

# **ON SALLY YATES' STAND AND THE SESSION'S NOMINATION**

There are some weird details about the reporting on Sally Yates' decision to get fired rather than defend the Muslim ban.

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## **DOJ STILL CLAIMING ITS KID GLOVE OVERSIGHT OF PROSECUTORS IS ADEQUATE**

DOJ's Inspector General is making its perennial complaint that it cannot investigate DOJ's lawyers. What explains the timing of this complaint?

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## **WHY DEMOCRATS MAY EMBRACE JIM COMEY'S SELF-RIGHTEOUSNESS IN 12 MONTHS**

Democrats' views on Comey may flip again in a year's time.

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# **FBI'S DEMOGRAPHICS: NO POT SMOKERS, BUT LOTS OF MIDDLE AGED WHITE MEN**

Jim Comey's FBI has too many white men. Jim Comey also believes that pot smokers don't have integrity. Maybe he should rethink his notion of integrity?

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# **ANTHONY WEINER CREATES A VIRGIN BIRTH FOR EVIDENCE THE CLINTON FOUNDATION INVESTIGATORS WANT**

In addition to reopening the email server investigation, by obtaining a new copy of thousands of Huma Abedin's emails, the FBI has also obtained via separate means information that Clinton Foundation investigators had been prohibited from obtaining.

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# **THE STORY ABOUT JUDICIAL DYSFUNCTION**

# BEHIND THE COMEY WHIPLASH

Former DOJ officials would like you to believe the scandal surrounding Comey's behavior in the Clinton investigation is limited to this particular investigation. But it actually suggests far more is wrong at DOJ.

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## ON THE PASSING OF DAVID MARGOLIS, THE DOJ INSTITUTION

David Margolis was a living legend and giant at the Department of Justice. Now he has passed. Just posted is the following from DOJ:



### Statements From Attorney General Loretta E. Lynch and Deputy Attorney General Sally Q. Yates on the Passing of Associate Deputy Attorney General David Margolis

Attorney General Loretta E. Lynch and Deputy Attorney General Sally Q. Yates released the following statements today on the passing of Associate Deputy Attorney General David Margolis, senior-

most career employee at the Department of Justice.

Statement by Attorney General Lynch:

"David Margolis was a dedicated law enforcement officer and a consummate public servant who served the Department of Justice – and the American people – with unmatched devotion, remarkable skill and evident pride for more than half a century. From his earliest days as a hard-charging young prosecutor with a singular sense of style to his long tenure as one of the department's senior leaders, David took on our nation's most pressing issues and navigated our government's most complex challenges. To generations of Justice Department employees, he was a respected colleague, a trusted advisor and most importantly, a beloved friend. We are heartbroken at his loss and he will be deeply missed. My thoughts and prayers are with David's family, his friends and all who loved him."

Statement by Deputy Attorney General Yates:

"David Margolis was the personification of all that is good about the Department of Justice. His dedication to our mission knew no bounds, and his judgment, wisdom and tenacity made him the "go-to" guy for department leaders for over 50 years. David was a good and loyal friend to all of us, and his loss leaves a gaping hole in the department and in our hearts."

I am sure Mr. Margolis was a kind, personable and decent chap to those who knew and worked with him. I can be sure because there have been many voices I know who have related exactly that. He was undoubtedly a good family man and pillar of his community. None of that is hard to

believe, indeed, it is easy to believe.

Sally Yates is spot on when she says Margolis' "dedication to our [DOJ] mission knew no bounds". That is not necessarily in a good way though, and Margolis was far from the the "personification of all that is good about the Department of Justice". Mr. Margolis may have been such internally at the Department, but it is far less than clear he is really all that to the public and citizenry the Department is designed to serve. Indeed there is a pretty long record Mr. Margolis consistently not only frustrated accountability for DOJ malfeasance, but was the hand which guided and ingrained the craven protection of any and all DOJ attorneys for accountability, no matter how deeply they defiled the arc of justice.

This is no small matter. When DOJ Inspectors General go to Congress to decry the fact that there is an internal protection racket within the Department of Justice shielding even the worst wrongs by Department attorneys, as IG Glen Fine did:

Second, the current limitation on the DOJ OIG's jurisdiction prevents the OIG – which by statute operates independent of the agency – from investigating an entire class of misconduct allegations involving DOJ attorneys' actions, and instead assigns this responsibility to OPR, which is not statutorily independent and reports directly to the Attorney General and the Deputy Attorney General. In effect, the limitation on the OIG's jurisdiction creates a conflict of interest and contravenes the rationale for establishing independent Inspectors General throughout the government. It also permits an Attorney General to assign an investigation raising questions about his conduct or the conduct of his senior staff to OPR, an entity reporting to and supervised by the Attorney General and Deputy Attorney

General and lacking the insulation and independence guaranteed by the IG Act.

This concern is not merely hypothetical. Recently, the Attorney General directed OPR to investigate aspects of the removal of U.S. Attorneys. In essence, the Attorney General assigned OPR – an entity that does not have statutory independence and reports directly to the Deputy Attorney General and Attorney General – to investigate a matter involving the Attorney General's and the Deputy Attorney General's conduct. The IG Act created OIGs to avoid this type of conflict of interest. It created statutorily independent offices to investigate allegations of misconduct throughout the entire agency, including actions of agency leaders. All other federal agencies operate this way, and the DOJ should also.

Third, while the OIG operates transparently, OPR does not. The OIG publicly releases its reports on matters of public interest, with the facts and analysis underlying our conclusions available for review. In contrast, OPR operates in secret. Its reports, even when they examine matters of significant public interest, are not publicly released.

Said fact and heinous lack of accountability for Justice Department attorneys, not just in Washington, but across the country and territories, is largely because of, and jealously ingrained by, David Margolis. What Glen Fine was testifying about is the fact there is no independent regulation and accountability for DOJ attorneys.

They are generally excluded from the Department IG purview of authority, and it is rare, if ever, courts or state bar authorities will formally review DOJ attorneys without going

throughout the filter of the OPR – the Office of Professional Responsibility – within the Department. A protection racket designed and jealously guarded for decades by David Margolis. Even when cases were found egregious enough to be referred out of OPR, they went to....David Margolis.

In fact, attuned people literally called the OPR the “Roach Motel”:

“I used to call it the Roach Motel of the Justice Department,” says Fordham University law professor Bruce A. Green, a former federal prosecutor and ethics committee co-chair for the ABA Criminal Justice Section. “Cases check in, but they don’t check out.”

If you want a solid history of OPR, and the malfeasance it and Margolis have cravenly protected going back well over a decade, please go read “The Roach Motel”, a 2009 article in no less an authority than the American Bar Association Journal. It is a stunning and damning report. It is hard to describe just how much this one man, David Margolis, has frustrated public transparency and accountability into the Justice Department that supposedly works for the citizens of the United States. It is astounding really.

As I wrote back in 2010:

But just as there is an inherent conflict in the DOJ’s use of the fiction of the OPR to police itself, so too does David Margolis have issues giving the distinct appearance of impropriety. Who and what is David Margolis? A definitive look at the man was made by the **National Law Journal** (subscription required):

“Taking him on is a losing battle,” says the source. “The guy is Yoda. Nobody fucks with the guy.”

...

Margolis cut his teeth as an organized-crime prosecutor, and he often uses mob analogies in talking about his career at the Justice Department. When asked by an incoming attorney general what his job duties entailed, Margolis responded: "I'm the department's cleaner. I clean up messes."

The analogy calls to mind the character of Winston Wolfe, played by Harvey Keitel in the 1994 film "Pulp Fiction." In the movie, Wolfe is called in by mob honchos to dispose of the evidence after two foot soldiers accidentally kill a murder witness in the back of their car.

"The Cleaner" Mr. Margolis considered himself, while fastidiously sanitizing gross malfeasance and misconduct by DOJ attorneys, all the while denying the American public the disinfectant of sunshine and transparency they deserve from their public servants (good discussion by Marcy, also from 2010).

Perhaps no single incident epitomized Margolis' determination to be the "cleaner" for the Department of Justice and keep their dirt from public scrutiny and accountability than the case of John Yoo (and to similar extent, now lifetime federal judge Jay Bybee). Yoo as you may recall was the enlightened American who formally opined crushing innocent children's testicles would be acceptable conduct for the United States to engage in. Yoo and Bybee, by their gross adoption of torture, literally personally soiled the reputation of the United States as detrimentally as any men in history.

So, what did David Margolis do in response to the heinous legal banality of evil John Yoo and



Jay Bybee engendered in our name? Margolis cleaned it up. He sanitized it. Rationalized it. Ratified it. Hid it. To such an extent architects of such heinous war crimes are now lifetime appointed federal judges and tenured professors. Because that is what "The Cleaner" David Margolis did. "Protecting" the DOJ from accountability, at all costs, even from crimes against humanity, was simply the life goal of David Margolis, and he was depressingly successful at it.

So, less than 24 hours in to the passing of The Cleaner, is it too early to engage in this criticism? Clearly other career officials at the DOJ think discussing the pernicious effects of Margolis on accountability and transparency are out of bounds.

I wonder what the late Senator Ted Stevens would say in response to the "too soon" mandate of Steven Bressler? Because thanks to the efforts of The Cleaner Margolis, Stevens died without the public knowing what an unethical and craven, if not downright criminal, witch hunt attorneys in the Department of Justice ran on him. Even after Stevens was long gone from office and dead, there was Margolis "cleaning" it all up to protect his precious Justice Department when even the internal OPR found gross misconduct:

Following the Justice Department's agreement in 2009 to vacate the convictions it obtained of former Alaska Senator Ted Stevens, it conducted an internal probe into the conduct of its senior lawyers and—surprise!—exonerated them and itself. It then refused to make the report public. However, at the time the conviction was voided, the presiding judge in Stevens's case, Emmet Sullivan, appropriately wary of the department's ethics office, appointed a special prosecutor, Henry F. Schuelke, III, an eminent Washington attorney and former prosecutor, to probe the DOJ's conduct. Late last week, Schuelke's 525-page

report was released, over the loud objections of DOJ lawyers. The report revealed gross misconduct by the prosecutorial team, stretching over the entire course of the case and reaching into the upper echelons of the department. It concluded there had been “systematic concealment of significant exculpatory evidence which would have independently corroborated [Stevens’s] defense.”

Having laid out the above bill of particulars as to David Margolis, I’d like to return to where we started. As I said in the intro, “I am sure Mr. Margolis was a kind, personable and decent chap”. That was not cheap rhetoric, from all I can discern, both from reading accounts and talking to people who knew Mr. Margolis well, he was exactly that. Ellen Nakashima did a fantastic review of Margolis in the Washington Post last year. And, let’s be honest, the man she described is a guy you would love to know, work with and be around. I know I would. David Margolis was a man dedicated. And an incredibly significant man, even if few in the public understood it.

Say what you will, but Mr. Margolis was truly a giant. While I have no issue delineating what appear to be quite pernicious effects of David Margolis’ gargantuan footprint on the lack of accountability of the Department of Justice to the American citizenry, I have some real abiding respect for what, and who, he was as a man. Seriously, read the Nakashima article and tell me David Margolis is not a man you would love to kill some serious beers with by a peaceful lake somewhere.

But David Margolis, both the good and the bad, is gone now. Where will his legacy live? One of our very longtime friends here at Emptywheel, Avattoir, eruditely said just yesterday:

Focus instead on the institution, not the players. The players are just data

points, hopefully leading to greater understanding of the institutional realities.

Those words were literally the first I thought of yesterday when I received the phone call David Margolis had passed. They are true and important words that I, and all, need to take heed of more frequently.

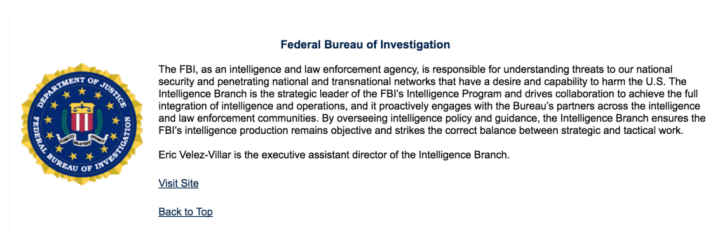
David Margolis, it turns out from all appearances and reports, was a complex man. Clearly great, and clearly detrimental, edges to him. So what will his legacy be at the Department of Justice? Will the closing of the Margolis era, and it was truly that, finally bring the institution of the Department into a modern and appropriate light of transparency, accountability and sunshine?

Or will the dirty deeds of David Margolis' historical ratification and concealment of pervasive and gross misconduct by Department of Justice attorneys become permanently enshrined as a living legacy to the man?

We shall see.

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## BEN WITTES' DELUSION: FBI IS THE INTELLIGENCE COMMUNITY



Ben Wittes has started a series of posts on how

to tyrant-proof the presidency. His first post argues that Jennifer Granick's worries about surveillance and Conor Friedersdorf's worries about drone-killing are misplaced. The real risk, Wittes argues, comes from DOJ.

What would a president need to do to shift the Justice Department to the crimes or civil infractions committed—or suspected—by Trump critics and opponents? He would need to appoint and get confirmed by the Senate the right attorney general. That's very doable. He'd want to keep his communications with that person limited. An unspoken understanding that the Justice Department's new priorities include crimes by the right sort of people would be better than the sort of chortling communications Richard Nixon and John Mitchell used to have. **Want to go after Jeff Bezos** to retaliate for the *Washington Post's* coverage of the campaign? Develop a sudden trust-busting interest in retailers that are "too big"; half the country will be with you. Just make sure you state your non-neutral principles in neutral terms.

[snip]

There are other reasons to expect a politically abusive president to focus on the Justice Department and other domestic, civilian regulatory and law enforcement agencies: one is that the points of contact between these agencies and the American people are many, whereas the population's points of contact with the intelligence community are few. The delusions of many civil libertarians aside, the intelligence community really does focus its activities overseas. To reorient it towards domestic oppression would take a lot of doing. It also has no legal authority to do things like arresting

people, threatening them with long prison terms, fining them, or issuing subpoenas to everyone they have ever met. By contrast, the Justice Department has outposts all over the country. Its focus is primarily domestic. It issues authoritative legal guidance within the executive branch to every other agency that operates within the country. And it has the ability to order people to produce material and testify about whatever it wants to investigate.

What's more, when it receives such material, it is subject to *dramatically* laxer rules as to its use than is the intelligence community. Unlike, say, when NSA collects material under Section 702, when the Justice Department gets material under a grand jury subpoena, there aren't a lot of use restrictions (other than Rule 6(e)'s prohibition against leaking it); and there is no mandatory period after which DOJ has to destroy it. It has countless opportunities, in other words, to engage in oppressive activities, and it is largely not law but norms and human and institutional decency that constrain it.

I don't necessarily disagree with the premise. Indeed, I've argued it for years – noting, for example, that a targeted killing in the US would look a lot more like the killing of Imam Luqman Abdullah in 2009 (or the killing of Fred Hampton in 1969) than drone killing of Anwar al-Awlaki in 2011 (given that Abdullah's selling of stolen items got treated as terrorism in part because of his positive statements about Awlaki, it is not inconceivable FBI started infiltrating his mosque because of SIGINT).

My gripe (I have to have gripes because it is Wittes) is on two points. First, Wittes far overestimates how well the protections against abuse currently work. He seems to believe the Levi Guidelines remain in place unchanged, that

the 2008 and 2011 and serial secret changes to the Domestic Investigations and Operations Guide since then have not watered down limits on investigations for protected activities. He suggests it was a good thing to use prosecutorial discretion to chase drugs in the 1990s and terrorism in the 2000s, and doesn't consider why the rich donors who've done as much damage as terrorists to the country – the banksters, even those that materially supported terrorists – have gotten away with wrist-slap fines. It was not a good thing to remain obsessed with terrorists while the banksters destroyed our economy through serial global fraud (a point made even by former FBI agents).

We already have a dramatically unequal treatment of homegrown extremists in this country based on religion (compare the treatment of the Malheur occupiers with that of any young Muslim guy tweeting about ISIS who then gets caught in an FBI sting). We *already* treat Muslims (and African Americans and – because we're still chasing drugs more than we should – Latinos) differently in this country, even though the guy running for President on doing so as a campaign plank isn't even in office yet!

The other critical point Wittes missed in his claim that "delusional" civil libertarians don't know that "the intelligence community really does focus its activities overseas" is that DOJ, in the form of FBI and DEA, *is* the Intelligence Community, and *their* intelligence focus is not exclusively overseas (nor is the intelligence focus of other IC members DHS – which has already surveilled Black Lives Matter activists – and Treasury). The first dragnet was not NSA's, but the DEA one set up under Bill Clinton. One big point of Stellar Wind (which is what Wittes mocked Granick for focusing on) was to feed FBI tips of people the Bureau should investigate, based solely on their associations. And while Wittes is correct that "when the Justice Department gets material under a grand jury subpoena, there aren't a lot of use restrictions (other than Rule 6(e)'s prohibition

against leaking it); and there is no mandatory period after which DOJ has to destroy it," it is equally true of when FBI gets raw 702 data collected without grand jury scrutiny.

FBI can conduct an assessment to ID the racial profile of a community with raw 702 data, it can use it to find and coerce potential informants, and it can use it for non-national security crimes. That's the surveillance Wittes says civil libertarians are delusional to be concerned about, being used with inadequate oversight in the agency Wittes himself says we need to worry about.

Four different times in his post, Wittes contrasts DOJ with the intelligence community, without ever considering what it means that DOJ's components FBI and DEA are actually part of it, that part of it that takes data obtained from NSA's surveillance and uses it (laundered through parallel construction) against Americans. You can't *contrast* the FBI's potential impact with that of the IC as Wittes does, because the FBI is (one of) the means by which IC activities impact Americans directly.

Yes, DOJ is where President Trump (and President Hillary) might abuse their power most directly. But in arguing that, Wittes is arguing that the President can use the intelligence community abusively.

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## **SALLY YATES DOTH PROTEST TOO MUCH**

Some months ago Ninth Circuit Judge Alex Kozinski wrote an important piece talking about the many way criminal prosecutions are not fair. A lot of it focused on the imperfect process behind key ingredients of prosecutions – eye witness testimony, fingerprint analysis, plea

deals. But he also reprised his argument that we've seen an epidemic of Brady violations in recent years.

The Supreme Court has told us in no uncertain terms that a prosecutor's duty is to do justice, not merely to obtain a conviction.<sup>38</sup> It has also laid down some specific rules about how prosecutors, and the people who work for them, must behave—principal among them that the prosecution turn over to the defense exculpatory evidence in the possession of the prosecution and the police.<sup>39</sup> There is reason to doubt that prosecutors comply with these obligations fully. The U.S. Justice Department, for example, takes the position that exculpatory evidence must be produced only if it is material.<sup>40</sup> This puts prosecutors in the position of deciding whether tidbits that could be helpful to the defense are significant enough that a reviewing court will find it to be material, which runs contrary to the philosophy of the Brady/Giglio line of cases and increases the risk that highly exculpatory evidence will be suppressed. Beyond that, we have what I have described elsewhere as an “epidemic of Brady violations abroad in the land,”<sup>41</sup> a phrase that has caused much controversy but brought about little change in the way prosecutors operate in the United States.

As Zoe Tillman writes, the DOJ is rolling out an effort to tell itself that the mean things said by a top Appellate judge aren't true. Deputy Attorney General Sally Yates is going to give a speech telling prosecutors not to listen to that mean bully.

Deputy Attorney General Sally Yates on Tuesday is expected to deliver a rallying speech to a meeting of prosecutors that is a further



response—albeit indirect—to Kozinski’s article.

Yates will say that the “overwhelming majority” of prosecutors honor their legal and ethical obligations, including the requirement that they turn over potentially favorable information to defense lawyers, according to a copy of her prepared remarks.

Yates’ planned remarks criticize defense lawyers who make allegations of prosecutorial misconduct “a standard litigation strategy,” and others who “irresponsibly” make misconduct allegations.

“Prosecutors are in these jobs because we care about our solemn obligation to seek justice, and when someone unfairly impugns that commitment, it strikes at the core of who we are,” Yates, who will speak at the National Prosecution Summit in Washington, is expected to say.

And the Associate Deputy Attorney General Andrew Goldsmith and U.S. Attorney John Walsh of Colorado wrote this letter, attempting to rebut that mean bully.

On its face, the entire effort is farcical. In recent years, DOJ has rewarded lawyers who helped it get away with misconduct. It failed, for years to give proper notice of Section 702 surveillance to defendants, and still hasn’t corrected the record with the Supreme Court about its false claim that it had been doing so. And until this summer, David Margolis served as an unwavering shield against DOJ actually disciplining its own.

But the funniest part of DOJ’s pushback is this paragraph from Goldsmith and Walsh’s letter.

On several occasions, Judge Kozinski referenced the prosecution of former senator Ted Stevens. The Stevens case,

as others have noted, involved significant discovery failures and deserves to be held up as an object lesson to prosecutors. But the Department's efforts in the aftermath of that case also deserve discussion. One of Eric Holder's first acts after his swearing in as Attorney General was to seek dismissal of the conviction. In the months that followed, the Department undertook a sweeping review of its discovery-related procedures and instituted a string of new policies. All federal prosecutors, regardless of experience level, are now required to attend annual discovery trainings, while new prosecutors must attend rigorous, multi-day "discovery boot camps." The Department developed a series of new policies governing the collection and disclosure of electronically stored information. And the Department established an extensive infrastructure of experienced prosecutors to focus on discovery issues, including a full-time national criminal discovery coordinator (who reports directly to the Deputy Attorney General, second only to the Attorney General herself at the Department of Justice) and discovery coordinators at each of the 93 U.S. Attorney's Offices across the country.

That mean bully Alex Kozinski was wrong to bring up the time DOJ engaged in willful prosecutorial misconduct even of one of the most powerful men in the country, they say, because when caught doing so DOJ rolled out a system to try to prevent that from happening again.

Except that's not all DOJ did. First, it went to great lengths to hide the independent review of its actions – a review which showed fairly rampant abuse. Then, when it conducted its own discipline of those who engaged in that abuse, it not only focused on the lower level

prosecutors, but it also did nothing more than slap their wrists.

A Justice Department internal investigation of the botched prosecution of Ted Stevens concluded two prosecutors committed reckless professional misconduct and should be sanctioned through forced time off without pay.

DOJ officials recommended Joseph Bottini be suspended without pay for 40 days and James Goeke be suspended for 15 days without pay. DOJ did not find that either prosecutor acted intentionally to violate ethics rules, a finding that is contrary to a parallel criminal investigation.

Again, the Stevens case is a picture of what happens when prosecutorial misconduct is wielded against a very powerful white man – someone far more protected from abuse than the average federal defendant – and this is how things ended up, with a wrist-slap.

Maybe under her tenure, Yates plans to change this. Or maybe she just wants prosecutors not to worry too much about that bully in the Ninth.

But she needs to prove her intent through actions, not words, and thus far there's little sign of those actions.

Update: Patrick Toomey also reminds me that DOJ the National Association of Criminal Defense Lawyers has been trying to get DOJ to share its guidelines on Brady, but thus far they've refused to give it over. NACDL has now appealed that to the DC Circuit.

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# IN HIS LATEST “EAT THE JOURNALISTS FOR LUNCH” LUNCH, JIM COMEY FLIRTS WITH FERGUSON EFFECT

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<i>Years</i>	<i>Violent crime<sup>1</sup></i>	<i>Violent crime rate</i>	<i>Murder and nonnegligent manslaughter</i>	<i>Murder and nonnegligent manslaughter rate</i>
2014/2013	-0.2	-1.0	-0.5	-1.2
2014/2010	-6.9	-9.6	-3.2	-6.1
2014/2005	-16.2	-22.1	-14.9	-20.8

ly, Jim Comey invites a group of select journalists in for lunch and eats them alive with his charisma and unsubstantiated claims. The first I noticed came when Comey made some false claims about National Security Letters, without a single journalist correcting him. More recently, Comey claimed FBI had arrested 10 people with ties to ISIS, only two of whom have every publicly appeared.

In this week’s edition, Comey got passionate about a claimed spike in crime.

And in unusually passionate remarks, the FBI director said he was “very concerned about what’s going on now with violent crime and murder rates across the country,” in cities as disparate as Omaha and Milwaukee.

At least in this instance, journalists are getting less credulous, because most (though not CNN) reported that in fact the crime stats released this week show a decline in crime, not a spike, even while they reported that violent crime in “many” cities has spiked.

NPR:

Newly released federal data suggest a slight dip in violence across the nation in 2014. But Comey said those numbers may not be capturing what's happening on the ground today. He's been hearing similar concerns from police chiefs, he said.

WSJ:

Earlier this week, the FBI released data showing violent crime dropped slightly in 2014, but many big city police departments have reported significant jumps in shootings this year compared with last year.

HuffPo:

In 2014, the number [of murders in NYC] had dropped to 328 – the lowest number of murders since the New York City Police Department began collecting statistics in 1963.)

None I saw, however, pointed out that the claim of a spike in “many” cities stems from a persistent propaganda effort that has been debunked as cherry-picking. Yes, there are a few cities with alarming spikes in violence, but they should be examined as cities, not as a trend that the FBI’s own data shows is moving in the opposite direction.

In his comments, Comey didn’t endorse the Ferguson effect. But he *did* say we need to move slowly on criminal justice reform both because of this alleged spike and because crime has gone down (!?!). Still from the HuffPo:

Comey said he didn’t know whether protests against police violence have made it harder for police to do their jobs, a theory that has been dubbed the “Ferguson effect.” “I’m not discounting

it, but I just don't know," he said, adding that he was "focused on it, trying to figure it out."

"Some have said police officers aren't getting out of their cars and talking to gang-bangers on street corners anymore, but I don't know," he said. "What I do know is that a whole lot of people are dying. They are, according to the chiefs, overwhelmingly people of color, and we've got to care about that."

The spike in crime made him want to be "thoughtful" on criminal justice reform, Comey added.

"My strong sense is that a significant portion of the change in our world since I was a prosecutor in New York in 1987 is due to law enforcement, but I'm sure there are lots of other things [going on]," he said.

"I just want to make sure that as we reform – first of all, we're grateful that we actually have the space and time to think and talk about sentencing better, rehabilitating better, and [that] is a product of hard work over the past 25 years – but as we do it, are very, very thoughtful about where we used to be and how we got from that point to here," Comey said.

As with encryption back doors, the data is not there (on that issue, DOJ simply doesn't collect data on how often encryption prevents it from accessing data). But that's not going to stop him from cautioning against criminal justice reform.