

# JOHN BRENNAN DENIES A SPECIAL HARRY REID BRIEFING

This passage from John Brennan's testimony about Russia to the House Intelligence Committee yesterday has gotten a lot of attention:

Through the so-called Gang of Eight process, we kept Congress apprised of these issues as we identified them. Again, in consultation with the White House, I personally briefed the full details of our understanding of Russian attempts to interfere with the election to Congressional leadership, specifically Senators Harry Reid, Mitch McConnell, Dianne Feinstein, and Richard Burr, and to Representatives Paul Ryan, Nancy Pelosi, Devin Nunes, and Adam Schiff between 11 August and 6 September. I provided the same briefing to each of the Gang of Eight members.

Given the highly sensitive nature of what was an active counterintelligence case involving an ongoing Russian effort to interfere in our presidential election, the full details of what we knew at the time were shared *only* with those members of Congress, each of whom was accompanied by one senior staff member. The substance of those briefings was entirely consistent with the main judgments contained in the January classified and unclassified assessments, namely that Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton and harm her electability and potential presidency and to help President Trump's election chances.

The passage has been used to question why GOP leaders, most especially Mitch McConnell, didn't

react more strongly, particularly given public reports that he wouldn't sign onto a more aggressive statement about Russian efforts.

As I noted in this post, the record thus far reflects a difference in emphasis (on protecting the election systems rather than on Russian attempts to hurt Clinton).

But I want to look more closely at what Brennan actually said.

His description of the briefings seems to be a denial of what I laid out in this post – the NYT report that he gave Harry Reid a special briefing (one which may have been based on the Christopher Steele dossier) that was more alarming than others.

## ***CIA DIRECTORS SHOULD NOT MEET WITH JUST ONE GANG OF EIGHT MEMBER***

The second detail I find most interesting in this story is that John Brennan privately briefed Harry Reid about his concerns about the Russians.

John O. Brennan, the C.I.A. director, was so concerned about the Russian threat that he gave an unusual private briefing in the late summer to Harry Reid, then the Senate Democratic leader.

Top congressional officials had already received briefings on Russia's meddling, but the one for Mr. Reid appears to have gone further. In a public letter to Mr. Comey several weeks later, Mr. Reid said that "it has become clear that you possess explosive information about close ties and

coordination between Donald Trump, his top advisors, and the Russian government – a foreign interest openly hostile to the United States.”

While I’m generally sympathetic to Democrats’ complaints that DOJ should have either remained silent about both investigations or revealed both of them, it was stupid for Brennan to give this private briefing (and I hope he gets grilled about it by HPSCI when he testifies in a few weeks). In addition to the things Reid said publicly about the investigation, it’s fairly clear he and his staffers were also behind some of the key leaks here (and, as CNN reported yesterday, leaks about the investigation actually led targets of it to alter their behavior). For reasons beyond what appears in this story, I think it likely Reid served as a cut-out for Brennan.

And that’s simply not appropriate. There may well have been reasons to avoid briefing Richard Burr (who was advising Trump). But spooks should not be sharing information with just one party. CIA did so during its torture cover-up in ways that are particularly troubling and I find this – while not as bad – equally problematic.

When Brennan said he “provided the same briefing to each of the Gang of Eight members,” he might be seen as denying that the briefing to Reid was anything unusual.

Except this NYT article describes Reid’s as taking place in “late summer” and describes top officials as already having received briefings. Another NYT article describes the special briefing for Reid as having taken place on August 25.

In an Aug. 25 briefing for Harry Reid, then the top Democrat in the Senate, Mr. Brennan indicated that Russia's hackings appeared aimed at helping Mr. Trump win the November election, according to two former officials with knowledge of the briefing.

The officials said Mr. Brennan also indicated that unnamed advisers to Mr. Trump might be working with the Russians to interfere in the election. The F.B.I. and two congressional committees are now investigating that claim, focusing on possible communications and financial dealings between Russian affiliates and a handful of former advisers to Mr. Trump. So far, no proof of collusion has emerged publicly.

Mr. Trump has rejected any suggestion of a Russian connection as "ridiculous" and "fake news." The White House has also sought to **redirect the focus** from the investigation and toward what Mr. Trump has said, with no evidence, was President Barack Obama's wiretapping of phones in Trump Tower during the presidential campaign.

The C.I.A. and the F.B.I. declined to comment for this article, as did Mr. Brennan and senior lawmakers who were part of the summer briefings.

In the August briefing for Mr. Reid, the two former officials said, Mr. Brennan indicated that the C.I.A., focused on foreign intelligence, was limited in its legal ability to investigate possible connections to Mr. Trump. The officials said Mr. Brennan told Mr. Reid that the F.B.I., in charge of domestic intelligence, would have to lead the way.

As described by the NYT, the Reid briefing went

beyond what Brennan says he briefed all the Gang of Eight members on, specially with regards to Trump advisors working with Russia. It's possible Brennan briefed Reid twice.

Much later in the hearing, Trey Gowdy asked Brennan about the Steele dossier. Some of Brennan's responses – especially his claim not to know who commissioned the Steele dossier; watch him play with his pen – were not all that believable. Brennan went on to say that the CIA didn't rely on the dossier, but his denial pertained to the IC report on the hack.

It wasn't part of the corpus of intelligence, uh, information that we had. It was not in any way used as a basis for the intelligence community assessment that was done, uh, it was not.

Note the funny mouth gesture which used to be Brennan's main "tell."

Gowdy being Gowdy was not smart enough to ask whether the dossier was ever used in a briefing to members of Congress.

As I have noted, the IC denials pertaining to the dossier are, um, unconvincing (one two three). That's all the more true given that Steele has admitted to sharing copies of his dossier with his former employer, who would naturally share with Brennan (elsewhere in the hearing Brennan refused to address what our foreign partners had shared with us).

In any case, it seems to me the question is not so much whether McConnell blew off the seriousness of the Brennan warning, but, still, whether Reid received another briefing—perhaps outside that date scope—that included information McConnell didn't get.

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# DID POMPEO ALSO GET AN OBSTRUCTION CALL FROM TRUMP?

The WaPo reports that Trump called both Admiral Mike Rogers and Dan Coats to ask if they could issue statements denying any collusion between Trump's campaign and Russia.

Trump made separate appeals to the director of national intelligence, Daniel Coats, and to Adm. Michael S. Rogers, the director of the National Security Agency, urging them to publicly deny the existence of any evidence of collusion during the 2016 election.

Coats and Rogers refused to comply with the requests, which they both deemed to be inappropriate, according to two current and two former officials, who spoke on the condition of anonymity to discuss private communications with the president.

If Trump was calling spooks, he presumably would have called all spooks, including CIA Director Mike Pompeo (with whom he is probably closer than the other two). So why aren't we hearing about that call? Is Pompeo just better at keeping secrets than his counterparts? Or is he hiding it because he didn't object as strongly as his counterparts?

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## THE KUSHNER-COMEY CONNECTION

The WaPo is reporting that the FBI probe into ties between Russia and Trump's campaign is

looking at a person still in the White House, in addition to Mike Flynn and Paul Manafort.

The law enforcement investigation into possible coordination between Russia and the Trump campaign has identified a current White House official as a significant person of interest, showing that the probe is reaching into the highest levels of government, according to people familiar with the matter.

Further down in the article, WaPo names some people that might be this other person of interest – but just one of them is actually *in* the White House.

Current administration officials who have acknowledged contacts with Russian officials include President Trump's son-in-law, Jared Kushner, as well as Attorney General Jeff Sessions and Secretary of State Rex Tillerson.

Still further down, the WaPo covers what first got me believing Jared Kushner is the ultimate target of this probe: his meeting with Sergey Gorkov, the FSB-trained head of the sanctioned Russian bank, Vnesheconombank.

The White House also has acknowledged that Kushner met with Kislyak, the Russian ambassador to the United States, in late November. Kushner also has acknowledged that he met with the head of a Russian development bank, Vnesheconombank, which has been under U.S. sanctions since July 2014. The president's son-in-law initially omitted contacts with foreign leaders from a national security questionnaire, though his lawyer has said publicly he submitted the form prematurely and informed the FBI soon after that he would provide an update.

Vnesheconombank handles development for

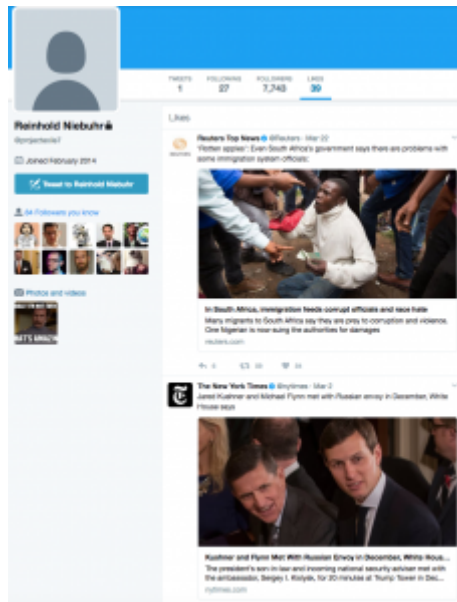
the state, and in early 2015, a man purporting to be one of its New York-based employees was arrested and accused of being an unregistered spy.

That man – Evgeny Buryakov – ultimately pleaded guilty and was eventually deported. He had been in contact with former Trump adviser Carter Page, though Page has said he shared only “basic immaterial information and publicly available research documents” with the Russian. Page was the subject of a secret warrant last year issued by the Foreign Intelligence Surveillance Court, based on suspicions he might have been acting as an agent of the Russian government, according to people familiar with the matter. Page has denied any wrongdoing, and accused the government of violating his civil rights.

As I’ve noted since, there was a lot of smoke coming from Kushner’s direction: first, SSCI’s explicit interest in interviewing Kusher and then two competing stories about a Trump request for CIA’s Sergey Kislyak dossier that only makes sense if the audience were Kushner, not Flynn.

But there are a few more dots (in addition to people claiming to have confirmed this point) that support the idea that Kushner is the ultimate target here, and that Trump, in his clumsy attempts to protect Mike Flynn by firing Jim Comey, is actually attempt to protect the father of his grandchildren.





Back on March 2, Jim Comey's then still secret Twitter account favorited this NYT article disclosing that Mike Flynn had a previously undisclosed face-to-face meeting with Sergey Kislyak at Trump Tower. (h/t TC)

Michael T. Flynn, then Donald J. Trump's incoming national security adviser, had a previously undisclosed meeting with the Russian ambassador in December to "establish a line of communication" between the new administration and the Russian government, the White House said on Thursday.

Jared Kushner, Mr. Trump's son-in-law and now a senior adviser, also participated in the meeting at Trump Tower with Mr. Flynn and Sergey I. Kislyak, the Russian ambassador. But among Mr. Trump's inner circle, it is Mr. Flynn who appears to have been the main interlocutor with the Russian envoy – the two were in contact during the campaign and the transition, Mr. Kislyak and current and former American officials have said.

[snip]

They generally discussed the relationship and it made sense to establish a line of communication," Ms.

Hicks said. “Jared has had meetings with many other foreign countries and representatives – as many as two dozen other foreign countries’ leaders and representatives.”

The story was presented as White House confirmation of earlier New Yorker reporting that Kushner had the meeting, with the White House newly disclosing Flynn’s presence at it. But we now know that the representation that Kushner’s meeting with Kislyak was just one of a slew of meetings with foreign leaders wasn’t quite right. He had sent an aide to a subsequent meeting, and coming out of that meeting, he met with Gorkov, basically meeting with someone personally lobbying to get rid of Ukraine-related sanctions.

Later that month, though, Mr. Kislyak requested a second meeting, which Mr. Kushner asked a deputy to attend in his stead, officials said. At Mr. Kislyak’s request, Mr. Kushner later met with Sergey N. Gorkov, the chief of Vnesheconombank, which the United States placed on its sanctions list after President Vladimir V. Putin of Russia annexed Crimea and began meddling in Ukraine.

Of course, while we only learned that fact later, when Comey favorited that story on March 2, he would have known the full details of the follow-up communications. In other words, he would recognize that story as yet another case of the White House hiding Russian communications. He would also likely already know that Kushner had not included that meeting on his security clearance form.

We only learned that story on March 27, when the NYT revealed the Senate Intelligence Committee wanted to interview Kushner about the meeting. As I noted at the time, the discussion between Gorkov and Kushner, coming before Flynn’s

December 29 discussions with Kislyak, would dramatically change the connotation of Flynn's discussions of sanctions. Because, while the immediate context of the December 29 discussions would have been the new hacking related sanctions imposed on December 28, with the prior meeting with Gorkov, they would likely also include the Ukrainian ones. That was the payoff discussed in any quid pro quo related to the election: Putin would help elect Trump, and in exchange Trump would end economic sanctions.

Of course, to make the argument that Flynn was offering to give Russia the payoff for the election-related help, you'd have to get Flynn to cooperate. If you got Flynn to cooperate, he'd be able to tell the FBI whether or not those December 29 conversations pertained just to the hacking sanctions or also to the Ukrainian ones.

The FBI has a great many things they can and will use to get Flynn to cooperate, including his undisclosed foreign payments and his lies to the FBI in his January 24 interview.

[Large section based off erroneous reading of Wittes' post removed.]

When Trump fired Comey, he claimed that Comey had thrice told him "he" wasn't under investigation. Even assuming Comey did, consider how Trump would understand that and how normal people would. To us, "he" would include just Trump. But to someone like Trump whose only real loyalty is to family, "he" would include his family. Including Kushner.

Trump may well think Flynn is a nice man that deserves his loyalty. More likely, though, Trump knows that Flynn could sink his son-in-law. I believe that's why Trump had to fire Comey in an effort to undercut the Flynn investigation.

And Rod Rosenstein, the survivor, just picked a partner from the firm of Kushner and Ivanka's lawyer Jamie Gorelick, Robert Mueller, to take over the investigation into Flynn.

Update: Sure enough, Reuters is reporting that Mueller, by design, may not be able to investigate Kushner or Paul Manafort.

Within hours of Mueller's appointment on Wednesday, the White House began reviewing the Code of Federal Regulations, which restricts newly hired government lawyers from investigating their prior law firm's clients for one year after their hiring, the sources said.

An executive order signed by Trump in January extended that period to two years.

Mueller's former law firm, WilmerHale, represents Trump's son-in-law Jared Kushner, who met with a Russian bank executive in December, and the president's former campaign manager Paul Manafort, who is a subject of a federal investigation.

Legal experts said the ethics rule can be waived by the Justice Department, which appointed Mueller. He did not represent Kushner or Manafort directly at his former law firm.

If the department did not grant a waiver, Mueller would be barred from investigating Kushner or Manafort, and this could greatly diminish the scope of the probe, experts said.

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## **THE SCOPE OF THE SPECIAL COUNSEL**

# APPOINTMENT IS TOTALLY INADEQUATE

Rod Rosenstein just appointed former FBI Director (and, before that, US Attorney) Robert Mueller as Special Counsel to take over the investigation into Trump and his associates.

I'm agnostic about the selection of Mueller. He has the benefit of credibility among FBI Agents, so will be able to make up for some of what was lost with Jim Comey's firing. He will be regarded by those who care about such things as non-partisan. With Jim Comey, Mueller stood up to Dick Cheney on Stellar Wind in 2004 (though I think in reality his willingness to withstand Cheney's demands has been overstated).

But Mueller has helped cover up certain things in the past, most notably with the Amerithrax investigation.

My bigger concern is with the scope, which I believe to be totally inadequate.

Here's how the order describes the scope:

(b) The Special Counsel is authorized to conduct the investigation confirmed by then-FBI Director James R. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including:

(i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and

(ii) any matters that arose or may arise directly from the investigation; and

(iii) any other matters within the scope of 28 C.F.R. § 600.4(a).

As I read this, it covers *just* the investigation

into ties between the Russian government and people associated with Trump's campaign. Presumably, that includes Mike Flynn, Paul Manafort, and Carter Page, among others.

But there are other aspects of the great swamp that is the Trump and Russia orbit that might not be included here. For example, would Manafort's corrupt deals with Ukrainian oligarchs be included? Would Flynn's discussions with Turkish officials, or Rudy Giuliani's attempt to excuse Turkey's violation of Iran sanctions? Would the garden variety money laundering on behalf of non-governmental Russian mobbed up businessmen be included, something that might affect Manafort, Jared Kushner, or Trump himself?

And remember there are at least two other aspects of the Russian hacking investigation. Back in February, Reuters reported that San Francisco's office was investigating Guccifer 2.0 and Pittsburgh was investigating the actual hackers. Somewhere (San Francisco would be the most logical spot), they're presumably investigating whoever it is that has been dumping NSA's hacking tools everywhere. I've learned that that geography has either changed, or there are other aspects tied to those issues in other corners of the country.

Plus, there's the Wikileaks investigation in EDVA, the same district where the Mueller-led investigation might reside, but a distinct investigation.

Any one of those investigations might present strings that can be pulled, any one of which might lead to the unraveling of the central question: did Trump's associates coordinate with the Russian government to become President. Unless Mueller can serve to protect those other corners of the investigation from Trump's tampering, it would be easy to shut down any of them as they become productive.

Yet, as far as I understand the scope of this, Mueller will only oversee the central question,

leaving those disparate ends susceptible to Trump's tampering.

Update: In its statement on the appointment, ACLU raises concerns about whether this would include the investigation into Trump's attempt to obstruct this investigation.

Update: WaPo's Philip Rucker reminds that Mueller is law firm partners with Jamie Gorelick, who has been representing both Ivanka and Kushner in this issue.

Update: Mueller is quitting WilmerHale to take this gig. He's also taking two WilmerHale former FBI people with him. Still, that's a close tie to the lawyer of someone representing key subjects of this investigation.

Update: One addition to the ACLU concern about investigating the Comey firing. In the most directly relevant precedent, the Plame investigation, when Pat Fitzgerald expanded his investigation from the leak of Plame's identity to the obstruction of the investigation, he asked for approval to do so from the Acting Attorney General overseeing the investigation – in that case, Jim Comey.

The Acting Attorney General in this case is Rod Rosenstein. So if Mueller were as diligent as Fitzgerald was, he would have to ask the guy who provided the fig leaf for Comey's firing to approve the expansion of the investigation to cover his own fig leaf.

Update: Petey noted to me that Jeff Sessions' narrow recusal may limit how broadly Rosenstein's order may be drawn. It's a really interesting observation. Here's what I said about Sessions' recusal (which is very similar to what I tried to address in this post).

There are two areas of concern regarding Trump's ties that would not definitively be included in this recusal: Trump's long-term ties to mobbed up businessmen with ties to Russia (a matter not known to be under investigation but which

could raise concerns about compromise of Trump going forward), and discussions about policy that may involve quid pro quos (such as the unproven allegation, made in the Trump dossier, that Carter Page might take 19% in Rosneft in exchange for ending sanctions against Russia), that didn't involve a pay-off in terms of the hacking. There are further allegations of Trump involvement in the hacking (a weak one against Paul Manafort and a much stronger one against Michael Cohen, both in the dossier), but that's in no way the only concern raised about Trump's ties with Russians.

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## TRUMP SHOULD GET NO FBI DIRECTOR PICK

Yesterday, Mike Lee trolled Democrats by suggesting that Merrick Garland, who has a lifetime seat on the DC Circuit, should vacate that and lead the FBI. In a piece explaining how utterly moronic the many Democrats who took his bait are, Dave Weigel explains this is "Why Liberals Lose" – not just because they never press for advantage effectively, but because they so often fall prey when Republicans do.

We live in a golden age of political stupidity, but I'm not being hyperbolic when I say this: The idea of pulling Judge Merrick Garland off the D.C. Circuit federal appeals court and into the FBI is one of the silliest ideas I've seen anyone in Washington fall for. It's like Wile E. Coyote putting down a nest made of dynamite and writing "NOT A TRAP" on a whiteboard next to it. It's also an incredibly telling chapter in the book that's been written since the



Republican National Convention – the story of how Republicans who are uncomfortable with the Trump presidency gritting their teeth as they use it to lock in control of the courts.

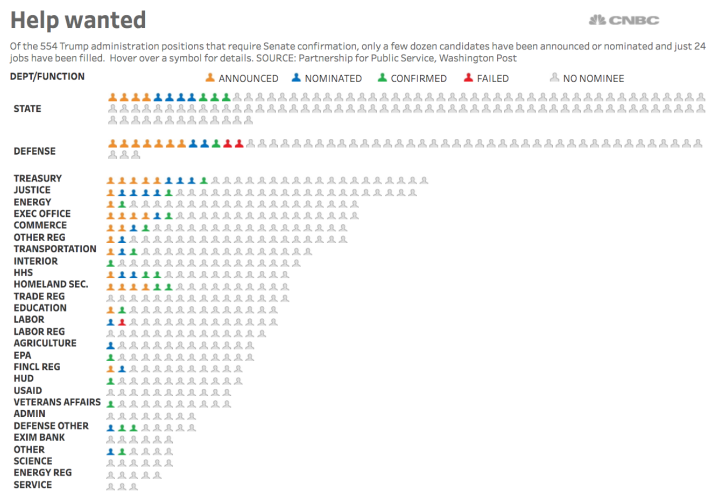
You should definitely read all of Weigel’s piece, which is spot on.

But there are other aspects that the success of Lee’s play explain about Why Liberals Lose. First and foremost, it shows how mindlessly Democrats adopt the playing field that Republicans deal them.

I mean, even as Democrats have been pushing for months to use the Russian scandal to impeach Trump, and even at the moment where that actually seems feasible (down the road), most Democrats simply accepted the necessity of replacing Jim Comey and have shifted instead to fighting the worst names being floated, people like Trey Gowdy (an initial trial balloon) and Alice Fisher and Michael Garcia, who’re reportedly being formally considered.

Why are Democrats even accepting that Trump should get to replace Comey?

According to CNBC’s count from mid-April, Trump had filled just 24 of the 554 Senate confirmed positions in government.



Sure, Trump has filled a handful more in the interim month, but Trump is otherwise not in a

rush to staff the government. Yet he has immediately turned to replacing Comey.

There is nothing more illegitimate than for Trump to be able to give someone a ten year term as FBI Director because he fired Jim Comey.

Trump is no longer hiding the fact that he fired Comey to try to undercut the Russian investigation. And the timeline is clear: the dinner to which Trump called Comey to twice demand his loyalty took place on January 27.

As they ate, the president and Mr. Comey made small talk about the election and the crowd sizes at Mr. Trump's rallies. The president then turned the conversation to whether Mr. Comey would pledge his loyalty to him.

Mr. Comey declined to make that pledge. Instead, Mr. Comey has recounted to others, he told Mr. Trump that he would always be honest with him, but that he was not "reliable" in the conventional political sense.

[snip]

By Mr. Comey's account, his answer to Mr. Trump's initial question apparently did not satisfy the president, the associates said. Later in the dinner, Mr. Trump again said to Mr. Comey that he needed his loyalty.

Mr. Comey again replied that he would give him "honesty" and did not pledge his loyalty, according to the account of the conversation.

That means it took place the same day of Sally Yates' second conversation with Don McGahn about FBI's investigation into Mike Flynn (and by association, I always point out, Jared Kushner).

It was always a pipe dream for Democrats to think they could stave off Neil Gorsuch's confirmation, in part because you really do need

a full panel at SCOTUS.

But for the moment, the FBI will continue to run the same way the rest of government is running: with the acting officials who're filling in until Trump gets around to filling the spot. Moreover, Andrew McCabe, the Acting FBI Director, is a Comey loyalist who will ensure his initiatives will continue for whatever portion of Comey's remaining 6 years he gets to serve.

This is important not just for the Russian investigation – it's important to the future of our democracy. Alice Fisher, for example, would be an even more insanely pro-corporate FBI Director than Comey (former Board Member of HSBC, remember) or Mueller.

Democrats should be out there, loudly and in unison, decrying how inappropriate it would be for Trump to get to replace Comey when everyone watching knows the firing was one of the most corrupt things a President has done in a century.

Instead, they're falling prey to Mike Lee's obvious ploys.

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## **A LETTER FOR ROD ROSENSTEIN TO REMEMBER**



Before  
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still plays in words that conveyed huge situations beyond the mere words. One was “A Night To Remember”. Yes, even before the famous movie (and before the sappy and stupid “Titanic” decades later), it was an earlier book about the Titanic disaster. There are daily shipwrecks as significant as that now in the Age of Trump.

Today, specifically, we have the issue of a Titanic level shipwreck President crashing the country out of pettiness and ignorance like the United States has never ostensibly seen in its history.

Yesterday on Twitter, I noted that there was a telling omission in the supposed “justification” memo Rod Rosenstein penned and Trump initially claimed to rely on as basis for firing Comey:

I think Marty went a tad easy on Rosenstein. Rosenstein authored the document, had to know what it's purpose was, and duplicitously framed it in terms he “thought” he could step back from. No. Just no.

There is simply no other possible reading of the Rosenstein May 9, 2017 memo. If Rosenstein did not understand the purpose his memo was intended for, he is too stupid to be in the DAG job he is. Assuming he has the minimal smarts to understand, then he is a craven and already a failed servant of the American people as DAG. Either way, Rosenstein is terminally compromised.

This morning, in what I can only describe as an admirable *mea culpa* statement that I think will long be remembered, in a good way, Ben Wittes called for Rosenstein to go.

In the end, Trump was able to make set piece out of Rosenstein, because Rosenstein let himself be used as a set piece. And there's an important lesson in that for the many honorable men and women with pending appointments and nominations to serve in senior levels of the Justice Department—or who are considering accepting such appointments. It took Donald Trump only two weeks to put Rosenstein, a figure of sterling reputation, in the position of choosing between continued service and behaving honorably—and it took only two days after that for the President to announce that Rosenstein's memo, after all, was

nothing more than a Potemkin village designed as a facade on Trump's predecided outcome.

Do you really want this to be you? Do you really think Trump will not leave your reputation as so much roadkill on the highway after enlisting you in sliming someone else a week or two after you take office?

The lesson here is that these are not honorable people, and they will do their best to drag you down to their level. They will often succeed.

Here we are, and, thankfully, people in and around the Third Branch, especially in the all important Southern District of New York region (from which Comey has come and gone), are fighting back and speaking out with shouts that are from far more than the cheap seats people like me occupy.

Without further adieu, a letter from SDNY luminaries:

May 12, 2017

Rod J. Rosenstein, Esq.  
Deputy Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Mr. Deputy Attorney General:

We, the undersigned, are former United States Attorneys and Assistant United States Attorneys for the Southern District of New York. In view of the recent termination of James Comey as Director of the Federal Bureau of Investigation, we are writing to request that you appoint a special counsel to oversee the FBI's continuing investigation of Russian interference with the 2016 Presidential election and

related matters. This letter is addressed to you rather than the Attorney General since he has recused himself from this matter.

As you know, Jim has had a long and distinguished career with the Department of Justice, beginning with his appointment as an Assistant United States Attorney in the Southern District of New York serving under United States Attorneys Rudolph Giuliani, Benito Romano and Otto Obermaier from 1987 through 1993. He returned to the Southern District of New York in 2002 when he was appointed the United States Attorney and served in that capacity until he was confirmed as Deputy Attorney General in 2003. Most of us came to know Jim when he worked in the Southern District of New York. Many of us know him personally. All of us respect him as a highly professional and ethical person who has devoted more than 20 years of his life to public service.

While we do not all necessarily agree with the manner in which he dealt with the conclusion of the Hillary Clinton email investigation, we sincerely believe that his abrupt and belated termination for this conduct, occurring months later and on the heels of his public testimony about his oversight of the investigation of Russian interference with the 2016 presidential election, has the appearance – if not the reality – of interfering with that investigation. Even if this investigation continues unabated, there is a substantial risk that the American people will not have confidence in its results, no matter who is appointed to succeed him, given that the Director of the FBI serves at the pleasure of the President. We believe it is critical in the present political climate and

clearly in the public's interest that this investigation be directed by a truly independent, non-partisan prosecutor who is independent of the Department of Justice, as is contemplated by 28 C.F.R. §600.1.

We are Republicans, Democrats and independents. Most importantly, we are proud alumni and alumnae of the Department of Justice. We do not suggest that you or any other members of the Department of Justice or a newly appointed Director of the FBI would not conduct yourselves properly, but the gravity of this investigation requires that even the appearance of political involvement in this investigation be avoided. As former prosecutors, we believe the only solution in the present circumstances would be to appoint a Special Counsel pursuant to 28 C.F.R. §600.1, and we urge you to take that course.

Respectfully submitted,

Jonathan S. Abernethy Elkan Abramowitz  
Richard F. Albert  
Marcus A. Asner Martin J. Auerbach  
Miriam Baer  
Thomas H. Baer Kerri Martin Bartlett  
Maria Barton  
Andrew Bauer Bernard W. Bell Richard  
Ben-Veniste  
Neil S. Binder Laura Gossfield Birger  
Ira H. Block  
Suzanne Jaffe Bloom Barry A. Bohrer  
Daniel H. Bookin  
Jane E. Booth Katharine Bostick Laurie  
E. Brecher  
David M. Brodsky Stacey Mortiz Brodsky  
William Bronnermn  
Jennifer K. Brown Marshall A. Camp  
Bennett Capers  
Michael Q. Carey Neil S. Cartusciello  
Sarah Chapman

Robert J. Cleary Brian D. Coad Glenn C.  
Colton  
William Craco Nelson W. Cunningham  
Constance Cushman  
Frederick T. Davis John M. Desmarais  
Rhea Dignam  
Gregory L. Diskant Philip L. Douglas  
Sean Eskovitz  
Jesse T. Fardella Meir Feder Ira M.  
Feinberg  
Michael S. Feldberg Steven D. Feldman  
Edward T. Ferguson  
David Finn Eric P. Fisher Sharon E.  
Fraser  
Steven I. Froot Maria T. Galeno  
Catherine Gallo  
Robert Garcia Kay K. Gardiner Ronald L.  
Garnett  
Scott Gilbert Barbara S. Gillers Mark  
Godsey  
Joshua A. Goldberg James A. Goldston  
Mark P. Goodman  
George I. Gordon Sheila Gowan Stuart  
GraBois  
Paul R. Grand Helen Gredd Bruce Green  
Marc L. Greenwald Jamie Gregg James G.  
Greilsheimer  
Jane Bloom Grise Nicole Gueron Barbara  
Guss  
Steven M. Haber Jonathan Halpern David  
Hammer  
Jeffrey Harris Mark D. Harris Roger J.  
Hawke  
Steven P. Heineman Mark R. Hellerer  
William Hibsher  
Jay Holtmeier John R. Horan Patricia M.  
Hynes  
Linda Imes Douglas Jensen James Kainen  
Eugene Kaplan Steven M. Kaplan William  
C. Komaroff  
David Koenigsberg Cynthia Kouril Mary  
Ellen Kris  
Stephen Kurzman Nicole LaBarbera Kerry  
Lawrence  
Sherry Leiwant Jane A. Levine Annmarie  
Levins



Raymond A. Levites Donna H. Lieberman  
Jon Liebman  
Sarah E. Light Jon Lindsey Robin A.  
Linsenmayer  
Edward J.M. Little Mary Shannon Little  
Walter Loughlin  
Daniel Margolis Walter Mack Kathy S.  
Marks  
Mark E. Matthews Marvin S. Mayell Sharon  
L. McCarthy  
James J. McGuire Joan McPhee Christine  
Meding  
Paul K. Milmed Judith L. Mogul David E.  
Montgomery  
Lynn Neils Peter Neiman Rosemary Nidiray  
Tai H. Park Robert M. Pennoyer Elliott  
R. Peters  
Michael Pinnisi Robert Plotz Henry  
Putzel  
T. Gorman Reilly Emily Reisbaum Peter  
Rient  
Roland G. Riopelle Michael A. Rogoff  
Benito Romano  
Amy Rothstein Thomas C. Rubin Daniel S.  
Ruzumna  
Robert W. Sadowski Elliot G. Sagor Peter  
Salerno  
Joseph F. Savage John F. Savarese Edward  
Scarvalone  
Kenneth I. Schacter Frederick Schaffer  
Gideon A. Schor  
Julian Schreibman Wendy Schwartz Linda  
Severin  
David Siegal Marjorie A. Silver Paul H.  
Silverman  
Charles Simon Carolyn L. Simpson David  
Sipiora  
Dietrich L. Snell Peter Sobol Ira Lee  
Sorkin  
David W. Spears Katherine Stanton  
Franklin H. Stone  
Richard M. Strassberg Howard S. Sussman  
Erika Thomas  
Richard Toder Timothy J. Treanor Paula  
Tuffin  
Peter Vigeland David Wales Max Wild

Samuel J. Wilson Elaine Wood Paulette  
Wunsch  
Thomas Zaccaro Ellen Zimiles  
cc: Jefferson B. Sessions III, Esq.  
Attorney General of the United States

This letter reflects the signers' personal views, not of the U.S. Attorney's Office for the Southern District of New York, the U.S. Department of Justice, or any other government agency.

But it is STRONG. And it is hard to not love it completely. It is raw, and it is real. Nobody asks defense attorneys to sign these missives, nor would anybody give them credit for having done so, were they asked.

This letter, however, is from the elite of the elite prosecutors, with SDNY historic names attached to it (and sometimes significant family names you may not notice), and there are a LOT of them. Almost wonder who did "not" sign on to it?

So, what does it mean?

A LOT. If you know how District level US Attorney offices run, but especially the hallowed ground in SDNY, then you know just how unusual and remarkable is this collective letter.

Think I mentioned "stunning" earlier. It is all that.

Why? Because the problem in the US is here, and it is now. It is bigger than Red versus Blue. It is bigger than Me versus You. It is bigger than all that. There is a fracture in the very machinery governance itself runs on.

The clockworks of governance are bugged. "We are Republicans, Democrats and independents." And we all deserve better than the orange narcissist piloting the nation into an iceberg.

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# THE LAST USA: DANA BOENTE IS THE BEST SHORT TERM SOLUTION

In the wake of the Comey firing, particularly given the way Deputy Attorney General Rod Rosenstein let himself serve as a pawn, many people have renewed their call for “a special prosecutor.” In the short term, however, I believe Dana Boente – that is, the status quo – is a better solution.

As a reminder, Dana Boente is the US Attorney of Eastern District of VA. With Rosenstein’s confirmation as DAG, Boente is the last remaining confirmed US Attorney in the United States. Boente’s office is overseeing at least two parts of the Russian investigation: the generalized investigation into Wikileaks, and the investigation into Trump’s campaign. The latter investigation recently issued subpoenas to Mike Flynn associates. There are reportedly parts of the investigation in three other places: some work being done in Main Justice, as well as a team investigating Guccifer 2.0/Shadow Brokers in San Francisco, and a team investigating the Russian hackers in Pittsburgh.

But the bulk of what people think of as “the Russian investigation” – the investigation into Trump’s cronies – is happening in EDVA, overseen by The Last USA.

In addition to reporting up to Rosenstein as DAG and Rosenstein as Acting AG for the Russian investigation, Boente just took over as Acting Assistant Attorney General for National Security Division – the office that reviews things like FISA orders. That means Boente – for better and worse – has more authority, on several levels, than a “Special Counsel” would have.

First, note I use the term “Special Counsel,”

not "Special Prosecutor." Ken Starr was a Special Prosecutor, but in the wake of his fiasco and given persistent questions about the constitutionality of having someone who was totally independent from the structure of DOJ prosecuting people, Congress got rid of the provision supporting Special Prosecutors.

So if Rod Rosenstein wanted to appoint someone "independent" to oversee the Russian investigation, he'd have to use the Special Counsel provision.

While I think it is permissible to hire someone from outside of DOJ to do that job (so it is *possible* he could call up corporate lawyer Pat Fitzgerald for his third ride on the Special Counsel merry-go-round to, in dramatic fashion, save the investigation undercut by the firing of his good friend Jim Comey), in practice the recent Special Counsel appointments (the UndieBomb 2.0 leak investigation, the StuxNet leak investigation, the John Kiriakou prosecution, the Torture investigation, and the Plame investigation) have all been DOJ prosecutors, either US Attorneys (in all but one case) or an Assistant USA Attorney, in the case of John Durham's whitewash of torture. Plus, while Fitz is still well-loved at DOJ and FBI as far as I know, if Rosenstein appointed him, I bet Trump would fire him within minutes because he's sure as hell not going to be "loyal." And because of Fitz' past gunning hard for Cheney and Bush, many Republicans might not put up much of a stink there.

If Rosenstein were to adhere to the practice of naming existing DOJ prosecutors, though, it'd mean he'd be choosing between Boente, The Last USA, or an AUSA (perhaps one of the ones who recently reported to him in MD). In both cases, the Special Counsel would report to Rosenstein for AG approvals (as Pat Fitz reported to Jim Comey for the Plame case).

You can see quickly why Boente is the preferable option. First, there's no reason to believe he isn't pursuing the investigation (both

investigations, into Wikileaks and Trump's associates) with real vigor. He is a hard ass prosecutor and if that's what you want that's what you'd get. His grand jury pool is likely to be full of people with national security backgrounds or at least a predisposition to be hawks.

But – for better and worse – Boente actually *has more power* than a Special Counsel would have (and more power than Fitz had for the Plame investigation), because he is also in charge of NSD, doing things like approving FISA orders on suspected Russian agents. I think there are problems with that, particularly in the case of a possible Wikileaks prosecution. But if you want concentrated power, Boente is a better option than any AUSA. With the added benefit that he's *The Last USA*, which commands some real respect.

Sure. If next week Trump calls Boente to dinner and demands his loyalty on threat of firing, this may change. But the same logic that people are using with a Special Counsel (that if Trump fired *that person*, maybe then Republicans in Congress would want something more independent) holds for Boente. Firing *The Last USA* ought to be as incendiary as firing an AUSA, assuming anything will be.

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## **THE TUESDAY NIGHT MASSACRE**



As you  
may  
have  
heard,  
President  
Trump  
has  
just  
fired  
FBI  
Direct

or James Comey.

This is truly Nixonian Saturday Night Massacre level action.

Trump previously ran on, indeed got elected on, and likely only on, the scurrilous rogue comments of Jim Comey starting with the rogue July 5, 2016 press conference where Comey went off all rails on DOJ and PIN protocols. Here is the New York Times original report:

Mr. Comey's dismissal was a stunning development for a president that benefited from the F.B.I. investigation of the Democratic nominee during the 2016 campaign. Separately, the F.B.I. also is investigating whether members of the Trump campaign colluded with Russia to influence the election.

The abrupt firing raised questions over whether Mr. Trump was trying to influence the Russia investigation. But he said he was following recommendations from the Justice Department, which criticized how Mr. Comey concluded the investigation into Mrs. Clinton.

Trump actually saluted Comey for this at one point. What a micro-moment self serving, not to mention narcissistic jerk.

If anybody in the world thought that that Trump is not as craven and against the Constitutional form of government we all were born and raised

on, let that no longer be a question.

And if the media cannot get their heads out of their asses and realize the danger is NOT just to their First Amendment rights, but to the core of our republic and democracy, then they too should go the way of the dodo bird.

The foundations of this cowardly play were always there if you followed the ever changing voice and words of Donald Trump regarding the Clinton email issue and how the Department of Justice handled it.

If you thought this point, and/or Comey was the one only voice that could not be fired or silenced, you are sadly mistaken.

This blog has never, and I am being kind across my writings, Marcy's and those of our departed friend Mary, been a friend of Jim Comey. He has long, and more presently, been an uneven and self serving voice mostly interested in preservation and enhancement of his own voice and position. Comey has been preternaturally successful at this.

That said, tonight I will be in Comey's camp. I await what my friends at Lawfare and some others may have to say regarding the Tuesday Night Massacre.

Because this is a day that should live bright for a very long time.

People glibly talk about the "Resistance". How naive. The battle is now, and has been joined in full by a cabal that makes Nixon look like a piker. The place is here. The time is now.

The temporal fact that it is Comey that tipped a scale of justice is immaterial. It has happened.

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# ONE TAKEAWAY FROM THE FIVE TAKEAWAYS FROM THE COMEY HEARING: ELECTION 2016 CONTINUES TO SUFFOCATE OVERSIGHT

The Senate Judiciary Committee had an oversight hearing with Jim Comey yesterday, which I live-tweeted in great depth. As you can imagine, most of the questions pertained either to Comey's handling of the Hillary investigation and/or to the investigation into Russian interference in the election. So much so that The Hill, in its "Five Takeaways from Comey's testimony," described only things that had to do with the election:

- Comey isn't sorry (but he was "mildly nauseous" that his conduct may have affected the outcome)
- Emotions over the election are still raw
- Comey explains DOJ dynamic: "I hope someday you'll understand"
- The FBI may be investigating internal leaks
- Trump, Clinton investigations are dominating FBI oversight

The Hill's description of that third bullet doesn't even include the "news" from Comey's statement: that there is some still-classified detail, in addition to Loretta Lynch's tarmac meeting with Bill Clinton and the intercepted



Hillary aide email saying Lynch would make sure nothing happened with the investigation, that led Comey to believe he had to take the lead on the non-indictment in July.

I struggled as we got closer to the end of it with the – a number things had gone on, some of which I can't talk about yet, that made me worry that the department leadership could not credibly complete the investigation and declined prosecution without grievous damage to the American people's confidence in the – in the justice system.

As I said, it is true that most questions pertained to Hillary's emails or Russia. Still, reports like this, read primarily by people on the Hill, has the effect of self-fulfilling prophecy by obscuring what little real oversight happened. So here's my list of five pieces of actual oversight that happened.

## **Neither Grassley nor Feinstein understand how FISA back door searches work**

While they primarily focused on the import of reauthorizing Section 702 (and pretended that there were no interim options between clean reauthorization and a lapse), SJC Chair Chuck Grassley and SJC Ranking Member Dianne Feinstein both said things that made it clear they didn't understand how FISA back door searches work.

At one point, in a discussion of the leaks about Mike Flynn's conversation with Sergey Kislyak, Grassley tried to suggest that only a few people at FBI would have access to the unmasked identity in those intercepts.

There are several senior FBI officials who would've had access to the classified information that was leaked,

including yourself and the deputy director.

He appeared unaware that as soon as the FBI started focusing on either Kislyak or Flynn, a back door search on the FISA content would return those conversations in unmasked form, which would mean a significant number of FBI Agents (and anyone else on that task force) would have access to the information that was leaked.

Likewise, at one point Feinstein was leading Comey through a discussion of why they needed to have easy back door access to communication content collected without a warrant (so we don't stovepipe anything, Comey said), she said, "so you are not unmasking the data," as if data obtained through a back door search would be masked, which genuinely (and rightly) confused Comey.

FEINSTEIN: So you are not masking the data – unmasking the data?

COMEY: I'm not sure what that means in this context.

It's raw data. It would not be masked. That Feinstein, who has been a chief overseer of this program for the entire time back door searches were permitted doesn't know this, that she repeatedly led the effort to defeat efforts to close the back door loophole, and that she doesn't know what it means that this is raw data is unbelievably damning.

Incidentally, as part of the exchange with Feinstein, Comey said the FISA data sits in a cloud type environment.

**Comey claims the government doesn't need**

# the foreign government certificate except to target spies

Several hours into the hearing, Mike Lee asked some questions about surveillance. In particular, he asked if the targeting certificates for 702 ever targeted someone abroad for purposes unrelated to national security. Comey seemingly listed off the certificates we do have – foreign government, counterterrorism, and counterproliferation, noting that cyber gets worked into other ones.

LEE: Yes. Let's talk about Section 702, for a minute. Section 702 of the Foreign Intelligence Surveillance Amendments Act authorizes the surveillance, the use of U.S. signals surveillance equipment to obtain foreign intelligence information.

The definition includes information that is directly related to national security, but it also includes quote, "information that is relevant to the foreign affairs of the United States," close quote, regardless of whether that foreign affairs related information is relevant to a national security threat. To your knowledge, has the attorney general or has the DNI ever used Section 702 to target individuals abroad in a situation unrelated to a national security threat?

COMEY: Not that I'm aware of. I think – I could be wrong, but I don't think so, I think it's confined to counterterrorism to espionage, to counter proliferation. And – those – those are the buckets. I was going to say cyber but cyber is fits within..

He said they don't need any FG information except that which targets diplomats and spies.

LEE: Right. So if Section 702 were narrowed to exclude such information, to exclude information that is relevant to foreign affairs, but not relevant to a national security threat, would that mean that the government would be able to obtain the information it needs in order to protect national security?

COMEY: Would seem so logically. I mean to me, the value of 702 is – is exactly that, where the rubber hits the road in the national security context, especially counterterrorism, counter proliferation.

I assume that Comey said this because the FBI doesn't get all the other FG-collected stuff in raw form and so isn't as aware that it exists. I assume that CIA and NSA, which presumably use this raw data far more than FBI, will find a way to push back on this claim.

But for now, we have the FBI Director stating that we could limit 702 collection to national security functions, a limitation that was defeated in 2008.

## **Comey says FBI only needs top level URLs for ECTR searches**

In another exchange, Lee asked Comey about the FBI's continued push to be able to get Electronic Communication Transaction Records. Specifically, he noted that being able to get URLs means being able to find out what someone was reading.

In response, Comey said he thought they could only get the top-level URL.

After some confusion that revealed Comey's lie about the exclusion of ECTRs from NSLs being just a typo, Comey said FBI did not need any more than the top domain, and Lee answered that

the current bill would permit more than that.

LEE: Yes. Based on the legislation that I've reviewed, it's not my recollection that that is the case. Now, what – what I've been told is that – it would not necessarily be the policy of the government to use it, to go to that level of granularity. But that the language itself would allow it, is that inconsistent with your understanding?

COMEY: It is and my understanding is we – we're not looking for that authority.

LEE: You don't want that authority...

(CROSSTALK)

COMEY: That's my understanding. What – what we'd like is, the functional equivalent of the dialing information, where you – the address you e-mailed to or the – or the webpage you went to, not where you went within it.

This exchange should be useful for limiting any ECTR provision gets rushed through to what FBI claims it needs.

## **The publication of (US) intelligence information counts as intelligence porn and therefore not journalism**

Ben Sasse asked Comey about the discussion of indicting Wikileaks. Comey's first refusal to answer whether DOJ would indict Wikileaks led me to believe they already had.

I don't want to confirm whether or not there are charges pending. He hasn't

been apprehended because he's inside the Ecuadorian embassy in London.

But as part of that discussion, Comey explained that Wikileaks' publication of loads of classified materials amounted to intelligence porn, which therefore (particularly since Wikileaks didn't call the IC for comment first, even though they have in the past) meant they weren't journalism.

COMEY: Yes and again, I want to be careful that I don't prejudice any future proceeding. It's an important question, because all of us care deeply about the First Amendment and the ability of a free press, to get information about our work and – and publish it.

To my mind, it crosses a line when it moves from being about trying to educate a public and instead just becomes about intelligence porn, frankly. Just pushing out information about sources and methods without regard to interest, without regard to the First Amendment values that normally underlie press reporting.

[snip]

[I]n my view, a huge portion of WikiLeaks's activities has nothing to do with legitimate newsgathering, informing the public, commenting on important public controversies, but is simply about releasing classified information to damage the United States of America. And – and – and people sometimes get cynical about journalists.

American journalists do not do that. They will almost always call us before they publish classified information and say, is there anything about this that's going to put lives in danger, that's going to jeopardize government people,

military people or – or innocent civilians anywhere in the world.

I'll write about this more at length.

Relatedly (though technically a Russian investigation detail), Comey revealed that the investigation into Trump ties to Russia is being done at Main Justice and EDVA.

COMEY: Yes, well – two sets of prosecutors, the Main Justice the National Security Division and the Eastern District of Virginia U.S. Attorney's Office.

That makes Dana Boente's role, first as Acting Attorney General for the Russian investigation and now the Acting Assistant Attorney General for National Security, all the more interesting, as it means he is the person who can make key approvals related to the investigation.

I don't have any problem with him being chosen for these acting roles. But I think it supremely unwise to effectively eliminate levels of oversight on these sensitive cases (Russia and Wikileaks) by making the US Attorney already overseeing them also the guys who oversees his own oversight of them.

## **The US is on its way to becoming the last haven of shell corporations**

Okay, technically these were Sheldon Whitehouse and Amy Klobuchar comments about Russia. But as part of a (typically prosecutorial) line of questioning about things related to the Russian investigation, Whitehouse got Comey to acknowledge that as the EU tries to crack down on shell companies, that increasingly leaves the US as the remaining haven for shell companies that can hide who is paying for things like election hacks.

WHITEHOUSE: And lastly, the European Union is moving towards requiring transparency of incorporations so that shell corporations are harder to create. That risks leaving the United States as the last big haven for shell corporations. Is it true that shell corporations are often used as a device for criminal money laundering?

COMEY: Yes.

[snip]

WHITEHOUSE: What do you think the hazards are for the United States with respect to election interference of continuing to maintain a system in which shell corporations – that you never know who's really behind them are common place?

COMEY: I suppose one risk is it makes it easier for illicit money to make its way into a political environment.

WHITEHOUSE: And that's not a good thing.

COMEY: I don't think it is.

And Klobuchar addressed the point specifically as it relates to high end real estate (not mentioning that both Trump and Paul Manafort have been alleged to be involved in such transactions).

There have been recent concerns that organized criminals, including Russians, are using the luxury real estate market to launder money. The Treasury Department has noted a significant rise in the use of shell companies in real estate transactions, because foreign buyers use them as a way to hide their identity and find a safe haven for their money in the U.S. In fact, nearly half of all homes in the U.S. worth at least \$5 million are purchased using shell companies.



Does the anonymity associated with the use of shell companies to buy real estate hurt the FBI's ability to trace the flow of illicit money and fight organized crime? And do you support efforts by the Treasury Department to use its existing authority to require more transparency in these transactions?

COMEY: Yes and yes.

It's a real problem, and not just because of the way it facilitates election hacks, and it'd be nice if Congress would fix it.

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## THOUGHTS ON THE NYT COMEY BLOCKBUSTER

The NYT has a big piece on Jim Comey's involvement in the election you should definitely read. Rather than share my thoughts in a tweet storm I thought I'd share here so we can all gab about it.

### Consensus coming closer to Jim Comey being self-righteous

As long time readers know, I think Jim Comey is self-righteous. He creates a heroic self-image that is often overblown (as it was regarding the post hospital hero events). So I was happy to see this paragraph – and observations matching it – through out the story.

Mr. Comey made those decisions with the supreme self-confidence of a former prosecutor who, in a distinguished career, has cultivated a reputation for what supporters see as fierce

independence, and detractors view as media-savvy arrogance.

Comey deserves all the criticism he has gotten for his statements about the Hillary investigation. But we're stuck with Comey for now; he's one of the few checks against Trump's arbitrary rule (and Comey is enough of a media hound to be able to create the space to conduct the investigation into Trump).

But one way or another I'm happy people are beginning to understand Comey not as the hospital hero, nor as a partisan, but as someone who doesn't (or didn't?) assess his own actions with a fair measure.

## The secret David Margolis meeting

One of two really interesting new details in this story is that, when Comey was trying to decide what to do, he consulted with David Margolis, who has long been treated as the conscience of DOJ by DOJers. (See this [bmaz](#) post for more background on Margolis.)

Mr. Comey sought advice from someone he has trusted for many years. He dispatched his deputy to meet with David Margolis, who had served at the Justice Department since the Johnson administration and who, at 76, was dubbed the Yoda of the department.

What exactly was said is not known. Mr. Margolis died of heart problems a few months later. But some time after that meeting, Mr. Comey began talking to his advisers about announcing the end of the Clinton investigation himself, according to a former official.

This meeting (and the description of how they staged Margolis' funeral so the DOJ people

criticizing Comey wouldn't have to share a stage with him) plays a weird role in the story, as if just the mention of the meeting serves to exonerate Comey's terrible decision to announce the end of the Hillary investigation.

But what the story doesn't note is that Comey was effectively consulting with the person who for years always intervened to make sure DOJ's lawyers don't get held accountable for their misconduct (most notably, he did this for John Yoo). Now, I'm not sure whether as FBI Director Comey's behavior might have been reviewed by the Office of Professional Responsibility; as it happens DOJ IG is doing so. But it is not ethical to have the guy who, later on, would bless your actions, bless them before the fact. It's like getting pre-approval to break the rules.

## Loretta Lynch should have recused

One of the details others find most interesting is that the FBI acted as they did, in part, because a Democratic operative suggested in an email that Loretta Lynch would ensure nothing came of the investigation.

During Russia's hacking campaign against the United States, intelligence agencies could peer, at times, into Russian networks and see what had been taken. Early last year, F.B.I. agents received a batch of hacked documents, and one caught their attention.

The document, which has been described as both a memo and an email, was written by a Democratic operative who expressed confidence that Ms. Lynch would keep the Clinton investigation from going too far, according to several former officials familiar with the document.

Read one way, it was standard Washington political chatter. Read another way, it

suggested that a political operative might have insight into Ms. Lynch's thinking.

Normally, when the F.B.I. recommends closing a case, the Justice Department agrees and nobody says anything. The consensus in both places was that the typical procedure would not suffice in this instance, but who would be the spokesman?

The document complicated that calculation, according to officials. If Ms. Lynch announced that the case was closed, and Russia leaked the document, Mr. Comey believed it would raise doubts about the independence of the investigation.

I've got a *slew* of hacking related questions about this document – starting with why it hasn't, as far as I know, been leaked. The described timing as “early last year” suggests that it may have been hacked in the FSB phase of the hacking. But the document would have solidified the narrative the Russians were reportedly fostering about Hillary.

The article doesn't pursue those questions, but it notes that in response to finding it, Comey did not ask Lynch to recuse. He should have. You recuse whether or not there's basis for recusal but because of appearances as well. Moreover, so much awfulness could have been avoided had she recused. This was one of the big own goals of this whole mess.

## **CIA Directors should not meet with just one Gang of Eight member**

The second detail I find most interesting in this story is that John Brennan privately briefed Harry Reid about his concerns about the

Russians.

John O. Brennan, the C.I.A. director, was so concerned about the Russian threat that he gave an unusual private briefing in the late summer to Harry Reid, then the Senate Democratic leader.

Top congressional officials had already received briefings on Russia's meddling, but the one for Mr. Reid appears to have gone further. In a public letter to Mr. Comey several weeks later, Mr. Reid said that "it has become clear that you possess explosive information about close ties and coordination between Donald Trump, his top advisors, and the Russian government – a foreign interest openly hostile to the United States."

While I'm generally sympathetic to Democrats' complaints that DOJ should have either remained silent about both investigations or revealed both of them, it was stupid for Brennan to give this private briefing (and I hope he gets grilled about it by HPSCI when he testifies in a few weeks). In addition to the things Reid said publicly about the investigation, it's fairly clear he and his staffers were also behind some of the key leaks here (and, as CNN reported yesterday, leaks about the investigation actually led targets of it to alter their behavior). For reasons beyond what appears in this story, I think it likely Reid served as a cut-out for Brennan.

And that's simply not appropriate. There may well have been reasons to avoid briefing Richard Burr (who was advising Trump). But spooks should not be sharing information with just one party. CIA did so during its torture cover-up in ways that are particularly troubling and I find this – while not as bad – equally problematic.

# Two missing details: the leaks and the delayed notice to Congress

While this is already a comprehensive story (though its telling of October 7 omits key details), there are two parts that seem critical that are missing: the flood of leaks from FBI and the decision to delay notifying the Gang of Four of the CI investigation.

This week, CNN reported that the FBI was “clarifying” an earlier policy fostering more contact between FBI employees with the media in response to leaks about the Trump campaign. (Click through to read about the TV series coming out focusing on FBI heroism that the FBI exercised editorial control over!!!)

The FBI is overhauling its media policy, restricting contacts between the news media and its employees amid controversy over alleged leaks, bureau officials told CNN.

*The new media policy was rolled out this week at a conference in Washington attended by FBI special agents in charge of its 56 field offices, according to officials who attended.*

*Media access to top officials at the FBI became more common in recent years under FBI Director James Comey, part of a transparency effort he said was aiming at demystifying the FBI and helping the public understand its*

*mission. But the new policy appears to curtail that access.*

*An official familiar with the development of the new policy described it as largely a “clarification” intended to reinforce existing rules on who is authorized to talk to reporters, not a step back from Comey’s transparency initiatives.*

Not only should this policy have been put in place before people leaked details of FISA orders, but it should have been put in place in early 2016, when it was clear FBI Agents were leaking details of the Hillary investigation to try to force their supervisors to expand its scope to include the Clinton Foundation.

Instead, the possibility that FBI Agents would leak was one of the reasons why Comey did what he did. The correct thing, instead of making unprecedented public statements as he did, would have been to shut down the leaking.

Additionally, according to Comey’s testimony, FBI actually delayed notifying at least the heads of the Intelligence Committees until fairly recently. The NYT acknowledges *that* this detail was hidden. But I’d love to understand how this departure from normal briefing affected all the other decisions (particularly in light of the the Brennan meeting).

In any case, read the whole thing. It’s very frustrating. But it also lays out a series of things that Comey – and other Obama officials – should have done differently.