

Hearing Transcript

Senate Judiciary Committee Hearing on Rod Rosenstein and Rachel Brand Nominations

March 8, 2017

GRASSLEY:

Good morning everybody. I'm pleased to be able to hold this nomination hearing for two very outstanding nominees, Rod Rosenstein and Rachel Brand. They've been nominated for two very important senior positions in the Department of Justice, deputy attorney general and associate attorney general.

The deputy attorney general, who is the second in command at the department, oversees its day to day operations. The associate attorney general oversees the department's civil litigation departments. It's critical that we fill these two important positions so the department can operate at full capacity and we couldn't have two better nominees for these positions.

Mr. Rosenstein and Mrs. Brand, share a lot in common. They both are dedicated civil servants. They've both been confirmed by the Senate before, in Mrs. Brand's case, twice. And they both served in the Senate confirmed positions during President Obama's administration. They're both extraordinarily talented and fair-minded lawyers, dedicated to the full and evenhanded enforcement of our laws and they will serve the department with distinction.

Mr. Rosenstein has served the department for more than three decades, President Bush appointed him to be U.S. attorney for Maryland. He continued to serve in that position throughout President Obama's entire two terms in office. I'm sure that Senator Cardin and Van Hollen will speak to his accomplishments in these roles.

And I also like to submit, for the record, a letter from our former colleague and friend, Senator Mikulski, supporting his nomination and without objection, that letter will be entered.

Now, with respect to Mr. Rosenstein's nomination, I have a few things to say about the attorney general's announcement last week and the supplemental testimony that he sent to this committee just yesterday. During his confirmation Attorney General Sessions told this committee that he would do -- what he would do if specific matters arose where he believed his impartiality might be questioned.

He said he would consult with the Justice Department's professionals and listen to their advice and to those who question his independence from the president, Attorney General Sessions proved them wrong already too, by recusing himself. Last week he kept his word, unlike Attorney General Lynch has said, Attorney General Sessions recused himself. His recusal means that if there is any ongoing matter that deals with the Trump campaign, it will be handled by the deputy attorney general.

So, if Mr. Rosenstein is confirmed and I surely expect him to be the responsibility for any decisions would fall on him. Already I've heard some calls from the other side that a special counsel should be appointed to take over. Any talk of a special counsel is premature at best. More importantly, any insinuation that Mr. Rosenstein lacks impartiality or professionalism necessary to handle these matters is out of line.

He's a career civil servant who's served with distinction in both Bush and Obama administrations. His independence is beyond reproach. In fact, in 2012 there was a series of higher-level leaks to the media of highly classified information. The leaks looked like they were designed to make the previous administration look good. Rather than appoint a special counsel, Attorney General Holder placed Mr. Rosenstein and another U.S. attorney in charge of the leak investigations.

At the time, the chairman of this committee said Attorney General Holder made a good choice when he put Mr. Rosenstein in charge. He described Mr. Rosenstein as a tough, honest prosecutor and the epitome of a professional prosecutor. Another senior Democrat on this committee said she opposed a special counsel because it takes a long time.

The ranking member also had this to say about Mr. Rosenstein and the other U.S. attorneys assigned to the matter, quote, "These are two scrupulous men. They're both independent and I have no reason to believe they cannot work with the FBI and assemble a very strong prosecution team were warranted," end of quote.

Presumably, my Democratic colleagues haven't changed their minds about Mr. Rosenstein -- Rosenstein because the president is now a Republican instead of a Democrat. Please remember a special counsel inquiries under the current department regulation are not the best way to ensure transparency and accountability that my colleagues have called for. There is no mandatory public report or other fining at the end of the investigation if no charges are filed. The investigations can just disappear into a black hole without the public ever understanding what the facts were.

GRASSLEY:

The intelligence committees are investigating these matters, and the other side has asked the inspector general to investigate as well. Unlike special counsels, congressional I.G. investigations can get the facts and present them to the public.

So the notion that somehow a special counsel will bring facts to light just isn't true. I can't help but notice the selective nature or the latest calls for a special counsel. Where were these calls from the other side when Attorney General Lynch was overseeing the Clinton investigations? Attorney General Lynch had been appointed by President Clinton to be a U.S. attorney.

Her law firm had represented the Clintons. Her ability to continue in her job as attorney general depended on a Clinton victory in the election. And she had a private meeting with President Bill Clinton on her government airplane while the department was investigating Secretary Clinton. Where were the calls from Democratic leadership for a special counsel at that time?

Where were the calls for a special counsel when Congress referred a criminal contempt citation to the Department of Justice against Attorney General Holder for withholding documents on Fast and Furious scandal? He misled Congress about when he learned about Fast and Furious. Where were the calls from the other side to have hearings on that?

The U.S. attorney was simply ordered to ignore the criminal contempt citation and my friends on the other side of the aisle were fine with that and unfortunately so. It would be easier to credit (ph) calls for a special consult if they were made with some consistency and -- and intellectual honesty.

There are times when special consults are appropriate, but it's far too soon to tell at this time. And even if there were evidence of a crime related to any of these matters, once confirmed, Mr. Rosenstein can decide how to handle that matter. I know of no reason to question his judgment, his integrity, or his impartiality.

I'll have more to say about Ms. Brand when I introduce her, but for now, let me say that she also is a dedicated public servant with exceptional credentials. Her nomination is supported by former attorney's general and deputy attorney's general, I'll enter a letter from them in the record, without objection it will be entered.

Before I turn to Senator Feinstein for her opening statement, lemme say how we'll conduct the hearing today. After Senator Feinstein's opening statement, we'll have the introduction of nominees. Senator Ernst and I will introduce Ms. Brand, but I'm going to introduce after my three colleagues have spoken, it'll save a little bit of time for them.

But she's an (inaudible) Senator Cardin and Van Hollen will introduce Mr. Rosenstein then the nominees will give their opening statements. We'll have seven-minute rounds of questions. I know that there are a number of issues senators would like to cover with these nominations, so I'll stay here until everyone has had the chance to ask all the questions they want.

We will do more than one round of questions and if we do, that'll be five additional minutes. And I'm prepared to work through the noon hour unless the nominees need time off.

Senator Feinstein?

FEINSTEIN:

Thanks very much, Mr. Chairman. As you have said, that today we begin our consideration of the nominees to fill two really important positions within the Department of Justice.

The deputy attorney general essentially leads the day to day operations of the Justice Department and also, directly oversees the Solicitor General's Office, the Office of Legal Counsel and the law enforcement components, like the FBI, the DEA and the AFT. Significantly, the deputy attorney general steps in when the attorney general cannot or should not be involved in a particular matter.

The associate attorney general is effectively the number three position and oversees critically important components of the Justice Department, including the Civil Rights Division, the

Environment and Natural Resources Division, the Civil Division and the Office on Violence Against Women. From national security to voting rights and from consumer protection to immigration litigation, both of these positions carry tremendous responsibility within the Justice Department.

So I wanna take a moment to welcome the two nominees here today, Rod Rosenstein and Rachel Brand and congratulate them for having been nominated to such major posts in the Justice Department. I had the pleasure of meeting with them yesterday and both certainly appear well-qualified. If confirmed, they will be part of a senior leadership team that will help shape policies and priorities that will affect all of us in America and they will help determine the direction of the Justice Department over the next four years.

Unfortunately, at this early stage in the new administration, there have already been some concerning developments. First, the acting attorney general, Sally Yates, was abruptly fired by the president for taking a principled stand on the executive order banning individuals from certain majority Muslim countries. And her stance was then vindicated by the 9th Circuit.

Second, instead of taking strong stance to protect the voting rights and civil rights of all, the department has taken steps to further erode those rights. Specifically, we already see the Civil Rights Division switching positions in important cases, like the Texas Voter Identification Law, or withdrawing its guidance relating to transgender students. This reversal of course, away from policies that uphold and protect civil rights for all Americans, is unfortunate. But it well may reveal the intended path of the future.

Over the past several weeks, there have been numerous press stories about the White House to direct communications for ongoing investigations and even direct U.S. attorneys on how to argue cases. I continue to strongly believe that the case can be made for an independent investigation that is insulated from any potential political influence. So I very much support the appointment of a special prosecutor to lead the investigation into Russian influence in the election.

I believe we need an independent criminal investigation into Russian influence. It's vitally important that the American people have trust in this investigation and that there is not even the appearance of a conflict of interest or political influence. So that's why I continue to support the appointment of a special prosecutor to lead the investigation.

To be clear, I do not say this because I question the integrity or the ability of Mr. Rosenstein, I do not. But this is about more than just one individual. This is about the integrity of the process and the public's faith in our institutions of justice. Justice Department regulations clearly provide for the appointment of a special counsel when there is a conflict of interest for the department or other extraordinary circumstances and where the appointment of a special counsel would be in the public interest.

By his own words, Attorney General Sessions was a surrogate for the Trump campaign. He has admitted he met with the Russian ambassador on two occasions. And on Friday the attorney general announced he believes he should recuse himself, and he has. In addition, the investigation into Russia's interference could very well involve officials in the Trump administration.

All these factors demonstrate that there is, at the minimum, an appearance of a conflict of interest, which is what's needed under the regulations. In addition, if you look back to December 2003, when Attorney General Ashcroft refused -- recused himself from the Valerie Plame case, that very same day, then Deputy Attorney General Comey appointed a special prosecutor. He said, he did so out of an abundance of caution and to avoid any appearance of a conflict of interest.

I believe the same abundance of caution is warranted here. As has been done in the past, a special prosecutor should lead this investigation. I believe it should be respected prosecutor, someone free of any partisan or political background, someone who has a reputation for integrity and impartial decision-making, and who is independently selected not by the attorney general.

From the outset, we need a respected prosecutor who is independently selected free of any partisan or political background. I'm also concerned about the Justice Department's role in dismantling important rules and regulations that -- among other things help protect consumers, keep people safe, and protect our environment. Through executive orders and congressional repeals President Trump and his allies are taking unprecedented steps to help big business but harm average Americans.

I've had an opportunity to meet with both Mr. Rosenstein and Mr. Brand, as I said. They both have impressive credentials and I enjoyed meeting with them. But as we all know the test of leadership and suitability for a job is not how nice you are or how well you get along. It is whether the Justice Department or our courts -- whether in those departments We need independent, fair-minded public servants who will adhere to the rule of law and look out for everyone in this country, not just the powerful or well-connected.

We need steel spines, not weak knees when it comes to political independence in the Department of Justice. And there is a real danger, I believe, that the Justice Department could become politicized. And so I hope to hear today from these nominees what they will do to guard against just that.

Thank you very much, Mr. Chairman.

GRASSLEY:

Thank you, Senator Feinstein.

Now Senator Ernst and then Senator Cardin and Senator Van Hollen.

ERNST:

Thank you, Chairman Grassley.

It is my privilege to be here today to introduce a native in Iowan, Rachel Brand, who has been nominated to be associate attorney general of the United States. After graduating from Pella

Christian High School in Pella, Iowa and the University of Minnesota, Morris, Ms. Brand went on to receive her law degree from Harvard Law School.

After law school, Ms. Brand embarked on an impressive legal career in both private practice and public practice. In fact, she has at one time or another served in all three branches of government. She was previously confirmed by the Senate as assistant attorney general for legal policy at the Department of Justice. And before that, she clerked for Justice Kennedy on the Supreme Court of the United States. And perhaps the most prestigious of all, she worked as an intern for Senator Grassley.

(LAUGHTER)

In addition to her public service, Ms. Brand has had a distinguished career in private practice. Has taught as a -- as an adjunct law professor and serves as a board member for Doorways for Women and Families; an organization dedicated to creating pathways out of homelessness, domestic violence and sexual assault. Ms. Brand has shown time and time again a commitment to public service. And if she is confirmed it is my understanding that she will be the first woman to serve the country as an associate attorney general of the United States.

I am honored to be here today to support her for this position and I look forward to what I hope will be a speedy approval of her nomination.

Thank you, Chairman Grassley.

GRASSLEY:

Thank you, Senator Ernst.

Now, Senator Cardin?

CARDIN:

Thank you, Senator Grassley.

Senator Feinstein, it's a pleasure to be back before the Judiciary Committee. I thank you for this opportunity.

I first, want to thank both of our nominees for being willing to serve their country and thank their families, because this is a family sacrifice to serve in government. And we thank -- thank them for being willing to do this. I'm pleased to be here with Senator Van Hollen, to introduce and support Rod Rosenstein to be the deputy attorney general. This was a welcomed nomination by President Trump.

Rod Rosenstein has demonstrated throughout his long career, the highest standards of professionalism. He has dedicated his entire professional career to public service. He's an experienced prosecutor and administrator. Very impressive credentials, graduating from the

University of Pennsylvania, Wharton School, from Harvard Law School where he was editor of the Harvard Law Journal. He was clerk for Judge Ginsburg on the District Court, Court of Appeals.

He's been the U.S. attorney since 2005. He has served in many leadership positions among the U.S. Attorneys. And as Chairman Grassley pointed out, he's been given very sensitive assignments by the Department of Justice, because of his known professionalism. I am very impressed by his responsibilities as a U.S. attorney for the state of Maryland. He has led major criminal investigations and prosecutions in regards to contraband smuggling with gang members, inmates and correctional officers.

He has personally supervised the coordination of our anti- terrorism efforts, recognizing that each stakeholder can add to the strength of Maryland's efforts to fight terrorism. He's done that without regard to turf issues, providing a coordinated strategy in our state of Maryland. He has handled corruption cases, sensitive corruption cases, from police officers, to elected officials and he has protected Maryland citizens through his commitment on consumer issues and on environmental issues. What impresses me the most is the fact that he has done this in a totally nonpartisan, professional manner.

When I was elected in 2006 to the United States Senate, Rod Rosenstein was already the U.S. attorney, he had been appointed there by President Bush. So I first met Mr. Rosenstein when he was the U.S. attorney for our state. And when I was elected, I was approached by many elected officials as to what was gonna happen with the U.S. attorney. I was impressed by the first phone calls I received, from the law enforcement individuals in Baltimore City responsible for the protection of our city, all urging me to encourage President Obama to retain Rod Rosenstein as U.S. attorney.

That was not the only call that I received. He has received strong support all from the justice leadership in the state of Maryland. State and local officials strongly support his appointment to the Deputy Attorney General, strongly supported his work as U.S. attorney. So when Senator Mikulski and I had to make a decision, we recommended to President Obama that he retain Rod Rosenstein as the U.S. attorney for Maryland and we're pleased that President Obama did, in fact, retain Mr. Rosenstein as our U.S. Attorney.

He has the support of state and local officials, Brian Frosh, the attorney general of Maryland supports this nomination. Doug Gansler, the former attorney general of Maryland supports the nomination. Peter Franchot, the comptroller of our State, Gregg Bernstein, the former State's attorney of Baltimore City, all support Mr. Rosenstein because of his record and his professionalism.

He's supported by our local police. Kevin Davis, the chief of Police for Baltimore City supports this nomination. And, as you may know, Maryland -- Baltimore is under a consent decree as a resulted of a pattern and practice investigation in Baltimore. The Maryland State Bar Association supports his nomination, former assistant U.S. attorneys support his nomination.

Mr. Chairman, I think Mr. Rosenstein is the right person, at the right time, for deputy attorney general. I share the concern of many members of this committee as to what Russia did in attacking

our democratic institutions. I support a complete investigation to understand exactly what happened. I believe the facts need to be done by an independent commission and that would be the best way for us to get all the fact necessary in regards to the -- what Russia was doing.

The Attorney General's office must follow facts, including the standards for the use of a special prosecutor. Based on Mr. Rosenstein's prior record, I am confident of his judgment on these issues.

GRASSLEY:

Thank you Senator Cardin.

Now Senator Van Hollen.

VAN HOLLEN:

Thank you Chairman Grassley, Ranking Member Feinstein, members of the committee, for the opportunity to join Senator Cardin in supporting Rod Rosenstein's nomination to become deputy attorney general.

As you've heard, he's had an illustrious and long career and during his 27 year career he's earned a reputation as a fair and focused administrator of justice. As a result, he has served in both Republican and Democratic administrations and earned the distinction of being the longest serving U.S. attorney in the country today.

Rod has not only aggressively prosecuted dangerous gangs and criminals in Maryland, but also elected officials who violated the public's trust. He has show impartiality in these investigations and his successful prosecutions have led to ethics reforms that increase transparency and public confidence in Maryland.

In addition to being a top notch lawyer, he's known for the professional manner in which he runs his current office. In his letter of support, Maryland's Attorney General Brian Frosh notes that Rod, quote, "Inherited an office in turmoil," end quote. When he became Maryland's U.S. attorney, but with a quote, "Steady hand a superb management created a department that is now universally respected." Those skills will be put to test in the coming months.

It's no secret that Mr. Rosenstein is before this committee at a tumultuous time for the Department of Justice and his job will be to serve justice and not political leaders. As Rod and I discussed yesterday, the ultimate question is the same one that Senator Sessions posed to Sally Yates during her hearing as the nominee to be deputy attorney general when he said, quote, "You have to watch out because people will be asking you to do things you just need to say no about," end quote. And went on to ask, do you think the attorney general has the responsibility to say no to the president if he asks for something that's improper?

Like Sally Yates, Rod Rosenstein said he would be willing to put his job on the line to uphold the public trust and the integrity of the Department of Justice. Mr. Chairman, I share the views expressed by Senator Feinstein and Senator Cardin as to the investigation and ties -- any ties

between the Trump Administration and Russian interference in our elections. I believe they will require the appointment of a special prosecutor and I've also joined Senator Cardin and others in calling for a nonpartisan, independent commission.

I also made it clear in my conversations with Mr. Rosenstein that if the FBI director has, in fact, requested that the Justice Department deny President Trump's unsubstantiated claims about Obama administration's wiretapping of Trump Tower, then the Justice Department has a duty to let the public know the truth.

Mr. Chairman, I think we would all agree that it's vitally important that the American public has faith that our laws will apply equally to all Americans, regardless of rank or position. Rod Rosenstein has applied that principal faithfully during his time as U.S. attorney in Maryland. It's essential that the same principle applied at the Department of Justice.

Members of the committee, I do not know what the future holds on these issues of great importance to our democracy. I do know that Rod Rosenstein has a record and reputation of serving justice and I support his nomination. I also want to join Senator Cardin expressing our gratitude to his wife, Lisa (ph), his daughters Julie (ph) and Allison (ph) for joining us at today. And for their families commitment to public service. Thank you.

GRASSLEY:

Thanks to both my colleagues. And unless any of my colleagues have questions you're -- you're free to go. Thank you very much.

(UNKNOWN)

(OFF-MIKE)

GRASSLEY:

I gotta -- go yes, I gotta introduce her first. I will take my time now to introduce Rachel Brand. And you've already been told she's a native Iowan. She may not have lived in Iowa for a few years now, but I know she loved going to the Ohio State Fair. And I know that she still goes home a fairly regularly to visit a 94-year- old grandmother and both sets of her grandparents were dairy farmers.

GRASSLEY:

Ms. Brand is familiar to this committee. She appeared before us many times, both as a nominee and as expert witness. She is already serve the country well I'm glad to see that she has been nominated once again, this time as associate attorney general. I'll of note that this is the third time that she'd been nominated for Senate confirmed position. Both President Bush and Obama also nominated her for roles in their respective departments -- or administrations.

Before Ms. Brand graduated from Harvard Law School she was an intern at my D.C. office, as you been told by my colleague. She clerked to for the Justice of the Supreme Court of Massachusetts, as well as for Justice Kennedy on the U.S. Supreme Court. She served as counsel to both President Bush and as assistant attorney general, Office of Legal Policy. In that role she prepared nominees to be sitting at the very place she is at this time.

She also specialized in counterterrorism and national security issues. In 2011, she became chief counsel for regulatory litigation of the U.S. Chamber of Commerce. Most recently, she was a member of the Privacy and the Civil Liberties Oversight Board. Of course, that board oversees federal agencies' counterterrorism activities to ensure the privacy and civil liberties are balanced with national security interest.

In addition to her brass career accomplishments, Ms. Brand is on the board of an organization called Doorways. Doorways, helps women and children who find themselves in abusive situations. They have a 24 hour hotline and provide shelter and support services for these people. I'm pleased to support someone who -- who was so well- qualified with her previous positions at the White House, Office of Legal Counsel, Privacy and Civil Liberties Oversight Board. She has experience that touches almost every part of the federal government.

As the assistant attorney general for the Office of Legal Policy, she was a member of the senior management team of the Department of Justice; working with components and law enforcement agencies across the department. Similarly, at the privacy and slimmer liberties oversight board, she worked with diverse agencies to ensure the privacy and civil liberties are taken into account while carrying out the important mission of protecting the nation from terrorism. And during Ms. Brand's tenure, she gained extensive litigation management experience that will serve her well as she oversees civil litigating campaigns.

So congratulations on your many accomplishments, Ms. Brand. I'm proud to be able to support your nomination and I think you'll do a very fantastic job.

Will you both now come to the table and before you sit, I would like to swear you in. Do you affirm that the testimony you're about to give before this committee will be the truth, the whole truth and nothing but the truth, so help you God? OK.

Now, it's up to you Mr. Rosenstein, to give your statement, but before you do that, you may want to introduce your family and anybody else you want to introduce that's here to urge you on.

ROSENSTEIN:

Well, thank you, Chairman Grassley, Ranking Member Feinstein and members of the committee. I wanna thank you for scheduling this hearing and thank you for taking the time to meet with me in your offices over the past two weeks.

I'm very grateful to Senators Cardin and Van Hollen for their generous introductions. I would like to introduce my wife of 22 years, Lisa Barsoomian. Lisa is a former assistant U.S. attorney who

shares my affection for the Department of Justice. She now devotes much of her time to our daughters, Julie and Allison.

This hearing, I'm sorry to say, required Allie to break her perfect school attendance record. My older daughter Julie writes for the school newspaper, but journalistic ethics precludes her from covering this event today. These young women are excellent students, superb athletes, and fundamentally good people.

I'm also proud, Senators, that my parents, Robert and Jerry (ph) Rosenstein are here today. My mom worked as a bookkeeper and served on the school board. My dad ran a small business in Philadelphia with his partner, Miriam Smalls (ph), who's also here. My parents encourage their children to take full advantage of the promise of America, even when that required us to move far from our small hometown of lower Moreland, Pennsylvania.

My sister, Dr. Nancy Messonnier also has spent her entire career in public service. She traveled from Georgia where she is a center director at the Centers for Disease Control. She's also a uniformed officer, a captain, of the Public Health Service and I'm disappointed she wasn't permitted to wear her uniform here today, but we're very proud of her.

My mother-in-law Alice Barsoomian, flew from California with Lisa's aunt, Rita Arslanian (ph). They are immigrants to America, senators and they are quite proud as well, to be here today. And many other relatives, friends and colleagues are in this room or watching the broadcast.

Senators, I am so fortunate to be part of one of our nations crown jewels. The United States Department of Justice stands for the principle, that every American deserves equal protection under the rule of law. I wanna thank the attorney general and the president for placing their trust in me, to help manage the department and to enforce that principle.

The Justice Department has been my professional home for almost three decades. I served under five presidents and under nine attorney's general. And I wanna assure you, senators, based on my personal experience that our department is filled with exemplary professionals, devoted public servants who conduct independent investigations 365 days a year. I was fortunate to join them in 1990 and during the Clinton administration, I had the privilege of working directly for the deputy attorney general at that time, Philip Heymann.

I served in several other positions around the Justice Department and then in 2005, when I became U.S. attorney, I expected to serve for four years under President Bush. And I am so grateful to President Obama, for demonstrating his confidence in me and allowing me to serve for eight years, in his administration, with the support of our home state senior Senators Cardin, Mikulski and Sarbanes. Political affiliation is irrelevant to my work.

Our goals of preventing crime and protecting national security require us to work cooperatively with all partners, to be vigilant and to be proactive. We also need to be role models, because contacts with the police create indelible memories for citizens. As deputy attorney general I will draw on my personally experience with thousands of honorable law enforcement officers all

around this country as I seek to implement change and to build public trust. Justice is our name and justice is our mission.

Attorney General Robert Jackson famously said that the citizen's safety lies in a prosecutor who tempers zeal with human kindness, seeks the truth, serves the law and approaches the task with humility. For me, the grand hallways of main justice echo with the voices of mentors and friends. They taught me to ask the right questions. First, what can we do? Second, what should we do? And third, how will we explain it?

Senators, before taking on a position of this solemn responsibility, it's important to know who you are and what you stand for. My oath is an obligation. It requires me to support and defend the Constitution of the United States. To bear full faith and allegiance to the Constitution and to well and faithfully discharge the duties of my office. As you know, I've taken that oath a few times. I've administered that oath many times. I know it by heart. I understand what it means and I intend to honor it.

If you confirm my nomination, I will work to defend the integrity and independence of our justice department, to protect public safety, to preserve civil rights, to pursue justice, to advance the rule of law and to promote public confidence. The members of this committee are indispensable partners in achieving those goals and I know Ms. Brand shares that view.

Senators I am so proud to be here with one of the finest lawyers of my generation who would become the first female assist -- associate attorney general in the 40 year history of that office. I want to thank you for allowing me to speak and thank you for considering my nomination.

GRASSLEY:

Thank you Mr. Rosenstein.

Now, Ms. Brand and you can give your statement as well as introduce anybody that's here to support you and urge you on.

BRAND:

Thank you Mr. Chairman.

Mr. Chairman, Ranking Member Feinstein and members of the committee, thank you for the opportunity to appear today as you consider my nomination. I also would like to thank the president and the attorney general for the opportunity to be considered for this position.

I'm grateful to you, Mr. Chairman, and to Senator Ernst for your kind introductions today. Although I have not lived in Iowa in sometime, as you mentioned, I will always consider myself an Iowan. I now would like to introduce my family.

With me today is my husband, Jonathan Cohn, whom I met at Harvard Law School and he was one of the smartest lawyers I've ever known. He also served in the Department of Justice. We was born

and raised in Manhattan and so he was a bit of a novelty the first time I brought him home to Pella Iowa. We had some sport with him, taking him around to meet the cows on my uncle's dairy farm but he took it all in stride and put up with it and now he enjoys going back -- going back to Pella.

Sitting with him are our sons, Garrett (ph), age seven and Willem (ph), age nine. They're not looking too happy to be here, at least Garrett's (ph) not.

(LAUGHTER)

This is the second confirmation that Willem (ph) has attended. At my PCLOB confirmation hearing five years ago, Willem was four and he sat still about as long as we expected of a four year old until he got fidgety and Senator Leahy's counsel very nicely asked him if he wanted to go back into the anter (ph) room and gave him something to play with. We didn't think it was wise to bring Garrett (ph), who was then two, but he was excited was excited to eat juice -- eat cookies and drink juice at my swearing in at Justice Kennedy's chambers. This is the first time he's worn a blazer and I'm not sure how happy he is about that either.

But -- my parents, Ruth and Ivan Brand had planned to be here today. But unfortunately their flights were canceled last night and they couldn't make it. But they may be watching the live stream on the website. My mother-in-law, Helene Cohn (ph), is here. She traveled down from New York. Helene immigrated to the U.S. from the Netherlands that many years ago and my kids call her Oma, the Dutch word for grandma.

I'm also grateful to the friends have taken the time to be here today to support me. I have been blessed with opportunities in both public service and the private sector to work in a wide range of areas of law and policy. Working the top-notch lawyers in private practice; I learned a great deal about law and lawyering. And I had the opportunity to manage litigation concerning a broad spectrum of legal issues. But my heart has always been in public service where I've spent the majority of my career.

My love of public service dates back even in my college years when I studied political science at the University Minnesota, Morris. And in college and law school, I took every chance I could get to gain government experience. Including, of course, my internship attorney Grassley.

My first experience with the Justice Department was way back during my 1L summer when I worked as a honors intern at the FBI's national security division. Chairman Grassley and Senator Ernst Savard have already described my professional biography, so I won't take up the committee's time repeating it. But I would just say that it was a tremendous privilege to serve in the Justice Department as assistant A.G. for legal policy; working with components across the department to craft policy solutions to the challenges that they were facing.

I am honored to be nominated to be associate attorney general. I am also humbled by the opportunity to take on such a serious responsibility. I have deep admiration and respect for the institution of the Department of Justice, for its clinical work, for a tradition of independence and the dedicated public servants, lawyers, law enforcement officers and many others who worked

their across administrations. If confirmed, I will strive to undertake my role with integrity, independence and fidelity to constitutional principles and the rule of law.

I look forward to entering back into public service, serving the Department of Justice, its client United States and the public interest if I am confirmed. I also look forward to working with Mr. Rosenstein, if we are confirmed.

Thank you again for the opportunity appear today. And I look forward to taking your questions.

GRASSLEY:

Yeah. Yeah.

I'll start questioning. For the benefit of both Republicans and Democrats on the committee, we will take you in the order that you were here when the gavel falls. And then for people that came in later on it'll be according to how they arrive. And I would also ask that -- including this chairman, not to take more than the seven minutes.

GRASSLEY:

So if you still have one second left when you can answer, start the last question you're gonna asked. Go ahead and asked the question at that point.

I hope that at that point our nominees will give a shorter answer. And I hope after your time is run out that you won't -- that you won't carry on dialogue that's kind of a debate going on between the nominees and you folks as well. Because we got a lot of work to do today.

I'm going to start with Mr. Rosenstein. But before I asked the three or four questions on this first point, the attorney general has announced that he will recuse from any existing or future investigations of any matter relating in any way to the campaigns for president of the United States. That would include any investigation into campaigns for president and any communications with representatives of the Russian government.

The attorney general made clear that his announcement did not confirm the existence of any such investigation in accordance with department practice. In the event such an investigation were to take place, however, it would fall then to the position you have been nominated for as deputy attorney general in light of the recusal.

So four questions that you can take as long to answer or short answers, I'll do one at a time. Have you ever met with representatives of the Russian government?

ROSENSTEIN:

Not to my knowledge, senator, at least not recently and I have (OFF-MIKE)

GRASSLEY:

Push the button.

ROSENSTEIN:

Sorry, Senator. Over the course of my career from time to time, I have spoken to groups of visiting lawyers and judges from foreign countries. It's certainly possible there may have been Russian officials, there. But I don't recall any such meetings, no.

GRASSLEY:

OK. When were you first in contact with the attorney general about your nomination? Have you ever spoken to the attorney general about the question of Russian contacts with presidential campaigns?

ROSENSTEIN:

My first contact with Attorney General Sessions, I believe, was approximately November 28th, when I received a phone call from him. I don't believe I ever had any direct contact with Senator Sessions prior to that date. And no, I've had no conversations with Attorney General Sessions about that matter.

GRASSLEY:

About the Russian contacts?

ROSENSTEIN:

Correct.

GRASSLEY:

OK. Is there any basis on what you would not be able to handle such an -- these investigations, given that the Attorney General Sessions has announced his tension to recuse?

ROSENSTEIN:

Senator, I'm not aware of any. I should tell you, of course, since I'm not involved in the matter, I don't know what, if any investigation is currently ongoing within the department. So if I were confirmed, I would need to familiarize myself with the facts. I would need to consult with experts in the department. We have a complex set of rules and statutes that govern recusals.

And so I'm not aware of any requirement for me to recuse at this time. But as a lawyer, senator, I would have to know what it is I'm recusing from. And as a Department of Justice official, I'd have to rely on the advice I got from the career staff, we have folks who are trained to do just that.

GRASSLEY:

I hope this next question's not an impossible one. How would you handle such an investigation, have you ever discussed with the attorney general the appointment of a special prosecutor to handle such an investigation?

ROSENSTEIN:

Well, how we would handle an investigation, senator, is the way I would handle any investigation. As far as I'm concerned, every investigation conducted by the Department of Justice is an independent investigation, we prosecute tens of thousands of people every year and every one of those defendants deserves an independent prosecutor.

And so I would be certain that we had independent investigators to conduct those investigations along with law enforcement agents, who are trained to conduct their investigations in an appropriate way and comply with the statutes, the regulations, the constitution of the policies of our law enforcement agencies. And so that's the way I would do that, Senator. With regard to the special counsel, in this or other cases, I know this is the issue du jour (ph) on Capitol Hill.

But I anticipate that if I were the deputy attorney general, we'd have a lot of matters coming before the department over time. And I would approach them all the same way. I would evaluate the facts and the law, consider the applicable regulations, consult with career professionals in the department and then exercise my best judgment, if I were acting attorney general or provide my best advice to the attorney general if he were not recused, about what I believe is the right course of action.

GRASSLEY:

Yeah. I'd like to go to Ms. Brand now, and ask you about your work at the Chamber of Commerce. When you worked there, your client of course, was that chamber. In that capacity, you signed a number of brief opposing the positions of government agencies.

Of course, at the Department of Justice, your job will be to defend these agencies and their missions. Can you discuss how you will approach that from a different angle?

BRAND:

Sure Senator Grassley, I would be happy to. As you say, as a lawyer I have spent some of my career in private practice representing clients. I've of course spent more of my careers in public service of one type or another. But, just as when I was at a law firm, when I was at the Chamber of Commerce I had a client, the Chamber of Commerce and, as a litigator there, my job was to file lawsuits and file amicus briefs on behalf of that client.

If I'm confirmed to this position, of course, I'll have a very different role, I'll have a different client. My client will be the United States and my role will be to serve the public interest and the interest

of justice, representing that client as best I can. That's a role I'm very comfortable with. As I've said, I've spent more of my career in public service than in private practice and I would be honored to take that role back on if I'm confirmed.

GRASSLEY:

Back to Mr. Rosenstein, you served as an associate independent counsel and of course you've already referred to the decades of experience you've had in the department. So you're familiar with the role of independent counsels or special prosecutors in federal investigations.

Appointment of a special counsel requires both that there's evidence of a crime or wrongdoing and that the department is unable to handle the matter fairly, is that right as you see it?

ROSENSTEIN:

Generally that's correct. I believe what you're referring to is the department's regulation on special counsels as opposed to the independent counsel statute which sun-settled (ph) in 1999. It would require, under the current regulation, a determination by the attorney general or the acting attorney general that, number one, a criminal investigation of a person or matter is warranted.

Number two, that there is a conflict of interest for the department to conduct that investigation. And number three, that the public interest justifies the appointment of a special counsel.

GRASSLEY:

OK. You -- let me ask the question, I think you just answered it, but if you want to say more -- how would you decide whether a special prosecutor would be appropriate in a particular department investigation?

ROSENSTEIN:

Well, whatever it is Senator, and there are various formulations of this, as was mentioned in the introduction. I was specially designated by Attorney General Holder to conduct a sensitive investigation -- I wasn't technically a special counsel under that regulation but -- the bottom line is, Senator, that it's my job to make sure that all investigations are conducted independently.

GRASSLEY:

My time's up. I have two more points on that question, but I'll do that in the second round.

Senator Feinstein.

FEINSTEIN:

Thanks very much, Mr. Chairman.

Mr. Rosenstein, earlier this year the entire United States intelligence community made public its assessment that Vladimir Putin ordered a Russian influence campaign, designed to interfere with the 2016 presidential election. The goal was to undermine public faith in the United States democratic process and to harm the campaign of Secretary Clinton in favor of President Trump. I am very concerned.

I've been six years -- the chairman of the Intelligence Committee and on it for 16 years, so I've followed this closely, have had the gang of eight briefings and feel very certain that the reports of the intelligence community are, in fact, correct.

Have you read either the final classified or unclassified versions of the intelligence community's assessment regarding the Russian government's interference with the 2016 presidential campaign?

ROSENSTEIN:

Senator, I'm certainly familiar with the issue from media accounts. I obviously have not read any classified report concerning because it's not within my official responsibility as U.S. Attorney for Maryland and I don't believe I've read the unclassified report, I've believe I've read summaries in the media.

FEINSTEIN:

Well I'm -- I'm going to ask that you do that before your nomination comes up, if it does, on the floor, if you will. Will you read those reports?

ROSENSTEIN:

I think, senator, if -- if I were to become deputy attorney general, it would be essential for me to read those reports. Probably the classified as well, if there is such a report. I don't think I'm authorized to do prior...

FEINSTEIN:

Well, why don't we find you're number two now -- or will be number two.

ROSENSTEIN:

Yes, yeah. I think it's very important, Senator. I think that's a really valuable point appreciate your raising it. Because the media reports actually have, I think, created some confusion about that. I am the U.S. attorney for the district of Maryland. I have no role in managing the department, so...

FEINSTEIN:

Right. Well, I understand that.

ROSENSTEIN:

Yes.

FEINSTEIN:

I -- it was my fault, I misspoke. So thank you. Let me go on to the question of special counsel. And I mentioned in my opening remarks that when Valerie Plame's covert identity was revealed by someone in the Bush White House, Attorney General Ashcroft recused himself. And then Deputy Attorney General Comey promptly assigned Patrick Fitzgerald to be a special prosecutor with plenary authority to investigate and prosecute that case.

Now, given the recusal by the attorney general and the intense political interest in this matter. And the strong potential that the investigation will in fact involve individuals associated with the White House, it would seem that this situation also rises to the level of extraordinary circumstances that warrant a special counsel under the regulations.

Given all of this, and the heightened level of distrust on all sides, do you support the appointment of an independent special counsel to look into these matters?

ROSENSTEIN:

Senator, my understanding of this -- and again, it's based solely on media accounts of this point. My understanding is that at least one of your colleagues called for a special counsel for something related to this matter while Attorney General Lynch was in office in early January. And she rejected the request. And based on media accounts, I believe she said exactly what I said. That she had confidence in the career professionals of the department. But she had an additional piece of information, she presumably knows the facts. And I didn't. And she rejected that request.

Currently, Senator, we have acting attorney general for this matter, Dana Boente. He was appointed U.S. attorney by President Obama. And if there were need for special counsel, he currently has full authority to appoint one.

So I don't know at this point if the Attorney General Lynch or acting Deputy Attorney General Boente are right or wrong. But I certainly wouldn't be in a position to overrule them without having access to the facts that are the basis for their decisions.

FEINSTEIN:

So I'm to figure out what your bottom line is. I interpret that as a no, is that fair?

ROSENSTEIN:

Well I don't know, Senator. I think the -- the answer is I'm simply not in a position to answer the question. Because I don't know the information that they know, the folks who are in the position to make that decision. And what I am and am in a position I don't -- I don't presume that Attorney

General Lynch and acting Deputy Attorney General Boente are correct. I have a lot of respect for them. But if I determined that they're mistaken then...

FEINSTEIN:

OK...

ROSENSTEIN:

... I would overrule them.

FEINSTEIN:

Thank you, I understand.

Miss Brand, if I may, while at the National Chamber Litigation Center, you led regulatory litigation directed against regulations to protect workers rights and the environment. The president has now issued two executive orders aimed squarely at eliminating regulations.

The first requires the two federal regulations be identified for elimination for every new regulation. The second requires regulatory task forces in each agency to make recommendations on repealing, replacing and modifying existing regulations. As you may know, not all of the rules required by Dodd Frank have been finalized or fully implemented, despite the fact that it's been nearly seven years since it became law.

By one measurement, over a hundred rules still remain to be finalized, nearly a third of all the rules required by Dodd-Frank. It is concerning to me that these rules may not be proposed or finalized at all under the regulatory position of this administration, simply because there aren't hundreds of others found to offset.

What is the legal justification for arbitrarily failing to issue a regulation called for under law, simply because there aren't two regulations on the books to eliminate?

BRAND:

Thank you, Senator Feinstein. I am aware of those executive orders generally, I haven't studied them as I'm not yet in the department. With respect to the executive order ordering a review of regulations on the books, my recollection is that President Obama issued something quite similar during his term in office. And I -- I haven't studied what the results of that -- that study were.

In terms of the -- the other executive order, again, I haven't studied it. But I think that any regulatory action taken by any agency of the government has to comply with the requirements of the Administrative Procedure Act, which require reasoned decision-making. That statute remains in place, but as to the interplay between the APA and the executive order, those decisions would fall on the first instance to the regulatory agencies themselves, but I would have to study it further.

FEINSTEIN:

Thank you, very much.

Thanks, Mr. Chairman.

GRASSLEY:

OK. Senator Hatch?

HATCH:

Well, Thank you, Mr. Chairman. Let me first say that I -- I agree with you, that there is no legitimate -- legitimate basis for asking the attorney general to appear before this committee. It is insanely, at best, to demand a hearing before the attorney general has had a chance to address this matter further, as he has now done.

Skipping that basic step of fairness makes it look like this is more about publicity and -- and partisan fostering, than anything else. At least it looks that way. Responding to written questions after his hearing, the attorney general stated if the matter rose where he believed his impartiality might reasonably be questioned, he would quote, "Consult with department ethics officials regarding the most appropriate way to proceed," unquote. Well, that is exactly what he did.

I wish I could say the same thing about his predecessor, she would not recuse herself from the investigation into Secretary Clinton's misuse of classified information. Our Democratic friends have nothing to say about that. And like I said, this kind of double standard makes it at least look like partisan politics. And hopefully, it can start depoliticizing the Justice Department.

Now, lemme turn to the nominees before us today. I wanna congratulate both of you, you're excellent lawyers, I have great respect for each of you. Both Mr. Rosenstein and Ms. Brand are familiar to us and I think each is well-qualified in being asked to lead the Justice Department.

Now, Mr. Rosenstein lemme just ask you this question. I am the senate sponsor of the Rapid DNA Act. It would allow the use of rapid DNA technology to help -- to help analyze crimes, exonerate the innocent and prevent DNA extensive or analyze of backlogs.

Do you support the effort to allow DNA samples collected and analyzed with the use of rapid DNA technology, to be included in the National DNA CODIS (ph) Database?

ROSENSTEIN:

Senator, I'm not familiar with the details of the legislation. But as you describe it, it certainly sounds like it would be a valuable tool for law enforcement. I think it's critically important that we arm law enforcement officers with modern technology so that they're best able to do their job of keeping us safe.

And I know of many cases where DNA has been used effectively. Both to catch dangerous criminals, rapists in particular, we hear cases like that all the time. And, also, to exonerate innocent persons, some of whom have been wrongly convicted. So I think DNA can be an extraordinarily valuable tool and I believe we should arm our law enforcement officers with that sort of technology.

HATCH:

Great. I'm -- I'm concerned about a lack of transparency in federal -- federally funded pre-trial release programs. Individuals are often released without paying any bail on a promise to return to court and to meet the conditions of a pre-trial program. If they fail to return or complete such a program they become fugitives and the tax payers have to pay the price for billions in unpaid bills.

HATCH:

Last Congress I introduced the Citizen's Right to Know Act, which requires state and local governments that receive federal funding to report to the attorney general on these pre-trial release programs. What is your assessment of the pre-trial release program?

ROSENSTEIN:

Mr. Senator I regret that I'm not familiar with the...

HATCH:

OK.

ROSENSTEIN:

... with those challenges. I know that in cases I've supervised we make every effort if we believe somebody poses a significant danger to the community to make sure they are detained prior to trial. And if somebody's eligible for pre-trial release and they might be a candidate to be out in the community, then we would support that as well. But it's certainly important to make sure, in either case, that we have them available for court when the court date comes.

HATCH:

Thank you.

Ms. Brand, you're hear as part of the constitutionally prescribed appointment process. In that process the president nominates but cannot appoint without the advice and consent of the Senate. We had a dispute a few years ago when the previous president attempted to appoint some officials without Senate consent. He tried to define for the Senate and when we were in session and when we were in recess so that he could bypass the advice and consent requirement.

In your capacity with the U.S. Chamber litigation center, you filed a brief arguing that the president exceeded his power under the constitution. Am I right that the Supreme Court unanimously held that those appointments were unconstitutional?

BRAND:

Yes, Senator.

HATCH:

How important is it that the president abide by the limits of the constitution -- by the limits the constitution sets?

BRAND:

Well, Senator Hatch, I think that it's important for every officer of the United States, whether in the executive branch, the Congress or the judiciary -- or in a regulatory agency -- to stay within the bounds of the authority granted to them by Constitution or laws of the United States. I think that divided governmental power, whether it's divided along federalism lines or whether it's divided horizontally with the separation of powers is a critical protection of individual liberty and freedom.

HATCH:

Well, thank you.

In 2008 you advocated against over federalizing criminal justice. A growing number of experts and policy makers are also cautioning against over criminal -- criminalizing behavior. I've long been a proponent of a default mens rea, or criminal intent requirement, in the federal criminal code. What are your thoughts about a -- a default criminal intent requirement?

BRAND:

Well, Senator, I understand that legislation along those lines has been introduced, I'm not sure if it's pending now and it -- I would have to study the details of the legislation. I certainly do think that it's important to have an appropriate or at least a clear mens rea for every criminal provision in the code.

HATCH:

Well, thank you. That's all I have today. I appreciate both of you, appreciate you're willing to serve, appreciate the service both of you, each of you has given to the federal government and to our -- our fellow citizens of this country. Thank you so much.

(UNKNOWN)

Thank you.

GRASSLEY:

Senator Leahy.

LEAHY:

Thank you, Mr. Chairman.

Ms. Brand, I do recall asking my staff to tell your child that was a -- a place he'd be more interesting than listening to even -- even to your testimony, especially to the senators. As a father and a grandfather, I understand that.

Mr. Chairman, I know you said that you don't really -- I need to invite the attorney general back before the committee. I would note that his supplemental testimony last night did not even attempt to answer the -- his (ph) misleading response to my question. And concern what the Russians appear to be doing to us, I do feel you should bring him back.

Let me -- let me mention this. I watched you both being sworn in. And over my years here I've watched hundreds and hundreds of people being sworn. It's a very important oath, and Mr. Rosenstein, you said you've -- you've memorized it. I'm sure you have. But many of the people who've testified so far -- this year's nominees, they've fallen short of -- of this -- and their misleading testimony only came to light after the press reported on it.

Will you -- I'll both of you. You can answer this is this yes or no. Will you commit to me that in the event you need -- find the need to clarify any of your answers before this committee you do so immediately and not wait until the press calls you on it? Mr. Rosenstein.

ROSENSTEIN:

Thank you, Senator. I don't know if -- if you've ever had the opportunity be on my side of the table. We certainly make every effort to answer your questions fully and quickly...

(CROSSTALK)

LEAHY:

... if you go back over it afterward and -- and witnesses have. And they've found something which they've left out and they've let us know. Will you commit to do that before you have to be forced because of something in the press?

ROSENSTEIN:

Yes, I would.

LEAHY:

Ms. Brand?

BRAND:

Yes.

LEAHY:

Thank you.

Now Senator Feinstein, Mr. Rosenstein, asked you about the appointment of special counsel. I recall, I was not in the Senate...

(UNKNOWN)

OK...

LEAHY:

... I was a young prosecutor when Elliot Richardson was asked the same questions for this committee as the nominee for attorney general. 1973, Watergate was unfolding. He promised the committee he would appoint independent prosecutor if confirmed saying -- saying that -- and I -- I quote him, "It was necessary to create the maximum possible degree of public confidence in the integrity of the process." And, of course -- of he named Archibald Cox. He actually did that before the committee finished hearing.

No Russian hacking of one of our national committees -- this case the Democratic National Committee, their efforts to influence our elections -- their continuing efforts -- not only this country. But other countries to influence elections is just as serious as Watergate. Do you agree that accessing a computer or computer network without authorization, then obtaining and disseminating another's documents and e-mails -- is that illegal under federal law?

ROSENSTEIN:

(OFF-MIKE)

LEAHY:

Thank you. And, of course, according to the intelligence community -- and I agree with Senator Feinstein, read the full report. Both the public one, but the classified one. And see about Russia's interference on election. It was intended to undermine public faith.

Do -- do you agree that investigating what Russia's done is a matter of extraordinary importance?

ROSENSTEIN:

(OFF-MIKE)

FEINSTEIN (?):

(Inaudible) activate the mic?

ROSENSTEIN:

I'm sorry. Senator, I don't know the details of what, if any investigation is ongoing, but I can certainly assure you, if it's America against Russia or America against any other country I think everyone in this room knows which side I'm on.

LEAHY:

And well, so I do too, but I -- but you also agree that American people through such an investigation, they have to have confidence in the integrity of it?

ROSENSTEIN:

I believe it's critical for the American people to have confidence in the integrity of our investigations, yes.

LEAHY:

Suppose you're conducting an investigation and -- and you find that it sweeps out communications between those under investigation and your own boss. Would you agree that raises challenges you might not have in a private investigation?

(CROSSTALK)

ROSENSTEIN:

Yes, it would, Senator.

LEAHY:

I think unfortunate interference is one of the worst things I have seen in my years in the Senate. I've thought about this, I was in Vermont over the weekend and I spent a lot of time going over it. I cannot remember anything in my years here that has troubled me more to have another country trying to interfere. The national security advisor has resigned, the attorney general has recused himself, the White House seems to me meddling in a investigation.

Have you discussed with anyone from the administration or anyone connected with the president whether you would appoint a special counsel, if you were confirmed?

ROSENSTEIN:

I've had no communication with the White House at all about that issue, nor have I had communication with the attorney general about that issue.

LEAHY:

OK. Are you willing to appoint a special counsel to examine Russian interference on elections and other criminal activity?

ROSENSTEIN:

I'm willing to appoint a special counsel, Senator, whenever I determine that it's appropriate based upon the policies and procedures of the Justice Department.

LEAHY:

I'd ask you to go back and read what -- what Elliot Richardson said.

ROSENSTEIN:

I have, Senator.

LEAHY:

Thank you. And I -- you know, the president has said that President Obama wiretapped his phones and the Trump Tower phones. Does the president have that authority to unilaterally wiretap somebody?

ROSENSTEIN:

Senator, I have absolutely no information about that other than what I've read in the newspaper. And if I were the deputy attorney general, my office would have a critical role...

LEAHY:

My question is, does the president have that authority to unilaterally wiretap some of these phones?

ROSENSTEIN:

I -- I don't know the details, Senator and I'm reluctant as a lawyer to comment on that. In a criminal investigation, the answer would certainly be no.

LEAHY:

The reason I ask, I would assume that if the president is not telling the truth about this, those who know the truth would say what the truth is.

Thank you, Mr. Chairman.

GRASSLEY:

Senator Cornyn?

CORNYN:

Mr. Rosenstein, Ms. Brand, congratulations on your nomination. I think you're both exactly the answer to the chaotic times we're living in, professionals, who are dedicated to the rule of law and -- and not politics.

I'm a little confused by some of my colleagues statements today because they've called for an investigation -- actually there's an investigation ongoing by the Senate Intelligence Committee and the House Intelligence Committee.

I was out at CIA headquarters yesterday and observed four large binders full of classified information that's been made available to the committee to conduct that bipartisan investigation, one that Chairman Burr and Vice Chairman Warner have -- have authorized. And I think that's the appropriate place for that investigation to take place, rather than some sort of a select committee or some sort of a media circus.

I also am puzzled that -- Mr. Rosenstein you have been appropriately been praised for your reputation as a professional prosecutors and somebody whose integrity is beyond reproach. But then my colleagues here ask you whether you'll abdicate those responsibilities without even knowing the evidence and appoint a special counsel. I think you've answered the questions appropriately and I have confidence that you will apply the proper standards once you actually are confirmed.

And then I hear some of my colleagues talking about the importance of getting the Justice Department on track and yet -- then claiming they're going to block your nomination because of their concern about some other collateral matters.

I just want to ask you, Mr. Rosenstein, you were -- you pointed this out earlier but I think it bears repeating that you were appointed by the Obama administration, Attorney General Holder, to oversee a sensitive investigation to allegedly leaks of classified information, is that correct?

ROSENSTEIN:

Yes sir, that's correct.

CORNYN:

And would you just briefly describe what that investigation entailed?

ROSENSTEIN:

Well, the only thing I can describe for you, Senator, is the outcome of the investigation because we don't discuss matter beyond what's in the public record.

CORNYN:

That would be -- that'd be fine.

ROSENSTEIN:

The outcome of that investigation was that General James Cartwright pleaded guilty and admitted that he had made false statements in the course of an investigation into alleged unlawful disclosures. He admitted that he had, in fact, made disclosures in violation of law.

CORNYN:

Well, I would suggest to my friends that if you have the professionalism and integrity sufficient to conduct that sort of sensitive investigation that I believe you're eminently qualified for this position to which the president has nominated you and you will conduct yourself with a similar professionalism and integrity.

Mrs. Brand, as I said earlier, congratulation on your...

BRAND:

Thank you.

CORNYN:

... your appointment and of course you've been before the committee several times in different capacities. But I wanted to ask you, in particular, about your role on the privacy and civil liberties oversight board.

As you know, Congress will have the responsibility of looking at the Foreign Intelligence Surveillance Act reauthorization for section 702. We've got a number of other sensitive law enforcement tools and intelligence gathering tools which will be considered this year and, certainly, when you're confirmed you'll be -- you and Mr. Rosenstein will be playing a role in that.

But could you just describe for the public, generally, what sort of oversight and protections that are part and parcel of these law enforcement and intelligence gathering tools? Because I think sometimes people lose that and it's really important, it seems to me, for people to understand that there are oversight from all three branches of government; judicial, executive and legislative; and there -- the concern that we all have about privacy rights is -- is protected by that sort of oversight.

BRAND:

Well, thank you, Senator Cornyn, I thought a lot about this. And I've -- I've written about this in my individual capacity and on the PCLOB. Which oversight mechanisms apply depends on which authority you're -- you're talking about, obviously. And these are very complex matters. And I -- I hesitate to brush with sad broad strokes on something so complex.

But as a general matter, take FISA for example, there is oversight by all three branches of government in a typical FISA application. There is extensive work done inside the executive branch and there's judicial oversight. And then there's, of course, oversight by the committee that you sit on, the Senate Intelligence Committee, as well as the House Intelligence Committee. For certain programs there is oversight by the Justice Department of the intelligence agencies. There is involvement by the inspector generals in some cases. There's involvement by the board I formally sat on, the PCLOB.

So depending on the circumstances, there could be quite a few levels of oversight for a particular government action. I think that's appropriate.

CORNYN:

Well, I appreciate the complexity of talking about it from a 30,000 foot level and -- or at (large. But I think it is important for the public to understand that there are a number of legal protections and oversight responsibilities that do protect privacy rights. While at the same time preserving essential law enforcement and intelligence gathering tools.

I believe Director Comey, has Section 702 of the Foreign Intelligence Surveillance Act, the crown jewels of the intelligence community. And it strikes me it would be a travesty -- and indeed it would be dangerous, if for some reason Congress failed in its responsibility to reauthorize such an important law enforcement and intelligence gathering tool because of misguided concerns or unsupported concerns about lack of adequate oversight and protection of for privacy rights. So that's gonna be a very important part of the discussions.

I think the House, if I'm not mistaken, Judiciary Committee's actually having a hearing on that today -- or certainly this week. So we look forward to your contribution as we try to strike the right balance along with yours, Mr. Rosenstein. Thank you both for your service and I certainly look for to supporting your nominations.

ROSENSTEIN:

Thanks you.

DURBIN:

Thank you very much, Mr. Chairman, Mr. Rosenstein and Ms. Brand. Thank you very much come by my office, I appreciated it.

For the record, my friend from Texas raises a question about delay in filling these positions. Deputy Attorney General Jim -- Jim Cole was held up by the Republicans in this committee for hundred days before he was confirmed. Stewart Delray (ph) nominee to be associate attorney general under President Obama was held up for almost a year. He never received the floor vote and ultimately withdrew his nomination. I trust you will be treated more professionally by this committee.

Let me ask specific questions, if I can, about this issue of the Russian involvement. And, Mr. Rosenstein, I respect the fact you haven't read this report. But it's 15 pages long and it's on the internet and it's not classified. And I want to read several paragraphs that really put in perspective why we're asking these questions today. Because what we have learned from this intelligence report two months ago is historic.

It is of cyber attack on the United States of America like none we've ever seen before. I quote from our intelligence agencies, "Russian efforts to influence the 2016 U.S. presidential election represent the most recent expression of Moscow's long-standing desire to undermine the U.S.-led liberal democratic order. But these activities demonstrated a significant escalation in directness, level of activity, scope of effort compared to previous operations."

The intelligence agency say, we assess Russian President Vladimir Putin ordered an influence campaign in 2016, aimed at the U.S. presidential election. Russian goals were to undermine public faith in the U.S. democratic process, denigrate Secretary Clinton, harm her electability and potential presidency. We further assess Putin and the Russian government developed a clear preference for President- elect Trump.

This was not put out by the Democratic National Committee, this was published by our intelligence agencies and it's the reason that many of us believe this is not like an ordinary investigation by the Department of Justice. This is historic. It's always critical when it comes to filling these appointments, but this is an historic, constitutional moment in our history.

So I'd like to ask you, Mr. Rosenstein, will you commit that if you're confirmed, you will not impede or shutdown any FBI or Justice Department investigation and the Russian efforts to influence the 2016 U.S. presidential election?

ROSENSTEIN:

Senator, on the issue of foreign interference in American elections, I can assure you that you and I are on the same side. I will certainly support any properly predicated investigation related to interference by the Russians or by anybody else in American elections.

DURBIN:

I might say, for the record, that Attorney General Sessions was asked that same question at his confirmation hearing and he would not make that same commitment.

Second question, will you commit to properly inform the American people if the Department of Justice closes, terminates, or declines to further pursue an investigation into Russian interference in the 2016 U.S. presidential election?

ROSENSTEIN:

I'm sorry, Senator, what exactly is the...

DURBIN:

Inform the American people, if the Department of Justice closes, terminates, or declines to further pursue an investigation into Russian interference in the 2016 U.S. presidential election?

ROSENSTEIN:

Senator, I've been a prosecutor, as you know, for over 27 years. And our primary responsibility as prosecutors is to collect the evidence and determine whether or not we can prove a case in court. Often, there are other concerns that arise in investigations.

And in this particular one, Senator, I think I would need to consult with the director of the FBI and with the intelligence community before I make any commitment about what would be the outcome of such an investigation.

DURBIN:

I'm asking you if the outcome is closing or terminating, or declining to further pursue the investigation, would you report that to the American people?

ROSENSTEIN:

Senator, I don't wanna make any commitment about what I would do at the conclusion of investigation without knowing the details of the investigation. Talking with the director of the FBI, I can assure you, that if it's appropriate to release it to the American public, I would.

DURBIN:

Do you pledge to continue to pursue any ongoing investigation by the Justice Department into Russian interference in the 2016 election or any other attempts Russia may have made to undermine the United States, our political system or our position in the world?

ROSENSTEIN:

If there is an ongoing investigation in the Justice Department into interference with our elections by Russia or anybody else, and it's properly predicated and there's a basis for a federal investigation then absolutely, I would support it.

DURBIN:

That's another question that Senator Sessions refused to answer in his earlier hearing. I'd like to ask you about the scope of the Sessions recusal. I'm not sure where we stand today based on the letter which this committee received from the attorney general. Have you had an opportunity to read the wording in his recusal and the letter that he sent this committee?

ROSENSTEIN:

I -- I'm familiar with it, Senator, from media accounts. I was pretty busy with your colleagues yesterday. I don't think I -- I know I didn't read the letter yesterday. But I'm generally familiar with it.

DURBIN:

What he said in his recusal last Friday -- Thursday, I'm sorry, quote, "I have now decided to recuse myself from any existing or future investigations of any matter relating in any way to the campaigns of the president of the United States."

This, I might say, is a partial recusal, when it comes to the investigations into Russian influence on President Trump and his circle of advisors and associates. This recusal does not extend to post-election Russian contacts with the Trump transition team and the Trump Administration, like the Russian Ambassador's meetings with Jared Kushner and Michael Flynn on its face.

But yet the letter which the committee was sent says in its final paragraph, and I read, the March 3rd 2017 -- 2017 letter which we sent -- many of us sent to Attorney General Sessions, also asked why I had not recused myself from quote, "Russian contacts with the Trump transition team and administration." The attorney general says, I understand the scope of the recusal as described in the department's press release would include any such matters.

So, do you believe that this recusal now would affect any Russian contact with the Trump transition team or administration?

ROSENSTEIN:

Senator, I'm familiar with the department's recusal policies and regulations and they're actually more complicated than you might think because we're governed by the general government wide conflict of interest provisions in Title 5. We're governed by the Code of Federal Regulations Title 5 government wide.

We're also governed by a particular statute in Title 28 and by regulations that apply to the Department of Justice under 28 -- Title 28 of the Code of Federal Regulations. In addition to that, as lawyers, we're governed by bar rules.

So there are a lot of policies that apply and that's why it's important for us, when this issues do arise, to consult with career professionals and I think it's important also, Senator, to understand

that what we tell our people is that when you recuse there's no presumption you've done anything wrong. What you recuse because the issue justifies your recusal. So I don't know the details.

ROSENSTEIN:

If I were confirmed I would certainly make sure that if the attorney general were recused that I wouldn't discuss the matter with him and I have not discussed the matter with him.

DURBIN:

Thank you, but that's not my question. What I'm asking you to do -- and I want to give you the time to do it properly because this is an important matter and I know you're an excellent attorney and want to get this done right. I want to give you the official recusal by Senator -- Attorney General Sessions of last week in his letter which he sent to this committee and ask you for clarity as to the scope of this recusal.

I think that the attorney general left a wide gap in there about contacts between the Russians and the transition team and any members of this administration. And I want to know how you read it in light of these too and I want to give you the time to do it properly and professionally.

ROSENSTEIN:

Senator, I appreciate it, but I just don't know how I would have a basis for evaluating that without access to the information. I presume that the attorney general consulted with career professionals in the department who knew the fact and, if I become the deputy attorney general, and I believe that that's not a sufficient recusal, I'll certainly consult with him.

But if I were to read it today, Senator, I would only know what you knew. I wouldn't know what was the nature of the investigation, I wouldn't know what's under investigation that he may or may not need to recuse from. So I just wouldn't be in position to comment on whether it's adequate. But I do know that -- I know the people in the department who make these decisions, these are nonpartisan career folks and I believe they would of made a good faith effort to appropriately detail it.

(CROSSTALK)

DURBIN:

Mr. Rosenstein I'm not questioning the process. I'm just asking for clarity and to the recusal of the attorney general in his own words, not for the entire process that lead up to his conclusion. I'm asking you how you read his own words.

Mr. Chairman I yield.

GRASSLEY:

Senator Lee.

LEE:

Thank you Mr. Chairman. Thanks to both of you for being here.

One of the reasons why our republic is strong is we've got strong public servants who are willing to offer their service, even in difficult jobs. Ms. Brand I'd like to start with you.

In 2008 you wrote a memorandum that was later published by the Heritage Foundation and you approached the topic of the over federalization of criminal law. One of the things you wrote in there was that the -- quote, "Trimming back the federal criminal code by eliminating offenses that should be investigated and prosecuted by the states has long been a goal of policy experts and good government advocates . This exercise in federalism is worthwhile both for its constitutional merits and for its effect on government accountability," close quote.

This, coupled with the fact that in one answer a few minutes ago you managed to put in a plug for both restoring federalism and separation of powers, won me over. Because I happen to believe that our drift away from federalism and separation of powers has caused problems. Problems that are by their very -- very nature, neither liberal nor conservative; Republican or Democratic. They're - - they're law and order kinds of concerns. They are structural concerns, they're constitutional concerns. And ultimately they get to this point of accountability.

Would you agree with me if -- if I took what you wrote in there in and said that that could be applied to basically every instance, not just in the criminal law; but, given that the position that you'll be involved in will be dealing primarily with -- with civil issues. Federalism and separation powers are important and that everything we drift from them; whether it's in the context of criminal law or -- or of -- of a civil matter, that we're limiting accountability of government.

BRAND:

Yes I do, Senator. I think that the Department of Justice should be governed by the principles enshrined in the Constitution. I certainly would consider myself governed by them. And the Constitution, I think brilliantly, divided government for the -- for the protection of individual liberties. So yes, I absolutely agree with you.

LEE:

Thank you. Given that you'll be overseeing the civil litigating components of the department, I also wanted to ask you when is it appropriate for the department to decide not to defend a particular federal law? What's the standard that you think ought to be applied there?

BRAND:

Well, if you're talking about defending an act of Congress from a constitutional challenge, for example. I think the department's obligation is to defend an act of Congress whenever there is an available reasonable legal argument to be made.

LEE:

And that itself has its roots in the separation of powers, does it not?

BRAND:

Yes.

LEE:

Given that we make the law and then if -- if the executive branch isn't doing its job and nobody's accountable as they should be?

BRAND:

Yes.

LEE:

Mr. Rosenstein, one hot button topic that has come up again and again last few years involves prosecutorial discretion. This is a topic that I discussed with Attorney General Lynch. And also a topic that I discussed with Attorney General Sessions when each of them came through this committee.

Do you think that the government should exercise prosecutorial discretion on a case-by-case basis? Or is this something the government can decide to apply as a more general matter based on policy considerations?

ROSENSTEIN:

That's a difficult question, Senator, as I think the answer is a little bit of both. We have general guidelines, the Department Justice is currently governed by what are known as the attorney general's prosecution guidelines. They actually were developed by Attorney General Civiletti during his tenure in the Carter administration.

They're in the U.S. attorney's manual; Title 9, Section 27. And establish sort of the general criteria in all cases that prosecutors ought to look to in determining whether to bring a particular case. And one of the factors is federal law enforcement priorities.

So at a high level, the determination needs be made, what are our priorities? And at a lower level, given that the case falls within a priority, what are the factors that determine whether not prosecute that individual case?

So I think the -- the -- the complete answer to your question is it's a combination of both policy judgments about where to focus our resources and then, ultimately in every case, it needs to be an individualized determination about whether the facts in that case justify a prosecution.

LEE:

Thank you. With -- with respect to the minimum mandatory sentences, we talked a little bit in my office, about the fact that in your office, in the U.S. Attorney's Office that you lead, you've been fairly conservative or cautious, about how you charge crimes involving minimum mandatory sentences. Unfortunately, we didn't have enough time to go into a lot of detail, there.

Can you talk to me a little bit about your office's practices with regard to minimum mandatories and how those might reflect the approach you'll take in the Department Justice, if confirmed?

ROSENSTEIN:

Yes, Senator, we -- we comply with the department's policies concerning where -- when to use mandatory minimum sentences. And there are many cases that we deal with that involve extraordinarily dangerous people, who deserve to be sent to prison for lengthy periods of time. And in those cases, we -- we apply the mandatory penalties that are available to us.

In many cases, using a mandatory minimum penalty, or prosecuting charging a defendant with a mandatory minimum penalty, results in cooperation from that defendant. And if we're able to do that, that's one of the ways we're actually able to help, one of the areas where federal prosecutors are particularly able to help our local colleagues in Baltimore and probably in other cities, is that we're able to break this no snitching code that is such a problem with violent gangs in -- in many of our cities.

We're able to break that by catching a defendant who has committed a serious crime, holding it accountable under the penalties established by this Congress and offering the opportunity to truthfully provide information about other crimes that he knows. And using that power, Senator, we're able to -- to break the backs of some of these violent gangs in our communities.

So I think it's critically important that we have those penalties available to us in appropriate cases. But as you say, you know, we also need to take into consideration, whether in a particular case, it would be excessive. And there are some cases where we have discretion under department policies. And in those cases, we faithfully apply the policies and use those mandatory penalties, only when they're justified.

LEE:

Thank you. Briefly, in the time I've got left, I wanna talk to you a little bit about civil asset forfeiture. Equitable sharing is a program that the department suspended in December of 2015, a lot of budget cuts. That program was resuscitated a few months later, in 2016.

Would you consider making changes to or possibly even ending equitable sharing, at least where equitable sharing in the civil asset forfeiture context is used to circumvent state and local laws restricting civil asset forfeiture by state and local law enforcement officials?

ROSENSTEIN:

I would certainly, Senator, consider changing the policies. I'd be reluctant to commit to completely terminating the policy. It's a law enforcement tool that's available to us. And I think in appropriate cases, we need to use the tools that are available to us.

LEE:

Thank you, I see my time's expired.

Thank you, Mr. Chairman.

WHITEHOUSE:

Mr. Rosenstein, good morning. Many attorneys general have defended the Department of Justice from political interference, by restricting contacts between DOJ and the White House to a select few officials. What will be the department's policy in this administration?

ROSENSTEIN:

Senator, I believe the department's policy is and will be, that communications with the White House concerning cases, that's the most sensitive matter...

WHITEHOUSE:

Yep.

ROSENSTEIN:

... need to be cleared through the office of the deputy attorney general. That's been the policy -- I believe it was the policy when I worked for Phil Heymann as deputy attorney general in 1993. And I think it's really important Senator, that everybody understands that there needs to be a single point of contact, because if you have...

WHITEHOUSE:

And at the White House?

ROSENSTEIN:

Pardon me?

WHITEHOUSE:

At the White House, could anybody at the White House call you about a cases?

ROSENSTEIN:

Well, anybody could call, Senator, they're not going to get an answer. My understanding is that...

WHITEHOUSE:

Well, in fact, isn't the rule that they shouldn't even call?

ROSENSTEIN:

I believe the rule Senator, is that the communication should be between the White House Counsel or deputy counsel and the deputy attorney general.

WHITEHOUSE:

Precisely. And you're prepared to enforce this as deputy attorney general?

ROSENSTEIN:

I've enforced that Senator, as U.S. attorney, occasionally we get calls from people who shouldn't be calling, usually it's a congressional staffer who doesn't know the rules rather than somebody at the White House, but I think it's important we circulate that info -- and people do it innocently, I don't mean to accuse anybody, people don't know the rules if they're not in the department. We need to know the rules and we need to...

WHITEHOUSE:

And the White House needs to know the rules?

ROSENSTEIN:

Yes sir.

WHITEHOUSE:

Why is it important that prosecutors not reveal derogatory investigative investigation about individuals who have not been charged with an offense?

ROSENSTEIN:

I think that speaks for itself Senator and...

WHITEHOUSE:

I would like to hear you say it.

ROSENSTEIN:

The -- you know my guidance for this and many other issues is Robert Jackson, who was the attorney general of the United States, gave a speech that is the -- still stands as I think the best articulation of the principles of the federal prosecutor.

On April 1st of 1940 and he explained that that is the most significant power of the federal prosecutor and it's subject to abuse. That we need to refrain from disparaging people unless it's necessary and justified in a case. So if we charge somebody with a crime and it's appropriate to introduce evidence against them in court we do it. If we don't charge them with a crime, we have responsibility not to disparage their character.

WHITEHOUSE:

And even where an individual is charged you don't divulge derogatory investigative information beyond what's charged in the information or the indictment correct?

ROSENSTEIN:

Well we don't do it gratuitously Senator, it might be appropriate in the course of a judicial proceeding, a detention hearing, a file for example.

(CROSSTALK)

WHITEHOUSE:

Correct. Yeah, in 2010 the Department of Justice propounded a memo suggesting that the office of legal counsel attorneys do not owe a duty of candor to their clients that is equivalent to the duty of candor that work-a-day attorneys are held to in court proceedings. I understand that the Department of Justice has since corrected that and that OLC attorneys are treated as being held to a duty of candor equivalent to that of work-a-day attorneys in court.

What duty of candor will you hold OLC attorneys to in the performance of their functions?

ROSENSTEIN:

You know, Senator, I'm not familiar with that issue. The duty of candor is not just an internal department policy, it's an ethical rule governing lawyers so I would certainly enforce that rule.

WHITEHOUSE:

We'll follow up then with a question for the record for a more fulsome response. Did the department's civil case against the tobacco industry, years ago, have merit and was it an appropriate use of the department's authority?

ROSENSTEIN:

Senator I -- I'm -- I do not know the answer to that question, I apologize.

WHITEHOUSE:

How -- how...

ROSENSTEIN:

I'm just not familiar with it. You may be -- it may or may not be I'm just not familiar with the details, I certainly recall reading about it but if I get the job Senator there are a lot of areas I'm an expert in and there's some areas I'm not and I regret I'm just not familiar with details of that and I couldn't comment on whether it was or wasn't an appropriate exercise of authority.

WHITEHOUSE:

Is the holding in that case correct that corporations do not have a first amendment right to fraudulent speech?

ROSENSTEIN:

I believe that's correct as a matter of law, yes.

WHITEHOUSE:

Matter of law isn't it. Do you know if the Department of Justice is looking into connections between Russia and the Trump campaign?

ROSENSTEIN:

I -- I've asked that before and I do not. I know what I read in the newspaper and many of you, Senator Cornyn mentioned, may know more than I do about that. So I do not know the answer to that.

WHITEHOUSE:

In the event that there were such an investigation, would the content of communications between Russian officials and Trump surrogates be relevant to such an investigation?

ROSENSTEIN:

It may be Senator. I don't know the details of the investigation, so I'm not in a position to comment on what may or may not be relevant.

WHITEHOUSE:

As a matter of logic, it would likely be relevant, would it not?

ROSENSTEIN:

If that's what we're investigating, it would certainly be relevant.

WHITEHOUSE:

It would certainly be relevant. Would contacts between Trump surrogates and the Trump campaign regarding surrogate communications with Russia also be relevant to such an investigation?

ROSENSTEIN:

Senator, when we conduct criminal investigations we conduct thorough criminal investigations so I can assure you that if our investigators and prosecutors determined that -- that sort of information was relevant to an investigation, we would get that information.

WHITEHOUSE:

And you understand that those answers make Attorney General Sessions a likely witness in any such investigation.

ROSENSTEIN:

I -- I -- I don't, Senator. But I do understand that the attorney general has recused and I'm not gonna discuss it with him.

WHITEHOUSE:

With the respect to discussing ongoing investigations; do you agree that if all the shop windows are broken on Main Street it is appropriate for the police chief to announce that he intends to get to the bottom of it and to assure the public that law enforcement will respond?

ROSENSTEIN:

Circumstantial evidence, Senator. Unless there were hurricane, that would be evidence of some crime might have occurred, yes.

WHITEHOUSE:

And when there is public awareness that a crime has occurred, it's not only appropriate it's really incumbent upon law enforcement to assure the public that it will go about its duties and take what steps are necessary to enforce the law.

ROSENSTEIN:

Yes.

WHITEHOUSE:

And people do that all the time.

ROSENSTEIN:

Yes, we do.

WHITEHOUSE:

Police chiefs do it, you've done it as U.S. attorney, DAs do it. People do that all the time. Is not the public report on Russian election manipulation the equivalent of broken windows on Main Street? Don't the -- doesn't the American public now understand that there has been a very significant piece of damage done to our election process by a foreign government as a result of that report?

ROSENSTEIN:

Senator, I believe that you and I are on the same side. If the Russians interfered with American elections then I'm on the American side.

WHITEHOUSE:

And it's appropriate for you, when you have that information, to assure the American public that it will be appropriately investigated. And that there is, in fact investigation taking place.

ROSENSTEIN:

You know, the complication here, Senator -- I don't mean to be difficult in any way, I'm trying to be as helpful as I can. But there has been repeated reference to intelligence equities here and I know nothing about that.

So one of the challenges that we face with foreign hacking -- and this is an issue I know something about outside of this the context this case. We need to figure out who's responsible for it. Is it a foreign government? Is it an intelligence issue? Is it a law enforcement issue? And that's a challenge question we take...

(CROSSTALK)

WHITEHOUSE:

But the question whether the Department of Justice is conducting an investigation into this is one that is appropriate for the Department of Justice to answer, correct?

ROSENSTEIN:

Yes, absolutely.

WHITEHOUSE:

There we go. My time's expired.

Thank you, Chairman. I appreciate it.

GRAHAM:

I want to thank Senator Kennedy for -- for allowing me to cut in line here.

Did you read or hear about President Trump's tweets regarding his assertion that President Obama was involved in monitoring his campaign or the Trump Tower?

ROSENSTEIN:

I -- I certainly did read about the tweets that were reported over the weekend. Yes.

GRAHAM:

What was your reaction?

ROSENSTEIN:

I don't think it's appropriate for me to share my reaction, Senator. That's -- that has no bearing on my work. If president gives me instruction in the context of an order to carry out any sort investigation, that's my job. If the president is exercising his First Amendment rights, that's not my issue.

GRAHAM:

He called on Congress to investigate. Do you think that's a reasonable thing for him to do?

ROSENSTEIN:

That's a political issue, Senator. It's not an issue that's likely...

(CROSSTALK)

GRAHAM:

Well, let me just say; yes and we will. The bottom line here is if there was a warrant issued regarding Trump campaign activities and Russian contacts, would you in your new job if you're confirmed know about that warrant request? And whether or not it was issued?

ROSENSTEIN:

I -- I -- I would hope at least prospectively that I would. I don't know to what extent, if something like that were done in the past, it would be appropriate for me to review it. But...

GRAHAM:

Are you tell me as a deputy attorney general, you wouldn't know if the Department of Justice applied for a warrant?

ROSENSTEIN:

I hope that I would.

GRAHAM:

I hope you would too. Now, there's a Title 3 warrant -- I think that's the right title, or criminal warrant. And there's the FISA court. Are you familiar with the FISA court?

ROSENSTEIN:

Yes, I am.

GRAHAM:

Would you be able to tell us as deputy attorney general, if you're confirmed, whether or not a request was made at The FISA court to monitor Trump campaign activity and the Russians?

ROSENSTEIN:

Would I be able to? I would presume that I would be able to. Whether it would be appropriate for me to do so, would be another question.

GRAHAM:

OK. Why would it not be appropriate for you?

ROSENSTEIN:

I just don't know, Senator, you know I have in my capacity as U.S. attorney, I've dealt with FISA issues when they become relevant to criminal cases, but I'm not an expert on the statute.

GRAHAM:

OK.

ROSENSTEIN:

And I know their intelligence community equities and I need to consult with them before I made any decision.

GRAHAM:

OK. So there's three ways this could have been done. You could've gotten a warrant to the normal criminal process that would've been lawful if the judge granted it, right?

ROSENSTEIN:

Hypothetically, we do that all the time.

GRAHAM:

OK number two, you could have a FISA court, which is a little bit different, but it's still the court overseeing someone's request, right?

ROSENSTEIN:

Yes, that's correct.

GRAHAM:

The third would be, if the President Obama on his own decided to wiretap Trump Tower or the campaign, do you know of any basis that he would have the ability to do that without a FISA warrant or without a warrant from a federal judge in a criminal investigation?

ROSENSTEIN:

No, I do not.

GRAHAM:

OK, as a matter of fact, he could not. No president can just unilaterally say, go wiretap that American citizen, right?

ROSENSTEIN:

Senator, I...

GRAHAM:

Without court approval.

ROSENSTEIN:

Yeah, you know, I'm a lawyer Senator, so...

GRAHAM:

Well, no you're not gonna just be a lawyer, you're gonna be the deputy attorney general of the United States.

ROSENSTEIN:

Well, here's the thing and I don't -- I'm a lawyer, somebody tells me nobody can do that, my answer is...

GRAHAM:

Well, give me a -- give me a -- well, in writing, later on tell me how the president of the United States could unilaterally wiretap an American citizen, an American company, an American campaign for president without some court approval.

ROSENSTEIN:

So my answer to that Senator is I -- I would hope and I would agree with you that that would not happen.

GRAHAM:

Yep. OK. Do you -- are you familiar with the executive order regarding the DACA kids that President Obama issued?

ROSENSTEIN:

Only by virtue of having read about it in the newspaper.

GRAHAM:

OK. Do you know if it's constitutional or not?

ROSENSTEIN:

I do not.

GRAHAM:

OK. The executive order was to give legal status to, I think 800,000 kids who are called DACA kids, they came here as small children. And President Obama gave them through an executive action legal status. Can you get back to me as to whether or not you think that falls within the president's prosecutorial discretion?

ROSENSTEIN:

I don't believe it'd be appropriate for me, Senator, to comment on an issue like that, that might well be litigated and my position would -- would -- I would have to consult with the appropriate experts in the department and reach a legal conclusion about what judgment to take. I would not offer an opinion, prejudge a case like that, prior to or apart from the context of having it litigated in my capacity as deputy attorney general.

GRAHAM:

OK. Now, if there is an investigation regarding the Trump campaign and Russian contacts, there's -- we'd (ph) be two stages. One, the gathering of the evidence in a decision whether or not to proceed forward in a prosecution fashion, is that correct?

ROSENSTEIN:

This is a hypothetical, Senator...

GRAHAM:

Yes.

ROSENSTEIN:

We're talking about some tweets, I don't know about any investigation...

GRAHAM:

Well, just any investigation.

ROSENSTEIN:

Yes.

GRAHAM:

So you'd want an independent person advising the investigators while they're gathering the facts, not just making the decision of disposition, is that correct?

ROSENSTEIN:

You would want independent advice, yes.

GRAHAM:

OK. So can you assure this committee, if there is such an investigation, that you would make sure that the investigators are advised from a professional lawyer at the Department of Justice who's independent, even during the gathering of the facts?

ROSENSTEIN:

Yeah, I hope I made that very clear, Senator...

GRAHAM:

OK.

ROSENSTEIN:

... that I would view it as my responsibility as deputy...

GRAHAM:

Right.

ROSENSTEIN:

... to make sure every case was investigated independently.

GRAHAM:

Now, is it true that the current acting deputy attorney general could appoint a special counsel if they believe that was appropriate?

ROSENSTEIN:

I believe that's correct.

GRAHAM:

OK and that person was appointed by President Obama?

ROSENSTEIN:

That's Dana Boente, the U.S. attorney from eastern Virginia, that's correct.

GRAHAM:

OK. If you take over and you get confirmed then would it be your job since the attorney general recused himself?

ROSENSTEIN:

In any matter which the attorney general is recused the acting attorney general would have that authority.

GRAHAM:

Generally speaking, when the subject of the investigation has a political bent to it, do you believe that you could do that job even though you've been appointed by this president?

ROSENSTEIN:

Absolutely, Senator. And you have to recognize that we have a lot of policies regarding recusals and conflicts but we also have proud tradition. In fact, my office in the district of Maryland in 1972, the U.S. Attorney George Beall, a Republican U.S. attorney appointed by a Republic president, prosecuted the Republican vice president of the United States so I believe that, I certainly do.

GRAHAM:

So do you believe all of your time before taking this job has prepared you for that moment if that moment ever comes?

ROSENSTEIN:

I certainly hope so, Senator.

GRAHAM:

OK. Sentencing reform, are you familiar with the efforts by this committee and others to pass sentencing reform?

ROSENSTEIN:

I'm generally familiar with the issue, yes Senator.

GRAHAM:

OK. Do you have general opinion as to whether or not we need sentencing reform at the federal level?

ROSENSTEIN:

I think, Senator, that it's always appropriate for the Congress to evaluate the tools that are available to federal prosecutors and to assure yourselves number one, they're being used appropriately and number two, you know, whether or not there are additional tools that they need or tools that you provided them that perhaps you should take away. So I think that it's appropriate for that to be an ongoing process.

GRAHAM:

Thank you.

GRASSLEY:

(OFF MIKE)

KLOBUCHAR:

Thank you very much Mr. Chairman.

I'll start with you Ms. Brand, you have a good choice of colleges in Morris, Minnesota.

BRAND:

Thank you. Sure.

KLOBUCHAR:

So thank you for that. I wanted to start with something pretty important to me, because my dad was a journalist for many, many years, and that's freedom of the press. I raised this issue with the attorney general and he said, in his confirmation hearing, that he was still reviewing the regulations.

Yet, in 2015 the attorney general revised -- the then attorney general, revised the department's rules for when federal prosecutors can subpoena journalists or their records and he committed to releasing an annual report on subpoenas issues and charges against journalists. The previous two attorney generals also committed not to put reporters in jail for doing their jobs.

First of all, what are your views on the standards that Attorney General Holder put forward and were upheld during Loretta Lynch's tenure?

BRAND:

Thank you Senator Klobuchar, that's a very important issue. Obviously the freedom of the press is one of the freedoms enshrined in the First Amendment to the Constitution. I'm aware that -- I'm aware of those guidelines, but I must confess, since I have not been in the department in about 10 years, I have not studied them.

I understand that they heightened the standards which were already, I think, relatively strict in terms of the circumstances in which the department could subpoena a journalist. They require high level approval they would...

KLOBUCHAR:

So would you just -- would you uphold those standards? What's your answer on it?

BRAND:

It would not actually be within my authority to that Senator, that would be under the purview of the deputy AG -- I hate to throw him under the bus but -- but I can't commit to you because it's not going to be my decision.

KLOBUCHAR:

Okay, then (ph) we'll go to you Mr. Rosenstein.

ROSENSTEIN:

You know, I apologize Senator I thought Rachel was going to handle that question, would you restate it please?

(LAUGHTER)

KLOBUCHAR:

That's what I thought.

(LAUGHTER)

What's your answer?

ROSENSTEIN:

I -- I -- I..

KLOBUCHAR:

OK, I get it. OK.

(LAUGHTER)

The question is about...

ROSENSTEIN:

Yes or no?

KLOBUCHAR:

That's all right. A yes or no answer on the standards that Attorney General Holder had put forth to protect the freedom of the press. He revised the department's rules for when federal prosecutors can subpoena journalists for their records.

ROSENSTEIN:

Yes, Senator I am familiar with those rules and, you know, they've been modified over time and I think it's important for the department to always be willing to revisit our internal policies to make sure we get it exactly right because sometimes, you know, we find out that we didn't have it exactly right the last time...

KLOBUCHAR:

OK.

ROSENSTEIN:

So as a general proposition, I think those rules -- and if -- you want a yes or no answer and I apologize. But it's a balancing -- the rules reflect the balancing and I think it's important for us to heavily balance First Amendment concerns and freedom of the press...

KLOBUCHAR:

So are you going to review the rules? Or where you on the rules, so...

(CROSSTALK)

ROSENSTEIN:

I don't have any plan to review the rules, but I -- I wouldn't rule it out if somebody thought it was appropriate to take a -- a look at.

KLOBUCHAR:

But right now you would leave the rules in place?

ROSENSTEIN:

I'm not aware of any plan to revisit them.

KLOBUCHAR:

OK, I'm in a follow-up on some of Senator Graham's questions about what happened over the weekend. Where news report stating that FBI Director Comey called on the Justice Department to publicly reject the president's recent assertion that President Obama ordered the wiretapping outside the phones in the Trump Tower during last fall's campaign. So my question is this -- it's not specifically on that.

In a situation where the president of the United States makes a factual statement about the status of an investigation and that statement is later determined not to be correct -- this is on an investigation, what is the responsibility of the Justice Department to set the record straight?

ROSENSTEIN:

Senator, I think that I -- I -- I cannot answer the hypothetical way. It wasn't my understanding that it was a comment on a Justice Department investigation. Maybe it was, I was somewhat distracted this weekend with other issues. I'm familiar with the tweets, but the I -- I -- I just can't ask that.

I would certainly -- what I would do -- I can commit to you what I do in -- in any situation like that. So I'd talk to the FBI director, Jim Comey and I'd certainly consider his views. And I'd make an independent determination about what to do under those circumstances.

KLOBUCHAR:

But it would be your call and to make that decision and not the director of the FBI's call?

ROSENSTEIN:

Yeah. Since I don't know exactly what decision was -- what I've read in the newspaper purports to be leaks of what may or may not have occur. So I don't know exactly what the protocol was, but...

KLOBUCHAR:

OK.

ROSENSTEIN:

I would anticipate that, obviously that the FBI reports the deputy attorney general. And -- and Mr. Comey was the deputy attorney general, so I'm sure he appreciates that chain of command. So would be my responsibility, yes.

KLOBUCHAR:

OK. Are you aware, again, of any time FBI agents of the Department of Justice wiretapped U.S. citizen without a proper warrant since you've been a U.S. attorney?

ROSENSTEIN:

Not on my watch, no, Senator.

KLOBUCHAR:

OK. And are you aware of an instance in which FBI agents or the Department of Justice personnel sought warrant without a good faith belief that probable cause existed?

ROSENSTEIN:

Not on my watch, no.

KLOBUCHAR:

OK. Now I want to turn to Russia. In your statements -- and you and Senator Durbin went back and forth. At some point today, I think maybe with Graham you said, "If Russia interfered." And I know you have not read that 17 page report that we're all referring the -- the public report that the 17 agencies put out. It's short and I just ask you to review it.

Because basically you are putting ourselves in the shoes of the attorney general when it comes to this, what ever investigation may come out at this time. That's why all the media was there. I bet you we've never had that many reporters here for a deputy attorney general.

I don't think we've ever had this much interest in a hearing like this. And it is because you will essentially be putting yourself in his shoes. And so I'm just asking that you read that report so I can asking the same question I asked now Attorney General Sessions. And that's whether or not he believed there was (any reason to doubt that evidence. He said there was no reason to doubt it.

ROSENSTEIN:

I -- I -- I suppose I should clarify. As a lawyer, maybe sometimes I'm too careful with my words. I have no reason to doubt the conclusion intelligence community.

KLOBUCHAR:

OK.

ROSENSTEIN:

And as -- as a lawyer -- as prosecutor the issue for me is what can I prove in court, which may be different issue from what I believe. But I should have no reason to doubt the intelligence community's conclusions.

KLOBUCHAR:

OK. And I so appreciated your opening statement where you said you look at things as a prosecutor say; and that is what can I do, what should I do? And then the last thing is how do we explain things?

KLOBUCHAR:

Because I think way too much at this administration so far has been -- whether it's the refugee order, whatever it is -- is just about explaining things. You don't have to comment about this. Instead of first asking what is the right thing to do and what can I legally do.

And so that's where I wanna get to it if, in fact, you in this matter or in any other matter end up appointing a special counsel which could happen. But in this matter, you would be the one to make the decision; 28 CFR, Section 600.4 says that the scope of any special counsel's investigation will likely be determined by the acting attorney general for the purposes of the investigation.

How would you define the scope of any investigation? It also says that you could overrule a special counsel's decision. When would you be willing to overrule a special counsel's authority? So the question is under the rules, what -- how would you define the scope and would, in fact, when would you be willing to overrule?

ROSENSTEIN:

Thank you, Senator. In court, we would ask the chairman for opportunity to respond, I know our time's expired.

KLOBUCHAR:

(OFF-MIKE)

ROSENSTEIN:

OK. So...

(CROSSTALK)

ROSENSTEIN:

OK. So a complete answer to your question would take a lot of time. I don't wanna take away from your colleague's time or prolong the hearing.

KLOBUCHAR:

Oh, they don't care, it's fine.

(LAUGHTER)

(UNKNOWN)

Yeah, we're fine.

ROSENSTEIN:

I would -- I think, you know, there was an independent counsel statute. Under the counsel statute, we appointed prosecutors who were not accountable of the (ph) attorney general of the United States that expired. Under current law, every special counsel we appoint is accountable to attorney general.

KLOBUCHAR:

That's correct, and in this case to you, if it was on the part that the attorney general recused himself.

ROSENSTEIN:

Right, right and this was, of course, true in the Watergate era, Archibald Cox was fired by the acting attorney general. But the authority that I would give to a special counsel would be whatever authority is appropriate to make sure that he or she had the -- the full range of authority to conduct the appropriate investigation that's required and justified by the facts and the law, just like we do in all other cases within the department.

GRASSLEY:

Senator Kennedy?

KENNEDY:

Thank you, Mr. Chairman. Thank you, Mr. Chairman.

Good afternoon. Mr. Rosenstein, can we -- can we agree that there is a difference between interfering with an election and actually changing the outcome of an election?

ROSENSTEIN:

That's not an issue within my jurisdiction, Senator. If somebody interferes, it would be potentially a crime, whether it has an impact on the outcome or not. So I -- my answer is yes, there's certainly a difference.

KENNEDY:

Well, let's suppose that -- that you're running for office and a super-PAC runs ads criticizing you. The super-PAC would be interfering legally in your election. But those ads may not impact the outcome of your election. Do you see the distinction I'm trying to make?

ROSENSTEIN:

I do and I apologize because I assumed that by interfere, you meant unlawfully interfered. If somebody interferes lawfully, that would not be law enforcement issue.

KENNEDY:

Right.

ROSENSTEIN:

They have a First Amendment (ph) right to do that.

KENNEDY:

Well, you can -- you can lawfully and unlawfully interfere.

ROSENSTEIN:

If -- if that's your definition of interfere, yes sir.

KENNEDY:

Do you believe that Russia interfered with our elections in November?

ROSENSTEIN:

Well, as I indicated in response to Senator Klobuchar, my understanding is that's the conclusion of the intelligence community. That's my only basis of knowledge, Senator, and so I have no reason to doubt that.

KENNEDY:

Can we agree that Russia has interfered in past elections in America?

ROSENSTEIN:

I do not know the answer to that, Senator.

KENNEDY:

OK. Have you ever heard of a group called Service A, which is the active measures branch of the First Chief Directorate of the KGB?

ROSENSTEIN:

I -- I do not recall ever hearing that group.

KENNEDY:

Well, that's who did it. Are you aware that in 1968, Service A attempted to head off the election of Richard Nixon? The Kremlin offered to subsidize a campaign of his rivals, are you aware of that?

ROSENSTEIN:

Respecting one of your colleagues earlier comments, I think I may have heard of Service A and - - and newspaper stories about this that would be my only basis of knowledge.

KENNEDY:

OK. Are you aware that in November of 1984, Service A tried to stop Ronald Reagan from being reelected?

ROSENSTEIN:

I am -- I have no personal knowledge of that. No, Senator.

KENNEDY:

OK. Are you aware that Service A planted stories in the United States that former President Kennedy was actually killed in a secret CIA plot?

ROSENSTEIN:

I -- I'm certainly aware that -- of some of the issues from the Cold War era Senator, but I -- I don't recall those specific details.

KENNEDY:

OK. All right. Well, can we agree that -- that Russia's interference, if any, in the election in November was not -- not the first time it's tried to do that?

ROSENSTEIN:

I simply don't have any personal knowledge of that, Senator. I accept your representation if that's what the intelligence community concluded. I have no reason to doubt that and I would be offended by it.

KENNEDY:

OK. Well, let's get down to it. You're going to be in charge of this investigation. I want you to look me in the eye and tell me that you'll do it right, that you'll take it to its conclusion and you'll report to the American people your results.

ROSENSTEIN:

So, Senator, I will -- I will do every investigation, within my authority, right. And I believe that the 115,000 employees in the Department of Justice will support me in that. And we'll take it to the appropriate conclusion.

The reporting aspect, Senator, I -- I just don't know what that entails. When you're talking about national security information, there are a lot of agencies that have equities in that, not just the Department of Justice and I don't have experience with that. That's one of the areas where I would have to rely heavily on career officials. So I can assure you that I -- as you know, I highly value our responsibility to inform the American people to the extent we can so that's sort of my default position.

If we have lawful basis and it's appropriate for us to provide public information, I think it reassures the public when they know what we've done and why we've done it, so that would certainly be my preference.

KENNEDY:

Well, let me rephrase the question. Will you be willing to do what I just asked within the parameters of national security?

ROSENSTEIN:

Within the parameters of national security and the law, yes sir.

KENNEDY:

OK. I happen to believe that a U.S. attorney is the most powerful position in American government -- I guess maybe being president's more powerful, but...

ROSENSTEIN:

I hope so.

KENNEDY:

Well, it's an enormous amount of power. I mean, a U.S. attorney's job is to protect the American people, but at the same time, a U.S. attorney can ruin somebody's life. Are you -- are you comfortable with the checks and balances on the decisions that our U.S. attorneys make?

ROSENSTEIN:

Yes, sir. I am. And I referred earlier to Robert Jackson's speech in the Great Hall of the Justice Department in 1940 and that's exactly the issue that he addressed, and I do agree with you that we do have significant power. Our assistant U.S. attorneys have significant power and it's critical that they exercise that power responsibly.

KENNEDY:

OK.

Mrs. Brand, let me ask you a question. I'd (ph) like you to talk to me about your -- you've had some experience in this area -- about your personal philosophy on the intersection of national security and privacy.

BRAND:

Well, thank you, Senator Kennedy, that is really important -- critically important question that I have spent quite a bit of time thinking about over the last several years.

I think -- it's hard to talk about it in the abstract, of course. Anytime -- anytime the government is going to undertake, for example, a surveillance program in the national security context it's critical for them to do within the bounds of law. But not just within the bounds of law, also within the bounds of what is appropriate from a policy perspective in terms of protecting privacy interests.

I think it's possible to account for -- for both interests in every case, but where that line is it depends on the circumstances.

KENNEDY:

OK. Well, doesn't (ph) the power of government scare you little bit in terms of the privacy rights, just you as a citizen?

BRAND:

I would say that power of government -- I don't know if it scares me, but I -- but I view the power of the federal government to be considerable and potentially concerning in virtually every area,

which is why it's important to have checks and balances, legal requirements, and frankly, oversight of (ph) every area...

(CROSSTALK)

KENNEDY:

Do (ph) you -- you -- you believe we have the -- the proper checks and balances right now?

BRAND:

Well, again (ph), Senator, that depends on the circumstances. I think in -- in many areas, yes. Whether they always work correctly is another question, but I think the structure is -- works well and some -- in the areas that I'm familiar with.

KENNEDY:

OK. I want to thank you both for your willingness to serve.

ROSENSTEIN:

Thank you, sir (ph).

KENNEDY:

Thank you, Mr. Chairman.

GRASSLEY:

(OFF-MIKE)

FRANKEN:

Thank you, Mr. Chairman.

Congratulations to you both on your -- on your nominations. I'm gonna asked Ms. Brand a question, and Mr. Rosenstein, you're free to space out on this one.

(LAUGHTER)

KLOBUCHAR:

(OFF-MIKE)

FRANKEN:

Well, no (ph), I just want to give him a moment to pause.

Ms. Brand, can you comment on President Trump's claim about President Obama tapping his phones? Can a sitting president just order wiretap or some other form of electronic surveillance? Is that how it's done?

BRAND:

Well, Senator, I'm -- I -- I can't comment on the comments because...

(CROSSTALK)

FRANKEN:

I'm -- I'm -- just answer -- could you just answer my question? Is that how it's was done? Can the president just order a wiretap?

BRAND:

Well, under -- under FISA, Senator, a court order is required. But I don't know any of the facts that underlie this -- this questions in (ph) this current debate. So I'm reluctant to speculate on a (ph) hypothetical beyond that.

FRANKEN:

OK. Well, he has to get a FISA order, I believe. And I suppose if he were a cat burglar and went through the air conditioning ducts, he could have done it himself.

Mr. Rosenstein, exactly eight weeks ago this committee held a confirmation hearing before the attorney general, my former colleague Jeff Sessions. Now, Attorney General Sessions and I have very different views about a lot of things, but the purpose of confirmation hearing is not resolve differences of opinion on policy, the purpose of a confirmation hearing is to allow the American people to decide for themselves through our exchanges here in the committee whether nominee is qualified to serve. But in order for the hearing to truly serve that purpose, nominees must answer questions honestly. That's why they swear an oath.

But eight weeks ago, my question was not answered honestly. I asked then Senator Sessions following question; if there is any evidence of anyone affiliated with Trump camping communicated with the Russian government in the course of this campaign, what will you do? I didn't ask who had communicate with the Russian government. I asked how the man positioned to become the nation's top law-enforcement individual, a man who had served as chairman of the Trump campaign national security adviser -- advisory committee would conduct himself of circumstances required that the Department of Justice investigate members of that same campaign.

Here's what then Senator Sessions said, and I quote, "Senator Franken, I'm not aware of any of those activities. I've been called a surrogate a time -- at a time or two in the campaign and I did not

have communications with the Russians." Let me repeat that, "I did not have communications with the Russians." As we all know now, that wasn't true. Attorney General Sessions met at least twice with the Russian ambassador in 2016. Once in July, an event during the Republican National Convention, and once in September in a private meeting in his Senate office.

But Attorney General Sessions did not acknowledge the fact that his testimony misrepresented the truth until The Washington Post published an article exposing his meetings with the Russian ambassador. In the seven weeks, seven weeks, between his appearance before this committee and the publication of that article, Attorney General Sessions had ample opportunity to come clean and correct the record, but that's not what he did.

So after an embarrassing story in the Post describing undisclosed meeting with the very same Russian official whose communications forced the president's national security adviser to resign, Attorney General Sessions hastily called a press conference and announced that he would recuse himself from overseeing any Justice Department investigation into Russian interference with the election.

So Mr. Rosenstein, now that the attorney general has recused himself, it's your turn to answer my question, the very same question. Again, here is a question I asked then Senator Sessions and that I would like you to answer now. If there is any evidence that anyone affiliated with the Trump campaign communicated with the Russian government in the course of this campaign, what will you do?

ROSENSTEIN:

If there is predication to believe that such a communication was in violation of federal law, Senator, I would ensure an appropriate investigation.

FRANKEN:

Now, Mr. Rosenstein, do you understand that you have an ongoing obligation to update your testimony and correct any inaccuracies or mistakes that you discover after you leave the hearing today?

ROSENSTEIN:

You're making me very self-conscious, Senator, but yes I believe I do. I'm trying to be as careful as I can.

FRANKEN:

Good. I must have just taken it for granted that witnesses understood their obligation to correct inaccuracies in their testimony. But evidently, that obligation was unknown to Attorney General Sessions.

Yesterday, four days after the press conference of which he announced his recusal and 55 days after his hearing, Attorney General Sessions finally wrote to the committee to update his testimony. In that updated testimony, the attorney general references a letter written by the Democratic members of this committee on March 3rd. Attorney General Sessions said, and I quote, "The letter asked why I did not supplement the record to note any contact with the Russian ambassador before its disclosure. Having considered my answer responsive and no one having suggested otherwise, there was no need for a supplemented answer."

So it would seem that in the attorney general's view, unless this committee has reason to believe that a witness provided false testimony or unless this committee suggests that a witnesses' answer is grossly misleading or unresponsive, that that witness is relieved of his or her sworn duty to tell the truth, the whole truth and nothing but the truth. But I don't think that's how it works.

And in light of Attorney General Sessions' failure to recognize his obligation to this body, I thought it was important for me to make sure that you clearly understand this obligation. And you do understand this obligation, right?

ROSENSTEIN:

I believe I do, Senator.

FRANKEN:

OK. I think Senator Sessions should come back. I think he owes it to this committee to come back and to explain himself because he -- he also says in his letter -- may I just...

(UNKNOWN)

(inaudible) If you're reading a statement, please make sure (inaudible) time to answer.

FRANKEN:

I will not -- this will be very short. He says, having -- let's see. "I did not mention communications I had with the Russian ambassador over the years because the question did not ask about them." I asked him what he would do, as attorney general, if it was true that members of the campaign had met with the Russians. So he says, "I did not mention communications I had with the Russian ambassador over the years because the question did not ask about them."

He answered a question I didn't ask. And for him to put this in his letter as a response is insulting. And I -- I -- he should come back and explain himself, Mr. Chairman. I think he owes that to us because this appears to me like he was -- and I have been I bent over backward not to say that he lied. He needs to come back. I have bent over backward, I have given him the benefit of the doubt. But he has to come back.

ROSENSTEIN:

Mr. Chairman, may I -- what -- sorry -- may I just make one clarification. And I apologize, but...

GRASSLEY:

Go ahead.

ROSENSTEIN:

Senator Franken's comments, I think, make it important for me to make this point. That is that -- want to make sure that I didn't misspeak earlier when I was asked about whether or not I would announce an investigation was ending regarding Russia. I want to make sure you're all clear on this that I do not know if there is an investigation, I don't know anything but what I've read in the newspapers at this point.

FRANKEN:

Well, I actually find -- found -- find it very disturbing that you did not read the -- the declassified report on -- on -- on Russia's activities during the election...

(CROSSTALK)

ROSENSTEIN:

I read the newspaper story (ph).

FRANKEN:

I find that very, very disturbing.

ROSENSTEIN:

I read the newspaper story. I was (ph) very sorry to hear that, Senator.

GRASSLEY:

I would like to comment on what Senator Franken just said. And I don't expect Senator Franken to act like I would towards our witnesses, but as I remember Senator Franken asking his question of Senator Sessions, he referred to something -- that there had just been something come on CNN that obviously -- and Franken said that Senator Sessions wouldn't know what it was and he was going to take that into consideration. That -- that it would have been all right for you to ask your question and you probably should of given him a chance to get the information you had and reflect on it and give an answer in writing.

Now, the way -- the way I tend to -- and you -- both of you know that I said this to you when you were in the privacy of my office, if I was going to ask you a gotcha question I was going to tell

you about it ahead of time. And I consider what Senator Franken asked Sessions at that late moment -- that that story just come out is a gotcha question and...

FRANKEN:

It was not a gotcha question, sir.

GRASSLEY:

It was. From the standpoint that (ph)...

(CROSSTALK)

FRANKEN:

I...

GRASSLEY:

He didn't know what you were asking about.

FRANKEN:

But I said that as I was asking the question, I said...

(CROSSTALK)

GRASSLEY:

(inaudible) Senator yield (ph).

FRANKEN:

... you don't -- haven't heard this and I don't expect that you have heard it.

GRASSLEY:

Senator Tillis.

(CROSSTALK)

FRANKEN:

Look at the tape, Mr. Chairman, please.

TILLIS:

Thank you, Mr. Chair.

Congratulations to both of you for being here and to your families. A couple of questions, very quickly. It's one I ask of the attorney general nominee, in fact not too long ago in the Obama administration. Mr. Rosenstein, this question's for you. The Government Accountability Office issued a report in December of 2014. I think it was titled, "DOJ Could Strengthen Procedures for Disciplining its Attorneys."

Are you aware of that report?

ROSENSTEIN:

Sorry, what year was that, Senator?

TILLIS:

It was 2014, December.

ROSENSTEIN:

I'm not sure I'm aware of that particular report, I'm aware of the general issue. I probably was aware of that report at the time.

TILLIS:

Well, I would ask you in your -- in your capacity as the deputy attorney general to look at that report because there's no evidence that I've been able to find since it -- it was issued that there has been any actions taken to address the accountability problems, prosecutorial -- prosecutorial misconduct and issues that were very clearly articulated in the report. I think there's a lot of information there that can increase accountability and professionalism within the DOJ.

And I would like for you to maybe review that report and get back with my office if you think there are any things in your capacity that you would consider moving forward on or having merit because my opinion, I don't think there's been any specific actions taken.

ROSENSTEIN:

So, Senator, what I'd to request that with your permission is that I will commit to you that if I'm confirmed as deputy attorney general, I will not only read that report, but I'll talk with the inspector general because I think it's important for us to consult with the I.G., they're right down the hall in the Justice Department and make sure if they have advice about things we should do to better enhance the integrity of our prosecutors that we institute those practices.

TILLIS:

Thank you.

Ms. Brand, I have a question for you. I think it would be somewhere in your -- in your private sector capacity, you advocated for businesses, or you -- you worked in an organization that has businesses as their members. One of the areas at the organization you were part of has advocated for immigration reform. One of the -- the areas that we've discussed on this committee I've said on the immigration subcommittee on judiciary, are the reputed abuses of visa worker programs. And I'm trying to figure out how we can get to the facts.

If in fact -- I'm one for who actually supports immigration reform measures because I think its' going to be important for this Congress, after 40 years of failures between administrations and Congresses, to solve a problem that's out there. One of them, I think, is maybe a misconception about the visa programs and their potential abuses.

Do -- do you have any insights into how we can actually get through the -- the U.S. attorneys or through others to identify where legitimate abuses exist so we can make examples out of the businesses that are preventing us from making, potentially make examples, if there are abuses out there from preventing us to have an intelligent discussion about reforming the visa work programs?

BRAND:

Well, Senator, I -- I think you're talking about my work at the Chamber of Commerce. I was a litigator, I was not in the policy...

TILLIS:

Yeah, I was thinking more of your organization.

BRAND:

Yeah, so I -- I wasn't involved in that work for the chamber. But I do know from my former government service that the visa programs are -- there are a number of agencies involved in them, the Department of State, the Department of Homeland Security, in some cases, the Department of Labor for certain -- for certain worker visas. They're not administered by the Department of Justice, although it would be...

(CROSSTALK)

TILLIS:

... I'm trying to get to is we've gotta have somebody own the problem, so I appreciate the answer, I wanna be respectful of time. The thing is, is we've gotta have somebody own presenting specific evidence of real abuses of the program, because I think there are more phantoms than reality. There are probably some and in those cases, we need to make examples out of businesses. We need up enforcement actions for -- for businesses who are not -- not adhering to the letter of the law. But we need to find somebody to own it.

So if it's not the DOJ, then I need to go to some other agency and find someone who can identify these sorts of -- or these things that are actually creating additional challenges.

Mr. Rosenstein, did you have anything to add on that?

ROSENSTEIN:

My only thought, Senator, would be that, you know, there may be issues that are within the purview of the State Department, of Homeland Security, as well as Justice. But I would certainly, if I were deputy, provide any information we could to help you with that issue.

TILLIS:

I think that'd be very helpful. The next question I have also relates to immigration and its immigration courts and the resources. We have a tremendous backlog that we need to address. To what extent have you studied this and what could you offer me as some hope that we can get to a point to where we have more timely hearing enclosing of cases through the immigration courts?

ROSENSTEIN:

Senator, I'm -- I haven't studied it. I'll let Ms. Brand answer as well. I haven't studied it, but I'm familiar with the issue and one I can commit to you is that if I'm the deputy attorney general, it will be one of my priorities to make sure we move things as quickly as possible.

So I understand that there is a backlog with regard to those cases and I'll figure out whether or not there are procedural changes we can make, whether we need more resources in order to move those cases more quickly because I think it's critical for the department, both in the civil and criminal context, to make sure we -- we resolve those sort of matters as expeditiously as we can.

TILLIS:

Thank you.

Ms. Brand, do you have anything to add?

BRAND:

No, I think -- I think Commissioner (ph) Rosenstein said it well. There are -- I know that during my former time at the Justice Department, there was a significant management challenge involved in finding the resources to address the incredibly high volume of immigration appeals. I don't know exactly where that stands now, but I would be happy to look at that as I'm confirmed.

TILLIS:

And Mr. Rosenstein, my last question will be to you and it has to do with the state and local cooperation with the department in terms of public safety, justice and public safety. One of the areas here that we may have some disagreement would be in the areas of working with state and local law enforcement entities through task forces. There's -- I don't know if you're familiar with the -- the issue that we've had overtime with equitable sharing. I think there have been some abuses of it in terms of -- of some seizures.

But for the most part, I think it's a very important program to continue to ensure state and local participation. What are your views on that?

ROSENSTEIN:

Yes, Senator. I have -- in my capacity as U.S. attorney, one of my priorities has been to work with state and local law enforcement in all contexts in determining where we should devote our federal resources, what are the significant crime challenges, how can we work together to address them. So it's not just a matter of the federal government big footing their way in -- in pushing local folks out of the way but working together. And I think the Equitable Sharing Program is a really critical part of that effort.

So we need to make sure that if we're using that authority, we're using it appropriately and we're using it consistently with federal law enforcement interests.

TILLIS:

Thank you.

GRASSLEY:

Senator Coons?

COONS:

Thank you, Mr. Chairman.

I'd like to start just by congratulating both of you and your nominations and I'm thanking you for your long careers in public service and your families for their patience, persistence and support not just during your careers, but during this hearing.

I'd like to start by simply adding that I agree with Senator Franken, in that I think the attorney general should return to this committee and clarify his answers under previous questioning. I think it's important that we resolve the currently unresolved issues that I think were not clarified in his written response to this committee.

Mr. Rosenstein, is it ever appropriate for the president or senior White House officials to contact the Department of Justice or the FBI with instructions or directions on how to conduct an ongoing criminal investigation?

ROSENSTEIN:

If there are any context but ongoing criminal investigation, Senator, they should be directly with the deputy attorney general. I imagine there may be contexts, particularly with their national security equities or foreign affairs issues where it might be appropriate in a particular case. My presumption is no and only the deputy should be in position -- in coordination with the attorney general to make a determination in any individual case, whether there's an appropriate basis for an exception to that general rule.

COONS:

The presumption is no. There should be limited in narrow (ph) contacts and in no way should those contacts be designed to afford stonewall or shutdown an investigation that is well-founded in proceedings, is that correct?

ROSENSTEIN:

That's correct.

COONS:

We spoke previously about your commitment to preserving the independence and public confidence in our law enforcement system. And I think your admiral record of public service and your personal testimony at the outset reinforces that.

Given the unanimous opinion of our intelligence community that Russia did in fact interfere in our election and troubling evidence of actual contacts and even possible collusion between of the Trump campaign and Russia, would you agree that it's vital to the assurance of confidence in our democracy and law enforcement system that any investigation into these matters be fair, free, thorough and politically independent?

ROSENSTEIN:

Yes, I do.

COONS:

And you stated previously that you'd be willing to resign, if you felt that was not the case, that one of the things you would do if you felt you were inappropriately being pressured to shut down an investigation or the investigation was being stonewalled, that you would oppose those efforts, is that accurate?

ROSENSTEIN:

I don't recall whether I said it here, but it's certainly true.

COONS:

So in the steps before resigning, you would oppose those efforts that politically interfering, will you commit that you would share with the American people if you were compelled to resign under those sorts of circumstances that that was the reason you resigned?

ROSENSTEIN:

I think, Senator, I cannot answer that. Hypothetically, it would depend upon the facts and circumstances. In an appropriate case, I would, but I think I would need to -- you know, I'm a prosecutor and generally speaking, we don't talk publicly about our cases. And I don't know what context it might arise in, so I can assure you that if it's lawful and appropriate for me to do it, I certainly would.

COONS:

Thank you.

Do you believe three million to five million individuals voted illegally in the 2016 election as our president has alleged?

ROSENSTEIN:

Senator, I have no independent basis of knowledge about that and I'm not in a position to comment on it.

COONS:

And how do you plan on using the resources of the Department of Justice to investigate alleged instances of voter fraud, either in the 2016 presidential election or other elections?

ROSENSTEIN:

I anticipate, Senator, we'll continue to do it the way we have been doing it in -- in the -- during the 12 years that I served in both the Bush and Obama administrations.

When that sort of information came to the attention of our offices, we have attorneys in each U.S. attorney's office who are trained in handling in election fraud matters. They consult with experts in the Justice Department's public integrity section who are responsible for election crimes. In appropriate cases, they would launch an investigation that may result in federal charges.

COONS:

And do you agree with the department's recent decision to withdraw from a voter ID case in Texas where just last year, the Fifth Circuit concluded that the Texas law in question actually had a

discriminatory impact on minority voters and the Southern District of Texas is currently considering the evidence on whether Texas enacted the law with racially discriminatory intent?

ROSENSTEIN:

I've read newspaper stories about it, Senator, I had no role in the department's original position or its revised position. So I do not know what the legal basis was or what, if any, determination was made by attorneys in the department. If I were in that position, I would make sure to consult with lawyers who understand those issues and reach an independent decision about the appropriate course of action.

COONS:

Well, I was encouraged in your statement that corruption and civil rights cases are among our most sensitive and important and it's my hope that you'll continue what has been your laudable record of public service and ensuring that public integrity cases and civil rights cases are appropriately and timely brought.

Ms. Brand, if I could, the Office of the Associate Attorney General oversees, among other components, the Office of Violence Against Women. And you once criticized the Violence Against Women Act, which established and funds that office and something which my predecessor, the former vice president, was quite proud of having a hand in enacting, as a quote, "Broad expansion of federal criminal law," unquote.

If confirmed as associate attorney general, will you support the Office of Violence Against Women continuing its current activities to reduce gender-based violence and protect victims?

BRAND:

Well, Senator Coons, I'm glad that you brought that up because that's an issue that's -- sorry, I think the microphone is on, maybe I need to pull it closer. Is that better?

That's an issue that's very important to me, actually. Chairman Grassley and Senator Ernst noted in their introductions that I serve on the Board of Directors of a nonprofit that, among other things, operates a domestic violence safe house and helps victims of domestic violence achieve independence and stability. So I absolutely support the work of the Office of Violence Against Women and I -- I would be honored to work with them.

COONS:

Thank you, Ms. Brand.

Mr. Rosenstein, if I might, we spoke yesterday at some length about your strong record of combating violent crime, pursuing public integrity cases and protecting America's inventions and innovations through intellectual property enforcement. I'm especially interested in your view of the COPS office, COPS programs and COPS grants as a tool for combating violent crime. And in

my closing 30 seconds, would be interested in your view on how we might work together to strengthen state and local law enforcement cooperation with federal law enforcement, both in I.P. protection, we talked about customs and border, and in combating violent crime.

ROSENSTEIN:

Yes, thank you, Senator, I look forward to, if I'm confirmed, to working with you on both of those issues.

With regard to I.P., as you know, I've been involved in Departments (inaudible) Advisory Committee with regard to intellectual property issues, so I'm familiar with those issues and we brought some significant cases in my district and have committed to continuing that work.

With regard to the COPS office and combating violent crime and working with police agencies, I don't know all the details of it. My interaction with the COPS office was limited to one incident, or one episode in which they came to Baltimore and initiated a COPS investigation. And I think it certainly can be a useful tool and an appropriate case, so I anticipate that we would use that authority as we would all others, try to work with and help improve state and local law enforcement

COONS:

Thank you both.

Thank you, Mr. Chairman.

GRASSLEY:

(OFF-MIKE)

COONS:

That's all right, Senator, thank you.

GRASSLEY:

Senator Flake?

FLAKE:

Thank you, Mr. Chairman.

And thank you for the testimony. I apologize if I'm covered something that has been covered before, I haven't been able to be here the whole time.

But Mr. Rosenstein, you talked about an aspect of immigration that's important to the state of Arizona. We've had something along southwest border called Operation Streamline that has been

-- the purpose of the program is really to cut down on illegal border crossings by adopting a no tolerance posture there for those who are entering the first time and reentering illegally. It's helped increase border security, particularly along the Yuma Sector, have been very effective, there.

Nonetheless, in recent years, the U.S. Attorney's Office for the District of Arizona adopted a policy that ended prosecutions for first-time crossers. And I've asked many times Attorney General Holder and Attorney General Lynch, and I was never able to get a straight answer as to why this program had ended. I wanna make sure that -- that it is enforced. We've had success and I don't know why with a successful program along the border that we would adopt another posture. I hear it from sheriffs along the border all the time how effective that was and that when the federal government doesn't do this and the burden falls to them.

So can you talk about Operation Streamline, your understanding of it and if DOJ plans to go forward under your and others' leadership?

ROSENSTEIN:

Senator, as you know, I'm -- Maryland doesn't have an international border and I'm not familiar with the Streamline project. As a general proposition, though, I agree with you that law enforcement can be an important tool, among other tools available, to combat immigration crimes and all other crimes.

So if I become a deputy attorney general, I certainly would consider that an important issue to review and consult with the U.S. attorney in your district and any other districts as to what their policies are. As a general matter, we -- we do have limited resources and we do need to make decisions about which cases to bring, but I don't we should rule out any cases categorically if there's some potential to have a deterrent impact by prosecuting those cases.

FLAKE:

What has happened is Yuma effectively had Operation Streamline border crossings; went down significantly, there. Tucson Sector never adopted it and it pushed illegal crossings to -- toward the Tucson Sector. And so what do we have, uneven application of the law, it has impacts on those border communities. And so I would hope that you move forward with regard Operation Streamline.

When I asked Attorney General Sessions about it, he's obviously familiar with it and committed to move forward and I hope the department will do so.

With regard with -- let's switch the subject for minute (ph) of the DOJ grants. Fiscal year 2009 through 2013, department awarded approximately \$17 billion in grants. I'm concerned about the possibility and some of the findings of waste and fraud within these grant programs. It was recently reported that DOJ had squandered as much as \$100 million tax -- \$100 million in taxpayer dollars over the last five years. Recent OIG audit questioned nearly all of more than \$23 million in grants awards to just for example, the Big Brothers and Big Sisters of Arizona -- or I'm sorry, of America.

As the department's Inspector General Michael Horwitz said before the House Judiciary Committee, there is virtually no visibility on how grant funds are actually being used by the recipients. He continued, unless there is no I.G. audit or investigation of the granting agency dedicates resources to collect and analyze accounting information from the recipient, the government and the taxpayers are virtually in the dark regarding how grant funds are actually used. This is a serious problem.

What does the department plan to do to make sure there's more transparency and that we know how those grant funds are being utilized?

ROSENSTEIN:

Senator, in my capacity as U.S. attorney, I frequently work with inspector generals for the Justice Department and for other agencies. And there are a variety of tools that we have available to us to ensure that those grant funds, if they're not used appropriately, that we take appropriate remedial action. And one of them is civil enforcement and in fact, we have the ability to file false claims act cases, if we determine that a grant recipient has not complied with the rules regarding a particular grant. We also have criminal enforcement ability if a fraud has been committed with regard to a grant.

And so I would certainly consult with the inspector general about his findings and determine whether or not there's more that we can do. And the inspector general, of course, has authority not just make findings, but also has an investigative and a criminal enforcement (ph) component so they in fact can serve effectively as the police, for grant fraud within their agency. And I'll certainly ensure that that's done in appropriate cases.

FLAKE:

Ms. Brand, as associate attorney general, you will oversee department's Office of Information Policy. In that role, you'll be charged with making sure the department maintains transparency and timely response to request for information, including sensitive records under FOIA. How do you intend to do this?

BRAND:

Well, Senator, that is an important function for the Department of Justice, as for any other agency. The Office of Information Policy has a career official that's the head of that agency who's been there for -- for some time and I expect -- I would largely defer to her. But I would want to make sure that that is happening, that's operating efficiently and transparently and as quickly as possible.

FLAKE:

Mr. Rosenstein, you have developed quite a reputation for bringing law enforcement together at all levels to work toward a common purpose goal. This is desperately needed with regard to unifying local law enforcement and federal officers, with regard to local or law enforcement on

immigration laws and to coordinate immigration enforcement efforts. Can you speak to that for a minute?

ROSENSTEIN:

I certainly agree with you, Senator, that it's critical that we coordinate federal, state and local law enforcement. And there's some areas in which we're 100 percent in agreement, particularly with regard to violent crime and gangs, for example. And there are some issues where there are more complex political issues, such as immigration. But I believe that it's critical for us to the extent that we're able and to find common ground so that we can work together to make sure we use our -- our mutual resources most effectively, to combat crime problems that plague our citizens.

FLAKE:

We've had situations in Arizona, for example, where ICE has released individuals into the community who have had felony charges without informing even local law enforcement that this was being done. Can you commit that that won't continue in the future?

ROSENSTEIN:

I wouldn't want it to occur in any cases under our purview. If it's an ICE administrative case, it may not necessarily be under the Department of Justice's authority, but I'd certainly consult with the Department of Homeland Security and make sure that the if that's happening inappropriately, make sure to fix it.

FLAKE:

Well, great. Well, there -- there needs to be cooperation between DOJ and the Department of Homeland Security...

ROSENSTEIN:

Absolutely.

FLAKE:

... when individuals have been charged.

ROSENSTEIN:

Yes, sir.

GRASSLEY:

(inaudible) I have concluded that after these two witnesses here. And then a second round for three on this side that we can work our way through this and get done.

(UNKNOWN)

Certainly.

GRASSLEY:

If that's OK with you.

(UNKNOWN)

(OFF-MIKE)

GRASSLEY:

Do you need a five minute break?

ROSENSTEIN:

No, sir.

BRAND:

I'm fine.

GRASSLEY:

And the second -- and the second round will be five minutes and I'll -- we're gonna go to you two first, but then three for second round and then -- and then I'll have just one question, but I'll ask after everybody else has asked their question.

So, Senator Blumenthal?

BLUMENTHAL:

I'm presuming we'll have a second round as well, if we would like it?

GRASSLEY:

If you want it, yes.

BLUMENTHAL:

Thank you. Thanks, Mr. Chairman.

Thank you both for your public service and thank you for being forthright in your answers to our questions today. And Mr. Rosenstein, I wanna talk to you about the Justice Department that both of us love and the mentors that we share and those echoes that both of us have heard in those halls, both of us as United States attorneys and federal prosecutors and the values that are shared. And I wanted to say right at the outset that I regard your experience and your career as a prosecutor as exemplary and your intellect and integrity certainly qualify you for this position.

And yet, as I have told you, I will oppose your nomination if you are unwilling to commit to appoint a special prosecutor. And I say so with some sadness and regret because of my respect for you, but this issue of principle is so profoundly important and only you, only you have the power to appoint a special prosecutor. We are in an extraordinary time, careening toward a constitutional crisis with the intelligence agencies in complete agreement that the Russians launched a massive attack on our democracy, a campaign of meddling in our elections, through cyber attack and misinformation and propaganda.

BLUMENTHAL:

And there is evidence also of ties between Trump officials, contacts, connection, even potential collusion, and the Russians during the time when that attack occurred and there is the danger of a cover up, as indicated by the apparently false statements made to this committee by the now attorney general about his contacts with the Russians, and by others in the Trump administration, including his national security adviser, Michael Flynn.

So I believe that a special prosecutor is absolutely necessary to assure the independence, as well as the integrity of this investigation. And that's why I pressed you privately and I've said publicly from mid-February and before that there needs to be a special prosecutor.

Even though I support the investigation of the Intelligence Committee, which must do its work, as well as the appointment of a select committee and even a special commission that can produce findings of fact, a report and a recommendation. But you and I know that only the Department of Justice can pursue criminal wrongdoing. Only a prosecutor can pursue lawbreaking that violates our criminal laws. None of those other bodies can do it.

So let me begin by asking you. If you presented a witness to a grand jury who presented false statements and you knew they were false, wouldn't you immediately correct the record?

ROSENSTEIN:

If I presented a witness before a grand jury made false statements and -- I think that's a trick question, senator...

BLUMENTHAL:

It's a pretty clear question. It's a yes or no...

(CROSSTALK)

ROSENSTEIN:

(Inaudible)...

BLUMENTHAL:

... if you would. I know you would.

ROSENSTEIN:

In a grand jury it's actually not my job to tell the grand jury what the truth is. In a trial situation I would have an obligation, yes, sir.

BLUMENTHAL:

And if you presented a witness to a jury in a trial who testified falsely, you would immediately correct the record. Correct?

ROSENSTEIN:

If I knew that the testimony was false, I'd have a responsibility to take corrective action. Whether that's correcting the record or counseling the witness, it would depend on the circumstances.

BLUMENTHAL:

So I believe strongly that this committee has an obligation to bring back the attorney general to correct the record and explain why he stated as he did, incorrectly, that he had no meetings with the Russians.

Let me ask you a question about the ongoing investigation. We know from the newspapers, which is apparently your source of information, that the FBI is investigating. Won't the FBI need to ask Jeff Sessions?

And won't whoever the prosecutor is have to ask the attorney general why he made those statements? Won't they have to ask the former national security adviser and other Trump officials why they made false statements? Won't that be part of the investigation?

ROSENSTEIN:

Senator, I suspect that if I am confirmed for this position -- first of all, I should clarify because both Sen. Feinstein and Sen. Franken asked me about this 15-page public report.

I rely on the media for a lot of information, senator. A lot of information that matters to my work. But general information. But I want to commit to you that I will read that 15-page report that's available on the Internet. No need to follow up. I commit that I will read that...

(CROSSTALK)

BLUMENTHAL:

Let me suggest to you that unquestionably, and I don't expect you to disagree with me, that an investigation of the Russian meddling in our election and the ties between Trump administration officials and the Russians would involve questioning the attorney general of the United States, your boss. And possibly others in the administration. And possibly even the president, your boss.

How can you investigate your boss?

ROSENSTEIN:

If there's evidence, senator, that the attorney general and the president have information relevant to a criminal investigation in this case, as in previous cases that I've handled I'll make sure they're questioned. I've done that before. I've been involved before in questioning a president of the United States...

BLUMENTHAL:

But you've never investigated the attorney general of the United States, have you?

ROSENSTEIN:

No, I don't believe I've ever...

(CROSSTALK)

BLUMENTHAL:

You've never investigated the president of the United States have you?

ROSENSTEIN:

Well I was involved in an investigation that in part entailed the...

BLUMENTHAL:

As a target or subject of criminal wrongdoing?

ROSENSTEIN:

Senator, I don't want to comment on any more details in my experience with the Independent Counsel. I just want to assure you that I'll question and make sure that anybody with relevant information's questioned. I don't care who it is.

BLUMENTHAL:

If you decline to name a special prosecutor, will you commit to come before this committee and explain why?

ROSENSTEIN:

Senator, I really appreciate your candor with me yesterday about that issue. You know I had a meeting scheduled with you for yesterday afternoon.

And somebody brought to my attention on Sunday afternoon that you had -- or your office at least had issued a Tweet suggesting that you would try to obstruct my nomination if I didn't agree to do this. And I was a little reluctant to meet with you yesterday as a result of that. But it was a superb meeting. And I appreciated your candor and your civility.

And we may disagree on this narrow issue, but I think you and I have a lot in common, including our affection for David Margolis. And if I do become deputy attorney general, I hope that you will come visit the Margolis Memorial Conference Room in the deputy's office, and we can talk about issues of mutual concern.

I've thought a lot about this issue though, senator. You view it as an issue of principle that I need to commit to appoint a special counsel in a manner that I don't even know if it's being investigated. And I view it as an issue of principle that as a nominee for deputy attorney general I should not be promising to take action on a particular case.

And I respect if you feel you need to oppose my nomination on that basis. I respect your right to do it. I do not take it personally. But I would encourage you to consider my perspective on this.

And I shared with you that I view Robert Jackson as a model for me. And his view -- Robert Jackson actually addressed this in that speech I referred to where he said that it was important for U.S. attorneys to avoid participating in the operation and machinery of politics. And I view this as part of a -- it's a political issue.

And it's a completely legitimate issue for you. And I respect your right to consider it. But my view is that I have a responsibility when I take that oath, if I become deputy attorney general. I cannot take it conditioned upon having committed how I'm going to handle a particular case.

And I believe that if I were to do that in this case, some future deputy attorney general nominee would be here. And he'd be asked to make a similar commitment. And he'd say, well Rosenstein did it, why won't you?

And so I believe it's a matter of principle for me, senator, to take the position, as Robert Jackson said, that the purpose of this process is to determine whether or not the deputy attorney general nominee has the appropriate character for the job, and not how he or she is going to rule in particular cases. The White House hasn't asked me that question, and I simply can't answer it to you.

And I apologize. I regret that. But I do hope that you and I will be able to work together if I get the job.

We have a tremendous amount in common. I have a great respect for your affection for the department. And I believe we'll have a constructive relationship. So thank you.

BLUMENTHAL:

Well, thank you.

GRASSLEY:

Senator from Hawaii?

HIRONO:

Thank you, Mr. Chairman.

With the most recent unsubstantiated early morning Tweet from President Trump accusing President Obama of ordering a wiretap, thank you, Mr. Rosenstein, for your clear no on the question of whether President Obama on his own could order a wiretap. Maybe Putin can do that, but the president of the United States cannot do that.

And I note that Ms. Brand would not answer the same question, characterizing the question as a hypothetical. It is not a hypothetical question. It is a question of law.

Mr. Rosenstein, do you agree that the Office of the Attorney General is not the president's personal law firm?

ROSENSTEIN:

Absolutely, senator.

HIRONO:

So that the AG serves as America's chief law enforcement officer and head of the Department of Justice representing the United States. Will you commit to providing your best independent judgment in your prosecutorial discretion and duties at the Department of Justice?

ROSENSTEIN:

Yes, I will.

HIRONO:

So if the president indicates that he wouldn't want a special counsel in the investigation into Russia's interference in our elections, and if you determine that such counsel is warranted, will you be willing to deny the president his request?

ROSENSTEIN:

I believe I would, senator. It would depend on the context. Certainly if the president had a conflict in a particular matter I would not take any advice from the president.

HIRONO:

So you would make your own determination because you're a lawyer for the people of the United States?

ROSENSTEIN:

Let me clarify, senator. If you're -- hypothetical, and again, it's difficult for me to answer hypotheticals as a lawyer...

HIRONO:

I accept your answer. Thank you.

ROSENSTEIN:

If the president has committed a crime and I believe the president's culpable, then I wouldn't follow the president's advice.

That happened in the Nixon era. There was a question about whether presidents can wiretap without legal process. And I believe it has happened before. I don't have any reason to believe it's happened recently, and I certainly hope it hasn't.

HIRONO:

Ms. Brand, in our personal meeting you mentioned the need to preserve the integrity of elections. And to many that is doublespeak for voter suppression.

The states have justified voter suppression laws by claiming rampant voter fraud. In fact, President Trump continues to claim that three to five million votes were cast illegally during the General Election. Do you agree with his assessment that three to five million votes were illegally cast?

BRAND:

Well, Sen. Hirono, I think when we met yesterday you asked me about the importance of the Voting Rights Act as well as voter fraud. And I think what I said is that it's important, that both are important...

(CROSSTALK)

HIRONO:

But perhaps could you respond to my question, which is do you believe that three to five million votes were cast illegally in the recent general election?

BRAND:

Well if I might just finish that point. I think it's critically important for the department to do both their work in enforcing the Voting Rights Act, and if cases arise, as Mr. Rosenstein described, if there are allegations, credible allegations of voter fraud, the criminal division would pursue those.

HIRONO:

Well, I know that Mr. Rosenstein did not respond to that question saying that he did not have the information.

But in fact a comprehensive 2014 study published in the Washington Post found 31 credible instances of impersonation fraud, in other words voter fraud, from 2000 to 2014 out of more than one billion votes cast. So even this small number is likely inflated as the study's author counted all credible claims regardless of whether or not they were found to be valid.

So other studies done at the Arizona State University in 2012 and 2016 found similar negligible rates of impersonation fraud. So even given these facts, a dozen states have passed voter suppression laws.

And I'd like to ask you, Ms. Brand, will you commit to prioritizing DOJ resources to where the problems lie? The problems do not lie in voter fraud. The problems appear to lie in these voter suppression laws that states have been very busy passing after the Shelby case. I'd like to know whether you will prioritize DOJ resources going after the voter suppression laws, or certainly looking at these laws to see whether in fact they suppress votes.

BRAND:

Well, Sen. Hirono, I understand your concern with this. And I share concern for anything that would violate the Voting Rights Act and suppress votes. That's -- I view enforcement of that statute to be a core (ph) enforcement function of the Civil Rights Division.

I would approach that issue like I would approach any issue, which is that if an issue is raised, a particular case, I would look at the facts and I would look at the law.

I would of course be consulting with the lawyers in the Civil Rights Division. I don't -- they would be doing the work in the first instance of course. I don't intend to be micromanaging that work. But in my supervisory capacity I would talk with them, look at the facts, look at the law and exercise my best judgment.

HIRONO:

So Mr. Rosenstein, I would hope that you would have that kind of approach.

But you -- Ms. Brand, I think you said that protecting people's right to vote and access to voting is a core function.

And would you agree with that...

ROSENSTEIN:

Absolutely.

HIRONO:

... Mr. Rosenstein?

ROSENSTEIN:

Absolutely yes, senator.

HIRONO:

Thank you.

Under the Obama administration, expedited removal was used only when an immigrant was arrested within 100 miles of the border and had been in the country less than two weeks.

Under a new executive order issued by President Trump, expedited removal will now include all those who have been in the country for up to two years where a lot of things could happen. They could marry citizens. They could have citizen's children. No matter where they are caught in the U.S.

So Mr. Rosenstein, how can the DOJ ensure that expedited removal doesn't threaten the due process rights of those who are not brought before an immigration judge?

ROSENSTEIN:

Senator, I have no direct involvement in immigration. In my 27 years in the department as U.S. attorney we occasionally have civil cases that arise out of immigration disputes.

I believe that issue that you referred to is really a matter primarily in the jurisdiction of Homeland Security rather than Justice. So I regret that I'm just not in a position to comment on it.

HIRONO:

But wouldn't the DOJ be prosecuting these kinds of cases or not? Are you saying that because they don't come before a judge that that's not within your purview?

ROSENSTEIN:

Well no. I -- what I meant to say, I think what you have in mind is an administrative removal or a civil removal rather than a criminal prosecution. For criminal prosecution that's just the type of case that I'd prosecute as U.S. attorney.

I haven't been involved in civil removals. And the decision about which -- I believe the decision about which immigrants to remove is in the first instance to the Homeland Security. But I'll certainly -- if I become deputy, I'm sure I'll study up on that issue and consult with the experts in the department. And I'll be happy to consult with you...

(CROSSTALK)

HIRONO:

Certainly because the DOJ has responsibility to protect everyone's civil rights and due process rights I would think.

Thank you.

GRASSLEY:

(OFF-MIKE).

WHITEHOUSE:

Thank you, Chairman.

First let me say that I agree with Mr. Rosenstein that he should have the chance to familiarize himself with the matter before he makes a call about a special counsel.

But I would like to add to the record of these proceedings, then- Senator Sessions op-ed in which he stated, and I quote, "the appropriate response when the subject matter is public and it arises in a highly charged political atmosphere is for the attorney general to appoint a special counsel of

great public stature and indisputable independence to assure the public the matter will be handled without partisanship." There's a matter on which Sen. Sessions and I agree.

I'd also like to add that if Sen. Sessions, Mr. Chairman, had answered truthfully and accurately the question that has been the subject of so much debate, there would have been follow-up questions. Follow-up questions such as well, what was the content of those communications you had with the Russian ambassador? What were the circumstances that led to those meetings? What communications did you have with the Trump campaign about those meetings, if any?

And I think those are legitimate questions. And I don't think the committee should be deprived of the ability to follow up on those questions simply because we were deprived of an accurate and truthful answer. So I join my colleagues in hoping that the attorney general will reappear before us. Mr. Rosenstein, as a matter of law, is it correct Administrative Procedures Act has precedence over an executive order that might direct agencies to the contrary?

ROSENSTEIN:

No, I'd say I regret and that may be the case, I'm not familiar with that. I'm not in regulatory law, I do not know the answer to that.

WHITEHOUSE:

Sir, act of Congress -- doesn't the laws of the United States supervene executive orders?

ROSENSTEIN:

Sir --

WHITEHOUSE:

Don't the laws of Congress supervene executive orders?

ROSENSTEIN:

Yes.

WHITEHOUSE:

Okay, there we go. Mrs. Brand, a right-wing commentator has compared department staff to filth and urged that they be cleaned out like manure from the Ochaeon (ph) Stables. The Attorney General has questioned whether secular attorneys at DOJ can fully understand the truth. So how will you defend the department from partisan, religion-based or ideological hiring practices?

You have a great department that has steered away from that stuff by-and-large through its history. How will you protect that?

Your microphone.

BRAND:

Sorry, my microphone. I have a great deal of respect for the lawyers in the Department of Justice. I think discrimination on the basis of religion in hiring is illegal, anywhere. With respect to the impact of partisanship on hiring, we have the Civil Service Protection laws which govern the Department of Justice and I think it's very important that everybody who is in a hiring capacity understands what the rules are.

So, I think training is a big part of that. I believe every employee of DOJ is supposed to be trained in a whole variety of laws that govern their conduct, including the Civil Service Protection laws.

WHITEHOUSE:

Will this be a priority for you to assure that the department does not fall back into the predicament that it feel into when our Attorney General Gonzales...

BRAND:

Yes Senator.

WHITEHOUSE:

Okay. Science denial and specifically climate denial has been propagated by the fossil fuel industry for years through an array of front groups. The Chamber of Commerce, which you worked for, has been a relentless enemy of climate action and has trafficked regularly in climate denial. You have been there lawyer in environmental cases. Can we trust you on climate science as related issues come up in the department?

BRAND:

Well Senator, my role if I'm confirmed to be Associate AG will be to enable the officials in the Department of Justice to engage in their law enforcement functions, which include enforcing the Clean Air Act, the Clean Water Act, the Endangered Species Act and so on.

The scientific and policy judgments tend to be made by the EPA or the Department of the Interior, NOAA -- there are any number of agencies around the government who deal with those questions. The DOJ doesn't make those decisions in the first instance, but the policy, whatever it is -- the law, whatever it is -- should be enforced by the Department of Justice. I'm absolutely ready to take that on.

WHITEHOUSE:

Well, you said that when you were working for the Chamber you had a private client that had private interests and you as their attorney were obligated to advocate for their private interests, but

that in public service, what would be important would be to serve the public interest. Is there a public interest in addressing climate change?

BRAND:

Senator, I think that there's a public interest in the Department of Justice enforcing the law that Congress has enacted, including the...

WHITEHOUSE:

That wasn't the question I asked...

(CROSSTALK)

BRAND:

...Act.

WHITEHOUSE:

Is there a public interest in addressing climate change?

BRAND:

Senator, I think you're asking me for a personal judgment on the policy question and I'm not sure that's relevant to the way I would do my job as a law enforcement official in a law enforcement agency.

WHITEHOUSE:

Well...

BRAND:

My job would be to enforce the law, whatever it is.

WHITEHOUSE:

But there are a lot of policy calls that get made and there is a difference between somebody who doesn't think there's a public interest in doing something than somebody who does. So, it's a simple question, a highly-relevant to your duties, is there a public interest in addressing climate change?

BRAND:

Senator, all I can tell you is that I think there is significant public interest in the Department of Justice enforcing the laws passed by Congress and in defending rules propagated by the agencies and trusted by Congress with making those policy judgments. That would be my job.

KLOBUCHAR:

Thank you very much, Mr. Rosenstein, state and local leaders from Maryland have commented on your good working relationship with law enforcement, our U.S. attorney in Minnesota. Andy Googer (ph) has a lot of respect for you, we talked about that one when we met. I've seen first-hand the important role of having police on the beat to keep our communities safe.

I lead the bill to reauthorize the COPS program along with Republican Senator Lisa Murkowski of Alaska. I raised this issue in Attorney General Sessions confirmation hearing with Chuck Canterbury, the President of the Fraternal Order of Police, and he agreed that it's a very important program.

I'd like to hear your views on the COPS program and the support that it provides at the state and local law enforcement. Would you support this program as Deputy Attorney General and Ms. Brand, I'd also like to hear your views since you'll be involved in grants. So, thank you.

ROSENSTEIN:

Thank you, Senator. Certainly to the extent that there's funding for the COPS program, I'm going to make sure that it's done appropriately to achieve the objectives of the program. I have seen benefits from the COPS programs. Obviously, there are budgetary issues -- every budgetary decision is a tradeoff in terms of where the resources are going to go, but as a general proposition, I do think that money has in some instances been spent effectively to help drive reform in police departments that are eager to do it and that want to work collaboratively with the department and bring in experts who can help them update their policies and procedures.

KLOBUCHAR:

Thank you. Ms. Brand?

BRAND:

Senator, thank you. I know how interested you are in this program. I don't have a lot of experience with the COPS program. I couldn't add much to what Mr. Rosenstein has said, but certainly in my capacity as Associate AGL, I'll be overseeing the COPS office and it will be a priority of mine to get up to speed on this issue to ensure that they're putting that money to the best of use.

KLOBUCHAR:

Okay. Mr. Rosenstein protecting national security of the U.S. is a top priority of the Justice Department. We have worked very hard on going after extremism and recruitment. In our state, we've had a number of cases as you know, brought by the U.S. Attorney's office. Could you talk

about how you would approach that issue, not in prosecuting the cases -- I know you'll be devoted to that -- but of this issue of trying to prevent people from being recruited into extremism and the Justice Department, your predecessors in the job as well as the Homeland Security office has been involved in this.

ROSENSTEIN:

Yes, thank you Senator. I appreciate the opportunity to talk with you about that yesterday and I think as we discussed on probably 99% of these issues, we're all on the same side. And with regard to this one Senator, we're not in the prosecution business because we like to fill up prisons, we're in the prosecution business because it's a necessary tool in order to deter crime.

When you talk about violent extremism and any other conduct that is damaging to public safety, we need to do everything we can to prevent people from committing those violations. One of the things we can do is to intervene and prevent people from being radicalized to the point where they may commit those crimes. I think that is what you have in mind and I think that's important.

Part of it is a Justice Department function perhaps. I think there are a lot of other agencies that have a role in ensuring that we're raising good American citizens who are not going to engage in that type of conduct. But to the step the Justice Department is involved, I believe we do have something to add.

KLOBUCHAR:

Okay, thank you. Either of you can answer this, but I'm the Ranking Member of the Antitrust Subcommittee. Senator Leahy and I have worked and headed up this committee now for many years and we believe it's very important when we have these hearings and Senators have an opportunity to ask questions about mergers.

As you know, there's been a major wave of mergers in the last few years and a lot of work for the department. The department has an important role to play in challenging anti-competitive practices, reviewing mergers to make sure they won't harm consumers and competition in stopping price fixing cartels. Will you commit to making a robust enforcement of the Antitrust laws a priority?

ROSENSTEIN:

Yes, Senator.

KLOBUCHAR:

Okay, that's a good answer. All right. Thank you. Trafficking, that's my last question here and I'll put a question on opiates on the record.

Senator Cornyn and I, we led the bill that passed this last year with domestic priorities for trafficking. We also -- the Senate has been working on bills regarding foreign trafficking as well.

The Justice Department released its national strategy to combat human trafficking as required by that law at the end of last year.

Will you commit to prioritizing the implementation of the national strategy if you're confirmed, and if you want to add anything about these cases, I'd appreciate it.

ROSENSTEIN:

I'll certainly commit to that, Senator. With regards to opiates, I talked about that briefly yesterday, that's been a real priority for us in Maryland because we've seen an explosion of overdose deaths that are attributed to opioid drugs. It's throughout the entire society. I think it's critically important for us to address that.

Law enforcement is one part of it, but it's a very good example of where it's not just a law enforcement problem. In the state of Maryland, we have a coordinated effort lead by the Governor of Maryland to make that a top priority. So, I agree with you, yes.

KLOBUCHAR:

Thank you.

GRASSLEY:

Senator Cruz, first round is seven minutes instead of the five we've been having for second rounds. So go ahead.

CRUZ:

Thank you, Mr. Chairman.

I'd like to welcome both of the witnesses and congratulate you on your nominations. And I want to thank each of you for your long records of service.

Mr. Rosenstein, you have served in the Department of Justice for a couple of decades now. You've served under Republican administrations. You've served under Democratic administrations. And you've developed a distinguished career marked by integrity and fairness.

Ms. Brand, you and I have been friends a couple of decades now. And Heidi and I have been friends with you and your husband a long time, going back to college and law school.

You likewise have a long and distinguished career in public service, and have earned a reputation for integrity and fidelity to law. And that reputation and fidelity will never be more important than in this new job to which you have been appointed.

In this hearing a number of my Democratic colleagues have focused a great deal on the aspersions that have been cast on Attorney General Jeff Sessions, another good man, another man of integrity.

And it has been interesting to see a number of Democratic senators demanding of Mr. Rosenstein that you commit to appointing a special prosecutor at the very outset, before even being confirmed to the position of deputy attorney general.

I find it somewhat interesting and ironic in that the same Democrats who are doubting your ability to be fair had a very, very different view of your record just a few years ago. Indeed, Sen. Leahy described Mr. Rosenstein as a "tough, honest prosecutor," and as "the uptime of professional prosecutors."

Sen. Feinstein likewise described Mr. Rosenstein as a "scrupulous man who is independent." And she further said she "had no reason to believe why you cannot work with the FBI and assemble a very strong prosecution team where warranted."

Mr. Rosenstein, given the reputation you've earned as a fair and scrupulous prosecutor, how do you believe the Department of Justice should approach any criminal investigation? And what should guide the principles for going forward?

ROSENSTEIN:

Senator, first of all, I'm embarrassed to say that those accolades are probably not entirely justified, but I appreciate them. This is very easy for me because I've been in the department for 27 years. The folks that I've worked with in the department have trained me well.

Every investigation we conduct needs to be independent. And it doesn't matter who is the defendant, whether it's a prominent public official or just an average American citizen. It always needs to be conducted independently, and we assemble the resources we need and every investigation to do it appropriately.

It includes federal agencies, whichever is the relevant agency that is devoting the agents, the armed officers who conduct our investigations and make our arrests and execute our search warrants and serve our subpoenas. And the prosecutors, the assistant U.S. attorneys or the trial attorneys of the Department of Justice who conduct these investigations.

In every case, senator, it needs to be done independently. And that's something that I believe is generally the case.

I'm proud of the department's record. Any organization of significant size is going to have occasional issues, and I'm sure that we do.

But overall, senator, I'm extraordinarily proud to be associated with this institution. And I have great confidence in the men and women of the Department of Justice, that they're just as honest and independent today as they were on Jan. 19. And they'll continue to exercise their authority with independence and with an appreciation of the importance of their positions, and of their critical role in promoting public safety and enforcing the law.

CRUZ:

And I agree with you that there are a great many career officials at the Department of Justice who are principled, who have a fidelity to law, and who are eager to have a job mandate that is simply, fairly enforcing the law across the board.

You and I have discussed, and I have observed publicly that it is deeply concerning to me and to a great many people that over the last eight years, the leadership of the Department of Justice, I think, has been very politicized. It's -- perhaps it's not surprising the Democratic senators assume that same politicization will continue. But for eight years we've seen political attorneys general.

We've seen Eric Holder allowing illegal gun transactions with Mexican drug traffickers as part of Fast and Furious, which resulted in an illegal gun knowingly sold to traffickers being used to murder Border Patrol Agent Brian Terry. We saw the Attorney General of the United States Eric Holder held in contempt of Congress when he refused to cooperate with Congress's investigation in the Fast and Furious.

We saw the IRS illegally targeting American citizens for exercising their First Amendment rights because they were perceived to be political opponents of the president. And we saw the Department of Justice assign the investigation of that case to a partisan Democrat who was a major Democratic donor who'd given over \$6,000 to President Obama and the Democrats.

When all of this was occurring, none of the Democratic senators had any concern at all. Today they want a special prosecutor. But when a partisan Democrat was leading the IRS investigation they saw no need whatsoever for a special prosecutor.

We saw the Department of Justice with Operation Chokepoint punish, without due process, law-abiding citizens that didn't align with the president's political leanings. We saw the Department of Justice continue to allow millions of dollars of taxpayer funds to flow to sanctuary cities that were openly defying federal immigration law and releasing violent criminal illegal aliens who were committing horrible crimes.

We saw the administration refuse to enforce the laws on the books, and we saw that -- the Department of Justice sign off on a decision to pay a nearly \$2 billion ransom to the nation of Iran that flew in the middle of the night on unmarked pallets landing in an airport.

That pattern of politicized administration of justice has been dismaying to veterans of the Department of Justice because for decades DOJ has had a tradition of being nonpolitical, nonpartisan, fairly and faithfully applying the law. And that has been true under Republican and Democrat presidents until the last eight years.

The question I would ask of each of you is will you commit to this committee not to be a political Department of Justice in the same mold -- but on the Republican side that is most assuredly not your job. But rather will you commit to faithfully and fairly uphold the law without regard to politics?

ROSENSTEIN:

Senator, I will certainly commit to faithfully and fairly uphold the law without regard to politics.

BRAND:

Yes.

CRUZ:

Thank you, Mr. Chairman.

GRASSLEY:

Sen. Franken for five minutes. And then if Sen. (Inaudible) wants five minutes. And then I'll finish.

FRANKEN:

Thank you, Mr. Chairman.

And I just want to say something about the chairman. I have incredible respect and regard for the chairman, and dare I say affection. The chairman has cosponsored my legislation more than any other Republican. And I...

GRASSLEY:

Be quiet about that.

FRANKEN:

OK.

(LAUGHTER)

Hopefully this doesn't go to Iowa. OK. "Ex-nay on the o- sponsor-kay."

So I just want to -- I don't think it's fair to characterize -- and I understand that you were standing up for your friend, Senator Sessions and Attorney General Sessions...

GRASSLEY:

I'm trying to tell you how I try to treat nominees.

FRANKEN:

I know. But I'm saying that I don't think my question is a "gotcha" question. Let me read the question. And then I would ask people, go to the tape. I couldn't have been nicer.

I went, "OK, this is--"OK was the previous answer. "CNN has just published a story and I'm telling you this -- I'm telling you this about a news story that's just been published. I'm not expecting you to know whether or not it's true."

"But CNN just published a story alleging that the intelligence community provided documents to the president-elect last week that included information that 'Russian operatives claimed to have compromising personal and financial information about Mr. Trump.' These documents also allegedly say 'there was a continuing exchange of information during the campaign between Trump surrogates and intermediaries for the Russian government'."

"Now again, I'm telling you this as it's coming out, just so you know. But if it's true, it's obviously extremely serious. And if there is any evidence that anyone affiliated with the Trump campaign communicated with the Russian government in the course of this campaign, what will you do?"

Now I think that was a fair question, and it's certainly not a "gotcha" question. And he didn't answer my question.

The -- what he said to that question was "Sen. Franken, allegations get made about candidates all the time, and they've been made about President-Elect Trump lots of times. Most of them virtually -- wait a minute, I'm sorry -- I'm sorry. I'm reading from further down. This is what he said. "Senator Franken, I'm not aware of any of these activities. I have been called a surrogate at a time or two in that campaign, and I did not have communications with Russians. And I'm able -- unable to comment on it." So in other words, he -- it can't be a gotcha question if -- if he didn't answer the question.

So the thing that got him was him saying that had he not met with Russians. But that wasn't even my question. My question was just, if this is -- and I asked it of Mr. Rosenstein, which is if it turns out to be the case that members of the -- of the campaign -- of the Trump campaign, have met with Russians and colluded with them on this, don't you think -- what would you do? And I asked Mr. Rosenstein that. It was not a gotcha question. That's all I want to say. It was -- and if you go back and look at the tape, I have to say, I couldn't have been nicer.

I couldn't have been sweeter. Really. So that's that. Mr. Rosenstein, I want to ask you question. The president's former national security advisor, Michael Flynn, resigns his position because he misled senior administration officials regarding his communications with the Russian ambassador. It has been reported that Sally Yates who once held the position you are looking to fill and -- and was acting attorney general early in the Trump administration, warned the White House that Mr. Flynn could be vulnerable to blackmail because of his cover-up. Mr. Rosenstein, knowing what we know now, do you think Mrs. Yates was right to be concerned?

ROSENSTEIN:

Senator, I -- I hope I've been clear on this point throughout my testimony. I appreciate opportunity to clarify it. At this point, that I believe as a lawyer as justice department official, currently and potentially in the future, it's important for me to limit my testimony to matters in which I know

both the facts and the law and where I've consulted with the Department of Justice professionals who are engaged in handling the matter.

So on issues like that one, I appreciated Senator Whitehouse's sharing his perspective earlier, that you need to know the facts and the relevant information. You can't prejudge matters. There's currently an acting attorney general, Dana Boente, who is in that position with regard to many investigation that may be occurring. With regard to your specific question my answer is, senator, I do not know the details of what the basis was for that. And I wouldn't reach any opinion about it just based upon what I read in the newspaper.

GRASSLEY:

Senator from Hawaii.

HIRONO:

Thank you Mr. Chairman. There are more than 18,000 law enforcement agencies in the country. Of course the vast majority of our law enforcement officers do an exemplary job in protecting their communities and our safety. But there have been also specific cases where there was use of force, 31 incidents that have sparked nationwide outrage.

And I know that you are familiar with the attorney general civil rights division, which has investigated police departments and entered into consent decrees to resolve frequent unconstitutional policing. During your time as U.S. attorney in Baltimore, the DOJ has either finished negotiating or is negotiating a consent decree that involves you folks and it's before a judge. During Attorney General Sessions' confirmation hearing, I asked him whether he would honor the Department of Justice's existing consent decrees, some 20 of them that that are just police misconduct and its has accountability.

In my view did he not adequately assure me as attorney general he would uphold these agreements. He left opens the possibility that he would revisit these agreements, renegotiate these agreements. This concerns a lot of us. I'd like to ask you the same question. Will you commit to maintaining and enforcing the current consent decrees that the Department of Justice has negotiated?

ROSENSTEIN:

Senator, my familiarity with this issue is limited. But I can tell you my general perspective are that like all tools that we have available to us, it's appropriate to use this one in a particular case. On the question you're asking is it appropriate to renegotiate or revisit them, I think sometimes it probably is, but I just don't know the details of any particular agreement. What issues may arise. These are negotiated agreements between parties. Those are always subject to revision if circumstances change. So I would imagine there might be circumstances where you would have to revisit them, but I certainly agree with you it's a valuable tool provided to us by the Congress and in an appropriate case would need to use it.

HIRONO:

I take it that with the 20 or so consent decrees that are currently enforced, that there may be times you might want to, because of circumstances have changed and there was a meeting of the minds, but I hope that is not your intention to cast them aside.

ROSENSTEIN:

I have no intent -- I just have no base of information. I accept your representation. There are approximately 20 of them, but I don't know the details. I know there's one currently under review in Baltimore that has not been accepted by the court, but I'm not -- I'm not familiar with the details of the others.

HIRONO:

If you're going to reopen these -- some of these, I hope there is a process whereby you can let Congress know that that's what your intention is. Because these kinds of agreements have national ramifications in my view. During his confirmation hearing, A.G. Sessions stated that he would uphold the Supreme Court's marriage equality ruling and the LGBT inclusive federal hate crimes statute as settled law. Will you both -- both of you, commit to upholding marriage equality and hate crimes prevention for LGBT?

ROSENSTEIN:

Senator, I would anticipate upholding any laws. Certainly any laws the attorney is committed to uphold, so yes.

HIRONO:

Ms. Brand?

BRAND:

Yes.

HIRONO:

And do you both agree that Title IX protections apply to transgender students or transgender persons?

ROSENSTEIN:

Senator, I do not know the answer to that. I know that's a controversial issue of law. It's a statutory issue as I understand it, and I'm just not familiar with the analysis one way or the other on that. But I know that if that issue were to come up to my desk, I know we've got a lot of experienced career professionals in that department who would help us discern what Congress had in mind.

Once I reached my independent decision about that that would be my advice to the attorney general.

HIRONO:

Title IX says basically that there can be no discrimination on the basis of sex. and you're saying that is not clear whether that covers persons, transgender persons?

ROSENSTEIN:

I'm not saying one way or the other. I'm saying I don't know.

HIRONO:

Ms. Brand?

BRAND:

I'm in the same position as Mr. Rosenstein. It's not a statutory construction question that I have studied. I understand it's exactly the issue a play on some litigation, but I haven't had a chance to study it myself.

HIRONO:

Title IX being remedial legislation, I would hope it would be broadly interpreted. One more question, Mr. Rosenstein, do you think a Muslim registry would present constitutional problems?

ROSENSTEIN:

Senator, it would depend upon what you meant by that. I mean, certainly as a general proposition, I think any kind of registry in America that was predicated solely on somebody's religion would certainly present problems.

HIRONO:

Yes, such a register would be based solely on the basis of Muslim religion. Thank you.

GRASSLEY:

Couple short statements I want to make and then to a third thing would be to tell everybody on the committee that the record will be open for one week for answer for questions in writing. And then if nobody else comes, when I'm done, we'll adjourn. In 1986, I got a bill passed through Congress amending the False Claims Act.

Now it's called the False Claims Act empowering whistle blowers to help the federal government hold contractors accountable for fraud. Since that time, the government has recovered more than

\$53 billion, more than \$37 billion of that is because of whistle blowers. Will you vigorously enforce the False Claims Act to recover taxpayers dollars lost to fraud?

ROSENSTEIN:

Yes, senator. We have enforced that in my office in the district of Maryland. Our civil assistant U.S. attorneys have an affirmative civil enforcement program and we certainly will continue to enforce that.

GRASSLEY:

And then I would imagine on the second point whether its whistle blowers in regard to the False Claims Act or whistle blowers generally, would you commit to ensuring that the Department of Justice attorneys work collaboratively (ph) with the whistle blowers in regard to the fraud under the False Claims Act, but the protection of whistle blowers generally?

ROSENSTEIN:

Yes, senator. I would certainly make sure whistle blowers receive any protection they are entitled to by law or regulation.

BRAND:

Yes senator (ph) (inaudible) that's really important to you, and whistle blowers are protected by the act and other statutes and regulations, and I support that.

GRASSLEY:

Three letters I want to put in the -- in the record supporting Mr. Rosenstein's -- basically his record of independence from Jamie Gorelick and David Ogden.

GRASSLEY:

They served as deputy attorneys general for Presidents Clinton and Obama; James Cole, President Obama's deputy attorney general; and Philip Heymann, who served as deputy attorney general under President Clinton.

And then a couple of short statements. President Trump raised a very serious issue over the weekend that has been reported in the mainstream press as well. The New York Times reported on January 19th, based upon one anonymous source, that the intelligence intercepts related to the Trump campaign officials were provided to the Obama White House. If that is true, then the public needs to know, (1), how the intercepts were obtained; (2), why they were provided to the White House; and (3), whether any of the information was used for political purposes.

After President Trump's tweet, President Obama's spokesman denied any involvement, but someone told the New York Times in January that the White House was involved. I don't

remember any of my colleagues on the other side asking questions about that news report regarding the previous White House involvement.

But it's very different when they were reports of Trump White House officials asking the FBI Director Comey about this matter. Democrats started -- started suggesting it was somehow a sign of improper political influence. Yet, they were not asked any -- they have not asked any questions about indications that the Obama White House was gathering information from intelligence sources on its political appointments. And I'll put a New York Times article in the record.

And then the last thing would be in regard to charges about collusion between the Trump campaign and Russia. These have been raised several times. And so I would note for the record on Meet the Press, former DNI Director Clapper, under President Obama, said there was no evidence of collusion. Chuck Todd of Meet the Press asked him, quote, "Does intelligence exist that any definitively -- that can definitively answer the following questions: Whether there were improper contacts between the Trump campaign and Russian officials?," end of quote.

And then the quote from Mr. Clapper, "We did not include any evidence in our report that had anything -- that had any reflection of collusion between members of the Trump campaign and the Russians. There was no evidence of that included in our report."

Mr. Todd asked, quote, "I understand that, but does it exist?," end of quote. Clapper said, "Not to my knowledge." So without objection, a copy of that transcript will be placed in the record.

He was the director of national intelligence. He was ordered by President Obama to conduct a full review of the situation. As the DNI, he had access to all source intelligence -- "all sources of intelligence" is in quotation marks.

In other words, everything the government had. So if he's telling the truth and did his job properly, there's no evidence at this point to support these allegations. There is plenty of evidence, though, about illegal leaks of classified information by people out to get the Trump administration.

Meeting adjourned.

(CROSSTALK)

KLOBUCHAR:

Could I just reply?

GRASSLEY:

Oh, if you want to comment, you can comment (inaudible).

KLOBUCHAR:

Yes, I did. I did. I did want to comment.

GRASSLEY:

Oh, you want to?

KLOBUCHAR:

OK. I just wanted to thank the nominees, and we look forward to working with them. And I especially again -- I know more about you, Mr. Rosenstein, just from colleagues, and I want to thank you and your taking on a big job. And I wanted to respond. And part of why this is such a big job is that we have 17 U.S. intelligence agencies who have said that Russia attempted to influence our election. And we have the attorney general of the United States recusing himself.

And I just want to point out that this weekend, and the chairman raised the issues of the president's tweets, this weekend the director -- former Director Clapper actually said that he did not know of this kind of a wiretapping or that that had been -- there had been any kind of a FISA court order. He denied that. And we also have the reports now that the FBI director was trying to get this clarified, that this was not occurring.

So I just haven't seen any credible evidence to support the president's tweet from Saturday morning and I just think it's important that we clarify that on the record.

ROSENSTEIN:

Thank you, Senator. I want to...

GRASSLEY:

I do thank you all for being here and serving.

Go ahead and then we will adjourn.

ROSENSTEIN:

I just wanted to say thank you. I appreciate your courtesy and your colleagues. It's a real privilege for me to be here, to be part of this process. I know my family feels the same way and we look forward, if I'm confirmed, to continuing to work with all of you. Thank you very much.