

## Hearing Transcript

### Senate Judiciary Committee Hearing on Department of Justice Oversight

March 9, 2016

GRASSLEY:

We thank very much the attorney general coming for our oversight hearings that we have fairly regularly. Our founding fathers gave us a Constitution that set up revolutionary system of government. They divided the government between three equal -- coequal branches; legislative, executive, judicial. This separation of powers also comes with checks and balances; this hearing is part of those checks and balances.

Each branch has certain powers and responsibilities to make sure that the other branches don't grow too powerful. Most importantly, the system of checks and balances helps to protect the rights and liberties of our people from the beginning of our country, Congress, the president and the courts have engaged in a very great and worthwhile debate over their proper roles. That debate continues to this very day and I'm glad to be Chairman of this committee to help in that process of debate.

Oversight is just one of the critical functions in constitutional responsibilities of our legislative branch. That's part of that ongoing debate; it's an opportunity for Congress to investigate and question policies and executives of the executive branch. It's an opportunity for the executive branch to take responsibility for them and if there's disagreement to explain those disagreements.

It's an opportunity for Congress to defend constitutional powers on the checks and to check any abuses open overreaching executive branch. When you, Madam Attorney General, when you appeared before this committee last year, I said that there were some serious challenges facing the Department of Justice. I meant it at that time, these challenges go to the heart of our system of government; the Justice Department had become deeply politicized under your predecessor and that it failed to take care that the laws are faithfully executed.

Instead, laws were being rewritten, unilaterally changed and sometimes ignored. Executive agencies were allowing firearms to walk across into the hands of drug cartels, conservative political groups that had spoken out against the government were being targeted and in many ways, the president himself was at the root of the problem because he was carelessly ignoring the rule of law. He was also substituting his own political preferences for the will of the people and their elected representatives.

I think that he ignored Congress and the law when he traded five terrorists from Guantanamo Bay for an American soldier who had walked away from his base and he did so again when he granted amnesty and gave work permits to millions of undocumented workers. And I don't think it has stopped yet; last month he outlined a plan to transfer terrorist from Guantanamo Bay to prisons in the United States so that he could fulfill what he considers a legitimate campaign promise but goes about it even though the law says that he can.

So today, I look forward to ensuring that this president -- as I hope I have regularly any Republican or Democrat president -- isn't abusing his power and ensuring that the rights of the American people are being protected. So I want to discuss whether the president can use his executive authority to empty Guantanamo Bay by sending out Al Qaida terrorists to U.S. prisons. I want to hear about the administration strategy to work with technology providers to solve the going dark problem, especially now that Apple is refusing to provide assistance that your department has requested, even in cases involving dead terrorists.

I want to have a conversation about recent policy changes in your department to investigate and prosecute individuals for corporate wrongdoing, an approach that I have long called for since the 2008 financial and mortgage crisis. I would explore with you a host of whistleblower issues relevant to the department, including my recent FBI Whistleblower Protection Enhancement Act legislation and also want to discuss with you yet another example of stonewalling -- the administration -- stonewalling Congress and using the Department of Justice as a tool for its resistance effort.

The American people are now aware that Secretary Clinton used private e-mail address and nongovernment servers for all of her official business during her time at the Department of State. Over 2,000 e-mails contain classified information, with some containing what we call -- described as top secret sensitive, compartmented information and other related to special access programs. But the department and the FBI have refused to officially confirm basic information about the scope and nature of the investigation to this committee.

Apparently, the FBI is conducting an investigation relating to the mishandling of that classified information but given the politics involved, the potential for improper influence over the work of the investigators and career prosecutors is high. The president and his spokesman have commented on the merits of the investigation and some news reports say that investigation includes even the Clinton Foundation, but President Clinton, who was involved in the foundation, appointed you to be U.S. attorney in New York.

Now, this doesn't involve anything different than appearances, but given these appearances, more needs to be done to ensure that the public that decisions are being made without any influence from political appointees. If the FBI refers the matter to the Justice Department and it refuses to prosecute, then the public may be kept in the dark about the FBI's findings. But the public has a right to know the facts, even if those facts don't result in prosecution. This controversy isn't just a matter of protecting the sensitive national security information in some of the e-mails, it's also about a systematic effort to avoid freedom of information laws and federal records laws because you've heard me say so many times that the public's business ought to be public.

The records of government business -- I think -- belong to the American people. Simply said, the American people ought to know what their government's doing and must be sure that it's free from the interference of political appointees in the executive branch. So I conclude now by saying I look forward to conducting oversight over these issues and again, thank you for being here, Attorney General Lynch and for engaging in these important parts of our system of checks and balances.

And also, to thank you so many times since you've been attorney general for discussing things with me on the phone one-on-one, I appreciate it very much. Now I call on Senator Leahy.

LEAHY:

Thank you very much; I do welcome our nation's top law enforcement officer, Attorney General Loretta Lynch, back to the Senate Judiciary Committee and I commend her for the way she's handling the Department of Justice. Now one of our core responsibilities of our committee is, of course to provide oversight of the Justice Department and that includes holding public hearings for the attorney general.

So the American people will see how she answers our questions, although I would note that on matters of -- classified matters and ongoing matters, the attorney general's always been available to answer questions of members of this committee.

But the American people deserve the opportunity to evaluate themselves and work of the department and I look forward to hearing from attorney general on a range of subjects important to us in Vermont. But public hearings are also a chance for the American people to watch us, their elected officials. American should able to see their government in action. They should know whether we're acting on their behalf, and whether we're keeping their interests, not partisan politics, at the forefront of everything.

I must say that's why it's important that this committee hold public hearings on the next nominee to the Supreme Court, public hearings. It's the Senate's (ph) constitutional duty to provide advice and consent on Supreme Court nominees falls to this committee to initiate. I mentioned that because for a hundred years since we've had this committee, we've done that in public hearings. However, for the next nominee to the Supreme Court would be up to already (ph) single public committee meeting to discuss how to fulfill that constitutional duty. I know the Republican committee members met behind closed doors to unilaterally decide without any input from Democrats who sat at this committee and the Senate as a whole would simply refused to consider a Supreme Court nominee.

Even assuming, as I'm sure he will, the president fulfills his constitutional duty to nominate Supreme Court justices so they're spelled out very clearly in the Constitution. And of course, very clearly, we've taken an oath of office under God to uphold the Constitution, which includes advising and consenting to that nominate. But I think I'm going to have a unilateral decision by some behind closed doors; it's a dereliction of our constitutional duty. More important though it denies the American people the chance to participate in a public discussion of the nominee.

Now we talked about the Justice Department's responsibility keep Americans safe, which we remembered that the Senate Republicans refused to continue next Supreme Court nominee that's going to make the goal harder for the Justice Department. The Republican shutdown of any confirmation process for Supreme Court nominee means the court would be missing a justice for probably year and a half anyway. As several former U.S. attorneys from Ohio and Washington State, and California and Virginia recently wrote, quote "for federal prosecutors, agents and criminal investigations, a year is a lifetime. We've seen real threats, whether it's a heroin epidemic

or the threat of ISIS recruitment, based on people in our communities every day. For our law enforcement says ready to protect the public from these threats, they need to know the rules of the road", close-quote.

These former law enforcement officials explained (ph) with the Supreme Court unable to function as the pilot (ph) arbiter of our nation's laws for more and the years (ph) can be a real challenge on our law enforcement community. The Senate's considerations of the next Supreme Court nominee shouldn't be a question of politics, or electoral map. It should be about that solemn (ph) oath. We all took a senator's uphold the Constitution.

And we say so help me God; that's why the American people should expect to see this committee, meeting in the spring (ph) public hearings to consider the next nominate the nation's highest court. The Justice Department to disclose (ph) the general represents the American people every week before the Supreme Court. So our hearing today is not only the Justice Department but what looms large in the horizon. As part of this committee will do its job to fairly consider the next nominee to the Supreme Court.

I hope we will do our job for the good of this country; for entire justice system. Thank you Mr. Chairman.

GRASSLEY:

Attorney General Lynch, I believe that you're going to here a little bit about things that are contrary to normal oversight, as you just heard from Senator Leahy, and Senator Leahy has every right to say what he was going to do. I want to react just a minute to what he did because I think tomorrow, if you want to hear a full- blown debate on this issue, I think we'll probably have one before our committee tomorrow, while well we're also considering three or four judges and maybe a piece of legislation as well.

So I would respond just very shortly to what Senator Leahy said because whether it's today or tomorrow, or whether it's for the next seven or eight months, this is a very important debate that we ought have about the Constitution and about the not only who's going to be a replacement for Justice Scalia, but about the role of the Marine Corps.

Because I get people coming to my town meetings saying how come you don't impeach those Supreme Court justices? Now they don't realize that we're the jury and the House impeaches, but they're making the law, instead of interpreting the law so you ought to get rid of them. So there's a real -- at the grassroots of America out there -- there's a real feeling what is the Supreme Court doing and what the Constitution requires. So I'll respond one thing that Senator Leahy said, and that's about the caucus that we had of the people around this room when we sent a letter to the whole Republican caucus of whether or not we should wait for the next election or the Senate, act right away when the president makes his nominees, which he has a constitutional responsibility to do.

Now, that was caucuses of the Republican members of this committee that we have very, very frequently and I assume that the Democrat members have their caucus, to talk about things that

just how do their respective members feel about issues and I've never been invited to a Democratic caucus and I don't think that the Democratic caucus is open for public. And then tomorrow I think we're going to have debate, then, in regard to the constitutional function of the Congress -- you know, most of the time everything that Congress does has to be interacted between the president and the Congress.

You know, we pass a bill, he vetoes it, we can override or he can sign it and we everything is good. But you know, there's that relationship; but when it comes to these appointments, its two separate positions. One the president nominates and the Senate consents or withholds consent, and they're entirely separate and I think that I've got some quotes here and I think the other side gets tired of me quoting from peak members of them but I think it's very important that that somehow that we've taken a position ahead of a nominee wrong -- it isn't any different than if the president of the United States notifies Congress well in advance of passing a piece of legislation, he's going to veto it.

So the Constitution makes it clear that it's up to the Senate to decide how we do our job by providing advice and consent and we get to make that determination with each nomination and I want to point to the wisdom of Senator Biden, not in the speech that I've quoted so often but another one made in 2005, quote "I do not work for the president of the United States; none of you, meaning other senators, work for the president of the United States. We're all a coequal branch, equally powerful and important, with specific assigned constitutional responsibilities that only we have a right to determine" end of quote.

And then the last thing I'll say Senator Reid said in 2005, quote "the duties of the Senate are set forth in the U.S. Constitution; nowhere in that document does it say the Senate has a duty to give presidential nominees a vote. Now, you're a long term public servant and you ought to have a long introduction. I would like to give you just a short introduction; you're the 83rd attorney general of the United States. You were sworn in on April 27th, 2015, following your service as U.S. attorney for the Eastern District of New York, a position that you have held twice.

You hail originally from Greensboro, North Carolina, it wouldn't surprise me if you were still living there and you're a distinguished graduate of Harvard College of Harvard law school. We welcome you to the committee and I think -- I think I'd ask you just to sit because I want to swear you but I think you stand up because you get your picture in the paper, so just stay seated.

Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

LYNCH:

I do.

GRASSLEY:

Thank you very much, now you make your statement as long you want to make it.

LYNCH:

Thank you, Mr. Chairman thank you so much. Good morning, Chairman Grassley, Ranking Member Leahy, distinguished members of this committee. Good to be in front of you again; I'm tremendously grateful for the opportunity to share some of the recent accomplishments of the Justice Department, as well as to outline my priorities of the attorney general and to discuss how we can continue working together to create a stronger and safer nation.

Our first responsibility is to protect the American people and we're working tirelessly to investigate to detect and to disrupt plots to target our citizens, our infrastructure and our values. We have publicly charged approximately 90 individuals since the year 2013 for conduct related to foreign fighter activity our homegrown violent extremism and we remain focused on the danger posed by domestic extremists.

And that includes investigating incidents and attacks, like the one in San Bernardino, using every lawful tool available. And I want to emphasize that the Department of Justice takes our responsibilities extremely seriously. And we understand that all of these issues raise serious issues and questions for consideration by this body and by the American people. At the Department of Justice, we intend to do our duty to protect the American people and to uphold the rule of law.

Now, we are also redoubling our efforts in cyberspace, where as they do in the physical world, wrongdoers seek to steal data, to copy trade secrets and threaten our national security. We're using and supporting a wide range of tools to counter cybercrime and terrorist use of the Internet, including criminal prosecution, the efforts of our U.S. attorneys and partnerships with the private sector. We've created a cyber security unit within our criminal division, we've launched a private-sector outreach initiative under our national security division and we will continue to explore other ways to meet the challenges of law enforcement in the digital age.

Now, of course, our first line of defense against terrorism and crime, are the brave police officers and agents who risk their lives to keep us safe. We're grateful for their dedication and for their valor, and we are proud to support them in any way that we can, from training programs, from grant funding, to technical assistance. But as we have seen, in too many communities, these vital relationships between law enforcement officers and the residents that we serve and protect have frayed, amid long simmering tensions that threatened to erupt.

Now, in order to help repair these bonds, I recently launched the second phase of my community policing tour, which will take me to cities that are making significant progress in six areas defined by President Obama's task force on 21st-century policing. I've already visited Miami and around (ph) Florida, and Portland, Oregon and I look forward to highlighting more examples of encouraging innovation and collaboration in the months ahead.

Now, one of the greatest hazards to both law enforcement and the people that we serve is an epidemic of gun violence. In January, I recommended, and President Obama announced important new steps and guidance that will help keep the guns out of the hands of individuals who are not legally allowed to have them. That will enhance the background check system that will combat illegal online firearm dealing and spur cutting-edge, gun safety technology. These commonsense

measures will make a difference but addressing gun violence more comprehensively will require assistance from Congress and I look forward to discussing how we can work together to safeguard every American's right to life, liberty and security.

We are also focused on the most vulnerable members of our society, especially those who have fallen victim to human trafficking. Since becoming attorney general, I have expanded a program called the Anti-Trafficking Coordination Team Initiative. Of course, we have to call it by the initials, so it's the ACT team, but this is a collaborative and most importantly a survivor-centered approach to human trafficking investigations and prosecutions. It unites experts and officials from across the federal government to enhance our anti- trafficking efforts.

In last September, I announced that the department would provide \$44 million in new grant funding, to support research, to improve care for the survivors of human trafficking and also to bring these traffickers to justice. And I want to thank our partners in Congress many of whom who are on this committee for their support. By tripling human trafficking related funding for office of Justice Programs in fiscal year 2015, Congress played a vital role in this expansion and on behalf of those survivors that we represent every day I thank you for those efforts.

And finally, I want to say a word about criminal justice reform. The Department of Justice has taken steps to build on the success of the Smart On Crime Initiative, which has reduced our use of the harsh mandatory sentences for low-level nonviolent drug offenses and enabled us to focus on the more serious federal crimes. Now among other actions, we introduced the first-ever second chance fellow to advise the reentry counsel, which I'm proud to chair, regarding policies to help the formerly incarcerated individuals stay on the right path. We have forced partnerships across the federal government to tackle problems that lead to crime in the first place.

We invested and will continue to invest in promising federal, state, local and tribal reentry efforts, including a \$68 million investment in Second Chance Act grants in F.Y. 2016 and a proposed \$100 million investment in F.Y. 2017. Now, these are important steps but as we all know there is so much more to be done, particularly with regard to sentencing reform. I also want to take a moment to thank the members of this committee for your support of the Sentencing Reform and Corrections Act of 2015, which has been embraced by prosecutors, law enforcement officers and legislators of all political ideologies.

And I'm eager to collaborate with you to secure the passage of this important legislation by the full Senate. Mr. Chairman, Mr. Ranking Member, I thank you for the chance to speak with you today and for your ongoing support of the Justice Department's efforts. I look forward to working closely with you in advance of our shared goals and I'm happy to answer questions. Thank you for your time and your attention today.

GRASSLEY:

Before we start, I think we'll have seven minute rounds, and I'd like to ask my members, both Republican and Democrat, if you can't get your last question out before the seven minutes are up, don't ask it. Usually, we wait -- if you have one second left and you start the question, then we let you go ahead because we -- I'd like to have two rounds of questioning if we could.

By the way, again, you mentioned the sentencing reform; Senator Durbin and I hope that we have some sort -- we hope that we have an agreement that's sound that will make it possible for our leader to bring this up in the United States Senate. We happened to talk to some of our colleagues now to see if the changes we made are adequate and I know that you, as well as the White House, have been helpful in this effort. I want to thank you.

The current law -- I'm going to start my seven minutes now -- current laws prohibits the president from transferring any of the 91 dangerous terrorists currently housed at Guantanamo to prisons in the United States yet the president recently submitted a report to Congress announcing his intentions to do just that. In his report, the president said that the administration will work with Congress to lift and -- I want to emphasize -- unnecessary probations in current law.

These probations from my point of view aren't unnecessary; they're critical to ensuring that this president won't act unilaterally and endanger our public safety and national security. You recently testified that would be against the law for the president to transfer detainees from Guantanamo but the president, staff, and others close to him keep suggesting that he can use his executive authority and I think then ignore the law.

So the question -- does the Department of Justice believe that the president has the authority to violate the NDAA and transfer terrorists from Guantanamo to prisons and can you assure us this will not happen while you are attorney general?

Now, that last question I think I better rephrase; would you be giving advice to the president that he can do it under current law?

LYNCH:

Thank you, Mr. Chairman, with respect to the president's policy put forth to close Guantanamo Bay, as has been discussed over several cycles, this is of course an issue of long-standing discussion in interest, both in the administration and with our -- within our intelligence community and our foreign counterparts.

And I certainly support the administration's policy in this. As is noted in what was submitted to Congress, while there certainly are the ongoing efforts to transfer individuals from Guantanamo Bay, individuals are not able to be transferred from Guantanamo Bay to a facility on U.S. soil. That is prohibited by the NDAA, as you have noted Mr. Chairman.

And I believe the president's policy indicates a desire to work with Congress to implement any necessary changes that would have to be taken before this action could be taken. That's my understanding of the president's policy, I believe it is certainly his intention to follow through with that and certainly in the spirit that this committee has worked with me in terms of discussing issues and working to find solutions to issues, i believe that is his plan.

GRASSLEY:



And so on the latter question then, it sounds to me like you intend to continue advising the president on what the law is and that the law doesn't allow him to do that.

LYNCH:

Yes, the law currently prohibits the transfer to U.S. soil and the president would need to work with Congress. Congress would have to consider any relevant changes that could be made to the law before any transfer could be undertaken.

GRASSLEY:

Now I'd like to ask you, have you or your department reconciled the president's efforts to close Gitmo while at the same time the U.S. military has launched a complex initiative in Iraq and Syria, to capture, detain and interview ISIS leadership and operates (ph). These are some of the world's most dangerous and savaged terrorists and when they're done interviewing them, then they're simply being released to Iraqi authorities where our ability to keep tabs on them may be in doubt.

So the extent to which you are involved in, explain to the president what the law and the Constitution is, then the question that I ask -- how does -- how do you recognize through your department as adviser to the president, this effort to close at the same time U.S. military has launched these complex initiatives?

LYNCH:

Well, Senator, with respect to the president's plan to close Guantanamo Bay, certainly that plan was primarily provided by the department of defense which has jurisdiction over that and manages those individuals who are there. Certainly if we were called upon to provide legal advice as to any changes that might be required in the law, we would work not only with the president but of course with Congress as that was considered.

With respect to the larger issue that you raised of the current campaign that we are waging against ISIS -- in various countries in the middle east but in particular in Syria -- that effort is also one that engages, not just the Department of Justice but the department of defense, department of commerce because, again, this is a whole of administration approach to attack this enemy at various sectors, to attack their economic base of operations, to attack them from a military point of view.

And the Department of Justice would be involved if prosecutions were to occur or if we were to, as we often do, send legal advisers to different countries to advise on rule of law issues. We, of course, do not advise on issues involving actual combat. That is not within our area of expertise. With respect to individuals that may be captured or confined in this activity, everyone will be looked at on an individual basis and certainly it would not be just the Department of Justice on how those individuals should be handled.

So I'm certainly not able to give you that comprehensive overview now, I apologize for that. But I would not be able to speak for my other, my fellow agencies on that. But I can assure you that this

is really a whole of government approach. Those individuals will be looked at and reviewed on an individual basis and we feel that we will be able to take the appropriate action against them.

GRASSLEY:

To not violate my own admonition of my colleagues, I am going to leave out the introduction to this question but it involves going dark and encryption. Is the Department of Justice going to court in asking for a backdoor into Apple iPhones and if not, does Apple's behavior in the New York and the San Bernardino cases suggest that the administration's strategy of trying to engage technology companies is a failure?

LYNCH:

Mr. Senator, we do not want a backdoor into Apple or anyone else's technology. What we are asking for in both of the relevant cases, San Bernardino and the one currently being litigated in Brooklyn, New York, is for Apple to comply with a valid court order and provide assistance to its customer in the San Bernardino case, it is requested assistance. And in the New York case, to provide assistance that has been provided hundreds of times before. We are not asking them to break encryption, we are not asking them to weaken encryption; we are asking them to provide a way to remove a password blocker from the San Bernardino phone so the government can try and obtain access to that phone as we feel is our obligation to do.

We do not want to retain or possess anything that they may create in order to help us in that; it would remain with Apple. With respect to the New York case, as I mentioned we are asking Apple to essentially comply with a court order as it has done literally hundreds of times before on those older model phones in which encryption is not the issue at all.

GRASSLEY:

Senator Leahy?

LEAHY:

Thank you. Madam Attorney General, I have read something the other day where an immigration judge at the Justice Department said that three-year-old children can be taught immigration law and represent themselves in court without a lawyer. I assumed at first that was a misprint and then I thought it actually said it. I have been on this committee for decades -- a lawyer for decades -- I have never heard such a stupid, stupid, stupid thing from a judge or anybody else as that. The immigration laws are complex enough, but anyway, to say a three-year-old child can represent themselves and learn this?

Now, I understand the department issues a statement the judge was somehow speaking in his personal capacity, I think I would have fired him on the spot. But I do know the department regularly pursues immigration cases against children, including toddlers, who don't have lawyers, even though the DOJ has the authority to make sure these children have lawyers.

Would you agree -- does the Justice Department agree -- that a three-year-old child cannot comprehend immigration law?

LYNCH:

Well, Senator Lee, again, I share with you your puzzlement over those statements.

LEAHY:

I'm not puzzled, it's sheer anger.

LYNCH:

And as well as the view that I know we all like to think that our children are precocious but in no way does the department of justice feel that children of that age or even frankly children even older can or should represent themselves individually and I am sure those of you on this committee who are former prosecutors and former judges would find that a surprising occurrence or if they showed up in your court as well.

And I don't have an explanation for those comments other than they were in a personal capacity and I simply don't understand them enough to explain them to you, so I'm not able to provide any clarity there.

LEAHY:

Why don't children have -- there are children going into court without lawyers. Why is that happening?

LYNCH:

Well, we do not take the view that children could represent themselves. Currently, there's no -- in the immigration courts, while the current law does not provide for the right to counsel, as a matter of policy, we do feel that immigration proceedings for all applicants proceed much more smoothly when there is counsel appointed, particularly for unaccompanied children or children in general.

The immigration judges, as they proceed through their matters, have an obligation to actually stop and put matters on hold if the litigant in front of them is not able to comprehend the matter.

LEAHY:

But that does not answer my question; DOJ has the authority to make sure that these children have lawyers, and yet children are going before immigration hearings without counsel. Why not just have a blanket policy that they must have counsel? If things go -- you can argue things go smoothly, if people don't know their rights but if you got a child in there, why would they have -- if there's authority to make sure that they have children, why not just exercise that authority and say they have to have lawyers?

LYNCH:

Well, we do certainly support that as a policy matter, we support efforts to provide counsel to not just children but others in immigration court who don't have counsel through pro-bono representation, through nongovernmental groups and we also support congressional efforts to strengthen the policies and laws that would enable us to have a lawyer for every individual.

LEAHY:

But they do -- they do have the right, now and you have the right to -- DOJ has a right to ensure they do it. Why not just say there won't be a hearing with the child unless they are represented?

LYNCH:

Well, Senator, I think you raise an excellent point and we may find ourselves there; I think we're looking to find various ways to support that and we're looking to find various ways to get legal counsel appointed in every situation.

LEAHY:

I think that's a mark against this country and if you have children, they can learn the immigration law. Also lawyers around here have a hard time working through the immigration law and frankly, I think -- I think it is a bad, bad image for a judge; would say something that stupid, that reprehensible. To be the face of the United States, now we talk a lot about opioids, I'm hoping we get this opioid bill passed and some money for it.

I've been inspired -- all the hearings I've had around Vermont; Vermonters who respond to health crISIS, they've had comprehensive and community-based Prevention Treatment Recovery Act, everything from law enforcement to the faith (ph) community to teachers, to everybody. But what are -- what's happening at the federal level to support state and local efforts and do you see a connection between the growing opioid crises in illegal firearms trafficking?

LYNCH:

Thank you, Senator, I'm going to start with your last question because I think that -- and then move to the federal policies that we are we are implementing and expanding to deal with this crISIS because as you noted, it is a crISIS and it's an epidemic and affects every state with which we interact, every state in the union.

When we look at it -- and not only the increase in firearms dealing, but increase in violence levels overall -- one of the things that we did over the last calendar year, was I directed U.S. attorneys to reach out to state and local counterparts. U.S. attorneys in jurisdictions that see an increase in violence in general, not necessarily limited to firearms, but violent crime in general to see if we could pinpoint the causes in these relevant jurisdictions. And in many jurisdictions, while the causes did vary, drug abuse, particularly heroin, opioid and methamphetamine abuse, were behind

upticks in violence as well as violent crime using guns, so there is a connection there as individuals turn to crime to support habit, so we do see that.

Certainly at the federal level, we're very concerned about this issue. It's an issue that we feel needs to have also a whole of government approach. There is an opioid task force within the administration, the Department of Justice sits on that task force along with, for example, the Veterans Affairs, Health and Human Services, ONDCP, so that we can look at all of the things that factor into this particular epidemic in ways in which we can combat it, both from a public health issue and a law enforcement issue, because it really is both.

From a law enforcement perspective, DOJ has a very important role to play. DEA has recently enhanced its abilities by adding over 10 more heroin task forces across the country but we know that we cannot prosecute our way out of this problem. And many of the individuals who are caught in the grip of this epidemic, for example, most new heroin users are those who have previously abused prescription drugs before that and that is a clear gateway to the recent uptick in heroin that we're seeing.

So we have to also look at prescription drug abuse and the public health issues that that rise. That involves doctor education, that involves prescriber education, it involves working with states, who are doing tremendous work in terms of coming up with systems to record prescriptions so that doctors can check and make sure that the patient is not doctor shopping. So that's an important part of it as well. On our enforcement side, as I mentioned, DEA is expanding our task force groups that focus on heroin.

We are -- we are working to provide grants and supporting efforts to equip state and local law enforcement officers with a lock zone (ph), which is an emergency overdose treatment that can be very, very effective when law enforcement agents come upon someone who is experiencing a heroin overdose. Often that's when family members and friends make that 911 call and the officers arrived someone's an extremist, they can use this new lock zone (ph) and cut down on the risk of death significantly. So our view is this is a public health issue and an enforcement issue. We are using all tools; from enforcement to education and focusing on prevention and supporting our efforts -- our state and local colleagues efforts at the local level, as well.

GRASSLEY:

Senator Hatch?

HATCH:

Well, thank you Mr. Chairman, as the general mentioned, I have a high opinion of you and I appreciate the work that you're doing down at the Justice Department. I'd like to begin with the going darkish -- let me say this about law enforcement -- about whether law enforcement should have access to encrypted data on cell phones. I'm not convinced; the backdoor keys are specially designed software, is the answer.

Bad actors will exploit any avenue to achieve their goals and this includes encrypted devices and software sold by companies outside the United States. It seems the current dispute is less about one iPhone and more about the precedent that will be established, both here and abroad. What would limit law enforcement the next go around from asking for additional access? Is there a limiting principle here, can you understand why this is really such a difficult issue to?

LYNCH:

Yes, thank you, Senator. I think you certainly have highlighted the difficulties of this -- I know that something that you spent a great deal of time studying and writing about as well, and I appreciate your efforts in this field, and the chance we've had to appear before you and other capacities are the DOJ witnesses and talk about this. Senator, I think it goes back to what you just said in your statement; bad actors will exploit anything to achieve their goal and they currently are exploiting our technological ability and the way in which we handle communications and data.

And so we achieve the wonderful advances that American companies have been able to achieve, something that I think we should all be proud of. We have to keep in mind that as we have protected privacy, we have also balanced it with the need for security. That is the role of our Constitution, it is certainly what I see as one the most important roles of the Department of Justice. We protect privacy, but we also have to protect security as well.

What we feel is the appropriate way at this point in time, certainly in the cases before us, is to take a very narrow view of the information that we need and the means in which -- by which we would seek to obtain that information, so that we would not be asking for a major change in, for example, an overall operating system but simply a way to enable the FBI to try and get into a particular phone in the San Bernardino case.

And our view has been -- and certainly our discussions with companies had been informed by the view that every platform is different and presents different issues and that the response to the government should be as narrowly tailored as possible so that the relevant platform can protect its security, but still work with government. And I will say, as I hope has been made clear to you and others on the committee, is that as the attorney general and certainly as a citizen, I support strong encryption.

I think we all have to; we needed to protect our data, our personal data, our financial data, our medical data -- the issue here is warrant-proof encryption and just as we have security in so many other areas of our lives and yet still retain the ability to have a very, very focused response to law enforcement, I certainly believe that our technology companies, the greatest companies in the world, have the ability to work with us and achieve that.

HATCH:

OK, I understand your position. I'd like to turn now to the issue of criminal justice reform and specifically to the issue of mens rea. As you know, mens rea -- or criminal intent requirements protects morally innocent actors for being sent to jail accidentally or unintentionally breaking the law. They say that in order to be guilty of a criminal offense, the person must have acted with a

guilty mind. I'd like to read a quote from a 1952 Supreme Court case, *Morrisette v. The United States* -- the opinion in that case is by Justice Jackson, Robert Jackson, who was one of the all-time great justices, which you know. A contention that an injury can amount to a crime only when -- this is his quote, "the contention that an injury can amount to a crime only when inflicted by intention is no provisional (ph) or transient notion. It is as universal and persistent and mature systems of law as belief and freedom of the human will and a consequent ability of the normal individual to choose between good and evil," end quote.

General Lynch, do you agree with Justice Jackson that the notion that a criminal act requires a guilty mind, that it's not a provisional (ph) or passing notion? I think you can answer that yes or no.

LYNCH:

Thank you, Senator, and I think you have given one certainly of Justice Jackson's most prescient quotes on this issue and I think that certainly, as a practicing prosecutor for over 20 years, having to prove that element is an important part of many parts of the case. I do recognize also that this body's -- the Congress has seen fit to provide differing levels of intent, and I've worked within those laws as well and look forward to working with Congress as it considers how to handle this issue of mens rea in conjunction with criminal justice reform.

HATCH:

Do you agree with Justice Jackson that mens rea is a universal and persistent feature of our legal tradition?

LYNCH:

I certainly agree that it is one of the central features of our legal system and certainly it is one of the defining elements as to how we characterize certain types of activity.

HATCH:

Do you agree that unless Congress has provided otherwise, a person should not be convicted or sent to prison without proof of criminal intent?

LYNCH:

I certainly believe that Congress has taken that responsibility very seriously as it has crafted our criminal code and as I've worked within that criminal code, I've taken that responsibility very seriously as well. I think the Congress has also recognized the need to have, as I mentioned before, varying levels of intent and varying means to prove them and our courts have interpreted that in ways that have been very useful in protecting very important interests, such as our environmental interests and public safety interests and the like.

But as I indicated before, I certainly look forward to working with Congress to explore this issue. I think it's a very important issue and one in which we can certainly look to refine the ways in which we make sure that, as we prosecute offenses, that we are clear in the requirements that are set forth, that the defenders have notice of what is in fact prohibited.

HATCH:

OK, I'll accept that. On the topic of trade secrets, this committee recently reported the Hatch-Coons Defend Trade Secrets act by voice vote. Today the bill is co-sponsored by a majority of the Senate, actually in fact, I think, 54 senators. I'm optimistic this legislation can get to the president's desk in the near future. With that said, do you agree with me that a federal right of action will ease some of the pressures that your department faces in prosecute in trade secret cases?

LYNCH:

Thank you, Senator, I think that I'm very happy to see the progress of that bill throughout and I know that is something that not only impacts prosecutions but also as we look to protect our intellectual property in so many ways, the protection of trade secrets there. We're certainly committed to prosecutions under the current law and look forward to working with you, to advance this bill as well and look forward to the continuing of those discussions and think that, in fact, it's a very important issue.

HATCH:

Thank you, Senator Grassley, I just need about 30 seconds.

GRASSLEY:

Senator Hatch has asked the privilege to make a short statement I'm going to let him do that.

HATCH:

Well, it's really just a closing statement and that is I have one last request for you to take back to the department. It's been nearly two years since the department began working on revisions to the ASCAP (ph) and BMI consent decrees and I'd like to ask you to consider this. Will you please confer with your subject matter experts and circle back with an update on when the revisions are expected and will be completed, I'd appreciate that if you will do that.

LYNCH:

Thank you Mr. Senator, we certainly will.

GRASSLEY:

Senator Feinstein?



FEINSTEIN:

Welcome, Madam Attorney General, it's good to see you again.

I want to begin by thanking you by thanking you and hopefully you will thank the head of the FBI for the FBI's strong position on the issue of encryption and a probable cause of court order. It is my deep belief that no American company is above the law and that that particular industry should comply. I wanted to ask you a couple of questions. Google, Microsoft, Dropbox and other e-mail and cloud service providers use forms of encryption to protect customer data.

Their encryption techniques are strong, and that makes them relevantly well-protected against outside attacks. But the reality is that many companies only protect data like your e-mail in ways that they can still use it themselves and profit from it. I believe that the amount of personal information in the hands of private corporations and what some of those corporations are doing with that data is concerning. Isn't it true that private companies can encrypt data so it is protected from outsiders but at the same time those same companies can use our personal content data to target advertisements?

LYNCH:

Thank you, Senator, for raising this important issue. It certainly is the case that many companies, those that you mentioned and others, have strong encryption, which we think is a very positive thing, and yet retain the ability to use the data that is transmitted along their systems, both for security purposes as well as for marketing purposes. And so it is certainly the case, as we have seen in our talks with various companies, that strong encryption can be accompanied with the ability to still access the data and use the data in relevant ways.

And we think this is something that's part of the overall debate on this important issue. As we all consider, as you also have noted, how much personal information we willingly turn over to private companies and how we want that information handled. And certainly, as we continue to discuss these issues, I thank you for raising them and making them part of the debate.

FEINSTEIN:

Well, thank you very much. With my own devices and I'm not the most hip person when it comes to all of this, I've been amazed to learn what I can't control. And my understanding is that it's private information like web browsing history, e-mail content, and geo-location information, even when encrypted on smart-phones. So I think it is an area of concern as companies want to defy a probable cause warrant that they can use this data for their own profit-making motives and that's of concern.

Second question; as you know, there's a relentless and growing ISIL recruitment effort through social media platforms. Recruitment is repeatedly identified in nearly all of the 80 criminal indictments brought by your department during the past two years regarding ISIL. I understand that civil injunction authority already exists for the attorney general to obtain orders against those who provide material support to a foreign terrorist organization and who unlawfully spy on people.

The authority has been used to compel third-party providers to stop their participation in these crimes.

Has the department made any efforts to use its civil authority under the material support law to combat the use of third-party services like financial providers or Internet companies by ISIL?

LYNCH:

Well, thank you for raising that important issue. Certainly as we look at the unfortunate spread of violent extremists' thought and the accompanying activity here in the U.S., much of that recruitment, as you note, is online and we do see various platforms being used. We have actually had great success in working with the provider companies in these situations in pointing out to them situations where we feel terrorists are using their platforms to communicate. And for many of the tech companies, that violates their own terms of services. And so they have actually been very helpful in this regard in using their own criteria to remove recruiting material, jihadist material, extremist material and the like. Again, trying to balance the first amendment concerns there, so that's an area in which we actually work well with the tech companies and other companies, and other companies, and that's been a very productive dialogue for us. When it comes to the financial industry, also, as we look at those who use financial services to provide material support, we've also found that industry cooperative in terms of providing information and being responsive to government request for information.

FEINSTEIN:

Well, thank you very much. I've been very concerned about some of the material put out by terrorist organizations, which contain pictures of people to kill with their names, where to sit on the plane, to have the best effect from a bomb and also particularly the recipe for a bomb that can go through a magnetometer which is real and when tested it would explode a plane. So I visited with the general counsels of the major tech companies and asked them to remove this material and the answer I got was no, we will not.

That answer has very much struck in my craw. We all know that the Boston bomber used the recipe from one of those magazine how-to-do it of the pressure cooker and got it from one of these magazines. So the fact of the matter is that this doesn't belong in the public domain, is my very strong view, because the safety of our people depend on it. They just passed me a note, would an injunction help you in some cases?

LYNCH:

Well, certainly we would look at the facts of every case, and again, start discussions with the relevant companies. I think when we speak to the companies, we do try and balance the First Amendment issues with the security issues there, and as I indicated, many of them, in particular Twitter, has been responsive in removing content...

FEINSTEIN:

I found that too, with Twitter and Facebook wants to cooperate, as well. So I think that's helpful. But the others, I got a solid no.

LYNCH:

I think that's an unfortunate response. I will say that in my meetings with the same tech companies, we've received requests for more information and guidance that would help them, in fact, identify and be able to classify that material for removal. The videos in particular are an area of concern, not just for us in law enforcement but for the providers, those who have the communication services.

And I think they actually are struggling to differentiate when the bid -- when the video first comes across, something that they can -- they can block under their terms of service. But then, as it turns into a news story or a news reporting, you know -- they're trying, they're actually struggling I think with that balance of how to not promulgate this but still provide news and commentary on something.

FEINSTEIN:

Yes, so I'm not really talking about the news stories. I am talking about the how to commit a terrorist act manuals. So thank you and maybe we can talk about that.

LYNCH:

Yes, I would look forward to that, thank you.

CORNYN:

Good morning, Attorney General Lynch, good to have you here. On the -- ongoing litigation with regard to Apple and the encryption issue, frequently in the press it's cast as a question of the FBI versus Apple. But in fact, the FBI doesn't have authority to go to court and seek a court order to compel Apple to produce the information you've requested, correct? It requires the Department of Justice to do so what you had?

LYNCH:

Yes, Senator, and that is what the Department of Justice is doing in this case.

CORNYN:

So the FBI doesn't have any authority to go to court on its own?

LYNCH:

No, (inaudible). We do take them with us, however.

CORNYN:

I'm confident of that, I just want to make sure people understand their respective roles of different agencies within the law enforcement community, the FBI and the DOJ. What I intended to start with is your comments about gun violence. And let me come back, then to the other issue in a moment. Do you believe that mental illness plays a role in some of the incidents of mass gun violence that we've experienced in America in the last few years?

LYNCH:

Well, certainly I think with respect to specific cases where it's been adjudicated or a finding has been made, we could say that. Otherwise it would be speculation. But I will say that I think -- Senator, mental illness is the issue that I find is cutting across so many law enforcement issues today. Both from how we police to how we look at violent crime, to how we manage our prisons.

And certainly, as it relates to how we manage firearms in this country, you know, essentially making sure that we continue to have the right to have responsible firearm owners and yet, balancing that against those who are not allowed by law to have firearms, because of an adjudication of mental illness of various types.

CORNYN:

I couldn't agree more with you and I know that the adjudication issue was a -- in the Virginia Tech shooting for example, the state of Virginia had adjudicated him as mentally ill but the state of Virginia had not uploaded that adjudication on the background check system. So it was missed and I couldn't agree with you more about the intersection of health and the law enforcement.

I met at a major county sheriff's meeting the other day a gentleman who introduced himself as the largest mental health provider in America. He was a sheriff for the Los Angeles county and of course many people who are homeless, living on our streets, who are not -- don't have recourse to adequate treatment and perhaps even families who need additional resources to help their loved ones comply with their doctors orders, particularly with regard to taking their medication.

I'd ask you to take a look at some legislation that I've introduced called the Mental Health and Safe Communities Act, which includes a lot of the components that you've talked about. Perhaps that is something that we could work on together. I would welcome your input and advice on that.

LYNCH:

I look forward to reviewing that, thank you, Senator.

CORNYN:

So let me get back to the role of the FBI and the Department of Justice. And I want to talk for a minute about Secretary Clinton's use of her private e-mail server. We've read that the FBI is conducting an investigation of some sort, that secretary Clinton had previously deleted about

30,000 e-mails that she did not send to the state department. She did send another 30,000 to the state department and now courts are going through the process of determining which of these are producible under the Freedom of Information Act.

But recently, the department offered immunity to the Bryan Pagliano, the gentleman who reports -- was the one who helped set up this private e-mail account. It's true, isn't it, that immunity can't be granted by the FBI alone? That it requires the Department of Justice to approve of that grant of immunity, to go to court and to ask the court to grant immunity as part of their ongoing investigation isn't that right?

LYNCH:

There's various types of immunity, there is limited use and there's some that are conferred just for an agreement between a lawyer and the defense counsel. There's some that are conferred by the court so certainly, regardless of the various types that is something that is done in conjunction with an agent and an attorney who'd make the decision and also in conjunction with discussions with defense counsel.

CORNYN:

In this case, did the Department of Justice approve of the grant of the immunity to him Mr. Pagliano?

LYNCH:

Well, Senator, with respect to that specific case as I'm sure you know, we don't discuss the specifics of any ongoing investigation.

CORNYN:

Well, I'm not asking about the specifics, I am asking about procedure.

LYNCH:

Well, with respect to the procedure relating to any specific witness, I would not be able to comment on interactions between that witness and the department.

(CROSSTALK)

CORNYN:

Just as you said earlier, the FBI can't go to court without the Department of Justice's approval and you said you go together. If, in fact, this was immunity granted by a court, that had to be done under the (inaudible) and with the approval of the Department of Justice, which you head, correct?

LYNCH:

It would certainly depend upon the type of immunity that was granted. There are various types, sometimes it's an agreement between the attorney and the defense attorney...

(CROSSTALK)

LYNCH:

Yes.

CORNYN:

So is it -- if in -- let me give you a hypothetical, if the FBI were to make a referral to the Department of Justice to pursue a case by way of indictment and to convene a grand jury for that purpose, the Department of Justice is not required by law to do so, are they, are you?

LYNCH:

Well, certainly as part of -- it would not be in operation of law, it would be in operation of our procedures, which is we work closely with our law enforcement partners...

(CROSSTALK)

LYNCH:

It would also be consulting with the agents on all relevant factors of the investigation and coming to a conclusion aspect.

CORNYN:

But you would have to make the decision or somebody else working under you in the Department of Justice?

LYNCH:

It's done in conjunction with the agents. That's not something that we would want to cut them out of the process. That has not been an effective way of prosecuting, in my experience.

CORNYN:

Yes, I'm not suggesting that you would cut them out, I'm just saying, as you said earlier, you and the FBI would do that together, correct? Just like the Apple case?

LYNCH:

We -- we handle matters together of all types.

CORNYN:

If the FBI makes a referral to the Department of Justice to pursue criminal charges against Mr. Pagliano or anyone else who may have been involved in this affair, does the ultimate decision whether to proceed to court to ask for the convening of a grand jury and to seek an indictment, does that rest with you or someone who works for you at the Department of Justice?

LYNCH:

So, Senator, with respect to Mr. Pagliano or anyone who has been identified as a potential witness in any case, I'm not able to comment on the specifics of that matter. So I'm not able to provide you...

(CROSSTALK)

CORNYN:

I'm asking about what the standard operating procedure is. And it seems pretty straightforward, that the FBI does a criminal investigation but refers the charges to the Department of Justice, including U.S. attorneys, perhaps in more celebrated cases go higher up the food chain, but my simple question is, doesn't the buck stop with you? In terms of whether to proceed to seek an indictment, to convene a grand jury, and to prosecute a case that is referred to you by the FBI?

LYNCH:

There's many levels of review at various stages of a case, and so I would not necessarily be involved in every decision as to every prosecutorial step to make.

CORNYN:

Right, it would be you or somebody who works for you, correct?

LYNCH:

Everybody in the Department of Justice works for me, including the FBI, sir.

CORNYN:

I'm confident of that.

GRASSLEY:

Senator Schumer?

(LAUGHTER)

SCHUMER:

Well done, Attorney General. Well done.

I want to welcome you here. Thank you for being here. It's nice to see New Yorkers before this committee.

Brooklyn, our home borough, is extremely proud of you and the great work that you're doing. And just speaking for myself, you would have made a great Supreme Court justice and great nominee, I regret you have pulled your name out, but so be it.

So I do want to begin talking a little bit about appointments; the Supreme Court, but it's instructive to discuss the broader issue of confirmations in this committee under the Senate majority.

We have before us, as we all know, someone who went through a long, arduous and at sometimes acrimonious confirmation process to a post for which she was eminently qualified. The acrimony wasn't about her record, about her character. It was entirely about politics.

And it resulted in nearly a six-month delay between nomination and confirmation, as well as the only -- only cloture vote required for an attorney general in the United States history.

But you are far from being the only one to suffer a delay, Madam Attorney General. Many, many others suffer total disregard. We've obviously, today, talked about the majority's refusal, sight unseen, to hold hearings on a Supreme Court nominee. But there are a whole slew of lower court nominees and executive branch appointments, who are languishing in the morass that is the majority-led confirmation process, or I should say, lack thereof.

Republicans have confirmed the fewest civilian nominations of any Senate in decades. These are important posts -- the chief sanctions officer in the Treasury Department, Mr. Szubin, commissioners for the SCC and the FCC, the boards of the Fed and the Ex-Im Bank. And this Senate has confirmed far fewer judges than any recent comparable session.

It's not just with the Supreme Court that the Republican majority is not doing their job. It is about appointments up and down the line.

It's no surprise, then, that the number of judicial emergencies have tripled since Republicans gained the majority in 2015.

Now, we are going to try to get votes on a few judges that have the support, of course, of their home state Republican senators this afternoon. I hope our Republican colleagues won't play politics with them.

The bottom line is, if the Republican Senate doesn't do its job confirming nominees, whether it's for executive or judicial branches, then other branches of government can't do their jobs.



So I want to now focus on the Supreme Court and just ask you a few quick questions.

Your department represents the U.S. government in every court case in which it has an interest, is that correct?

LYNCH:

Yes, that is...

SCHUMER:

Criminal and civil? That's a lot of cases, isn't it? Probably many times larger than the biggest law firm.

LYNCH:

We -- I view us as the largest law firm, really, in the world.

SCHUMER:

And don't you rely on the federal courts to be the arbiters of significant legal disputes?

LYNCH:

They certainly are important in that process.

SCHUMER:

In fact, the United States was part of your filed statement of interest in the vast majority of cases before the Supreme Court last year?

LYNCH:

We did indeed.

SCHUMER:

OK. So a functioning Supreme Court matters to the executive branch in terms of function?

LYNCH:

It certainly matters to the executive branch and the Department of Justice.

SCHUMER:

And what happens when the court deadlocks and can't resolve issues because of a tie? We've had it in the past when certain justices have had recuse themselves.

LYNCH:

Well, my understanding is that the lower court opinion would stand and that that would remain the relevant law.

SCHUMER:

But doesn't it sort of can't (ph) it in many places, both in the Justice Department and in the private sector, sort of paralyze things or just put them on hold? Companies may wait for a decision, your agency may not be able to prosecute or move forward on other cases if there is deadlock or division within the various districts, is that fair to say?

LYNCH:

Well, I think everyone would have to evaluate whether this current state of the law allowed them to proceed with the matter or whether they had to wait in a matter.

SCHUMER:

And there are times when they can't?

LYNCH:

There are times when they would not be able to proceed.

I will certainly say that, from a law enforcement perspective, we will proceed and protect the American people to the best of our ability, regardless of the circumstances.

SCHUMER:

Right, but sometimes it would be easier if you had a decision than if it was a deadlock?

LYNCH:

I think people want clarity on those important legal issues.

SCHUMER:

Right, thank you.

OK, another issue. This is an extradition case, it's a heartbreaking criminal case, and I want to ask your help in bringing the perpetrators to justice.

On March 14, 2009, Vladimir Tolstykh was brutally killed after exiting his shop, The Brighton Bazaar, at the end of a business day. Tolstykh's murder -- this is in Brighton Beach, part of my old assembly district even 30 years ago -- and his murderer stole a payroll bag that contained \$32,000, then beat him to death. He left behind a widow, Rita, four beautiful children, the youngest of whom was only an infant when he was killed.

But, unfortunately, the suspects fled the country before they could be prosecuted, and one was arrested in Australia two years ago. The NYPD and the Brooklyn D.A.'s office, D.A. Thompson, have been diligently working to get him extradited to the U.S. so he can be tried for murder and the Tolstykh family can receive justice. But because we have an extradition treaty with Australia, it is within our authority to bring the killer back to the U.S., but they've been waiting for seven years.

So will you try to help look into this and maybe speed up this extradition so they don't have to wait any longer?

LYNCH:

Senator, I am aware of the case. I'm aware that our Office of International Affairs has been pursuing this extradition matter for approximately two years, and I look forward to being in consultation with my Australian counterpart soon on the matter to ascertain more as to what might be the issues here.

SCHUMER:

OK. We need real help in this issue, because they've been waiting for justice. And I don't think -- I don't know what's holding it up. Whatever you can do to get justice for them would be appreciated.

Last issue for me, Mr. Chairman, is SWATing.

We have a school district in Middletown up in the Hudson Valley, someone is angry at something about this school, and they have been plagued by SWATing attacks.

A caller calls up, makes repeated threats of violence against the school, the school has to be evacuated, and sometimes the kids have stay in school after 3:00 until the law enforcement authorities make sure it's safe. They're disrupting parents and their lives, the kids are scared, some parents are keeping their kids out of school. And it has been repeated times -- 13 instances of SWATing just at this Middletown School District, half of them to the Maple Hill Elementary School alone. You can imagine the fear that the kids and the parents have.

We have a problem, because the caller is hiding behind blocked and spoofed numbers. Now, we've spoken to the local FBI, the local offices in Newburgh, their main offices in Manhattan, and they're helping us. But I understand this is a national problem. So first, I would just ask you to make sure that the resources are there to help find the perpetrator of the school. And second and finally, what more can we be doing to deal with these SWATing incidents, which I think are nationwide now?

My last question.

LYNCH:

Thank you, Senator.

Senator, that -- this is actually a nationwide issue. And we do not view these as pranks or childish calls. They're serious. They divert scarce law enforcement resources to incidents that are not, in fact, accurate. As you noted, they terrify particularly children, parents, and cause long-term issues for the school districts that are dealing with this.

We take them very seriously, and where we find these perpetrators, we do intend to prosecute them.

And certainly, whatever is being proposed here, either out of this committee or by Congress, we are happy to work with you on any legislation as well that would aid us in those efforts.

But we do take these efforts very, very seriously and it is, actually as you noted, outside of New York state, also.

SCHUMER:

Right, and just -- would you just make sure that every resource being used to help find the perpetrators at this Maple Hill school?

LYNCH:

Yes, actually it is. Thank you very much for raising that.

SCHUMER:

Thank you.

Thank you, Mr. Chairman. Sorry to be a little long.

GRASSLEY:

Before Senator Vitter -- just a small rebuttal to a small part of what you said about the court. And that is in regard to your reference -- you didn't go into detail about emergency judicial vacancies. There are 31; we have 12 up here. Just so the public knows, we can't deal with the other 19 until the White House gets them up here.

Senator Vitter?

VITTER:

Thank you, Mr. Chairman.

And thank you, Madam Attorney General.

LYNCH:

Morning.

VITTER:

I'm very concerned about continuing sanctuary city policies in many jurisdictions around the U.S. We've talked about this before.

LYNCH:

Yes.

VITTER:

Often, defenders of those policies couch it in terms of not wanting to dissuade illegals who would be witnesses or who were victims from reporting crime; however, a lot of these policies also apply to not reporting illegals who are arrested or convicted of criminal offenses.

In other words, they're on the criminal end of an event as we saw, of course, tragically in the murder in San Francisco. Do you think it should be disallowed for a local jurisdiction to prohibit hits police force from reporting illegal status of somebody who's arrested or convicted of a crime?

LYNCH:

Thank you, Senator. You certainly have raised a very important issue that affects the interaction with the local jurisdictions as you've noted with our federal policies for removal of dangerous aliens, particularly those who are coming out of federal custody.

And your reference again to the tragic murder in San Francisco is one that has lighted this issue. Certainly, with regard to local policies, they vary across the country. And certainly, we actually are in litigation now on two particular matters where we're defending the Department of Homeland Security in their request to have jurisdictions report to them when local illegal immigrants are finished with state cases and therefore removable.

And we currently, actually, have one situation here ...

VITTER:

I don't want to cut you off, Attorney General, but my time is limited. Do you agree or disagree with policies that prohibit reporting illegal status of somebody who's arrested or convicted of a crime?

LYNCH:

Well, Senator, with the current state of the law and in terms of how local jurisdictions are handling this matter, that is a local matter. What we have done, however, as a policy as we have ...

VITTER:

Well, actually, it's not just a local matter and there's ...

LYNCH:

... we have a new policy regarding how we deal with cities that have in the past refuse to either turn individuals over to us for deportation or provide us the relevant information.

VITTER:

There's federal law on the matter, 8 U.S.C. 1373 says that no government entity including state or local or official may prohibit or in any way restrict any government entity or official from sending to or receiving from the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful of any individual, so it's a federal matter too. Isn't that correct?

LYNCH:

Yes. And we are defending that position in court now.

VITTER:

So based on your defense of that position, you disagree with policies that prevent reporting to ICE to federal authorities illegal status of arrestees or convicted criminals, is that fair to say?

LYNCH:

If those policies impact the particular statute that you mentioned, our view would be that they would fall under, again, the laws -- the position that we are currently defending, which is jurisdictions should report. Our issues are when jurisdictions do not report, as you quoted in the statute, to ICE for removal the information that we would need to effectuate the removal of those defendants.

VITTER:

Well, in Louisiana that I represent, New Orleans has just announced and expanded sanctuary city policy. They had some elements of sanctuary city policy. They have just finalized and announced a far expanded policy that would include absolutely prohibiting New Orleans Police Department from reporting to ICE or any federal authority, illegal status of someone again, put to the side victims, witnesses, someone who's been arrested and convicted of a crime.

Now, NOPD, through its spokesman Tyler Gamble, said publicly and it was quoted in the press. I'd be happy to give it to you, that Justice Department and the federal Consent Decree Monitor were very involved in discussions leading to this policy and approved the revised policy. Do you know if that's correct?

LYNCH:

What I can tell you is that the policy in question was one that the New Orleans Police Department felt that they needed to effectively police New Orleans, but it's my understanding does prohibit them from providing information to the federal authorities when we need that information as part of our ICE responsibilities, so essentially, that is my understanding of that situation, but certainly if you ...

VITTER:

Specific question, did the Justice Department approve the policy?

LYNCH:

I've given you my understanding of the situation and so I would refer you to the specific terms of our Consent Decree with New Orleans, as you can see what is specifically approved there or not.

My understanding is that ...

VITTER:

Does the Justice Department approve the policy of NOPD?

LYNCH:

My understanding is that New Orleans provide information to us for removal of illegal immigrants so that we can, in fact, fulfill our ICE responsibilities.

VITTER:

Well, this policy specifically prohibits the New Orleans Police Department from reporting illegal status including of folks arrested and convicted of crimes. This policy specifically prohibits the criminal sheriff from telling ICE when it is -- he is releasing from his local prison, somebody who is in illegal status, specifically prohibits that. So that's very troublesome particularly given the statement that the Justice Department approved this policy.

LYNCH:

That's not my understanding of the terms of their policy. They would be allowed to provide information as required under the statute that you quoted earlier to ICE authorities, so that we could effectuate our removal responsibilities for those individuals. And that is consistent with the policy ...

VITTER:

Including if ICE asked them to do this on a regular basis, to report any arrested person convicted who is illegal status and any person being released from jail who is illegal status?

LYNCH:

I'm not aware of prohibitions to that, Senator. And as I indicated before, that will be consistent with the policy which we have just recently announced regarding cities that do have a practice of not providing that information of where we have individuals in Bureau of Prisons custody, where who ordinarily would have been released to a state detainer to answer to state charges, which we do take very seriously in situations where those jurisdictions have indicated that they would not return the person to us at the end of a state proceeding or would not provide us information.

In fact, we give ...

VITTER:

Attorney General my time is winding down.

LYNCH:

We give ICE right of first refusal there.

VITTER:

... has wound down but one last statement. I think if you read the policy and words matter and it's laid out in black and white, in clear words that that's absolutely wrong. Part of it says, "The NOPD," that's the Police Department, "shall not engage in, assist or supporting immigration enforcement except as follows in response to an articulated direct threat to life for public safety or when such services are required to safely execute a criminal warrant or court order issued by a federal judge," close quote.

That means that routinely as I'm describing, they will not tell ICE when they have an arrestee or convicted criminal who's in illegal status, they will not tell ICE when they are releasing that person from a local jail.

WHITEHOUSE:



If the attorney general wishes, she should have a chance to respond I think to that before I start my time.

LYNCH:

Thank you, Mr. Chairman.

Thank you, Senator Vitter. As I indicated before, New Orleans has indicated they will provide us information, certainly the issues that you've raised about a court order authorizing to do so where issues of public safety do implicate ICE concerns and would allow us to undertake our ICE responsibilities to remove those individuals.

WHITEHOUSE:

Thank you. Now, attorney general, the similarities between the mischief of the tobacco industry pretending that science of tobacco is dangerous was unsettled and the fossil fuel industry pretending that the science of carbon emissions is dangerous is unsettled has been remarked on widely, particularly by those who study the climate denial apparatus that the fossil fuel industry has erected.

Under President Clinton, the Department of Justice brought and won a civil RICO action against the tobacco industry for its fraud. Under President Obama, the Department of Justice has done nothing so far about the climate denial scheme.

A request for action by the Department of Justice has been referred by you to the FBI. My question is to you is, other than civil forfeitures and matters attendant to a criminal case, are there other circumstances in which a civil matter under the authority of the Department of Justice has been referred to the FBI?

LYNCH:

Senator thank you for that -- raising that issue and thank you for your work in this area. I know your commitment is deep. This matter has been discussed. We have received information about it and have referred it to the FBI to consider whether or not it meets the criteria for what we could take action on. I'm not aware of a civil referral at this time. I will look into that and get back to you, but I'm not aware of a civil referral outside of the one that you just raised.

WHITEHOUSE:

Are there any civil cases within the United States as plaintiff within DOJ civil division in which the FBI is preparing the case for the civil division?

LYNCH:

Are you -- regarding climate change?

WHITEHOUSE:

Regarding any matter.

LYNCH:

I'm not -- I couldn't give you that information right now as -- in terms of whether or not ...

WHITEHOUSE:

OK. I'll that as a question for the record.

LYNCH:

Thank you.

WHITEHOUSE:

18 U.S.C. Section 1968 authorizes the attorney general to file a civil investigative demand prior to the institution of a civil RICO proceeding to gather and to protect evidence. In referring this matter to the FBI, did you authorize them to issue civil investigative demands under your authority pursuant to that section?

LYNCH:

Senator, I wouldn't be able to give you the specifics on that at this time.

WHITEHOUSE:

All right. Question for the record then again.

LYNCH:

Thank you.

WHITEHOUSE:

Have you designated the FBI or anyone as the document custodian under the statute at issue, document custodian being a term of art in the RICO statute.

LYNCH:

Senator, I wouldn't be able to provide to that information and actually, Sir, with respect to the FBI's specific steps relating to a referral to them, we would not be able to give you an outline of what had been undertaken at this time.

WHITEHOUSE:

So whether or not they were authorized to use the attorney general's authority to file civil investigative demands would not be something you could disclose?

LYNCH:

Well, they always have that authority, whether or not it's something that happened in a particular case.

WHITEHOUSE:

OK. That's different.

LYNCH:

I assume it would not...

WHITEHOUSE:

I just want to make sure that they have that authority.

LYNCH:

But they have that authority as a general matter.

WHITEHOUSE:

Right.

LYNCH:

Whether or not it occurred in a particular matter is something that we wouldn't be able to give the ins and outs of while the matter was under review.

WHITEHOUSE:

OK. Second topic. The campaign finance environment in America is now as lawless as the wild west. The Federal Election Commission has been blockaded by three commissioners to the point where it is now according to its own chairman and I quote, "Dysfunctional." The IRS has been intimidated at the point where it is dysfunctional in the campaign finance area, as the Washington Post recently reported and as I quote, "Thrown in the towel."

The one area where those agencies still operate is in requiring that federal forms be filed and filled in under oath. That's a reporting requirement. When you look at these forms, they show on their

face that over and over again the same organization will give one answer under oath on one form and a different answer also under oath on another form.

Let me ask you. Is it true that false statements made under oath are prosecuted by the Department of Justice under 18 U.S.C. Section 1001?

LYNCH:

Senator, you cited the relevant statute, that will cover false statements made under oath as forms as you mentioned or orally to federal agents.

WHITEHOUSE:

Is it true that these 18 U.S.C. Section 1001 cases are the bread and butter of the Department of Justice?

LYNCH:

I'm not sure if that's the characterization that I would use, but they are certainly a tool that we use in a number of different types of investigation.

WHITEHOUSE:

Frequently, constantly and without the need for agency referral.

LYNCH:

We use them frequently, both with lawyers at main Justice and in the field.

WHITEHOUSE:

The -- can you tell us whether the department has taken any steps of any kind of to inquire into the flagrantly inconsistent statements made by organizations under oath to the IRS and to the Federal Election Commission, and indeed in some cases to state election commissions, again, irreconcilable? It would appear factually with what they said under oath to the IRS.

LYNCH:

Yes. I don't have that information for you. I can tell you that we certainly take all allegations of violations of 1001 or any of the relevant statutes governing these important filings very seriously.

WHITEHOUSE:

The concern I have from previous conversations that we've had is that the department takes the -- not you and I but the department and I, including even a hearing on this before you were attorney general is that the department has taken the position that unless the IRS makes a referral to it or

the Federal Election Commission makes a referral to it, it will not take notice of the open, plain, notorious and evident conflict between public statements made under oath on federal applications and forms.

And that seems to me to be hard to understand given the very simple nature of an 18 U.S.C. 1001 prosecution. It's not as if this is a matter that requires one to delve deep into the arcana of tax law if the statement is false it is false.

And if two statements are irreconcilable, it would seem to me that there is a reasonable likelihood that one is false and if there is an explanation, fine, but I would think that the department will want to try to obtain that explanation rather than simply allow this lawless atmosphere to continue.

My time has expired.

LEE:

Thank you, Mr. Chairman.

Thank you, General Lynch for joining us today. The Department of Justice, pursuant to the All Writs Act recently obtained a court order requiring Apple to engineer software, software that doesn't currently exist.

It would enable the government to bypass security mechanisms built into an iPhone, previously used by Syed Farook, one of the San Bernardino terrorists. It -- now importantly, there were several phones that were used by the two San Bernardino terrorists. All of the other phones were destroyed, all of them were crushed and were inaccessible because they didn't physically exist anymore.

This particular phone was a work phone. And some have speculated that perhaps that's why it wasn't destroyed, perhaps it was being used for work purposes, but regardless, this particular phone because it wasn't destroyed is the subject of this effort by the Department of Justice, resulted in this effort by the Department of Justice to require Apple to engineer software that doesn't currently exist.

The All Writs Act importantly provides that the Supreme Court and all courts established by acts of Congress may issue All Writs necessary, were appropriate in the aid of their respective jurisdictions and agreeable to the usages and the principles of law.

So it's not open-ended. It doesn't require the court -- allow the court to demand anything and everything. It still has to be agreeable to the usages and principles of law. Is it nonetheless, your position that the All Writs Act permits courts to compel private parties to engineer software to assist law enforcement?

LYNCH:

Senator, as has been laid out in the pleadings and in the relevant case, it's our position that the All Writs Act as interpreted by a variety of courts including the Supreme Court does require third-

parties to provide assistance to the government when necessary and when they are capable of doing so to execute lawful court orders.

The specifics of that assistance will vary from case to case and will essentially determine, you know, essentially how the third-party person is able to provide the assistance, under what means and measures. So the All Writs Act provides the legal authority for the court to order this third-party to provide assistance. The type of assistance will vary from case to case.

LEE:

But what limiting principles would exist if in fact the All Writs Act permit -- can be read to authorize a court to develop software that doesn't already exist, to enlist the work effort of a tech company, to create something that doesn't yet exist. What limiting principle is there? And I would add, what limiting principle is there in place that wouldn't also allow the government to use the All Writs Act or some other mechanism to require Apple, for instance, to write other software, perhaps software that would unlock a phone's camera, unlock a phone's microphone, unlock a phone's location services system in order to assist the government there.

Assuming apple or whatever other company is at issue, it doesn't have software that would do that. What limiting principle would stop the government from using -- going into court, using the All Writs Act to compel that kind of work product?

LYNCH:

I think in every situation you'd have to look at the type of assistance that was needed. In the relevant case here in San Bernardino, the government is not asking Apple to unlock the phone, but to disable a password blocker that would destroy the evidence and then the FBI will try ...

LEE:

Understood. And Apple is saying that that would require the development of new software. They'd have to engineer something that doesn't currently exist.

LYNCH:

But that is not Apple unlocking the phone or Apple going into the phone and extracting it or Apple taking certain steps. And so every case as we know just from watching jurisprudence will be developed by the relevant facts.

I think in this -- in this instance it's important to note that this is a customer request for a company to provide assistance to a customer. This request first came from the owner of the phone and so I think that's an issue that's of relevance and important in this case also.

And every case is going to be different. I think what we've tried to do is have a very narrow, very focused inquiry into potential evidence on one device.

LEE:

You know it's important to remember that the Supreme Court has stated in *Pennsylvania Bureau of Corrections versus U.S. Marshal Service*, a case decided by the court in 1985 that the All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute where a statute specifically addresses the particular issue at hand, it is that authority and not the All Writs Act that is controlling.

Now, importantly, there is a law that deals with issues in this area. The law is, of course, called the Communications Assistance for Law Enforcement Act or CALEA. It explicitly states that the CALEA, quote, "Does not authorize any law enforcement agency or officer to require any specific design or equipment, features or system configurations to be adopted by any manufacturer of telecommunications equipment," close quote.

CALEA further states that, quote, "A telecommunications carrier shall not be responsible for decrypting or ensuring the government's ability to decrypt any communication encrypted by a subscriber or a customer unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication," close quote.

Does CALEA apply here?

LYNCH:

Senator, I think that the relevant laws that we feel are applicable, are laid out in the pleadings in the San Bernardino case. I'm going to refer -- I would refer you to those briefs rather than have such a limited discussion about one law here.

LEE:

I understand. This is a limited discussion and our time is limited, but it's important nonetheless and my understanding is that the Department of Justice is taking the position in those pleadings, in those briefs, that CALEA does not apply and yet that seems odd to me because Apple is in fact, a manufacturer of telecommunications equipment.

And Apple is, in fact, being asked to be responsible for decrypting or ensuring the government's ability to decrypt an item that Apple itself manufactures. I also find it troubling that we've got a situation here in which this administration and many others were calling on Congress for a long time to require by statute that Apple and other similarly situated manufacturers provide a back door and a back door key that could be used by law enforcement.

That effort failed, but that effort contemplated changes to CALEA, because that effort failed, it's that much more disturbing that because, you know, there was not enthusiasm in Congress because there were very legitimate public policy concerns expressed in connection with that idea.

Congress decline to adopt such legislation. Now that Congress has decline to adopt such legislation then and only then the government goes into court at about the same time it decides not to pursue

this remedy in Congress and tries to get through the All Writs Act, the 1789 statute that was intended to not apply in circumstances like this where the area has been addressed by statute. A remedy that it couldn't get through Congress. This is a policy decision. This is not a judicial decision. It should be handled by Congress, not the federal courts.

Thank you, Mr. Chairman. I see that my time has expired.

LYNCH:

Just briefly. Mr. Chairman, thank you. Thank you, Senator, for raising these important issues and for your thoughts on them. I agree this is a matter for important public debate and discussion both by this body, hopefully this committee. I know many people here have given great thought to it, the larger Congress and the American people.

In the instant case, however, we have a law enforcement obligation to proceed and I can assure you that as was set forth in prior testimony before this and other committees, we've never asked for a back door. We don't want a back door. We want companies to do what they've been doing for years, which is provide assistance when they can and how they can.

And how they can will be determined and I feel should be determined by the courts in every specific case when there's a valid law enforcement interest to do so. And most respectfully, Sir, we did not wait for Congress to stop considering an issue to bring this court action.

What happened was someone killed 14 people in San Bernardino and in the course of our investigation, a customer asked for assistance to obtain information from a device. The same way if we needed to get into that person's desk or locker, we went to the owner of it.

And they had had to go to the manufacturer to gain access to help us gain access to a locked device in a way that would not destroy what was inside. That's the situation here, so I simply place that before you as part of the consideration of this important issue.

But I thank you for those thoughts. I think that those are important issues and they do require fuller and more fulsome discussion as to how we handle these issues, as to how we continue the constitutional balancing that we have always done in this country, between the essential right to privacy, which I am as committed to protect as anyone here. And also, also, the safety and security rights of every American, which is my sworn duty.

GRASSLEY:

Senator.

DURBIN:

Madam Attorney General, thank you for being here today. During the course of this presidential campaign there have been statements made on the other side by candidates which have been hateful toward American Muslims. One candidate referred to Syrian refugees as rabid dogs.



Donald Trump, the frontrunner for the Republican nomination, said we should ban all Muslim immigrants from the United States. We held the first hearing ever on anti-Muslim rhetoric and hate crimes in my Subcommittee on the Constitution several years ago.

I'd like your comments on the monitoring of hate crimes and crimes against people of the Muslim faith and your observations when it comes to law enforcement and the need for cooperation from American Muslims to keep America safe.

LYNCH:

Well, thank you, Senator. You raised a very important issue and I certainly think the hearing that was held on, that advanced those issues and allowed for a full -- an open airing of the concerns about rhetoric that we are hearing that is hateful towards Muslims or people of any religion or any perceived difference.

And, of course, we enjoy a robust habit and pattern of free speech in this country and we protect that, even hateful speech is protected. My concern as a law enforcement officer is always when that speech crosses the line into incitement of violence and when violence occurs as a result of that. And so, we take it very seriously as something that could be precursor to violence. As I indicated before, protecting that balance of free speech but looking for those situations where people do cross that line and they are inciting others to commit violent acts.

We saw that happen after 9/11, unfortunately. We saw several acts of violence against those who were Muslim or who were perceived to be Muslim, wrongly so, that resulted in death and serious harm. And so, we know that it can happen and it's something that's not indicative of the values of our country.

We have found it to be very effective to engage with the Muslim community before there are flashpoint incidents. So -- and it has been my experience both in this chair as Attorney General and as U.S. Attorney that the Muslim community is like any other community in this great country of ours, they have people who are on both sides of the law but they also have the same concerns that we all do.

Their children are concerned about being bullied in school. They're concerned about this perceived discrimination or real discrimination. And so, providing information to the Muslim community about those issues can ease their fears and concerns, and we find it to be very helpful in obtaining and building rapport that can help us as we build law enforcement investigations.

DURBIN:

Thank you. Senator Hatch asked earlier about the issue of mens rea and cited an opinion by Justice Jackson. Assistant Attorney General Leslie Caldwell testified before this committee in opposition to Senator Hatch's legislation on mens rea at a recent hearing.

And I'd like to ask you to be more forthcoming if you would and perhaps more specific. It's my understanding, of course, that there are certain crimes where we have said that there's a strict liability standard, food adulteration is an example of that, the notion of killing someone who is law enforcement for the federal government or otherwise, even crimes involving child pornography and sex trafficking.

I used an example in the hearing where we have a crime on the books which says if you're engaged in terrorist activity and kill an American, you are going to be held responsible, criminally responsible. I used the example of the terrorists in Mumbai and the fact that they couldn't have known of their own that there were American tourists who were killed by their terrorist act at that hotel. But under our law, they could be held responsible. So, would you expound a little bit more on this issue of mens rea and whether the line you think should be drawn?

LYNCH:

Certainly. And thank you for the opportunity to comment further on this important issue. And as I indicated, we look forward to working with you and other members of the committee as we explore how this will interact with the sentencing reform efforts.

Senator, as you've noted, we have decided as a society and as a statutory body, Congress has decided that there are crimes for which strict liability is important, to ensure the safety of our food and drugs and also to ensure the protection of those who serve us. As you mentioned, the assault or murder of a federal agent, terrorist activity that results in the death of Americans abroad are activities that we as a society and this body as a Congress have deemed to be of such a nature that they should incur liability when they occur and when they can be proven.

And that liability is indeed a strict liability because of the nature of those crimes. But there are also other indicia that we would have to prove in order to find someone guilty there. We would, of course, have to establish that they were responsible for those actions, that they took those actions, you know, for a particular purpose.

So, the absence of the specific mens rea or knowledge of, for example, that there were American tourists in a particular place would still not alleviate the government of its responsibilities to fully and fairly and adequately prove that crime in a crime of law. So, the person would be held accountable for the serious crime and the fact that they did not know, for example, in that -- in that example that Americans were involved would be used appropriately in my view as something to which they could be found liable for and sentenced for.

DURBIN:

Last December, the President commuted the sentence of a man named Alton Mills. Alton Mills at the age 24 never having served one day in jail, was found guilty of a third strike for the sale of drugs in the city of Chicago and was given a life sentence -- life sentence. He served 22 years before the President commuted his sentence. I've met him. I've worked with him. It is clearly a sentence which is excessive and way beyond what should have been imposed. There are now

20,000 clemency petitions that are pending before your department. It doesn't appear that you have the capacity to deal with them in a timely way. Tell me I'm wrong.

LYNCH:

Well, Senator, I think that with respect to clemency, the number of petitions is -- I'm not sure it's quite that high. And we are working, we have put in place -- we have put in place practices to work through the backlog. We have committed the resources that we can consistent with the appropriations issues that we have as well. And we're committed to working through the process. It is part of our larger system of criminal justice reform. It is -- it is part of the many ways in which we're trying to deal with the issues that have been the result of prior decisions that were taken we feel at that time with good intent, with the intent of protecting people, but have had these collateral consequences.

DURBIN:

Thank you.

Thanks, Mr. Chairman.

GRASSLEY:

Senator Tillis?

TILLIS:

Thank you, Mr. Chair.

LYNCH:

Good morning.

TILLIS:

Madam Attorney General, welcome. I admire your poise and appreciate all the work that you and your staff have done to prepare for this oversight hearing. Article 1 section 9 clause 8 of the United States Constitution prohibits officials from accepting money from foreign government while in office.

The Constitutional Convention of 1787 unanimously adopted the clause to prevent foreign influence on government officials. According to Secretary Clinton's public financial filings, she and former President Clinton appear to have received payments from speeches directly from a foreign government or an instrumentality of a foreign government yet none of the publicly released e-mails suggests the State Department ethics officials analyzed whether their joint income violated the constitutional restriction.

Has the Justice Department analyzed whether the Clintons' income from foreign sources may have violated a provision of the Constitution?

LYNCH:

Well, Senator, you certainly raised an interesting issue. I can tell you that the matter that has been under discussion both in this and other proceedings has been the Department's review of how the State Department handled classified information. So, I'm not aware of any other issues along the lines of what you have outlined.

TILLIS:

Would it be possible to have the department look into it and report back to this committee?

LYNCH:

Well, Senator, certainly if you would provide us information, we would see. I'm not sure that I could promise you a report at this time. I don't know what issues would be implicated. I don't know the timing of the issues that you've mentioned or the amounts that you've mentioned or the relevant rules of the State Department at that time.

TILLIS:

We'll follow-up with the formal request, I assume the record is going to be held open so, we'll do that. I do have one final question then. It sounds as though based on the answer to that question that the Justice Department did not play any role in advising the State Department about the ethical or legal questions that may be raised from the former President's speaking engagements.

LYNCH:

From President Clinton's speaking engagements?

TILLIS:

That's correct, any ethical questions based on the joint filings with Secretary Clinton. Back to the same question, you haven't been consulted by the State Department on this matter?

LYNCH:

Well, Senator, with respect -- I'm not sure the timing of when that would be when that would have occurred and so, I simply don't have an answer for you on that. I do not believe that we would have consulted with the State Department. I believe that you may want to raise that with the State Department's internal process.

TILLIS:

We will and we'll that in follow-up questions into the record. I wanted to ask a question, during your confirmation hearing last year, I asked a question about the Inspector General's report of, I think, December 2014. And I was curious, I think part of the report was titled "The DOJ Could Strengthen Procedures for Disciplining Its Attorneys" and at that time I don't think you'd had an opportunity to go through the Inspector General's report.

Now that you've been in the role for a while now, have you had an opportunity to look at that and has the Inspector General's report been instructive in any management decisions you've made as the chief executive of the department?

LYNCH:

Well, Senator, what I can tell you is that I have not read that report specifically. I am aware of the changes that the department has made and was making throughout most of 2015 to ensure that the disciplinary procedures were streamlined, were efficient, were consistent including providing more resources to the Office of Professional Responsibility.

TILLIS:

I want to move down to a maybe a lower level of detail in terms of the department and it relates to your Public Safety Officers' Benefits program. We know that there's a backlog in the DOJ processing the claims and I believe in your confirmation hearing last year, you may recall I raised the issue with you and whether or not we could place a priority on clearing the PSOB claims backlog.

It looks like that we haven't made much progress and kind of curious, I guess the sheer number claims and also the length of time to process the claims I think in October 30 last year, there were a total of over 1,000 Public Safety Officer Benefits claims outstanding. And from North Carolina, I've got 20 or so active death benefit claims outstanding. Do you think that the backlog is appropriate and the length of time to close the claims and if not, what actions are you taking to reduce the backlog?

LYNCH:

Well, Senator, thank you. That's a very important issue and it's on that I have actually had occasion to discuss with the leaders of the various law enforcement group with whom I meet regularly as well as my sheriffs' association with whom I meet regularly.

The Public Safety Officers' Benefit program is one that is managed through the department's Office of Justice Programs and they have been working on that backlog. And I think part of the issue is the nature of the information they received and the questions that they may sometimes have to raise about it.

So, they are -- they are looking to set in place their own system of streamlining that and making sure that they are requesting only what they need and that they are acting as quickly as possible.

And I know that they are actually speaking with jurisdictions on an individual basis about those claims to give them status reports and updates on that.

So, it is something that we're aware of. It is something that we have frequent conversations with our law enforcement partners because, of course, it's a matter of great importance to the families that are involved in these tragedies. At every claim that you were referring you in our home state or otherwise there's a tragedy underlying that and we take that responsibility very seriously.

TILLIS:

It's really important. We'll clearly be tracking the claims within North Carolina, but the broader question we'll follow-up with any sort of measures and the resource needs, the other things that may be necessary or changes that may be necessary to draw down the backlog. But it seems a bit long, for the reasons that you've said and it's prolonging the closure on a tragedy that these families are dealing with and I think it's very important.

I have a final question. I appreciate your comments in your opening statement about sentencing and criminal justice reform. You might be aware in North Carolina we did some of the Justice Reinvestment Act which has been tremendously successful in terms of reducing recidivism and probation violations. The -- it seems that the concerns with some of our members relate to the retroactive application for certain classes of crimes.

Do you have any -- do you share any concerns with the underlying bill, things that you would like for us to work on? I appreciate the fact that you're going to help us maybe getting support for. I was just curious in my closing seconds. Thank you.

LYNCH:

Well, thank you, Senator. Obviously a very important issue and one I really appreciate the efforts of everyone on this committee in working with us on. With respect to I think you're referring to potential changes involving armed career criminals and possibly other firearms offenses, I believe that we have been working at the staff level to have discussions about those as to how we can essentially make sure that we move forward with reform and still deal with the serious issues raised by those particular types of defendants.

Certainly, from the department's point of view, even if those were not the issues when it comes to release of any kind, we do feel that there should be a fulsome presentation to the relevant judge so a decision could be made. And so, I don't believe any decisions have been made about those provisions and we certainly look forward to talking with you further on them. And, again, I will commend North Carolina on its use of the Justice Reinvestment Act because through that, I believe that over the last several years crime is actually down 11 percent in the state for which we are all extremely grateful.

GRASSLEY:

Senator Klobuchar?

KLOBUCHAR:

Well, thanks very much, Mr. Chairman.

Thank you, Attorney General, for being here and I want to start by thanking you for your focus on sex trafficking and the implementation of the Justice for Victims of Trafficking Act that Senator Cornyn and I and others worked so hard on. And I know that you've had some good results in some of the cities that have been ATC team cities and we are, that stands for Anti-Trafficking Coordination teams.

I know Minneapolis and the twin cities are now one of them. But from what I've read you have 86 percent increase in convictions in those districts compared to 14 percent in non-ATC team districts, 26 percent nationwide. I wondered if could comment on that as well as what's happening with a piece of our bill which was developing the national strategy to combat human trafficking.

LYNCH:

Yes. Thank you very much for raising an issue that's of great importance and one of my own priorities as Attorney General. With respect to the ATC team, we have had tremendous success along the lines that you noted in raising the conviction rate and also the ability to open cases in those cities that participate in the ATC teams.

And we recently are bringing six more cities and districts on board. And we hope for similar results there as well. It has been one of the -- one of the tip of our spear so to speak in our victim-centered approach to dealing with human trafficking, that partnership that we have particularly with DHS and the Department of Labor are enabling us to not only bring the cases but also provide real support for the victims of trafficking at the end of those cases, because, of course, their trauma does not end just with the conviction.

And I thank you again for your work along with Senator Cornyn on the bill but also on this important issue. Our national strategy is in progress. What I would say is that as part of that national strategy, you know, the ATC team has been enhancing the federal collaboration between DOJ, Department of Labor and Department of Homeland Security.

We also have been strengthening our collaboration with our state and local colleagues. And just last fall, I announced another \$44 million in grants to improve and enhance those local efforts and about \$35 million of that is going to go towards organizations that are focused directly on survivors both in terms of empowering them and providing them real assistance at the end of a case.

And so, these collaborations are also going towards training local law enforcement officers in the very important area of recognizing human trafficking victims when they see them. This has been one of the concerns that they have expressed to us, that they know they have a problem in their jurisdiction. They want to work with federal authorities hand-in-hand with us but they're concerned about the ways in which to gain inroads into the victim community, also supporting the NGOs who are often the first people that the survivors turn to. They often don't call law enforcement first.

KLOBUCHAR:

Right. OK. Thank you very much for your work. We look forward to continuing that work. As you know we've had a number of cases out of twin cities with Islamic extremism, recruiting of extremists, number of indictments, the number of convictions, Andy Luger, U.S. Attorney and all of our federal law enforcement is working together and doing a good job here.

But this countering violent extremism task force was very important. Senator Franken and I here together with the event in the White House where three areas were featured including the twin cities in terms of the work they're doing. Could you tell me what DOJ has been doing and where it's continuing to try to get more money in the budget for this effort.

LYNCH:

Yes. Thank you very much. And very, very happy also that the twin cities are one of the pilot cities in our program for combating violent extremism, focusing specifically on those communities, listening to them and what they need, that's going to be very helpful to us as we develop it.

We have obviously have a strong enforcement piece when it comes to combating violent extremism, particularly the home-grown extremists that we see here in the country. Most recently, I'd say over the last two years, we've seen individuals seeking to leave the U.S. to travel overseas. We've prosecuted more than 85 of those individuals so far. And of great concern is the fact that over the years, their age is dropping. They're getting younger and younger, certainly the median age now is around 21 or less. And we're also seeing more and more young women being involved in this, not a majority but those numbers are increasing.

KLOBUCHAR:

Right. And I do appreciate the law enforcement piece of it, it's just this concept was to try to intervene early...

LYNCH:

Yes.

KLOBUCHAR:

... when schools and others see signs and so far I believe we still have more private money in it than we have some of the federal money in and so, we are really trying to push hard to get the additional funds.

LYNCH:

That will be very, very helpful. I think -- and I think the twin cities are going to be a good example of that. One of the things we are doing actually is working with Silicon Valley and the tech industry



to help us as well as Madison Avenue to provide assistance from the non-governmental side into combating violent extremism. I think it is fair to say that the government is not necessarily going to be the best messenger for that. We're not going to be the voice that young people who are on the edge are going to listen to first.

KLOBUCHAR:

Yes. I would agree and I'm glad we're doing that. It's just that if we actually want to use this model where we're trying to identify kids early and then coordinate the community to kind of circle around them...

LYNCH:

Yes.

KLOBUCHAR:

... we probably need funding to get some of that going.

LYNCH:

Yes.

KLOBUCHAR:

And it's just that the White House featured us -- our area and so, that's what we're continuing to work to try to get that done.

My last question is about the COPS program. Senator Murkowski and I are leading this effort for the reauthorization and I think you know how important as someone who's been a prosecutor the funding on the local level is for community policing. And could you talk about the grants and how an increase in funding would be helpful.

LYNCH:

Yes. With respect -- we recently had within our COPS program some grants for local law enforcement to deal -- dealing with the heroin issues, and that program essentially for financial reasons has been taken -- has been shifted I should say -- I don't want to say it's been taken away because it in fact now resides within DEA.

But -- so, DEA is going to have, I believe, six additional heroin-based task forces to deal with this issue. And, obviously, while those do pull in state and local law enforcement officers, we understand that the prior COPS program was a great source of support for local law enforcement as they had those very targeted efforts that were very, very effective as well.

And so, we certainly greatly appreciate your and Senator Mikulski's efforts.

KLOBUCHAR:

Ann Murkowski, actually Ann Murkowski of Alaska. So, I think Barbara Mikulski also supports it so we have a good team. The last thing that I wanted to just mention -- I won't ask a question because I'm out of time but it's just on the opioid bill and we know how important that is and we look forward to continuing to work with the Justice Department. Thank you.

LYNCH:

Thank you for your efforts in that regard.

KLOBUCHAR:

Thank you.

GRASSLEY:

Senator Sessions?

SESSIONS:

Thank you, Mr. Chairman and thank you, Attorney General Lynch.

LYNCH:

Good morning.

SESSIONS:

Thank you for your courtesies and your even-tempered leadership. We appreciate that. There are a number of questions that I think are important that we won't have time to go into fully today. But I'd like to raise some of them.

First in response to my colleague, Senator Durbin, the leading Republican candidate says we should have a moratorium on immigration from -- Muslim immigration until we've figured out what's happening, not a permanent ban. And I want to say it's critically important that the American people and everybody know that when a person is in our country, they're entitled to have their religion respected. The Constitution guarantees the free exercise of religion and that must be honored.

But I would note that NATO Commander Philip Breedlove testified before the Armed Services Committee not long ago that terrorists are infiltrating refugee flows in Europe where he's the commander and that ISIS is quote " spreading like cancer within this mix." He even said Russia's actions in Syria have wildly exacerbated the problem and it fits into a strategy of using non-military

means to divide NATO and the EU. So, this is not a little matter and I know you know that and I won't go into the details about it.

But do you -- with regard to our drug situation, it's happening today and the increase in heroin and the deaths that we are seeing, do you believe law enforcement plays a critical role in reducing the abuse of drugs, of reducing availability of heroin and cocaine and deaths that are now occurring?

LYNCH:

Senator, yes, thank you and (inaudible) discuss this epidemic is a grave concern to us. Law enforcement has a very important role to play particularly in the interdiction of heroin trafficking, the apprehension of those who are bringing heroin both into the country and spreading it throughout the country.

SESSIONS:

I would agree with that. And the interdiction is probably a key thing for the federal official although that is not all. There are major drug-dealing networks in every major city and throughout this country and rural areas, too. And they need to be attacked by federal officers. But the interdiction, I think, is first. So, I would suggest to you that a more secure border is essential because isn't it true that the majority of the cocaine, heroin and methamphetamine now that we're seeing in America is coming across the border from Mexico?

LYNCH:

Well, Senator, with respect to methamphetamine, a lot of it is just made here (inaudible).

SESSIONS:

Well, I know a lot of them is made here but isn't the majority of it coming across from Mexico.

LYNCH:

Yes. I couldn't give you the...

SESSIONS:

Well, what about heroin?

LYNCH:

Certainly, the Mexican border is a major transshipment point for heroin and cocaine which is a shift from 20 years ago.

SESSIONS:

The majority. Right, it is a shift, when I was prosecuting we had airplanes and boats and things of that nature and a lot of different areas being brought in. But the trend has changed and we've seen the movement from the, across the Mexican border, have we not?

LYNCH:

We, it has certainly grown to rival other areas although I would hesitate to say that we take our attention away from the ports as you noted, the ships and the boats in American border also.

SESSIONS:

Well, the problem is, I think you're in error there. I think it clearly is a majority. But the Center for Disease Control noted that over 47,000 people died from drug overdoses in 2014 and it's still rising. That's one drug overdose death every 12 minutes, 61 percent involve opioids, that the opioid overdoses in the United States have tripled since 2000, 600 percent increase in heroin overdose deaths since 2001. National survey of drug use and health under this administration's leadership released a report saying there were approximately 169,000 new heroin uses in 2013 alone. And I believe those, and they've, the substance abuse in mental health services in 2014 found that 589,000 people in the United States have an opioid disorder.

This is a huge thing. These things destroy lives, not just overdose deaths, people unable to function and work anymore, families are destroyed. People destroy their whole careers. Young people destroy their ability to have a financially secure future. They commit crimes in furtherance of these addictions and uses. DEA Administrator Chuck Rosenberg noted that 120 people die a day of heroin overdose in the United States.

So I guess what I'm saying to you is and you indicate that law enforcement plays a key role, but Tom Frieden, the Center for Disease Control and Prevention noted that law enforcement must intensify its efforts to reduce the availability of heroin, fentanyl and other illegal opioids. Would you agree with that?

LYNCH:

Certainly, that's an important goal and it is a goal of ours. I particularly view...

SESSIONS:

And Mr. Rosenberg said law enforcement, quote, "must continue to have the tools it needs to attack criminal groups who facilitate drug addiction." Do you agree with that?

LYNCH:

Certainly, those criminal groups are a major target of ours both here and, as you noted, overseas. As you also noted, Senator, with the number of new heroin users every year, over 160,000, sadly over 80 percent of those are prior prescription drugs abusers. And so we also continue our efforts

both from an enforcement perspective and a prevention perspective in the prior prescription drug abuse issue as well.

SESSIONS:

All right, I appreciate that. But are you aware of the fact that the, your own executive office, United States Attorneys that operates under your direction at the end of 2015 found that the six-month average of drug prosecutions by the U.S. Department of Justice was down 21 percent compared to five years ago? Are you aware that excluding prosecutions in federal magistrate courts, the six-month average was nearly 32 percent lower at the end of 2015 than five years ago?

LYNCH:

Yes, and the number does not surprise because, as I said, we have moved through a process of focusing less on the low-level individual offenders toward targeting the trafficker networks that you have noted are really the appropriate focus of ours. And we will have, we will have (inaudible) involved more (inaudible).

SESSIONS:

Well, well, ma'am, let me say to you that I've heard that argument that we're always focusing on higher people that's why the numbers are down for over 25 years. I do not believe that.

Attorney General Holder has abandoned the equitable sharing of drug proceeds with local law enforcement which is degenerating the cooperation needed to attack these gangs. We're proposing more reductions in sentences after Senator Durbin and I agreed on a reduction plan that passed and did reduced cocaine crack penalties significantly and now we have to have more.

Present population is declining at a rapid rate. It was 5,000 down last year. The budget for the prisons is being reduced as a result of a substantial decline in population. And at the same time, the drug use is surging and death are occurring. And on my opinion, it's going to get worse.

Mr. Chairman, thank you for your leadership and I've enjoyed working with you.

GRASSLEY:

To me, like we'd have Coons and then Lindsey Graham or Senator Graham and then Blumenthal and Franken. Let me ask, at noon we're supposed to have a vote. I'd like to go over there right now or soon and vote and come back here because I'd like to have seven more minutes with the attorney general.

UNKNOWN:

Would you like me to chair?

GRASSLEY:

Would you please?

UNKNOWN:

Yes, sir.

GRASSLEY:

I think you'll be the, you'll be the last one to turn the lights out. So that's the way we'll plan it then. Is that OK with you?

So Senator Coons now.

COONS:

Thank you, Chairman Grassley. And, Chairman Grassley, I was encouraged at the beginning of the hearing at your comment that you believe our bipartisan sentencing reform bill may soon be able to move forward and I'm pleased also that the Comprehensive Addiction Recovery Act which is a bipartisan effort to confront the real challenge that heroin and opioid addiction presents to America has also moved forward. It is possible for this committee to make bipartisan progress, although where it is possible.

And I was also, Madam Attorney General, encouraged by your comments in response to the question from Senator Hatch about the Defend Trade Secrets Act which we hope will move forward soon.

Let me start by thanking you, Madam Attorney General, and all the men and women in federal law enforcement for what you do, to tackle very difficult issues facing our country from drug addiction and counterterrorism to healing the relationship between law enforcement in the community that they serve. And let me start with a couple of critical issues that relate to support for state and local law enforcement.

As you know, gun violence has been a significant for my hometown of Wilmington, Delaware. And the department's violence reduction network has had tremendous positive impacts so far. The program's now in its second round of city partnerships and I'm hopeful that the department intends to both continue to support it and extend it and that there is some likelihood that the annual conference will be held in Wilmington. I'd be interested in hearing what sort of improvements you see being implemented in the violence reduction network this year and how you see the program's future.

LYNCH:

Well, thank you, Senator, for that. And I thank you and on behalf of the men and women of the Department of Justice, all the law enforcement agencies as well as the staff who work to support

them and the lawyers who implement their cases, I thank you for your comments about their service and I greatly appreciate your recognition of them. I'm proud to represent them every day.

The violence reduction network is an important tool and we have found it to be one of the ways in which we have been able to bring focused law enforcement resources really at a very cost-effective way to jurisdictions that have been struggling with historically high crime rates.

And Wilmington, Delaware has been one of our success stories. We have asked for more money in the budget for it for F.Y. 2017. And, you know, \$5 million is not a lot compared to other things that we ask for, but certainly the benefits will be great. We currently already have at least 10, I think 10 or 12 cities and we're planning on bringing 5 more cities onboard.

Now, are you know from your experience, to be a VRN city requires a certain level of crime that we don't want every city to aspire to. But the lessons from the VRN we feel could be very useful to other jurisdictions. So one of the things that we're going to be doing this summer, in the summer of 2016 is to convene some about 20 non-VRN cities, those that are not in the network but have similar issues to a conference with OJP to share the ideas and the best practices that we have been able to glean from working with cities like Wilmington, Little Rock, Flint, and the others in the VRN.

So not only do we find it to be a program that we hope has been helpful at the local level, we feel that as with so many efforts that are frankly anchored by our state and local partners, it will be a program that will provide leadership and guidance for other jurisdictions that are struggling with the same issues.

COONS:

Thank you, Madam Attorney General. I intend to continue to support the VRN and the appropriations process as well.

Let me turn briefly to two other programs that I think have shown some real positive impact for Delaware and I think can and should more fully supported federally, one is the Justice reinvestment initiative. Delaware participated in it early. Our general assembly made a number of changes to our criminal justice system and have seen some real positive impacts as a result. I'd be interesting in hearing how you see the future of the Justice Reinvestment initiative.

And I'd also mention the victims of Child Abuse Act, something Senator Sessions and I worked to get reauthorized. I was somewhat disappointed the president's budget request was half of what we had hoped for and the Bulletproof Vest Partnership Act which provides appropriate bulletproof vests for local law enforcement around the country.

I think all three of these are programs that provide real meaningful assistance to local law enforcement and that help strengthen the Criminal Justice Reform Movement in the case of the Justice Reinvestment initiative. Could you just briefly comment on how these programs fit into your overall objective to improve law enforcement in the country?

LYNCH:

Well, thank you, Senator, for the chance to talk about them. And I thank you for raising these three programs together because what they really highlight is that Criminal Justice Reform will, of course, have an anchor that comes from this committee and this body in the form of statutory changes. But it really also is going to be managed by how we interact and support our state and local partners, for example, the bulletproof vest initiative as we support officer safety, officer health and those important issues and also as we, that's how we deal with the victims of child abuse.

The Justice Reinvestment Act is something that's also extremely important to us because those funds are used to support changes both in local laws but also in the probation system. We have states that have been able to literally close prisons, that have seen significant drops in crime.

So criminal justice reform for us is really a long-range view of the entire system. And these programs in particular focus on three specific elements of it, but they show how everything comes together as it were, in a way to sort of support a holistic review of the, of the criminal justice system. And that by supporting victims, by supporting local jurisdictions in their efforts and by supporting local law enforcement, we will all have safer communities.

COONS:

We have a lot of work to do together in improving public safety and in healing some of the rift between communities and law enforcement. I'm grateful for your leadership in that.

Let me ask the last question, if I might. In the Shelby County decision, the Supreme Court significantly weakened, and some would even say gutted, but I'll say significantly weakened at least the Voting Rights Act. And on a bipartisan basis, 42 of us are trying to advance the Voting Rights Advancement Act. Senator Murkowski is a co- sponsor as well as Senator Leahy and a number of others of us. What difference do you think having this committee take up the Voting Rights Advancement Act might make in terms of voting rights enforcement?

LYNCH:

Well, Senator, thank you for your question and thank you for your leadership in this area. And I thank this committee as it, as it takes up this important matter also. Certainly, consideration of this act and the department had been working with the group on this is happy to continue we think would restore, help restore an important part of the department's arsenal in protecting the voting rights of all Americans.

It's vital to us that we look at this from a way in which we protect everyone's rights to vote. The citizens on the street, our service members, our elderly, people who have trouble getting to the polls, all of those individuals are of concern to us. And certainly we thank you for your efforts in looking for a way to provide legislative support to those efforts and look forward to working with you and this committee as it considers the matter.



COONS:

Well, the right to vote has been described as the most foundational right to democracy, a nearly sacred right. And I hope that we can find a way to make progress on ensuring that all Americans have access to the ballot and the right to vote.

Thank you for your service and your leadership as Attorney General.

LYNCH:

Thank you, Senator.

GRAHAM:

Madam Attorney General, welcome to the committee.

LYNCH:

Good morning.

GRAHAM:

Thank you for the job you do for our country. Have you ever discussed the Clinton e-mail investigation with President Obama or anyone at the White House?

LYNCH:

No, sir, I have not.

GRAHAM:

Do you anticipate that happening?

LYNCH:

No, sir, I do not.

GRAHAM:

So when Josh Earnest speaks about the investigation and talks about basically to reassure the American people that this is no big deal, do you know where he gets that information from?

LYNCH:

Senator, no, I do not, but I can assure you...

GRAHAM:

Would you tell him he should probably just stay silent?

LYNCH:

But, certainly, it's my hope that when it comes to ongoing investigations that we all would stay silent. And I can assure you that neither I nor anyone from the department has briefed to Mr. Earnest or anyone at the White House about this matter or other law enforcement matters.

GRAHAM:

He's just operating sort of on his own I take it.

LYNCH:

I'm simply not aware of the source of his information.

GRAHAM:

Thank you very much. Have you seen more threats to the homeland more than today in the past? Do you agree with me there are more threats to our homeland today than there've been at any time in recent memory?

LYNCH:

Certainly, I think those threats have increased, yes, sir.

GRAHAM:

OK. Sequestration. If we go back to the sequestration path next year, what damage will it do to your ability to protect this nation in your lane?

LYNCH:

Sir, sequestration would cost significant harm to the department's ability to protect the American people in areas of national security as well as our other law enforcement functions.

GRAHAM:

You'll have less FBI agents dealing with counterterrorism. Is that correct?

LYNCH:

We would.

GRAHAM:

You'll have less capability to deal with the growing cyber threats?

LYNCH:

That is correct.

GRAHAM:

OK. Thank you. When it comes to the problem with Apple and San Bernardino, are you, would you support legislation requiring Apple and other technology companies to create technological backdoors made available to the government in terrorism cases? Would you support legislation to do that?

LYNCH:

Certainly, we would review whatever was proposed and work with this committee or others to talk about the issues and to make sure that whatever was crafted would cover the range of issues that arise. The reason why we have focused on litigation in a case by case basis is because as we've noted, every platform is different, every issue is different. And we have been trying to deal with the situation with our discussions with the tech companies.

GRAHAM:

Would you be willing to draft legislation, provide to the committee your ideas of what legislation should look like to accomplish the goals you...?

LYNCH:

You know, Senator, I don't think the department's at a point at this point where we are drafting legislation here. But as I indicated, again, we're happy to work with you and others on the committee as you consider proposals.

GRAHAM:

OK. If China went to Apple in China and said we want a backdoor key to all iPhones in China, would, what would your response be?

LYNCH:

Well, certainly I think the company would have a strong response there. We're...

GRAHAM:

Would you support Apple's request to say no to China?

LYNCH:

Well, we are not asking for backdoor here so I certainly do not see us supporting backdoors elsewhere.

GRAHAM:

That's what I'm confused about. It seems to be that the judicial decision basically is requiring Apple to create technological devices or to create a system that would be able to get into the phones, their own phones. That's not true?

LYNCH:

Well, what we're asking Apple to do is to, is to essentially effectuate a system that would remove the password blocker. The password blocker destroys information.

GRAHAM:

That's not to unlock the phone?

LYNCH:

No. We would have to find our own way into the phone. Essentially, the password blocker destroys the information on the device if you get, guess the password incorrectly 10 times. We would like the opportunity for us to try and do that.

GRAHAM:

Would you support, would you support the Chinese government's request to do the same thing?

LYNCH:

Yes, I don't think that I'd be opining on the Chinese government's request.

GRAHAM:

The point I'm making is if we ask our own, if we ask companies here, are we setting a precedent for Russia, China and other countries.

LYNCH:

Senator, I think that one of the issues raised by their question, and I thank you for raising it, is that it creates really a false equivalency with our legal systems with other countries, with our moral systems, with the way in which we do business with other countries.

GRAHAM:

Well, we're the good guys and they're the bad guys.

LYNCH:

Well, we have a system of laws that have worked for a number of years.

GRAHAM:

Oh, I agree we're the good guys.

LYNCH:

Within, with corporate America to allow them to provide information to us from a variety of ways, systems and devices and protect privacy at the same time that have not led to the parade of horrors that's often described whenever those particular changes are made.

GRAHAM:

One of the arguments Apple makes if is other, there are other companies that create encryption, so from a terrorist point of view you're not limited to Apple iPhones to communicate, are you?

LYNCH:

I think the terrorists use any device they can to...

GRAHAM:

So this encryption issue, if you required Apple to unlock that phone, that doesn't deny a terrorist the ability to communicate privately, does it? There are other ways they can do this?

LYNCH:

We've certainly seen terrorists using a variety of encrypted platforms for communication.

GRAHAM:

The point of the committee is fixing, you know, getting the information of this particular phone doesn't prevent terrorists from using encrypted devices because they exist beyond Apple.

In terms of Apple's point of view, do you think their argument that if you require us to do this that other, it will hurt their market share, it would put them at a disadvantage to other companies that produce products outside the United States?

LYNCH:

You know, I haven't seen Apple's marketing analysis for that so I'm not sure, I'm not able to quantify that.

GRAHAM:

Does it make sense, I mean some company in Switzerland said, hey, you can buy our phone, we're not going to ever, you don't have to worry about the American government or any other government being able to break the encryption.

LYNCH:

Again, I think it would depend upon how people view that and how they rated it as an important feature and how it compared to Apple's devices.

GRAHAM:

So we're balancing the information we're trying to get in this individual case. Against the precedent we may be setting that other countries to follow. And we also have to balance the idea that the terrorist can use encryption outside of Apple. And we also have to balance the idea that we may be hurting American companies who are competing globally.

Are those sort of the four things that we're looking at?

LYNCH:

Senator, I'm not going to cabin the issues at this time because I think that for us the issue is about a criminal investigation into a terrorist act and the need to obtain evidence.

GRAHAM:

And -- but it's just not so simple. And I'll end with this. I thought it was that simple. I was all with you until I actually started getting briefed by people in the intel community and I will say I'm a person who's been moved by the arguments of the precedent we set and the damage we may be doing to our own national security.

So, I have definitely moved to any member of the committee who feels very passionate about this. Introduce some legislation requiring the Apple -- the technology companies to do what you want the judges to do. I'd like to look at it and it's just not enough to complain. If you think these companies should be required to do this, let's sit down, see if you can introduce legislation. I doubt if many people will do that.

Thank you for your fine work on behalf of our country.

LYNCH:

Thank you, sir.

CHAIRMAN:

Senator Blumenthal?

BLUMENTHAL:

Thanks, Mr. Chairman.

Thank you, Madam Attorney General, for the excellent work you've been doing, and your dedicated and energetic work on behalf of law enforcement over many years. I want to ask about the Freedom of Access to Clinic Entrances Act, the so called FACE Act which I was involved in enforcing when I was attorney general of the state of Connecticut.

As you know, it was passed 1994 after a particularly troubling time in our nation's history involving threats and attacks on clinics. It continues to serve a vital role in our nation. Recently, the decades long attack on the exercise of reproductive rights has taken the form of a series of highly edited, deceptive, and extremely inflammatory set of videos targeting Planned Parenthood.

But I wonder if you could tell me whether the FBI has noticed an increase in the number of violent incidents targeting abortion providers since the release of those videos beginning in July of 2015?

LYNCH:

So, Senator, you certainly raise important issues and it is an important enforcement area for the department, the FBI, and our civil rights division, and our U.S. attorneys offices. I don't believe I have the statistics on the increase in number of FACE Act violations since those videos have surfaced.

I know certainly we are -- and in connection with the Colorado shooting, while the state investigation is proceeding, we still are reviewing that as a possible FACE Act violation, although that case is proceeding in state court as a murder case. But it is in active area of enforcement, but I don't think I have the information on the data since that particular time period.

BLUMENTHAL:

I wonder if I could ask you to provide any data that is available, about the number of incidents and also prosecutions.

LYNCH:

Certainly, certainly.

BLUMENTHAL:

And I wonder if you could also tell the committee whether the Department of Justice is taking any increased enforcement activity with respect to incidents of violence or threatened violence around the clinics.

LYNCH:

Well, certainly, I know that with respect to -- and again, not limiting it to the time since the videos were introduced into the public domain, but for the past, I would say five to six years, the number of cases that we have charged under the FACE statute has increased. I think we've charged a total of 12 cases criminally and nine cases civilly. But again, that's over the entire course of this administration, not limited to just that time period.

So, we have seen that uptick certainly over the last five or six years and we are taking those cases very seriously and pursuing them both criminally and civilly.

BLUMENTHAL:

Thank you. The Department of Justice has been very responsive to a number of requests that I've made and I thank you for the responsiveness that it's shown, for example, on the General Motors investigation for deliberate concealment of the ignition switch defect where there has been a prosecution and result.

The Takata airbags where I understand there is an ongoing investigation into deliberate concealment of test results suggesting danger from those airbags; the Trinity guardrail investigation for defective end terminals and faulty testing; Volkswagen for the use of a device to evade emissions testing; recent indications of potential collusion by airlines on so-called capacity discipline; and a number of others.

I hope that you would agree that the public interest is well served by prompt conclusion of these investigations and also that where there are prosecutions potentially against individual corporate officers, there is a profoundly important deterrent effect as the Deputy Attorney General Sally Yates indicated in a memo September 9th of last year, prosecutions against individual corporate officers where there's evidence and where there's proof beyond reasonable doubt will encourage compliance with the law by corporations and those individuals and that will be to the good of not only the public in general, but also the corporations, shareholders, and its employees.

LYNCH:

Yes, we certainly do, and we certainly feel that the new individual accountability policy which essentially puts the onus on those corporations wanting to cooperate to also provide information of individual wrongdoing and also requires in a more systematic manner that we make sure that we are considering those issues in every corporate case.

We think that's a very important part in exactly the issues that you raised for corporate accountability as well as public knowledge.



BLUMENTHAL:

I have also asked for an investigation of Eversource in connection with potential misuse of H-1B visas and I hope that perhaps you could respond to that request if it is possible to do so.

LYNCH:

Certainly, sir.

BLUMENTHAL:

I want to ask finally about the so-called Charleston loophole. I know you're familiar with the situation that enabled Dylan Roof to buy the firearm that he used to massacre innocent people in the Charleston church. The Charleston loophole in effect enabled him to get a gun after the expiration of the 72 hours without the completion of the background check. And I wonder if even as we work toward a legislative fix which I have proposed whether the Department has been able to take steps that may enable prompt or completion of background checks.

LYNCH:

Yes. And thank you for the opportunity to comment on our work in this area. As I recommended to the President and discussed in prior testimony, one of the things the Department is working on is improving the systems within our background system, the NICS system so to speak. It's currently located in West Virginia and staffed by dedicated employees, all of whom, including all of us were heartbroken at the issues that led to Mr. Roof being able to obtain that firearm.

And currently, the current law is that if the background check is not concluded within that three-day period, the licensed firearm dealer is free to go ahead and conclude the transaction. Now, many do not. Many actually do wait if they haven't gotten a definitive answer, but those -- but they are lawfully allowed to go ahead and sell the firearms and many do. In this case, that is what happened.

The person did submit the information and because of issues of geography and the relevant counties, and the confusion caused therein, the information did not receive the examiner in time to stop that purchase. So, we are undertaking a review of the computer systems of the NICS facility. We are also undertaking to higher, almost double more those individuals -- doubling the number, I should say, of examiners so that we can comply within that three-day period.

To extend that period would require Congressional action, of course. Should Congress consider that, we would of course work with you to draft the appropriate legislation and provide our input there. But we are looking to operate as efficiently as possible within the existing laws that we have. That's our framework.

And so, our goal is to essentially strengthen and improve the next system so that it can be fully responsive within the allotted time.

BLUMENTHAL:

Thank you. Finally, on the topic of gun violence, as you may know, I've introduced legislation that would in effect repeal the so-called Protection of Lawful Commerce in Arms Act, also known as PLCAA.

The Department of Justice has repeatedly defended the law against challenges to its constitutionality. As you well know, the Department of Justice also has a history of declining to defend laws that it believes are unconstitutional, most recently with the defense of Marjac (ph). And I believe that compelling argument have been made against PLCAA's constitutionality on due process, taking cause grounds, as well as the 10th Amendment and the principle of separation of powers.

I wonder if you would consider and look carefully at the possibility of in effect, declining to defend the constitutionality of PLCAA.

LYNCH:

Well, Senator, I haven't been involved in the review of PLCAA on those grounds. And so, I'm not aware of the legal review that we've done to date on it. We may in fact have opinions that have done that review so far. Certainly, if there's more information that you'd like to provide, certainly, more analysis, we will always consider that. But at this point, I don't know the announce that we've done to date on that.

BLUMENTHAL:

Thank you and thank you for your service, General.

LYNCH:

Thank you, sir.

(UNKNOWN)

Mr. Chairman, my team and staff told me to go vote. So, I'll do that. I know you have -- you wanted to ask some more questions.

GRASSLEY:

Will you come back afterwards then?

(UNKNOWN)

If I run, yes, if you let me go now. Will you let me go now? Thank you.

GRASSLEY:

I think it was Senator Cornyn (ph) brought up, but in a little different weight, about Secretary Clinton's e-mail arrangements. Can I say something?

I've often been accused of asking about Secretary Clinton's e-mail since she's running for President, but to make the record clear, in June of 2013, I started asking questions about this as it related to one of her councilors, Aberdeen (ph) and e-mail and conflict of interests and stuff like that. That's where this all started a long time before she was running for President.

So, recently, a senior unnamed law enforcement official told the Washington Post about an immunity agreement with the State Department staffer who maintained her e-mail server. Yet, you, attorney general, have not answered this committee's question about the nature and status of that investigation.

Does the immunity agreement contain a provision requiring that staffer to cooperate with all government inquiries, including committees as I have requested, and if not, why not? Would you provide a copy of that agreement to the committee?

LYNCH:

Well, Senator, and again, I thank you for your recent letter on this -- also on this topic. And we are providing a response to your letter in writing. And so, I don't want to get ahead of that as we review the issues that you've raised there. I believe you had asked for a copy of that document.

We typically do not provide copies of documents as part of ongoing investigations, but we are preparing a response to your letter on those issues. Similarly, we don't go into the details of the agreements that we have with any witness in any matter in ongoing investigations.

And, Senator, I know as you mentioned, you had raised this issue in the context of reviewing another matter several years ago and you're following through now. And what I will say is that my response to this is the same as my response to other questions about ongoing matters whether now or whether I was U.S. attorney or whether I was a line assistant.

And the consistency with which the Department handles the ongoing matters whether they involve someone with a famous last name or not is something that we take very seriously. And so, our desire not to discuss this matter in open hearings or in the press is not out of a desire to evade your questions or certainly this committee's oversight responsibilities, but it is how we handle ongoing matters. And I certainly hope that it's taken in that way and we treat them the same and that is how the public has confidence in the investigations that we conduct.

GRASSLEY:

If that latter comment is about something I said in my opening statement, I said it was the appearance and no accusation.

LYNCH:

Certainly.

GRASSLEY:

OK. Now, what you just told me about immunity, I'm telling you just what common sense tells me that if there's immunity in certain instances, the only simple question we're asking is does that immunity carry over to Congressional committees because we ask for that immunity. The counsel for Meg Llano (ph) denied it and it seems to me a pretty simple question.

If it covers him for Justice Department matters, why wouldn't it cover him so he could testify before Congress? Now, you don't have to talk to that now, but I hope the letter will address that.

Let me go to FBI whistleblowers. The committee has put a bill on the agenda for tomorrow and this is something that Ranking Member Leahy and I really agree on to provide better protection for FBI whistleblowers.

I'd hoped that we would be able to move forward to the bill earlier. It is truly bipartisan legislation that we need to take up. One problem the bill tackles is protection for FBI employees who report wrongdoing within their chain of command. Director Colmy said in December that he supports those protections. Do you support legal protections for FBI employees who report wrongdoings to their supervisor?

LYNCH:

Well, thank you, sir. I think certainly I do support the protection of whistleblowers in general. The situation that you raised I think is also one that we -- all of us in law enforcement have an obligation to support and protect as well.

You're referring to the issues of the incidents of people who report through the chain of command. And I understand that our staffs have been talking about the bill. We appreciate the opportunity to provide comments on it and what I will say is that as we work through this issue, please know that again any concerns that the department raises are not out of a disagreement with the point of view of the protection of whistleblowers, but again just making sure that the FBI's intelligence gathering functions are also protected at the same time.

And we have as I said, appreciate the opportunity to work with your staff on these issues. It's particularly important to all of us in law enforcement because whistleblowers do bring us important information and we often are going to individual citizens and asking them to bring us information. We're going to people who are witnesses outside of government. And so, we try and protect them as well and it's important that we also have strong protections for whistleblowers who are inside government.

GRASSLEY:

Yeah. You used one word that's central to my next issue. Why would there be any reason for not providing these protections to FBI including people involved in the intelligence of the FBI, given

that every other branch employee even including in the intelligence community has that protection? In other words, what's special about -- something about the FBI as much as we respect the FBI?

LYNCH:

Well, I thank you for your statements of respect for the FBI and I appreciate that on their behalf. And certainly, I think that the dialogue that we were having as I indicated hopefully highlights that we certainly support the objective of protecting whistleblowers in every federal agency including the FBI and we certainly support protecting those who report within their chain of command, and as you, yourself, noted within the intelligence community.

And our hope is to make sure that we retain the consistencies of treatment on the intelligence community side for those issues also. And I thank you and your staff for working with us on those points.

GRASSLEY:

And I thank you for working with us. And let me bring up one of those issues that was brought up in these conversations. One of the issues that your department has raised is that allowing FBI employees to report wrongdoing to their chain of command could lead to too many complaints. You know, what's wrong with too many complaints?

I mean, you got a department of -- I don't know. You got 100,000 or 50,000 employees in it, but you're the attorney general. You can't know what's going on all over. It seems to me you would invite every wrongdoing to be reported to somebody so it could get corrected because you can't know about it.

But, anyway -- but it should be seen as a good thing for FBI employees to report wrongdoing. The judiciary committee held a hearing last March where we looked at the Government Accountability Office report. That report found that in a five-year period, only three whistleblowers won their cases and those cases took between eight years and more than 10 years. Certainly, something is wrong with that process.

Last year, the deputy attorney general's office told the Government Accountability Office that it would give whistleblowers updates on their case status but then they told me in a letter that they were just too busy to do that. I'll submit that letter for the record. It does not seem to me like the department has made improving FBI whistleblower protections a priority.

Almost two years ago the department promised it would issue a new regulation. Two years later, we don't even have the proposed regulation. So, question number three, where are the changes at the justice department said it was going to make in April 2014. You weren't even attorney general then. So, I can't blame you. But that's where we are.

LYNCH:

Well, certainly, sir, but regardless of when we certainly will endeavor to respond to you on that point. And as I said before, our concerns are always making sure that we protect whistleblowers and also protect the FBI's law enforcement efforts and -- and deal with the issues raised by there also being a member at the intelligence community.

And I think that our staffs are working well together looking at the specific language of the bill and I do thank you again for that opportunity.

GRASSLEY:

Here is something I think that -- that you ought to be able to give to us. One of the improvements that Justice said it was making for FBI employees was better training rights and legal protection as whistleblowers. Now, you had a training session on this, there was some sort of a video at that training session and we discovered that that video really didn't say much about how whistleblowers are encouraged or protected and reporting up the chain of command or stuff like that. I'm not sure I remembered exactly.

I requested a copy of that training almost a month ago and I have not received it. So I would like to have you get me a copy of a video, a simple thing, a video. Are you able to supply that? I assume that -- yeah, OK, so not to harass you, but I -- but he's going to come back to ask you questions and then I'll be done.

Recently Deputy Attorney General Sally Yates issued a memo that the department will now focus on prosecuting individuals and not just wringing financing statements from corporations. As a said at that time, the department settlement with HSBC was a missed opportunity to bring criminal charges in an enormous money laundering case and this administration failed to prosecute any Wall Street bankers or criminal executives responsible for our financial meltdown.

So the goal of the Yates memo is a good one. So this is something you and I agree on, but President Obama's former Deputy Attorney General James Cole has said that the Yates is "impractical," not based in reality and will lead to very few actual cases against individuals. Is former Attorney General Holder's Deputy correct that this new policy isn't based on reality and how are you going to ensure that individuals are actually prosecuted?

LYNCH:

Well, thank you sir. I think that the memo does reflect review within the Department of Justice that individuals have to be held accountable for their actions particularly in the white collar area. I'm not aware of the context for former Deputy A.G. Cole's comments and so I don't know what was said about that. But what I can tell you is that this memo and this policy were the result of thought and a desire to -- to encapsulate into a specific and clear policy guidance, the view that many of us in the department have and have had for some time that we always have to look at individual accountability.

In particular, as we do white collar cases and interact with corporate council, with the white collar bar, making sure that they also were aware that this was a focus of ours. And as you may recall,

one facet of the policy that I think is very important is that when we cooperate in corporations, that is to say when corporations cooperate with the government, provide us information about wrongdoing within their ranks or that their company has carried out, we will, of course, provide credit for that should it be reliable and of course accurate, but they will not receive any credit if they do not also provide information about individuals who are involved in wrongdoing.

So it is to both incentivize them to give -- put them on notice, that our investigation will be looking at them also. And of course our investigative officers will have their focus on those individuals as well. So that is something that we think will in fact generate results as we interact with -- with corporations who do want to work with the government.

Where we don't have cooperation, we still will continue our focus on individuals and that memo clearly put together in one clear concise policy statement a directive to all the litigating components as well, lawyers at main, justice and in the field, that when we are working on cases involving into corporations that we have to make sure that we completely consider all of the relevant individuals.

And certainly, this is something that many offices have been doing for some time. If you look at the records of individuals who have been prosecuted, I would note that under our Financial Fraud Enforcement Taskforce over 500 individuals have been prosecuted for financial crimes relating to the housing market, the financial markets and the like. But we wanted to make sure that it was clear, it was consistent, it was in one place and that we were focusing on not just the entity but the individuals.

So again, I'm not sure the basis for former Dep. Cole's comments and I can't comment on them not knowing their context, we believe very strongly in this policy. We believe that it will provide results in our investigations and in our cases. And we think it's an important step and a necessary step at making sure that not only are individuals with whom we interact on notice about what we expect from them, but that publicly people are aware of how we conduct our investigations.

GRASSLEY:

Thank you very much. Senator from Minnesota.

FRANKEN:

Thank you, Mr. Chairman. First of all, Attorney General Lynch, thank you for -- for waiting for me or I guess I thank the Chairman too, but for your -- your service basically and it's good to see you again.

LYNCH:

Thank you, sir.

FRANKEN:

I think it's -- there aren't a lot of colleagues here for me to say this to, but I think it's good that we're here doing our job and I think we maybe say that we should continue doing our job when it comes to the -- when the President puts forth a nominee for the Supreme Court and examine the nominee's qualifications and experience.

Attorney General Lynch as I think you're probably aware, I have been a vocal opponent of further consolidation in certain industries particularly in the cable and broadband market. And I appreciate the tough stance that DOJ took on Comcast's proposed acquisition of Time Warner Cable. Now, I know that you cannot discuss the specifics of any deals that are currently being reviewed, but I have a few questions about the way that DOJ analyzes mergers and acquisitions and -- and how DOJ enforce these conditions on when conditions have been -- when mergers have been approved with conditions.

As we saw a file in Comcast acquisition of NBC Universal positions that are placed on deals that are proof can be difficult to endorse and they're not always terribly reliable and also sometimes those conditions expire. In general how can the Department of Justice ensure that merger conditions actually have enough teeth to protect consumers in the long run?

LYNCH:

Well, thank you. This is an important area of focus for the Department of Justice. I think sometimes people think of any trust as sort of a dry arcane area of law. I have always found it to be one of the most vital areas of laws because it deals directly with consumer protection issues, the devices and products that people use every day in their lives and have around them in their homes and business and we seek to make sure that they're protected in their dealings as they make purchases and make those decisions with hard- earned dollars.

When it comes to the enforcement of conditions in our merger agreements, the agreements may provide for certain types of conditions, certain types of reporting for example and we will conduct periodic reviews. But certainly if their -- if their situations or circumstances where individual -- corporations I should say are not meeting those conditions we would not hesitate to take the appropriate steps and take action there.

And either, depending upon how far along the transaction was, take action or consult with the appropriate company and the appropriate board. When it comes to more specifics, certainly I'm happy to have the staff from any trusted division provide a briefing to you on specifics that we have done in those situations if that would be helpful.

FRANKEN:

Well, in some of the cases, I want to talk about this telecom when this Comcast (inaudible) DOJ that has the responsibility of enforcing conditions. And it seems like somewhere they fall into the cracks. And I was wondering how...

LYNCH:



That there might be some -- that there might be that middle place that neither entity is really reviewing as closely as they should in that perspective?

FRANKEN:

Well, there are a number of (inaudible), it seems like FCC doesn't have the resources to -- to enforce conditions.

LYNCH:

We are not able to comment on the FCC's abilities or resources. I haven't had those discussions with them. But as I said, I'm certainly happy to set up a briefing for you (inaudible).

FRANKEN:

OK. Well, this is something that the FCC and DOJ kind of work together on whether to allow merger to go on. Very often specific conditions are put on and then we -- as we saw, their conditions aren't followed. So yes. Let me ask about something Amy brought up, Amy Klobuchar's (inaudible) from Minnesota, which is about combating terrorist recruitment in Minnesota and about the -- the program that was put in place where we were one of the three cities for combating -- it's called Combating Violent Extremism. We prefer to call it Strengthening Community Resilience.

And in Minnesota, we have a large Somali population as you know and at first there were some young people who were recruited to Somalia to fight with Shabaab which is an Al Qaeda affiliate, and that kind of stopped, that happened when Ethiopia had come into -- come into Somalia. But now we're seeing -- we've seen -- and it's not all that many, but it's enough to cause a real alarm and it's very alarming within the community obviously to use -- lose sons and as you mentioned some daughters who are -- are going to Syria or Iraq to fight with -- with ISIS.

And Senator Klobuchar brought up the funding. I just want to bring up the approach which is -- and this is -- this is not an easy needle to thread because we don't want the communities to feel that this is simply some kind of just surveillance of trying to find out who is. On the other hand you want -- and you really want to gain the trust of the community. What have you -- is this something that you've looked at a lot, that you've discussed with, say, Andy Luger in -- in Minnesota?

And what can we do to make those communities feel like we're partnering with them and in a good way and not simply using this as a way of monitoring possible -- for possible terrorists, but actually building resilience within the community?

LYNCH:

Well, Senator I think you've put your finger on -- on the main issue that really hampers a lot of our -- our CVE efforts, which is that as they have been constructed in the past, they certainly have

been taken more as surveillance efforts than this effort to help the community regardless of our intent.

And I think, frankly one of the best things that the twin -- that the twin cities pilot project program did was change the name, as you mentioned from countering violent extremism to strengthening communities. That was one of the number one feedbacks that I have received both as A.G. and as a former U.S. attorney in my interaction with the Muslim community about the nature of the approach, that the initial description cast the program, at least in their eyes, as one more of surveillance in which Muslims were targeted for whatever reason even if it was a positive. And that targeting essentially increased the distrust between them and the government.

So how we approach every -- every distinct community in America is one that I think we have to be -- to think about and seek guidance from, from communities themselves. And I think that the twin cities have done a very, very good job of that.

The other thing that I think and that can be imported to other communities, the other thing that has been happening in the twin cities for a long time now that we are trying to import to other cities is this direct, very, very personal interaction between Federal and local law enforcement and the distinct minority communities. The U.S. Attorney's Office there, Andy Luger, and his predecessor U.S. attorney, have made great personal connections within the Somali community. And without that personal connection and trust, it is very easy to misinterpret our actions and our concerns.

Also, I think we do have to sort of get out of government sometime and realize that the government isn't always the best voice for conveying the appropriate message. As I mentioned earlier, we're working with Madison Avenue as well as Silicon Valley in trying to come up with effective programs to counter violent extremism. So those are the ways...

FRANKEN:

And how are you using Silicon Valley?

LYNCH:

Well, you know, Silicon Valley is also very concerned. As we've discussed, it's not their goal to be a platform for terrorism and they are concerned that they are being used as recruitment tools and as repositories for material that is being absorbed by this vulnerable disaffected young people of varying backgrounds who are then taking it to a deadly extreme. And so they are trying to figure out can they, on their own, come up with programming that will counter what is coming across the air waves and the computer waves. Can they in fact use their terms of service as we've mentioned to take down some content that's there.

But knowing that all of the content is not going to go away and that it will be replaced also, what can they do to generate content that is supportive and different and -- and...

FRANKEN:

Well, again, I think it has a lot to do with interacting with the community. I mean you say that changing the name has been helpful, that could have been done on the front side of that by saying, how do you like this name, you know.

LYNCH:

Yeah.

FRANKEN:

I mean that was -- it seemed like a pretty logical and easy thing to do. If you're talking about what kind of content, is that where you're going to?

LYNCH:

Yes.

FRANKEN:

Silicon Valley needs to be talking to the community because -- and I'm sure that's what you're doing, but that if we're going to counter the propaganda that they are offering, I think there has to be a real cultural understanding and sensitivity. But more than anything -- I know I'm over my time, but I think that to tell you the truth, I'm closer to this obviously than -- than you are, the feeling I get is that there's been a frustration in the lack of resources that have been -- that were -- the feeling was there are more promised than delivered and that I think they would rather see a good -- a soccer field, frankly or a, you know, some place to have fun.

LYNCH:

An after school venue.

FRANKEN:

Yes.

LYNCH:

Yes.

FRANKEN:

I think that's what we're talking about. And that has very well to do with ISIS propaganda. It has more to do with saying the people of the United States, people in Minnesota or Minnesota Senators are fighting for us and we have some challenges and if our young people had better things to do, that that might be helpful. And that there was a kind of promise of money and resources and instead

of, you know, necessarily doing surveillance on this, if you show that you care about our kids and their well-being, that would be -- that would go a really long way to winning over the community.

So there, thank you, Mr. Chairman.

LYNCH:

Thank you, sir. I agree with you.

GRASSLEY:

Thank you, Attorney General Lynch, the record will stay open for one week and you've been a good witness. Thank you very much. And any correspondents we have is an answer that I'd appreciate, answer as quickly as you can get them to us. Thank you very much. The meeting is adjourned.

LYNCH:

Thank you, Mr. Chairman.