

IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP

THE EVIDENTIARY RECORD PURSUANT TO H. RES. 798

VOLUME X, PART 8

Transcript of December 11–13, 2019 Committee on the
Judiciary Markup of: H. Res. 755, Articles of Impeach-
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MARKUP OF: H. RES. 755,
ARTICLES OF IMPEACHMENT AGAINST
PRESIDENT DONALD J. TRUMP
VOLUME VIII

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BEFORE THE
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CRS Report for Congress

The Congressional Budget Act of 1974 (P.L. 93-344) Legislative History and Analysis

February 26, 1975

Allen Schick
Senior Specialist in American National Government



**Prepared for Members and
Committees of Congress**

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INTRODUCTION

The Congressional Budget and Impoundment Control Act of 1974 establishes procedures for the determination by Congress of national budget policies and priorities and for legislative review of impoundments proposed by the President. The Act does not eliminate any existing procedures for the authorization of programs or the appropriation of funds--the new budget process is added to these--but it is likely to have a significant impact on the way Congress makes program and financial decisions. Nor does the legislation directly alter the executive budget process (except in regard to certain submissions and the budget timetable), but it is likely to generate major changes in legislative-executive fiscal relations.

The congressional budget process will be the framework within which Congress each year determines total revenues, expenditures, and debt, and the budget priorities of the United States. The first stage in the new process will be the adoption of a concurrent resolution on the budget by May 15. The allocations in this resolution will guide Congress in its subsequent consideration of appropriations and other spending measures. After action has been completed on all money bills, Congress will adopt a second budget resolution and (if necessary) will reconcile the determinations in this resolution with revenue, spending, and debt legislation.

Two new legislative instrumentalities have been created to serve Congress: Budget Committees in the House and the Senate and a Congressional Budget Office (CBO). The congressional budget process will operate within an October 1-September 30 fiscal cycle and deadlines have been prescribed for the completion of various congressional actions. Furthermore, new procedures are specified for backdoor expenditures, spending authorizations which do not go through the regular appropriations process. The new law also contains many provisions to improve the availability and timeliness of budget-related information, to promote program evaluation, and to speed up the development of a standardized budget information system.

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The main features of the Act are summarized in the first chapter of this publication. Chapter II recounts the legislative development and purposes of the Act and details the problems which Congress has sought to remedy. Chapter III presents a detailed legislative history and analysis of Titles I through IX of the Act and (where applicable) reports on the initial implementation of its requirements. A section by section history and analysis of Title X--The Impoundment Control Act--is available in CRS multilith 75-27SS.

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I. PRINCIPAL FEATURES OF THE CONGRESSIONAL BUDGET PROCESS

The Congressional Budget and Impoundment Control Act deals with five related matters and is organized into ten titles. (1) New budget instrumentalities--House and Senate Budget Committees and the Congressional Budget Office--are established in Titles I and II. (2) Congressional budget procedures, along with associated adjustments in the authorization and appropriations processes, are delineated in Titles III and IV. (3) Executive budget requirements, including a change in the fiscal year, are prescribed in Titles V and VI. (4) Budgetary information and its availability are provided for in Titles VII and VIII. (5) Impoundment control procedures are established in Title X. Miscellaneous provisions, including effective dates, are contained in Title IX.

Congressional Budget Institutions

Budget Committees have been established in the House and the Senate and are given jurisdiction over the congressional budget process and certain related matters. With a few special exceptions, the House and Senate Committees have identical jurisdictions. The Committees have the duty to report at least two concurrent resolutions on the budget each year, to study the effects of existing and proposed legislation on budget outlays, and to oversee the operations of the Congressional Budget Office.

The House Budget Committee has 25 members: five each from the House Appropriations and Ways and Means Committees; thirteen from other standing committees; and one each from the majority and minority leaderships. Appointments are to be made without regard to seniority and no Member may serve on the Committee for more than four years (plus a fraction of a year) during any ten-year period. The Act is silent as to how appointments are to be made and the initial selections for the majority were made by the House Democratic Caucus rather than by the Democratic

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Members of the Ways and Means Committee who until the 94th Congress constituted the Party's Committee on Committees. The Democratic Caucus also selected the first chairman of the House Budget Committee. Republican selections were made by the Republican Committee on Committees.

The Senate Budget Committee has sixteen Members whose selection has been made by the Democratic and Republican Conferences in accord with procedures used for other Senate committees. The Senate rule limiting Members to no more than two major committees has been waived until the start of the 95th Congress in January 1977.

The Congressional Budget Office (CBO) has been established as an informational and analytic arm of Congress. CBO is headed by a Director, appointed to a four-year term by the Speaker of the House and the President pro tem of the Senate after considering the recommendations of the two budget committees. The Director is responsible for staffing the Office without regard to political affiliation. CBO is given broad authority to secure information from executive agencies and is directed to coordinate its operations with the other congressional agencies: the Library of Congress, the General Accounting Office, and the Office of Technology Assessment.

The Act arrays CBO's duties according to four orders of priority. (1) Highest priority is to be accorded to the House and Senate Budget Committees. CBO is to furnish them with information relating to all matters within their jurisdiction and, at their request, shall assign personnel to them on a temporary basis.

The Act thus envisions a close and continuing relationship between CBO and the Budget Committees.

(2) Priority also is to be given to the two Appropriations Committees, the House Ways and Means Committee, and the Senate Finance Committee. CBO is to supply these committees with all available information and to undertake

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budget-related studies at their request. (3) CBO is to give other committees available information and, to the extent practicable, undertake studies in their behalf. CBO also has discretion to detail personnel to any congressional committee on a temporary basis. (4) Members are entitled to obtain any available information, but CBO is not required to initiate research for them.

CBO is assigned several recurring duties in the Act. It must submit an annual report (by April 1) to the Budget Committees on budget alternatives, tax expenditures, and national budget priorities. The Budget Office is to issue periodic scorekeeping reports as well as five-year projections of budget levels. CBO is to prepare cost analyses of legislation reported by all committees other than the Appropriations Committees. And it must assist any committee reporting budget authority or tax expenditures legislation in the preparation of various estimates.

Congressional Budget Procedures

The new congressional budget process is organized around two concurrent resolutions on the budget: one to be adopted by May 15 (prior to floor consideration of revenue or spending legislation); the other by September 15 (after action has been completed on all regular appropriations). The calendar of the budget process is set forth in the table below. It indicates that the budget process is to be initiated with submission of a new document--the current services budget--to be followed by the President's budget shortly after Congress convenes.

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Table I. Congressional Budget Timetable

<u>On or before:</u>	<u>Action to be completed:</u>
November 10	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15	Committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills authorizing new budget authority.
May 15	Congress adopts first concurrent resolution on the budget.
7th day after Labor Day	Congress completes action on bills providing budget authority and spending authority.
September 15	Congress completes actions on second required concurrent resolution on the budget.
September 25	Congress completes action reconciliation process implementing second concurrent resolution.
October 1	Fiscal year begins.

The first formal step within Congress will be the preparation by each standing committee and joint committee of its views and estimates with respect to budget matters related to its jurisdiction. These are to be submitted to the Budget Committees by March 15 but no committee will be restricted thereby as to the legislation (or amounts) that it may subsequently report. The sole purpose of these early submissions is to inform the Budget Committees of the views and interests of key legislative participants prior to their reporting of the first budget resolution.

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The Budget Committees are to report the first resolution to their respective Houses by April 15 of each year, thus allowing a full month for floor action and any necessary conference before adoption. This resolution is to set the appropriate levels of total new budget authority and budget outlays as well as the appropriate levels of Federal revenues and public debt and the appropriate budget surplus or deficit. Total new budget authority and outlays are to be allocated among major budget functions (of which there presently are 15) with additional subdivisions for each function (between existing and proposed programs; regular and permanent appropriations, and controllable and other amounts) to be included in the reports of the Budget Committees or, optionally, in the resolution itself.

Because this and subsequent budget determinations will be in the form of concurrent resolutions, they will not have the force of law nor will they directly limit actual Federal expenditures. Their sole effect is to guide or restrain Congress in its actions on revenue, spending, and debt legislation.

Floor consideration of the budget resolution will be under special rules devised to expedite the proceedings while allowing opportunity for a fiscal policy and priorities debate and for floor amendments. Final adoption of the first resolution is scheduled by May 15. In case of a deadlock in conference, House and Senate conferees are required (if seven days have elapsed) to report their agreements and disagreements to their respective Houses. The adopted budget resolution must be mathematically consistent, that is, the sum of the functional allocations must equal the totals for new budget authority and outlays, and the difference between total outlays and revenue must equal the appropriate budget surplus or deficit.

May 15 is the deadline for the reporting of authorizing legislation for the ensuing fiscal year by legislative committees. This schedule is intended to provide Congress with firm information on prospective authorizations and, more

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importantly, to enable it to proceed to the consideration of appropriations within a reasonable amount of time after the budget resolution has been adopted. However, the Act established a procedure for the waiver of the reporting deadline by means of a simple resolution in the House or Senate.

There is a prohibition against the consideration of revenue, debt, spending, or entitlement legislation prior to adoption of the first budget resolution. The aim is to insure that Congress considers such legislation in the light of the determinations made in the first resolution and, thereby, to avert circumvention of the new budget process. However, this prohibition can be waived in the Senate through a special procedure and it does not apply to advance revenue or spending actions.

The levels specified in the first budget resolution function as targets to guide Congress during its action on spending, revenue, and debt bills. Congress will not be restricted as to the amounts it appropriates, but it will be aided by a scorekeeping process that compares the amounts in individual bills with the appropriate levels set forth in the budget resolution. This scorekeeping procedure will be facilitated by a two-step allocation process involving the Budget Committees and all other committees with jurisdiction over spending legislation. First, the managers' statement accompanying a conference report on the budget resolution will allocate the appropriate levels among committees having jurisdiction over budget authority legislation. Second, each such committee will subdivide its allocation among its subcommittees or programs and report the amounts to the House and the Senate. These suballocations will be the basis for comparing the amounts in spending bills with the levels in the budget resolution. However, as noted, Congress will not be bound by its initial decisions and it may appropriate at higher levels if it desires.

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Following adoption of the initial budget resolution, appropriation bills will proceed through Congress in much the same manner as heretofore. The bills will be taken up individually, but it is contemplated that action on them will be completed shortly after Labor Day, and earlier if possible. Entitlement bills will have a similar timetable, and the Act specifies that they cannot become effective before the start of the next fiscal year. The intent is to make them (as well as appropriations) fully subject to any reconciliation process required by the second budget resolutions.

The second budget resolution--to be adopted by September 15--may retain or revise the appropriate levels set earlier in the year, and can include directives to the Appropriations Committees and to other committees with jurisdiction over budget authority or entitlements to recommend changes in new or carryover authority or entitlements. Similarly, the second resolution may direct the appropriate committees to recommend changes in Federal revenues or in the public debt. Changes recommended by various committees pursuant to the second budget resolution are to be reported in a reconciliation bill (or resolution, in some cases) whose enactment is scheduled by September 25, a few days before the new fiscal year commences.

With enactment of the reconciliation bill, the congressional budget process will be completed. At this point, Congress may not consider any spending or revenue legislation that would breach any of the levels specified in the second resolution. In other words, Congress would not be able to pass a supplemental appropriation if it would cause spending to rise above the levels of the second budget resolution, nor could it cut revenues below the second resolution's totals. However, Congress may adopt a new budget resolution any time during the fiscal year.

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An important purpose of the 1974 Act is to bring backdoor spending--termed new spending authority--under tighter legislative control. New contract or borrowing authority would be available only to the extent provided in appropriations. Thus, these forms of backdoor authority will become standard authorizations for which funding will be provided through appropriation measures. Bills providing new entitlements will be referred to the Appropriations Committees (with a 15-day time limit) if they exceed the allocations in the latest budget resolution. The new procedures do not apply to existing backdoor spending nor to social security trust funds, substantially self-financed trust funds, insured or guaranteed loans, or to certain other types of expenditure.

The new law encourages Congress to authorize programs at least one year in advance of the fiscal year to which they will first apply. One such incentive is offered in the May 15 deadline for the reporting of authorizations, for unless they have done advance work, many committees might not be able to meet this deadline. Another incentive is that the President will be required to submit his own authorization proposals in advance, though it is likely that he will supplement many of these with later submissions.

Executive Budget Procedures

The fiscal year is to be shifted from its present July 1-June 30 cycle to an October 1-September 30 timetable. This transition will be accomplished by establishing a three-month interim period running from July 1, 1976 through September 30, 1976. To facilitate the changeover, the Act provides for adjustments in accounting procedures and the expiration dates of authorizing legislation and it directs OMB to prepare any necessary implementing legislation.

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A distinction is made between two types of impoundment: rescissions, when there is no expectation that appropriated funds will be spent in the future; and deferrals, when the President wishes to delay the expenditure until some future time. In either case, however, the President must send a special message to Congress proposing that the funds be rescinded or deferred. Funds proposed for rescission must be made available for obligation if Congress does not adopt a rescission bill within 45 days after receipt of the President's message. Funds proposed for deferral must be released if either the House or the Senate adopts a resolution of disapproval. The Act provides that a deferral may not be proposed for a period beyond the fiscal year to which it applies or in instances where the President is required to submit a rescission message. The Comptroller General is to report to Congress if he finds that the President has failed to submit a required rescission or deferral message or if an impoundment has been improperly classified as a rescission or deferral. Special procedures have been devised for floor consideration of rescission bills and impoundment resolutions, with time limits for debate and other expediting provisions.

Effective Dates

The congressional budget process is to be phased in over a two-year period to enable Congress to tool up for its new responsibilities. The implementation schedule detailed below gives Congress the option to activate certain procedures for fiscal 1976, one year earlier than required by the law.

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Table 2. Implementation Schedule

<u>Provision</u>	<u>Takes Effect</u>
Budget Committees	Upon enactment
Congressional Budget Office	When the first CBO Director is appointed.
Congressional Budget Procedures	1977 fiscal year, or fiscal year 1976 to the extent specified by Budget Committees.
Backdoor Spending Controls	January 1976
Advance Authorization Submissions	1976 fiscal year
Shift in Fiscal Year	October 1, 1976
Current Services Budget	November 10, 1975
Executive Budget Changes (most)	1976 fiscal year
Program Evaluation and Budget Information Titles	Upon Enactment
Impoundment Control	Upon Enactment

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II. DEVELOPMENT AND PURPOSES OF CONGRESSIONAL BUDGET REFORM

The new budget process has been established in consequence of widely-held feelings within Congress that the legislative branch has lost control over Federal finances because it has inadequate procedures for making budgetary decisions. Its twin purposes are to improve congressional budget-making and to restore to Congress the power of the purse vested in it by the United States Constitution.^{1/} Virtually every component of the 1974 Act is traceable to a perceived shortcoming in the existing process. Thus: impoundment control derives from the large-scale withholding of funds by the Nixon Administration; the Budget Committees from the lack of a congressional mechanism to coordinate tax and spending policies; the Congressional Budget Office from the dependence of Congress on executive agencies for essential budget information; the budget resolutions from the lack of a procedure to determine budget totals and priorities.

Despite widespread support for budget reform, formulation and enactment of the legislation took almost two years. There were numerous disputes over particular provisions and the legislation was revised a number of times before its final form was decided. Nevertheless, the basic shape and purposes of the Act had remained intact and one can readily identify the congruence of the law enacted in July 1974 to the first version proposed fifteen months earlier.

This chapter traces the genesis of the legislation, examines the problems which led to its conception, and discusses the progress of the two principal budget reform bills through Congress, including the major changes wrought during the various stages of consideration.

^{1/} The source of this power is in Article I, Section 9 of the Constitution: "No money shall be drawn from the Treasury but in consequence of appropriations made by law."

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The Origins of Budget Reform

On the last day of the 92nd Congress, the House and the Senate approved legislation to establish a 32-member Joint Study Committee on Budget Control. That bill also raised the ceiling on the public debt and established a \$250 billion spending limit for the 1973 fiscal year. But one day after the bill became Public Law 92-599, the \$250 billion limitation ceased to have effect because the very section which set the limit also provided for its immediate nullification.

An Act which both establishes and disestablishes a ceiling on expenditures must have an unusual legislative history. It all began on July 26, 1972, when President Nixon demanded that Congress impose a \$250 billion limitation on spending for the 1973 fiscal year which had just begun.^{2/} Barely half a year earlier, the President had submitted a \$246.3 billion budget in which he criticized congressional budget procedures.^{3/} Now, however, the President foresaw Federal expenditures soaring as much as \$7 billion above the planned level, and later White House projections were as high as \$261 billion, almost \$15 billion more than had been budgeted.^{4/} Although Congress ultimately refused to effectuate a spending limit, actual expenditures for fiscal 1973 turned out to be much lower than the President's dire estimates. On July 26, 1973--exactly one year after the President had first demanded a spending ceiling--the Office of Management and Budget announced that actual outlays for the

2/ 8 Weekly Compilation of Presidential Documents (1972), p. 1176.

3/ The Budget of the United States Government Fiscal Year 1973. A brief discussion of congressional budget deficiencies is on p. 35.

4/ See The Budget of the United States Government Fiscal Year 1974. The \$261 billion figure and Administration actions alleged to have reduced spending are discussed on pp. 49-57. For a critical analysis of the Administration's claim, see E. Fried, A. Rivlin, C. Schultze, and N. Teeters, Setting National Priorities: The 1974 Budget (The Brookings Institution: 1973), pp. 444-46.

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year had totalled \$246.6 billion, only a few hundred million dollars above the original estimates and many billions of dollars below the "worst case" projections issued by the Administration.^{5/}

Of course, during the summer of 1972, the Congress had no knowledge of the favorable budget news which would be reported a year later. It was preoccupied with responding to the President's strategic demands which were accompanied by charges that Congress was fiscally irresponsible. The President castigated "the hoary and traditional procedure of the Congress, which now permits action on the various spending programs as if they were unrelated and independent actions."^{6/} The President contrasted his fiscal prudence with the alleged prolificacy of Congress--a theme which he repeatedly utilized during the 1972 election campaign--and he threatened that "with or without the cooperation of the Congress" he would move to restrain spending. Thus, from the start spending control was framed as a President versus Congress issue.

In September 1973, the request for a spending limitation was attached to "must" legislation, a bill raising the statutory limit on the public debt. Although the \$250 billion level was not very controversial, there was considerable disagreement over how the limitation should be implemented. The President wanted unrestrained discretion to reduce spending and Administration spokesmen refused to specify in advance which programs would be cut.^{7/} This position was upheld in the debt ceiling bill (H.R. 16810) reported by the House Ways and Means Committee on September 27, 1972.^{8/} The bill authorized the President "notwithstanding the provisions of any other law" to reserve such amounts as may be necessary to maintain the \$250 billion limit.

^{5/} The New York Times, July 27, 1973. The \$246.6 figure was tentative, issued shortly after the close of the fiscal year. Final figures published in the next year's budget set fiscal 1973 spending at \$246.5 billion.

^{6/} 8 Weekly Compilation of Presidential Documents (1972), p. 1176.

^{7/} See U.S. Congress, House Committee on Ways and Means, Hearings on Administration Request to Increase Debt Ceiling, Accompanied by a Spending Ceiling, 92d Cong., 2d Sess. (1972).

^{8/} H.Rept. No. 92-1456.

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But when the bill was considered by the House on October 10, Rep. George Mahon (chairman of the House Appropriations Committee) proposed a substitute (initially in the form of a concurrent resolution) which rejected the discretionary power sought by the President as a dangerous transfer of "legislative authority to the executive branch." The Mahon resolution provided instead that the President would propose specific cuts which would take effect only if approved by Congress. Mahon's substitute was defeated by a vote of 216-167 and the House then passed H.R. 16810 by a vote of 221-163.

The bill then moved to the Senate where it again emerged from committee with full authority for the President to reduce programs in accord with his preferences.^{9/} However, the Senate, voting 46-28, adopted a floor amendment requiring the President to make proportional cuts in programs and barring reductions of more than 10 percent in any activity or item. In addition, the amendment exempted nine enumerated spending categories from any Presidential cuts. But an amendment striking the \$250 billion ceiling altogether was rejected 48-24 and the bill passed by a 61-11 margin.

In conference, the requirement that program cuts be proportional was deleted and the President was given authority to reduce individual programs by as much as 20 percent.^{10/} The House approved the conference report on October 17, 1972 but on the same day the Senate rejected the report by a vote of 39-27 and it then adopted an amendment that had the effect of nullifying the spending limitation.^{11/} On October 18, the conferees met again, accepted the Senate amendment,^{12/} and, after further complications involving unemployment benefits, both the House and the

^{9/} S. Rept. No. 92-1292 (1972).

^{10/} H. Rept. No. 92-1606 (1972).

^{11/} Inasmuch as the \$250 billion ceiling was in both the House and Senate bills, it could not be deleted in conference. Hence, the only way to nullify the ceiling was by the addition of a separate provision that it would cease to apply after enactment. See 118 Congressional Record (October 17, 1972) 36854, remarks of Senator Long.

^{12/} H. Rept. No. 92-1614 (1972).

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Senate passed the debt ceiling bill containing the self-destructing limitation on 1973 expenditures. Whereupon the 92nd Congress adjourned sine die. On October 27, 1972, President Nixon signed H.R. 16810 and the battle for a spending ceiling came to a quiet end.

But the battle for budget reform had just begun. When the House Ways and Means Committee initially considered the debt ceiling bill, it inserted a provision (offered by Rep. Al Ullman) establishing a 30-member committee to study

the procedures which should be adopted by the Congress for the purpose of improving congressional control of budgetary outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of the anticipated revenues for that year.

The Ullman proposal attracted little attention during floor consideration of H.R. 16810, but the Senate adopted an amendment increasing the Joint Study Committee's membership to 32 in order to provide at-large representation for the minority in the House and the Senate.^{13/} One Senator pointed to the Joint Study Committee provision in opposing a floor amendment that would have attached a budget control procedure to the debt ceiling bill.^{14/} As enacted, the legislation compounded the anomaly of the self-negating spending limitation by directing the Joint Study Committee to study the "operation of the limitation on expenditures and net lending" that was to terminate one day after it took effect.

Purposes of Budget Reform

The Joint Study Committee was given little time to complete its assignment, its reporting deadline was February 15, 1973, less than four months after its formation. This period of time was effectively used to build a case for budget

^{13/} 118 Congressional Record (October 13, 1972), 35965. See remarks of Senator Roth who sponsored the amendment.

^{14/} 118 Congressional Record (October 13, 1972), 35972 an exchange between Senators Bennett (floor manager of the bill) and Percy (who introduced the amendment).

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reform by gathering evidence concerning the defects of the existing process. The Joint Study Committee thus set the agenda for reform in its Interim Report of February 7, 1973 which listed eleven guiding principles and identified a number of basic problems in budget control.^{15/} The Committee's central theme was "the lack of congressional control over the budget", a conclusion which it found self-evident in the fact that the Federal budget has been in a deficit position during all but seven of the years since 1931. The Committee further pointed to the huge deficits of recent years--aggregating to well over \$100 billion on a federal funds basis during the most recent half dozen years--and it argued "that the failure to arrive at congressional budgetary decisions on an overall basis has been a contributory factor in the size of these deficits."^{16/}

Table 3

Federal Budget Deficit; Unified Budget and Federal Funds, 1967-75
(in millions of dollars)

<u>Fiscal Year</u>	<u>Unified Budget</u>	<u>Federal Funds</u>
1967	- 8,702	- 14,944
1968	- 25,161	- 28,379
1969	3,326	- 5,490
1970	- 2,845	- 13,143
1971	- 23,033	- 29,866
1972	- 23,227	- 34,140
1973	- 14,301	- 25,000
1974	- 3,460	- 17,381
1975 (Jan. 1975 estimate)	- 34,700	- 43,000

In portraying Congress as culpable for inadequate budget control, the Joint Study Committee identified a number of shortcomings in the legislative budget process. The discussion that follows relies on the findings of the Committee and supplements them with later and more varied data.

^{15/} H. Rept. No. 93-13 (1973).

^{16/} Ibid.. p. 4.

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Separation of Tax and Spending Decisions

Since the Civil War period, Congress has split tax and spending legislation between different sets of committees. When the Federal Government was comparatively small and there were few year-to-year changes in revenues or expenditures, the task of Federal budgeting was primarily to estimate the yield from existing taxes and to decide how much of a surplus should be sought. The budget was not a central factor in the national economy, and a balanced budget was regarded (at least in theory) as the only proper course for the Federal Government. The growth of the budget has brought significant changes in its role, especially as regards economic policy. Nowadays, taxes and expenditures are volatile factors, sensitive to policy determinations and to economic conditions. The budget has become a main determinant of the economy and it impacts (though not always in an understood way) on employment, prices, and economic growth.

The lack of a procedure for coordinating revenue and spending decisions means that Congress often is unaware of the implications of its budget for the economy. The surplus or (much more likely) the deficit in the budget "happens" as the sum of many separate decisions and it is not consciously determined by Congress. The Joint Study Committee estimated that tax reductions (exclusive of social security taxes) enacted during the previous decade had the effect of cutting fiscal 1973 revenues approximately \$50 billion below the level they otherwise would have been. In other words, if Federal taxes had been maintained at 1962 rates,^{17/} there might have been surpluses rather than deficits in recent years. The Joint Study Committee did not argue for an annually-balanced budget, but it suggested "that when a deficit or surplus occurs, it should, to the extent possible, be the result of a planned rather than an unplanned congressional policy."^{18/}

^{17/} Ibid., p. 9. Also Table 9 on p. 24. Also see C. Schultze, E. Fried, A. Rivlin, and N. Teeters, Setting National Priorities: The 1973 Budget (The Brookings Institution: 1972) pp. 402-405.

^{18/} Ibid., p. 10.

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Congress Does not Decide Spending Totals

When Congress receives the President's budget, it distributes the various segments among its legislative committees and Appropriations subcommittees. Each year Congress considers at least thirteen regular appropriations, two supplemental bills, and dozens of other measures which mandate spending or authorize the obligation of funds. These bills add up to a congressional determination of spending totals only in the sense that the parts appropriated by Congress determine how much is to be spent. But at no time does Congress go on record as to the total amount of money that is to be spent during the fiscal year.

Not that Congress hasn't made the attempt from time to time in the past. The Legislative Reorganization Act of 1946 provided for an annual legislative budget, but after several abortive attempts, the legislative budget concept was abandoned.^{19/} In 1968, 1969, and 1970, Congress enacted one-year ceilings on Federal expenditures but in each case certain programs were exempted from the limitation.^{20/} As has been discussed, Congress turned down the President's request for a \$250 billion limitation on fiscal 1973 outlays.

Congress Does not Determine Annual Outlays

Congress does not directly decide how much is to be spent in a particular year. Its control extends to the appropriation of funds or to other legislation providing new budget authority, not to actual outlays. In Federal practice, an appropriation (or other form of budget authority) authorizes a government agency to incur an obligation. The cash expenditure occurs only when the obligation is paid off. When the appropriation and outlay occur in the same year, there is no difference between the two categories. Such is the case, however, for only about 60 percent

^{19/} See Louis Fisher, "Experience with a Legislative Budget (1947-49)" in U.S. Senate Committee on Government Operations, Improving Congressional Control over the Budget: A Compendium of Materials, 93d Cong, 1st Sess., pp. 249-51.
^{20/} See: The Revenue and Expenditure Control Act of 1968 (P.L. 90-364); The Second Supplemental Appropriations Act, 1969 (P.L. 91-47); and The Second Supplemental Appropriations Act, 1970 (P.L. 91-305).

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of the new budget authority requested for fiscal 1976. The actual amounts spent in the current fiscal year thus depend on a combination of past and current actions, just as future spending will depend in part on current-year decisions.

The 1976 budget illustrates the relationship between budget authority and outlays, and the salient data are set forth in Table 4. The fiscal year began with carryover balances (both obligated and unobligated) estimated at \$493.9 billion. The President proposed that \$385.8 billion in new budget authority be provided for the fiscal year. Outlays in 1976 were initially estimated at \$349.4 billion, of which \$237.8 billion was to be derived from new budget authority and \$111.6 billion was to come from carryover balances. This means that \$148.1 billion--more than one third--of 1976 budget authority will be spent in future years. As a consequence, it is estimated that fiscal 1976 will close with \$8 billion added to the carryover balances, raising their total to \$502.4 billion.

Table 4

Relation of Budget Authority and Outlays in the 1976 Budget
(in billions of dollars)

<u>Available Budget Authority</u>		
Balances from prior years	493.9	
New Budget Authority	385.8	
Minus Lapsing Authority	27.9	
Total Available Budget Authority		851.8
<u>Outlays by Source</u>		
From prior-years' budget authority	111.6	
From new budget authority	237.8	
Total Outlays		349.4
Budget Authority to be available in future years		502.4

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Because outlays for many programs are substantially determined by past decisions, it is difficult for Congress to control spending by means of the appropriations process. Obligations authorized in prior years still can generate spending. Thus, beyond the point of appropriations, Congress has no direct control over the budget process, but it is precisely at this stage that outlay levels are determined. One possible way for Congress to establish control over outlays would be for it to appropriate funds necessary for a particular year's expenditures rather than for obligations. In this way, Congress would decide how much is to be spent and for what. A modified expenditure-based appropriations process (called "accrued expenditure budget") was proposed by the Second Hoover Commission in 1955. However, substantial opposition was voiced by some Appropriations Committee members and no action was taken. A central defect of an expenditure-based budget is that it does not adequately provide for programs which have a long lead time between obligation and expenditure.

Congress does not Directly Determine National Budget Priorities

Congress makes its spending decisions in a fragmented manner by taking up the various appropriation measures seriatim and by authorizing expenditures in a number of legislative bills. At no point in the process does Congress decide how much is to be spent for one purpose versus other purposes. Thus, Congress has no procedure for deciding what portion of the total budget (or of incremental funds) should go for health programs or for comparing transportation needs with those of housing. This fragmented perspective extends to the Appropriations Committees which have quasi-autonomous subcommittees for each of the regular appropriation bills. Typically, the full Appropriations Committees make few changes in the bills marked up by their

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subcommittees.^{21/} Except for brief overview hearings shortly after the President submits his budget, the parent Committees do little to coordinate the work of their subcommittees.^{22/}

Legislative consideration of appropriation measures sprawls over many months with the result that it is difficult to assess the impact of any single measure on the budget. Table 5 shows that for fiscal 1974 appropriations, there was a lapse of 8 months in the House of Representatives between passage of the first (Legislative Branch) and last (Foreign Assistance) appropriation bills. In the Senate, there was a six month interval between action on the Agriculture and the Foreign Assistance bills.

In 1950, Congress experimented with an omnibus appropriation bill that covered all the regular appropriations for the fiscal year. Although there were no procedural defects in this approach, Congress did not use it in subsequent years.^{23/}

Backdoor Spending

Legislative consideration of the budget is further fragmented by "backdoor spending" which bypasses the regular appropriations process and/or the Appropriations Committees. The Joint Study Committee identified four types of backdoor spending: contract authority, borrowing authority, mandatory entitlements, and permanent appropriations.

^{21/} See Richard H. Frenno, The Power of the Purse: Appropriations Politics in Congress (Boston: 1966) for a discussion of the role of the Appropriations Committees and their subcommittees.

^{22/} In addition, the Joint Committee on Reduction of Federal Expenditures issues periodic scorekeeping reports. In 1973 and 1974, the Senate Appropriations Committee developed provisional targets for each of its subcommittees.

^{23/} See Dalmus H. Nelson, "The Omnibus Appropriations Act of 1950," 15 Journal of Politics (1953) pp. 274-88.

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Table 5

Passage and Enactment of Regular Appropriation Bills, Fiscal 1974

<u>Appropriation Bill</u>	<u>Passed House</u>	<u>Passed Senate</u>	<u>Enacted</u>
Agriculture-Environmental and Consumer Protection	June 15	June 28	October 24
Defense	November 30	December 13	January 2 (1974)
District of Columbia	June 18	July 20	August 14
Foreign Assistance	December 11	December 17	January 2 (1974)
HUD, Space, Science, Veterans	June 22	June 30	October 26
Interior	June 27	August 1	October 4
Labor-HEW	June 26	October 4	December 18
Legislative Branch	April 18	July 19	November 1
Military Construction	November 14	November 20	December 20
Public Works	June 28	July 23	August 16
State, Justice, Commerce, and Judiciary	June 29	September 17	November 27
Transportation	June 20	July 28	August 16
Treasury, Postal Service	August 1	September 5	October 30

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Contract authority is authority granted to Federal agencies to incur obligations in advance of appropriations. (There also are instances where contract authority is provided in the appropriation measure or where the authority can be exercised only to the extent that funds are appropriated. But these are not backdoor actions because they do not bypass the appropriations process or committees.) In the case of backdoor contract authority, actual appropriations are made at a later time when funds are required to liquidate the obligation. Thus, unlike ordinary appropriations which precede the obligation of funds, in this case the obligation precedes the appropriation. By the time the Appropriations Committees are asked to provide liquidating funds, an obligation already exists and Congress no longer has any effective control over the matter. The amount of new contract authority fluctuates substantially from year to year and it amounted to \$10 billion in fiscal 1973, \$36.1 billion in fiscal 1974, an estimated \$73.4 billion in fiscal 1975, and \$37.0 billion for fiscal 1976.^{24/}

Borrowing authority permits Federal agencies to borrow funds from the Treasury or from the public for specified purposes. The agency can use the borrowed funds in much the same manner as a regular appropriation except that borrowing authority often functions as a revolving fund, with payments to the Treasury enabling the agency to reborrow an equivalent amount. When an agency is authorized to spend public debt receipts, the Treasury loans it money and the transaction has the same effect as an appropriation. Sometimes an agency is permitted to spend agency debt receipts which it obtains by borrowing from the public.

Since 1932, authority to borrow from the Treasury has totalled more than \$30 billion, of which only about \$17 billion has been provided through the Appropriations Committees.

^{24/} U.S. Congress. House Committee on Appropriations Hearings on The Federal Budget for 1976, 94d Congress (1975), forthcoming. See The Budget of the United States Government, Fiscal Year 1976, p. 326, for the amount of total contract authority available through and without current action by Congress.

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New borrowing authority was \$1.3 billion in fiscal 1973, \$3.0 billion in fiscal 1974, an estimated \$7.1 billion in fiscal 1975, and \$3.8 billion for fiscal 1976.^{25/}

Mandatory entitlements cover instances where a person or government is entitled by law to receive a payment from the Federal Government. In such cases, the Federal Government has an obligation to satisfy the entitlement and even when the funds are provided through appropriations (as is the practice for public assistance and veterans benefits) Congress has no meaningful control over the amount. Mandated entitlements often are open ended with the amount of expenditures determined by factors over which Congress has no immediate control. In most years, the mandatory entitlements authorized by Congress exceed the amounts requested in the President's budget.

Permanent appropriations refer to budget authority which becomes available without current action by Congress. Many permanent appropriations are provided in basic legislation, and often are without limit of time or money. Almost half of the new budget authority in the 1976 budget is available without current action by Congress. Most permanent appropriations are in trust funds for social security, highway aid, and civil service retirement.

The problem of permanent appropriations has concerned Congress for many years. The Legislative Reorganization Act of 1946 directed the Appropriation Committees to recommend to their respective Houses what permanent appropriations, if any, should be discontinued.^{26/} This plea was renewed in the Legislative Reorganization Act of 1970 which urged congressional committees to "endeavor to insure" that "to the extent consistent with the nature, requirements, and objectives of these programs and activities, appropriations...will be made annually."^{27/}

^{25/} Ibid., p. 343.

^{26/} 60 Stat. 812.

^{27/} Public Law 91-510, 84 Stat. 1140, section 253.

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The Joint Study Committee argued that the four types of backdoor spending adversely affect the capability of Congress to control expenditures. As a result of backdoor practices, barely 40 percent of the budget goes through the Appropriations Committees, and some of the programs for which appropriations are made contain mandatory provisions over which Congress has little control. The fragmentation of the spending process has contributed to a "dual standard" in which Congress regularly appropriates less through the "front door" than is requested by the President but adds substantial sums through the backdoor. Estimates compiled in the scorekeeping reports of the Joint Committee on Reduction of Federal Expenditures (and shown in Table 6) reveal that since fiscal 1969, Congress has provided \$40 billion less in appropriation bills than has been requested by the President but has increased the backdoor amounts by more than \$50 billion.

Congress Cannot Control Annual Spending

Most of the budget is "relatively uncontrollable under existing law", a term applied by the Office of Management and Budget to budget estimates over which the President has no discretion. Many uncontrollable expenditures can be made controllable by changes in basic legislation, but the budget generally is based on existing laws plus changes recommended by the President.

For fiscal 1976, 75 percent of all budget outlays are estimated as uncontrollable, up 15 points from the corresponding percentage in fiscal 1967.^{28/} In dollar amounts, uncontrollable spending has grown from \$93 billion in fiscal 1967 to an estimated \$260 billion in fiscal 1976. As a matter of fact, the percentage of the budget which is uncontrollable has increased in every year (except one) during this period.

^{28/} The Budget of the United States Government, Fiscal Year 1976, Table 14,
pp. 354-55.

Table 6

Impact of Congressional Action on Budget Totals, Fiscal Years 1969-75
(in millions of dollars)

Year	Budget Authority				Outlays			
	Appropriations	Backdoors	Mandatory	Inactions	Appropriations	Backdoors	Mandatory	Inactions
1969	- 13,750	+ 465	+ 272	+ 75	- 4,550	- 51	+ 252	+ 75
1970	- 5,436	+ 5,340	+ 364	+1,470	- 2,869	+ 123	+1,352	+1,388
1971	- 2,617	+ 5,813	+2,539	-4,613	- 657	+ 50	+4,114	- 221
1972	- 2,993	+ 200	+ 473	-5,476	- 1,059	--	+3,714	-3,333
1973	- 4,886	+14,765	+ 864	-4,735	- 1,626	+3,295	+4,565	- 107
1974	- 5,119	+ 8,333	+ 859	-3,689	- 1,414	+ 15	+3,468	+ 348
1975*	- <u>5,664</u>	+ <u>14,795</u>	+ <u>1,533</u>	+ <u>83</u>	- <u>3,719</u>	+ <u>63</u>	+ <u>2,745</u>	+ <u>691</u>
Totals	- 40,465	+49,711	+6,904	-16,885	-15,894	+3,495	+20,210	-1,159

* Through 93d Congress.

Source: Joint Committee on Reduction of Federal Expenditures.

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The three main sources of budget uncontrollability already have been mentioned. One is the carryover of obligated balances from prior years. More than \$50 billion in fiscal 1976 spending is the result of prior-year contracts and obligations. A second factor is the payment of entitlements to eligible individuals and governments. The third source is permanent appropriations which become available without current action by Congress.^{29/} The entitlements and permanent appropriations account for more than \$150 billion in uncontrollable outlays.

Not only are uncontrollables the fastest growing part of the budget, they also tend to be higher than the original budget estimates. The budget requests for uncontrollable programs generally are estimates of future costs rather than discretionary Presidential proposals. In the average year, actual spending for uncontrollables is almost \$3 billion above the initial estimates. This means that if Congress decides to enact a ceiling on total outlays, either it would have to adopt a floating ceiling that is automatically adjusted upward if uncontrollable costs rise or it would have to cut back the controllable items if the uncontrollables escalate above their estimates.

Appropriations are not Enacted by July 1

One of the most troubling indicators of the inadequacy of the legislative process has been the habitual failure of Congress to complete action on regular appropriation bills before the fiscal year starts. During the past decade, there has not been a single fiscal year for which all regular appropriations were enacted prior to July 1. During five of the years since 1965, Congress has failed to enact a single appropriation measure before the fiscal year began and in none of these years were more than two of the regular appropriation passed by July 1. In one

^{29/} Many entitlements also are in the form of permanent appropriations so that these two categories overlap substantially.

Table 7
Uncontrollability of Outlays, Fiscal Years 1969-1976
(in billions of dollars)

	1969	1970	1971	1972	1973	1974	1975*	1976*
Total Budget Outlays	184.5	196.6	211.4	231.9	246.5	268.4	313.4	349.4
Total Uncontrollable Outlays	116.4	125.7	140.4	153.5	173.0	194.5	232.1	260.7
Increase from Previous Year's Uncontrollables	9.2	9.3	14.7	13.1	19.5	21.5	37.6	28.6
Difference between Actual and Original Estimate	1.9	6.6	4.6	2.3	- 1.5	2.1	*	*
Percentage Uncontrollable Outlays	63.1	64.0	66.4	66.2	70.2	72.5	74.2	74.7

* The amounts for fiscal years 1975 and 1976 are estimates taken from the 1976 budget.

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year--fiscal 1973--no appropriation measure was enacted for foreign assistance or Labor-HEW. This extreme breakdown was due to protracted conflict between Congress and the Administration. But in the average year, there is a delay of 2-5 months between the start of the fiscal year and the enactment of all appropriations. During the interval, Congress passes a continuing resolution which authorizes agencies to continue their operations at the previous year's level.^{30/}

One of the main reasons for the inability of Congress to clear all appropriations by July 1 has been delay in the enactment of required authorizing legislation. Under the rules of the House and the Senate, appropriations are not in order unless they have been authorized by law.^{31/} Prior to the 1950s, virtually all Federal programs and agencies had permanent authorizations, without limit of time or money. But during the past two decades there has been a trend to limited-term authorizations and as a result action on appropriations often has been deferred pending enactment of authorizations. More than \$45 billion in the 1975 budget required authorization before appropriations could be enacted. Only one of the regular appropriation bills for 1975 (the Legislative Branch Appropriation) did not require any new authorizing legislation.^{32/}

There is a time link between completion of action on authorizations and subsequent enactment of appropriations. According to one study, "most of the appropriation acts are approved within a few days to a few weeks of the approval of the

^{30/} In recent years, Congress has provided for some program expansions in continuing resolutions and it also has used this device to legislate some limitations on the use of funds by the executive branch.

^{31/} Rules of the House of Representatives Rule XXI, sec. 2; Standing Rules of the Senate, Rule XVI, sec 1 & 2. There are various exceptions to these general rules, particularly in the Senate.

^{32/} Joint Committee on Reduction of Federal Expenditures, 1975 Budget Scorekeeping Report. 93rd Cong., 2d Sess.

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last authorization act required for programs contained in the specific appropriation act.^{33/} Data for fiscal years 1969-72 indicate that there is a lag of more than 50 days between enactment of authorizations and appropriations.^{34/} In considering the effects of the authorizations process, it should be noted that the Appropriations Committees generally commence consideration of their bills without waiting for enactment of authorizations. Because of this practice, the Appropriations Committees are able to report their bills shortly after the authorizations have been cleared.

Table 8

Enactment of Appropriations, Fiscal Years 1965-74

<u>Year</u>	<u># Enacted by July 1</u>	<u>Date Last Bill Enacted</u>	<u>Total # of Days after July 1</u>
1965	0	Oct. 7	685
1966	2	Nov. 2	751
1967	2	Nov. 8	1,027
1968	1	Feb. 2 (1968)	1,533
1969	1	Oct. 17	756
1970	0	Feb. 1 (1970)	2,162
1971	0	Mar. 30 (1971)	1,791
1972	1	Dec. 18	853
1973	0	Oct. 26*	633
1974	0	Jan. 2 (1974)	1,659

* No Foreign Assistance or Labor-HEW Appropriations were enacted for fiscal 1973.

^{33/} George K. Brite, "Authorizing Legislation Required Prior to Enactment of Appropriations and Appropriation Acts for each Session of Congress, 90th Congress, Second Session to 92d Congress, First Session." Congressional Research Service, February 10, 1972. p. 5.

^{34/} See Allen Schick, "A Three-Year Limit on Authorization Bills," in U. S. Senate Government Operations Committee, Improving Congressional Control over the Budget: A Compendium of Materials. pp. 261-73.

Evolution of the Congressional Budget and Impoundment Control Act

From the time that it was proposed in April 1973 until it was enacted 15 months later, the budget legislation went through five committees, including a special joint committee at the start and a conference committee at the end. Contributions to the final Act were made at each stage and these are briefly discussed in the remaining portions of this chapter. The legislative history of the Act is outlined in Table 9 below.

The Joint Study Committee

On April 18, 1973, the Joint Study Committee issued its final report and identical bills to implement its recommendations were introduced in the House and the Senate. Because it lacked authority to report legislation, the Joint Study Committee's bills were referred to the appropriate House and Senate committees: H.R. 7130 to the House Rules Committee and S. 1641 to the Senate Government Operations Committee.^{35/}

The Joint Study Committee proposed the establishment of a 21-Member Budget Committee in the House and a 15-Member committee in the Senate, with one third of each Committee's seats assigned to the Appropriations Committee and another third to the tax committee (House Ways and Means or Senate Finance). The chairmanships of the new committees would alternate between the Appropriations and the Tax Committees. One third of the Budget Committee Members would

^{35/} In the House, resolutions were introduced by Representative John B. Anderson to authorize the Joint Study Committee to report legislation, but no action was taken on them. H. Con. Res. 178 and H. Con. Res. 179, 93d Congress, 1st Session (1973), 119 Congressional Record (daily ed., April 9, 1973). H-2537-38.

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Table 9

LEGISLATIVE HISTORY OF CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT

<u>Date</u>	<u>Action</u>	<u>Citation</u>
October 27, 1972	Joint Study Committee Established	Title IV, PL. 92-599
April 11, 1973	S. 1541 introduced	
April 18, 1973	Joint Study Committee Reports	<u>Recommendations for Improving Congressional Control over Budgetary Outlay and Receipt Totals. H.R. 7130 and S. 1641 introduced.</u>
April-May 1973	Hearings by Senate Subcommittee on Budgeting, Management, and Expenditures	<u>Hearings on Improving Congress Control of the Budget</u>
July-September 1973	Hearings by House Rules Committee	<u>Hearings on Budget Control Act of 1973</u>
November 20, 1973	House Rules Committee Reports	H. Rept. No. 93-658
November 28, 1973	Senate Government Operations Committee Reports	S. Rept. No. 93-579
December 4, 5, 1973	House Debates and passes H.R. 7130	
January 15, 1974	Hearings by Senate Committee on Rules and Administration	<u>Hearings on Budget Control Act of 1973</u>
February 21, 1974	Senate Committee on Rules and Administration reports	S. Rept. No. 93-688
March 19-22, 1974	Senate debates and passes S. 1541	
June 11, 12, 1974	Conference Committee reports	H. Rept. No. 93-1101; S. Rept. No. 93-924
June 18, 1974	House adopts conference report	
June 21, 1974	Senate adopts conference report	
July 12, 1974	President signs Congressional Budget and Impoundment Control Act	PL. 93-344

be drawn from the House or Senate at large. Thus, the Budget Committees were conceived as coordinating rather than representative bodies; their prime mission would be to link the revenue and spending sides of the budget, not to reflect the overall makeup of the House or the Senate.

In the Joint Study Committee scheme, the Budget Committees were to be assisted by a legislative budget staff, which would serve as a joint staff for both committees. "A joint staff for the two committees would enable both Budget Committees to benefit from the specialized knowledge and skills acquired by the staff in preparing and analyzing budget material...."^{36/} As conceived by the Joint Study Committee, the budget staff would not have been available to assist other committees or the membership at large, though some of its reports would have been made public. Like the Committees it would have served, the joint staff would have been assigned to assist the few in Congress with special interest in budget matters.

The core of the budget process conceived by the Joint Study Committee was to be a concurrent resolution on the budget adopted by May 1 of each year. This "first" annual budget resolution would have set limitations on total new budget authority and outlays, and would have allocated these spending totals among congressional committees and Appropriations subcommittees. The budget resolution also would have set the overall levels of revenues, debt, and budget surplus or deficit, and it could also have set limitations on guaranteed or insured borrowing. Floor debate on the budget resolution would have been regulated by a "rule

^{36/} Joint Study Committee on Budget Control. Recommendations for Improving Congressional Control over Budgetary Outlay and Receipt Totals, April 18, 1973. p. 27.

of consistency" requiring an amendment changing any of the spending amounts to maintain the consistency of the resolution. Thus, an amendment proposing increases in one budget category also would have had to propose an increase in the budget totals or an equivalent reduction in another category.

After its adoption, the budget resolution would function as a restraint on individual spending measures. Congress could not appropriate funds in excess of the amounts set forth in the budget resolution for a particular category and a special scorekeeping procedure would have been used to assure that the spending ceilings for the budget total and individual categories were not breached. If required by budget resolution, Congress would have been required to specify outlay limitations in appropriations and other spending bills. It also would have been required to adopt a tax surcharge (or an equivalent revenue measure) if such action was necessary to achieve the surplus or deficit prescribed in the budget resolution. Waiver or suspension of any of the new rules for the congressional budget process would have been only by a two-thirds vote of the House or the Senate.

New backdoor spending, except for fully self-financed trust funds, would have been terminated, and contract authority, borrowing authority, and entitlement legislation would have been funded only to the extent provided in appropriation acts. New authorizing legislation would have had an enactment deadline of June 30, before the start of the next fiscal year.

The congressional budget process which would have derived from the Joint Study Committee bill would have been under the effective control of the

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House and Senate Budget Committees, each of which would have drawn two-thirds of its members and its chairman from the Appropriations and Tax Committees. A resolution reported by the Budget Committees could not be easily amended on the floor of the House or the Senate and appropriation bills would have been required to abide by the spending limitations of the resolution.

These features were criticized at hearings before the House Rules and Senate Government Operations Committees. Many proposed a Budget Committee structure which would open its membership to a broader range of Representatives and Senators; others called for committees which would have no special quotas; still others asked for Budget Committees which would have rotating memberships. Similar complaints were voiced concerning the budget staff, with a number of bills calling for a new budget office to serve all committees and Members.

A third target of criticism was the budget resolution, for some because of the ceilings it would have imposed at the start of the congressional budget process, for others because the rule of consistency would have outlawed most floor amendments. A special problem was the House rule against amendments in the third degree; there was apprehension that this rule in combination with the consistency requirement would have made it virtually impossible to amend budget resolutions on the floor. Some critics were dissatisfied with the tax provisions of the Joint Study Committee proposal, in part because it was weighted in favor of a surtax as the means of achieving the prescribed surplus or deficit.^{37/}

^{37/} In addition to the hearings listed in Table 9, see Democratic Study Group, Special Report, Recommendations of the Joint Study Committee on Budget Control, May 10, 1973.

In the House

The House Rules Committee held hearings on H.R. 7130 during the summer of 1973, made extensive changes in the bill, and reported an amendment in the nature of a substitute on November 20, 1973. The bill was debated in the House on December 4 and 5 and passed by a vote of 386-23. Only two, comparatively minor, amendments were adopted on the floor.

The Rules Committee retained the basic structure formulated by the Joint Study Committee but modified many of the particulars. It proposed a 23-Member House Budget Committee, with ten from House Appropriations and Ways and Means, two from the party leaderships, and eleven at large. It provided for a Legislative Budget Office to function as a joint staff for the two Budget Committees but also to give some assistance to other committees and Members. The first budget resolution was to be a target, with no "consistency" limitation on floor amendments and no requirement that spending measures abide by the amounts in the resolution. Allocations in the budget resolution were to be by major budget function rather than by appropriation category. The task of reconciling the budget resolution with congressional action on spending bills was to take place in the fall, at which time Congress would adopt a second budget resolution calling for any desired changes in revenues, spending, or debt. In order to provide sufficient time for the congressional budget process, the fiscal year was to be shifted to an October 1-September 30 cycle.

The House Rules Committee attached an impoundment title to the budget reform legislation. Derived from H.R. 8480 which had been passed by the House

in July 1973, the impoundment title provided that any executive withholding of funds must cease if disapproved by either the House or the Senate within 60 days.

Senate Government Operations Committee

In the Senate, the vehicle used for marking up the budget legislation was S. 1541, introduced by Senator Ervin on April 11, 1973, one week before the Joint Study Committee reported. As introduced, S. 1541 was a "bare bones" bill, though some of its features resembled the provisions of the Joint Study Committee bill. S. 1541 was referred to the Government Operations Committee where it was considered by the newly-established Subcommittee on Budgeting, Management, and Expenditures during April and May 1973. The Subcommittee considered two versions of budget reform, one oriented to early ceilings, the other to budget targets, and by a vote of 5-4 it reported a bill which would establish budget targets. The bill then was considered by the full Committee which reported compromise legislation on November 20, 1973.

The Government Operations Committee bill provided for a 15-Member Senate Budget Committee with assignments to be made in the same manner as for other Senate Committees. There was to be a Congressional Office of the Budget to assist Congress in its budget-related functions and, though the bill was not explicit on the matter, this Office was to be in addition to separate House and Senate Budget Committee staffs.

The congressional budget process would revolve around a Spring resolution setting limitations on total budget authority and outlays and allocating these among legislative committees and their subcommittees or programs. In place of the rule of consistency devised by the Joint Study Committee, the burden of

consistency was to be shifted to the Senate and the House. While inconsistent amendments to the budget resolution could be considered, final adoption was permitted only for consistent resolutions. Congress would be able to adopt appropriations in excess of the levels in the budget resolution, but each appropriation or other spending bill would be required to have a clause stipulating that the new budget authority could not become effective until Congress passed special triggering legislation. This legislation could be considered only when the amounts in spending bills were within the limits of the budget resolution. If the spending totals were in excess of the budget levels, Congress would first have to consider a ceiling enforcement bill reducing spending to the budget levels. If this was not possible it could adopt a second budget resolution revising the limits or a bill making pro rata reductions in controllable expenditures.

The Senate Government Operations Committee bill also had procedures for backdoor legislation as well as a deadline for authorizing legislation. It added titles dealing with budgetary information, a three-year limitation on program authorizations, and the pilot testing of new programs. However, the Government Operations Committee bill did not have any impoundment control provisions.

The Senate Rules and Administration Committee

When S. 1541 was reported by the Government Operations Committee, Majority Whip Robert C. Byrd moved that it be referred to the Committee on Rules and Administration for the purpose of considering its effects on the rules and

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operation of the Senate.^{38/} The Rules and Administration Committee held one day of hearings on the bill and it then convened an informal staff-level group to prepare a revised bill acceptable to various Senate interests and perspectives. The group developed a "consensus" bill that was reported to the Senate on February 21, 1974. The bill was considered in the Senate on March 19-22, 1974, and after the adoption of approximately 20 amendments, was passed by a unanimous vote, 80-0.

The Rules and Administration Committee reviewed the entire bill but its main attention was given to Title III relating to the congressional budget process. The first budget resolution was converted to targets and a reconciliation phase was added at the end. Budget allocations were to be by function and the rule of consistency was restricted to final passage in the Senate. Outlay limitations were removed from spending bills and a crosswalk procedure was prescribed for relating the budget levels to the amounts in spending bills. Most of the changes aligned the Senate bill more closely to H.R. 7130 as passed by the House.

Titles dealing with pilot testing and a three-year limit on authorizations were removed in favor of provisions strengthening the role of Congress and the GAO in program evaluation. A new title was added, amending the Antideficiency Act to restrict the purposes for which funds may be reserved from apportionment.

Conference Committee

With most of the differences between House and Senate versions substantially narrowed by the actions taken by the two Houses, the conferees concentrated on the troublesome impoundment issue. They decided that the final legislation should combine congressional budget procedures and impoundment

^{38/} See 119 Congressional Record (daily ed., November 29, 1973) S-21364.

control and they devised an Impoundment Control Act (Title X) that brought together the Senate's amendment to the Antideficiency Act, an earlier Senate bill (S. 373), and the House's impoundment procedure in H.R. 7130. As conceived by the conferees, a distinction was made between two types of impoundment: rescissions and deferrals. Rescissions would have to cease unless approved by Congress within 45 days; deferrals would cease if disapproved by either the House or the Senate.^{39/}

As for congressional budget procedure, there is to be a targeting resolution in the Spring and a reconciliation process in the fall. The conferees divided backdoor legislation into two categories, with one procedure for contract and borrowing authority and another for entitlement legislation. They settled for a deadline on the reporting rather than the passage of authorizing legislation.

The conference committee reported to the House on June 11, 1973 and to the Senate on the next day. Final passage of the bill occurred in the House on June 18, 1973 by a vote of 401-6 and in the Senate on June 21 by a 75-0 vote. The bill was signed into law by President Nixon on July 12, 1974.

^{39/} For a legislative history and analysis, see Allen Schick, The Impoundment Control Act of 1974, Congressional Research Service, Multilith No. 72-27 SS, January 31, 1975.

III. SECTION BY SECTION HISTORY AND ANALYSIS OF THE CONGRESSIONAL BUDGET ACT

In this chapter, the origin, development, and meaning of each section of the Congressional Budget Act are discussed. A standard format is used: first, the text of the relevant provision of the Act; next, the legislative history of the provision; and finally, where applicable, implementation of the provision.

In order to simplify an understanding of the Act and its evolution, the following references are used throughout the chapter:

- (1) Joint Study Committee bill refers to S. 1641 and H.R. 7310 as introduced;
- (2) H.R. 7130 always refers to the bill as reported by the House Rules Committee or passed by the House;
- (3) S. 1541 always specifically indicates whether it refers to the bill as introduced, as reported by the Government Operations Committee, as reported by the Senate Rules and Administration, or as passed by the Senate;
- (4) Conference Report or Conference Committee refers to the legislation as enacted.

Section 2. Declaration of Purposes

SEC. 2. The Congress declares that it is essential—

- (1) to assure effective congressional control over the budgetary process;
- (2) to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures;
- (3) to provide a system of impoundment control;
- (4) to establish national budget priorities; and
- (5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

Legislative History

Neither the Joint Study Committee bill nor H.R. 7130 as passed by the House contained a statement of purposes. A declaration of purposes was formulated by the Senate Government Operations Committee during its markup of S. 1541. This declaration was expanded by the Senate Committee on Rules and Administration into two subsections, one detailing the purposes of the Act, the other listing its "means of accomplishment." The conference report combined the two subsections into a statement of purposes that reflects the final version of the Act.

Sec. 3 (a) Definitions

SEC. 3. (a) IN GENERAL.—For purposes of this Act—

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority during such year.

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds, except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability; and the term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means—

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 301;

(B) a concurrent resolution reaffirming or revising the congressional budget for the United States Government for a fiscal year as provided in section 310; and

(C) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 304.

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.

Legislative History

The Joint Study Committee bill did not define "budget outlays" or "budget authority", apparently because of the difficulty of devising definitions that correspond to the actual usages of these terms. "Tax expenditures" were not defined because the Joint Study Committee did not deal with them. However, section 125 (d) of S. 1641 defined "concurrent resolution on the budget" in almost the exact form as the enacted version.

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The definitions of "budget outlays" and "budget authority" are adapted from The Budget of the United States Government, Fiscal Year 1974, but with the definition of outlays expressly covering both expenditures and net lending.^{1/} The exception for insured and guaranteed indebtedness was added by the Committee on Rules and Administration to avert any unintended inclusion of such loans in congressional budget totals. These loans are contingent rather than direct liabilities of the United States; budget authority and outlays only ensue in case of defaults. The exemption conforms to executive budget practices and is paralleled by a similar exclusion of insured or guaranteed loans from the definition of "spending authority" in section 401 (c) of the Act.

The definitions cover the financial operations of all Federal agencies including those which by law are "off budget" and not included in the United States Budget.^{2/} However, if off-budget agencies were included in the congressional budget, its totals would be higher than the corresponding amounts in the President's budget. To avoid this possibility, the managers statement on the conference report provides:

The managers intend that the definition of "budget outlays" and "budget authority" for purposes of the congressional budget process be the same as that used for the executive budget and that any item which is excluded by law from the executive budget may be excluded from any specification of budget outlays or budget authority in the congressional budget process.

^{1/} See Part 6, "The Budget System and Concepts", pp. 314 ff.

^{2/} For a consideration of off-budget agencies, see section 606 below.

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The definition of budget authority is further complicated by its relationship to "entitlement authority" which is defined in section 401 (c) (2) (C) as authority

to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such Law.

There are two types of entitlements: (1) permanent appropriations contained in authorizing legislation. These do not require funding through appropriation acts. The leading example is social security legislation; and (2) entitlements authorized in basic legislation for which funding is provided in appropriation acts. These include veterans pensions, public assistance, and a number of other mandatory entitlements.

Only the first category might be covered by a strict interpretation of the definition of entitlement authority (authority "not provided for in advance by appropriation Acts"). Accordingly, legislation providing permanent appropriations for entitlements probably should be scored both as budget authority and as entitlement authority and would be subject to procedures prescribed in the Congressional Budget Act for both types of legislation.

However, mandatory entitlements which are funded in subsequent appropriations probably should be regarded as entitlement authority in the authorizing legislation and as budget authority in the appropriation bill. This interpretation conforms to the practice of the Appropriations Committees as well as to the scorekeeping procedures of the Joint Committee on Reduction of Federal Expenditure.

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The definition of "tax expenditures" is based on provisions in section 146 (a) of H.R. 7130 and section 3 (a) (3) of S. 1541. The latter was derived from an amendment proposed on September 28, 1973 by Senator Javits and incorporated in the budget bill by the Committee on Government Operations.^{3/} The Javits amendment also introduced the term "tax expenditures budget" which (in revised form) was carried into the new Act.

The definition of "appropriation acts" was inserted by the Senate Committee on Rules and Administration in order to clarify the meaning of section 401. The reference to 1 U.S.C. 105 has the effect of limiting appropriation acts to legislation which is in the form of an appropriation^{4/} in contrast to 31 U.S.C. 2 which defines appropriations as any form of "authority making funds available for obligation or expenditure." Thus, even though all types of budget authority are deemed appropriations, only budget authority provided in appropriation acts are covered by 1 U.S.C. 105.

^{3/} Amdt. No. 561, U.S. Senate, 93d Cong., 1st Sess. (1973).

^{4/} 1 U.S.C. 105 reads: "The style and title of all Acts making appropriations for the support of Government shall be as follows: 'An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year),' as amended, P.L. 93-344, s. 506 (a).

Sec. 3 (b) Joint Committee on Atomic Energy

(b) JOINT COMMITTEE ON ATOMIC ENERGY.—For purposes of titles II, III, and IV of this Act, the Members of the House of Representatives who are members of the Joint Committee on Atomic Energy shall be treated as a standing committee of the House, and the Members of the Senate who are members of the Joint Committee shall be treated as a standing committee of the Senate.

This provision was inserted by the Senate Rules and Administration Committee as a clarification of the status of the Joint Committee on Atomic Energy, the only joint committee in Congress with jurisdiction to report authorizing legislation. The applicable provisions of Titles II, III, and IV relate to assistance by the Congressional Budget Office, the congressional budget process, and the reporting of authorizing legislation.

TITLE I. HOUSE AND SENATE BUDGET COMMITTEE

Sec. 101 (a) Budget Committee of the House of Representatives

SEC. 101. (a) Clause 1 of Rule X of the Rules of the House of Representatives is amended by redesignating paragraphs (e) through (u) as paragraphs (f) through (v), respectively, and by inserting after paragraph (d) the following new paragraph:

"(e) Committee on the Budget, to consist of twenty-three Members as follows:

"(1) five Members who are members of the Committee on Appropriations;

"(2) five Members who are members of the Committee on Ways and Means;

"(3) eleven Members who are members of other standing committees;

"(4) one Member from the leadership of the majority party; and

"(5) one Member from the leadership of the minority party. No Member shall serve as a member of the Committee on the Budget during more than two Congresses in any period of five successive Congresses beginning after 1974 (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress). All selections of Members to serve on the committee shall be made without regard to seniority."

Legislative History

Separate Budget Committees. The concept of separate House and Senate Budget Committees conforms to the approach taken by the Joint Study Committee but is contrary to the joint committee procedure used for the legislative budget in 1947-49.^{5/} Two different challenges to separate House and Senate Budget Committees were raised during

^{5/} Section 138, the Legislative Reorganization Act of 1946, 60 Stat. 832.

consideration of S. 1541 by the Senate Government Operations Committee. Senator McClellan renewed his oft-made proposal for a Joint Committee on the Budget,^{6/} but this approach was not adopted. In its report on S. 1541, the Government Operations Committee explained:

The House has never gone along with the formation of a joint budget committee, for it is concerned that its asserted prerogative to initiate appropriations would be diluted.

The course of reorganization, therefore, requires that least disturbance be done to the traditions of the House and the Senate and their established relationships in the appropriations process. For this reason, the Committee has sought to obtain the benefits of a Budget Committee, avoiding, however, the problems and objections raised by proposals to combine House and Senate Members in a single unit.^{7/}

On September 28, 1973, Senator Muskie filed a printed amendment which he offered as a comprehensive substitute for S. 1541 as reported by the Subcommittee on Budgeting, Management, and Expenditures.^{8/} The Muskie amendment would have combined the existing jurisdiction of the Appropriations Committees with the proposed jurisdiction of the Budget Committees into new House and Senate Committees on Budget and Appropriations. This amendment subsequently was dropped in favor of the compromise bill formulated by the Government Operations Committee.

^{6/} For a discussion of proposed legislation to create a joint budget committee, see Louis Fisher, "Proposal for a Legislative Budget," in Senate Committee on Government Operations, Improving Congressional Control Over the Budget, 93d Cong., 1st Sess. (1973) pp. 236-48.

^{7/} S. Rept. No. 93-579 (1973), p. 12.

^{8/} Amdt. No. 559, 93d Cong., 1st Sess. (1973).

In the House, some opposition to new budget committees was voiced by Representatives Obey and Steiger (Wisconsin) who argued that the tasks could be handled by the Appropriations Committees.^{9/} However, the budget committee approach had wide support and was included in all versions of H.R. 7130.

Composition of the House Budget Committee. As a matter of comity, section 101 of the Act (providing for the House Budget Committee) was formulated by the House and adopted without change by the Senate. Similarly, section 102 (providing for the Senate Budget Committee) was devised by the Senate and accepted by the House.

The Joint Study Committee proposed a 21-member House Budget Committee: seven selected by the House Appropriations Committee; seven selected by the Ways and Means Committee; and seven at-large members appointed by the Speaker. In addition, the chairmanship of the Budget Committee was to alternate annually between Appropriations and Ways and Means.^{10/} These allocations were in line with the Joint Study Committee's conception of the Budget Committee as a group which would coordinate tax and spending policy rather than as a group representative of the House as a whole:

^{9/} U.S. Congress, House Committee on Rules, Hearings on Budget Control Act of 1973, 93d Cong., 1st Sess., pp. 287-297.

^{10/} To implement this arrangement, the Joint Study Committee bill provided that any rule or policy prohibiting dual chairmanships or membership on more than one major committee would not apply to the Budget Committees.

drawing on the appropriations and tax committees for two-thirds of the membership of each of the Budget Committees means that in effect these budgetary decisions at the committee level, to a substantial degree, will continue to be made by the financial committees of the House and Senate which have basic responsibilities in these areas.^{11/}

The quotas advocated by the Joint Study Committee were among the most controversial features of the budget reform legislation. The Democratic Study Group argued that "the committee makeup would be unrepresentative of the House as a whole and would discriminate against members of authorizing committees...."^{12/} During subsequent consideration of the legislation, the co-chairmen of the Joint Study Committee retreated from their original position: Rep. Al Ullman suggested a 20-member committee, half from Ways and Means and Appropriations and half selected at large;^{13/} Rep. Jamie L. Whitten proposed a 19-member committee, with ten from the two designated committees and nine at large.^{14/} The House Rules Committee considered a succession of alternatives including a 15-member committee appointed entirely by the majority and minority leaderships^{15/} and a 21-member committee without^{16/} any quotas or prescribed method of selection. At meetings on

^{11/} Joint Study Committee, Recommendations for Improving Congressional Control over Budgetary Outlays and Receipt Totals, Report, April 18, 1973, p. 18.

^{12/} Democratic Study Group, Special Report on Recommendations of the Joint Study Committee on Budget Control, May 10, 1973, p. 18.

^{13/} U.S. Congress, House Committee on Rules, Hearings on Budget Control Act of 1973, 93d Cong., 1st Sess., p. 57.

^{14/} H.R. 19961, (introduced October 16, 1973), 93d Cong., 1st Sess. (1973).

^{15/} House Rules Committee, Committee Print, September 12, 1973.

^{16/} House Rules Committee, Committee Print, dated September 29, 1973.

October 17 and 18, 1973, the Rules Committee rejected a non-quota formula by a vote of 7-6 and then opted for a 23-member committee: five each from Appropriations and Ways and Means; eleven from the membership at large, and one each from the majority and minority leaderships.

In finalizing the 23-member formula, the Rules Committee deleted language which would have permitted dual chairmanships or multiple major committee assignments. It also departed in two ways from the procedures governing other committees of the House. First, it limited membership on the Budget Committee to no more than four years (plus a fraction of a year) during any ten-year period. Second, it provided that selections shall be made without regard to seniority.

Implementation

The Act does not provide for the distribution of the Budget Committee seats between the two parties nor for the manner in which each party is to select its members. In the 93rd Congress, the 23 positions were divided 14-9 between the Democratic and Republican parties, a ratio comparable to that prevailing in the 93d Congress for other House committees. ^{17/} The parties utilized differing procedures for making their selections. ^{18/}

^{17/} Approximately 60 percent of the seats were allocated to the Democratic Party, the same percentage was used in the 93d Congress for the Appropriations and Ways and Means Committees.

^{18/} See Joel Haverman, "Congress Report/New Budget Committees Already have Ambitious Plans" National Journal, September 29, 1974, pp. 1445-1453.

The Democratic Party relied on its Caucus rather than on its usual Committee on Committees (the Democratic members of the Ways and Means Committee) to select all but one of the appointees.^{19/} The Speaker chose the Majority Leader to fill the slot allocated to the leadership. Seven at-large candidates were nominated by the Democratic Steering and Policy Committee; the Chairman of the Appropriations Committee nominated three of his committee members; and the Chairman of the Ways and Means Committee nominated three candidates. All of these nominees were selected by the Caucus. The Caucus also chose Rep. Al Ullman to be chairman of the Budget Committee in a contested election that was decided by a 113-90 vote.

Republican appointments were made by the Party's Committee on Committees which accepted two nominations each from the ranking minority members of Appropriations and Ways and Means and four nominations from its own executive committee. The Minority Leader chose himself for the position assigned to the leadership.

Although seniority was not strictly followed, both parties tended to select relatively senior members. No freshmen were appointed to the Budget Committee. The Democratic Members had served an average of nine terms in the House; the Republican members averaged eight terms.

^{19/} At organization meetings for the 94th Congress held in December 1973, the Democratic Caucus transferred jurisdiction over all committee assignments to the Democratic Steering and Policy Committee.

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In the 94th Congress, the rules of the House were changed to expand the Committee to 25 Members.^{20/} Although the two Budget Committees were established by statute, it is possible for either House to change the section relating to its Committee merely by amending its own rules. Section 904 of the Act provides that Title I (as well as certain other provisions) are enacted as an exercise of the rulemaking power of each House and can be changed in the same manner as other rules of such House.

Addition of two at large Members to the Committee was designed to change the party ratio to 17 Democrats and 8 Republicans in line with a Democratic Caucus decision that certain major committees shall have a 2-1 Democratic majority. Because of turnovers within Congress and departures from the Budget Committee, 8 Democrats and 2 Republicans received their first appointment to the Committee in 1975.

The Democratic Caucus selected Rep. Brock Adams as chairman in a contested election.^{21/}

^{20/} 121 Congressional Record (daily ed., January 14, 1975) H 5.

^{21/} Because of the procedures used to select Members of the Budget Committee, selection of the chairman did not take place until February 5, 1974, long after Congress had convened and all other committee chairmen appointed.

Sec. 101 (b) Authority to Meet, Hold Hearings, and Issue Subpenas

(b) Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

"6. For carrying out the purposes set forth in clause 5 of Rule XI, the Committee on the Budget or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books or papers or documents or vouchers by subpoena or otherwise, and to take such testimony and records, as it deems necessary. Subpenas may be issued over the signature of the chairman of the committee or of any member of the committee designated by him; and may be served by any person designated by such chairman or member. The chairman of the committee, or any member thereof, may administer oaths to witnesses."

Legislative History

This provision is taken intact from the original proposal of the Joint Study Committee. Until recently, committees did not have blanket authority under the Rules of the House of Representatives to conduct investigations or issue subpoenas. The Rules provided such authority for a few committees (such as Appropriations, Government Operations, and Internal Security), but most committees could obtain this power only through special resolutions. However, on October 8, 1974, the House adopted the Committee Reform Amendments of 1974 (the Bolling-Hansen Amendments) which authorizes all House Committees to sit, investigate, and issue subpoenas. ^{22/}

^{22/} H. Res. 988, 93d Cong., 2d Sess. Rule XI, clause 2, paragraph (m).

Sec. 101 (c) Jurisdiction of the House Budget Committee

(c) Rule XI of the Rules of the House of Representatives is amended by redesignating clauses 5 through 33 as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

"5. Committee on the Budget

"(a) All concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and other matters required to be referred to the committee under titles III and IV of that Act.

"(b) The committee shall have the duty—

"(1) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

"(2) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;

"(3) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the House on a recurring basis; and

"(4) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties."

Legislative History

This subsection is identical to the corresponding provisions of section 102 (a) relating to the duties of the Senate Budget Committee. Some minor differences between the jurisdictions of the two committees derive from later sections of the Act.^{23/} But throughout consideration of the budget legislation, there has been agreement that the House and Senate committees should have parallel jurisdictions.

Enumerated Duties. The statement of House Budget Committee jurisdiction lists four duties, each of which has its own legislative history.

^{23/} See sections 303 (c) and 402 (c) below.

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(1) The Joint Study Committee bill (and some later versions) itemized the content of the concurrent resolutions in the statement of jurisdiction, but this now is incorporated by reference to section 3 (a) (4) and Titles III and IV of the Act. The referenced duties include the reporting of at least two concurrent resolutions on the budget each year and (when required) a reconciliation bill or resolution. The reference to Title IV applies only to the Senate Budget Committee which under section 402 (c) has jurisdiction over emergency waiver resolutions. Certain other duties of the Budget Committees provided in Titles II and ^{24/}VII are not referenced in this subsection.

(2) The tax expenditures function is based on an amendment filed by Senator Javits on September 28, 1973. ^{25/} The enacted version was formulated by the Senate Committee on Rules and Administration and differs from the Javits amendment in two particulars. First, the amendment would have had the Budget Committees "make continuing studies of tax expenditures"; the Act charges them "to request and evaluate continuing studies", presumably referring to studies made by others. Second, Javits would have had the Budget Committees "study" methods of coordination; the Act charges them to "devise" such methods. The first change was made in recognition of the tax expenditure studies of the Joint Committee on Internal Revenue Taxation; the second, to strengthen the role of the Budget Committees.

^{24/} Section 201 (a) provides for Budget Committee recommendations concerning the Director of the Senate Budget Office; section 703 requires certain studies.

^{25/} Amdt. No. 561, 93d Cong., 1st Sess. (1973).

(3) The oversight function appeared in an early Government Operations Committee draft of S. 1541 and has been enacted without subsequent alteration.^{26/} Addition of oversight duties resulted from the conversion of the Congressional Budget Office from a legislative budget staff serving the two Budget Committees into a separate congressional office responsible to Congress as a whole.^{27/}

General Jurisdiction. What jurisdiction, if any, do the Budget Committees have in addition to the functions specified in sections 101 and 102 or in other provisions of the Act? Do the Committees have any legislative jurisdiction or are they confined to the special measures (budget resolutions and reconciliation measures) required by the Act? The answer is not at all clear or without potential controversy. One possible interpretation is that the Committees are limited to those matters expressly assigned to them in the Act. An alternative view is that they also may claim jurisdiction over budget-related matters which are not expressly within the jurisdiction of other committees. At least two types of jurisdictional issues can arise: legislation to establish a ceiling on Federal expenditures; and rescission bills or impoundment resolutions. The former is discussed below in regard to section 306 of the Act; the latter, in Title X.

^{26/} Committee Print No. 2, June 13, 1973.

^{27/} See Title II below for a discussion of the evolution of the budget office from a joint committee staff to a legislative office.

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The legislative history of the Act does not deal specifically with the question of additional Budget Committee jurisdiction. The report of the Senate Committee on Rules and Administration declares that "it is not intended that the Budget Committee diminish the responsibilities of any other committee."^{28/} Against this restrictive interpretation, it may be noted that sections 901 and 902 of the Act modify the jurisdictions of other House and Senate committees in recognition of the functioning of the new Budget Committees.^{29/}

Staffing. Section 101 does not provide for the staffing of the House Budget Committee, nor does section 102 provide for the Senate Budget Committee's staff. As will be explained in the analysis of Title II, the Joint Study Committee contemplated that the Budget Committees would have a joint staff. But this approach was abandoned in later versions and the authority of the two Committees to establish staffs derives from their status as standing committees of the House and the Senate. In addition, section 901 of the Act gives the House Budget Committee special authority to appoint staff.

^{28/} S. Rept. No. 93-688, 93d Cong., 2d Sess. (1974), p. 31.

^{29/} The jurisdictional changes are only mentioned by reference. Section 901 (a) provides that "The respective areas of legislative jurisdiction...are modified by title I of the Congressional Budget Act of 1974." Section 902 states that the jurisdiction of the Senate Finance and Appropriations Committees shall be "except as provided in the Congressional Budget Act of 1974."

Sec. 102 (a) Jurisdiction of the Senate Budget Committee

SEC. 102. (a) Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(r) (1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.

"(2) Such committee shall have the duty—

"(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

"(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

"(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and

"(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties."

Legislative History

As has been indicated, the Senate and House Budget Committees have parallel jurisdictions and the analysis of section 101 (c) is fully applicable to this subsection. In addition to the jurisdiction provided here, sections 303 (c) and 402 (c) give the Senate Budget Committee jurisdiction over resolutions to waive the prohibition against the consideration of certain legislation prior to adoption of the first concurrent resolution on the budget or the deadline for the reporting of authorizing legislation.

Sec. 102 (b) & (c) Composition of the Senate Budget Committee

(b) The table contained in paragraph 2 of rule XXV of the Standing Rules of the Senate is amended by inserting after—

"Banking, Housing and Urban Affairs----- 15"
the following:

"Budget----- 15".

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(h) For purposes of the first sentence of subparagraph (a), membership on the Committee on the Budget shall not be taken into account until that date occurring during the first session of the Ninety-fifth Congress, upon which the appointment of the majority and minority party members of the standing committees of the Senate is initially completed."

Legislative History

The size of the Senate Budget Committee has not been a matter of dispute. The Joint Study Committee as well as the original version of S. 1541 (introduced one week before the Joint Committee issued its final report) provided for a 15-member Budget Committee and this is the size enacted into law. However, there has been much disagreement over the selection of the Committee's members. The Joint Study Committee advocated the same percentage quotas it had recommended for the House Budget Committee: five Senators to be appointed by the Appropriations Committee; five by the Finance Committee; and five by the President pro tem of the Senate. The Budget Committee's chairmanship was to alternate annually between members from the Appropriations and Finance Committees.

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S. 1541 as introduced assigned six of the seats to the Appropriations and Finance Committees and nine to other Senators. Moreover, it provided that all 15 members were to be selected by party caucusses-- "in the same manner as other standing committees of the Senate." During its consideration of the legislation, the Senate Committee on Government Operations dropped all quotas, leaving to the determination of the Senate the manner in which all members were to be selected. It rejected by a vote of 5-3 a proposal to stagger the terms of the members of the Budget Committee, with one-third of the membership rotating every ^{30/} two years. With only one modification, the formula reported by the Government Operations Committee has been enacted into law.

The single change relates to the effect of Budget Committee membership on other committee assignments. Under the rules of the Senate, a Senator may serve on no more than two "major" committees. ^{31/} By a vote of 7-1, the Government Operations Committee designated the Budget Committee as a major committee, thereby applying the two-committee limitation to its members. ^{32/} The bill reported by the Committee on Rules and Administration deferred application of this limitation until the start of the 96th Congress, thus providing a grace period

^{30/} S. Rept. No. 93-579, p. 95. Under the proposal made by Senator Metcalf, five members would have been initially appointed to two year terms; five to four-year terms; and five for six years.

^{31/} Rule XXV. paragraph 6 (a) of the Standing Rules of the Senate. Paragraph 6 (b) exempts from this limitation Senators who were members of either the Government Operations or the Aeronautical and Space Sciences Committee when the Legislative Reorganization Act of 1970 (which converted these into major committees) was adopted.

^{32/} S. Rept. No. 93-579, p. 95 (1973). This designation was accomplished by listing the Budget Committee in Rule XXV, paragraph 2 of the Senate Rules.

during which the first appointees to the Budget Committee could serve on three major committees.^{33/} However, during floor consideration of S. 1541, the Senate adopted an amendment reducing the grace period to one Congress.^{34/} As a consequence, current members of the Senate Budget Committee will have until January 1977 to decide which committee assignment is to be relinquished.

Implementation

The party ratio for the 93rd Congress was nine Democrats and six Republicans, comparable to the distributions on other Senate committees.^{35/} Senate appointments were made by the Senate Democratic Steering Committee in accord with guidelines adopted by the Party Conference on July 19, 1974. The Conference directed.

That in determining the majority party membership of the Senate Budget Committee, the Conference instructs the Steering Committee to select members of the Budget Committee to reflect as nearly as practicable the balance of membership of the Conference as a whole, based on the following criteria: geography and philosophy.^{36/}

^{33/} S. Rept. No. 93-688 (1973). See page 26 for an explanation of this provision.

^{34/} Amdt. No. 1028, introduced by Senator Kennedy was accepted by the managers of the bill and adopted by voice vote. 120 Congressional Record (daily ed. March 21, 1974), S4064.

^{35/} The 60-40 percent ratio on the Budget Committee compared to 57-32 (and one independent) party distribution at the time the Committee was established.

^{36/} See 120 Congressional Record (daily ed., July 22, 1974), S 12975.

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Geographical balance was achieved by requiring candidates from the same region to compete against one another for Budget Committee appointments. As a result, at least two Democratic members come from each of the regions--East, South, Midwest, and West. Moreover, the Democratic Membership was balanced in terms of senatorial seniority. The nine members included two freshmen, and two others still serving their first term in the Senate.

Republican appointments to the Budget Committee were made by the Senate Republican Conference after it considered a number of slates devised by the Party's Committee on Committees. The Republican appointments for the 93d Congress resembled the quotas initially proposed by the Joint Study Committee: two each from Senate Appropriations and Finance and two at-large members. The Republican members tended to be more senior Senators, averaging more than 15 years of service, compared to 10 years for the Democratic members.

At the start of the 94th Congress, the Senate rules were amended to enlarge the Budget Committee to 16 Members, with a 10-6 party ratio.^{37/} One new Democratic Member was added to the Committee while five of the six Republicans were replaced.

Although Budget Committee members are permitted to retain two other major committee assignments through 1976, at the July 18, 1974 meeting of the Senate Democratic Conference, Majority Leader Mike

^{37/} 121 Congressional Record (daily ed., January 17, 1975) S 511.

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Mansfield urged that members not "be designated to the new Committee unless they are prepared to give up now--not two years hence, but now an existing membership on other major Committees."^{38/} The resolution adopted by the Conference affirms the grace period provided in the Act:

Resolved, That no member of the Budget Committee shall serve on more than three Class A committees after the commencement of the 94th Congress or more than two Class A committees after the commencement of the 95th Congress;

Provided, That grandfather rights granted to members of the Government Operations and Space Committees shall not be affected.^{39/}

However, an informal understanding was reached affecting only the Democratic members of the Budget Committee who held three other major committee assignments. Budget Committee Chairman Muskie was required to relinquish one of his other committee posts at the start of the 94th Congress. Accordingly he resigned from the Senate Foreign Relations Committee. The same understanding required Senator Magnuson to give up one of his other assignments in 1975. He withdrew from the Aeronautical and Space Sciences Committee.

^{38/} 120 Congressional Record (daily ed., July 22, 1974) S 12975.
^{39/} Ibid.

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Sec. 102 (d), (e) Meetings of the Senate Budget Committee

(d) Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement; or

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.

(e) Paragraph 7(b) of rule XXV of the Standing Rules of the Senate and section 133A(b) of the Legislative Reorganization Act of 1946 shall not apply to the Committee on the Budget of the Senate.

Legislative History

This provision requires the Senate Budget Committee to conduct all hearings and meetings in public unless it votes to close a meeting because of one or another of the reasons specified in the Act. A Budget Committee meeting can be closed by majority vote if it deals with (1) confidential national security or foreign relations matters; (2) internal staff, management, or procedure of the Committee; (3) charges of crime or

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misconduct or will clearly invade the privacy of an individual; (4) the identity of informers or relates to criminal law enforcement; or (5) trade secrets obtained in confidence or is required by law to be kept confidential.

The provision was inserted by the Senate Government Operations Committee during its markup of S. 1541 but was removed by the Committee on Rules and Administration. However, by a vote of 55-26, the Senate adopted a floor amendment by Senator Chiles to restore the original provision.^{40/}

Senate Rule XXV, paragraph 7 (b) provides that committee meetings for marking up legislation or voting shall be closed except when a majority of the committee votes to open the session.^{41/} Section 133 A (b) of the Legislative Reorganization Act of 1946 provides for open hearings by Senate committees except when the hearings pertain to national security, the character of individuals, or other confidential matters.^{42/} Both of these provisions are superseded by section 102 (d) of the Act which requires open meetings except when closed for cause.

^{40/} Amdt. No. 1017. 120 Congressional Record (daily ed.) S. 4031 (March 20, 1974).

^{41/} Paragraph 7 (b) was adopted by the Senate on March 6, 1973. The rule also allows a committee to close any meeting by majority vote.

^{42/} Section 133 A (b) was added to the Legislative Reorganization Act of 1946 by section 112 (a) of the Legislative Reorganization Act of 1970.

TITLE II. CONGRESSIONAL BUDGET OFFICE

Sec. 201 (a) The Office and its Director

(1) There is established an office of the Congress to be known as the Congressional Budget Office (hereinafter in this title referred to as the "Office"). The Office shall be headed by a Director; and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

(2) The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Deputy Director shall be appointed by the Director.

(3) The term of office of the Director first appointed shall expire at noon on January 3, 1979, and the terms of office of Directors subsequently appointed shall expire at noon on January 3 of each fourth year thereafter. Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed. Any Deputy Director shall serve until the expiration of the term of office of the Director who appointed him (and until his successor is appointed), unless sooner removed by the Director.

(4) The Director may be removed by either House by resolution.

(5) The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code. The Deputy Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as so in effect, for level IV of the Executive Schedule in section 5315 of such title.

Legislative History

The concept of a congressional budget staff, its organization, and responsibilities have been modified at virtually every stage of the development of this legislation. The Joint Study Committee conceived of a Joint Legislative Budget Staff with a Director appointed by the two Budget Committees. This staff would serve the two Budget Committees which would have no separate staffs (other than administrative personnel) of their own. As the staff of the Budget Committees, the Legislative Budget Staff would not be responsible to Congress as a whole or to other congressional committees or members. Appointment of personnel and securing of data from executive agencies could be only with the approval of the chairmen of the Budget Committees.^{43/} The role of the joint staff would have been somewhat analagous to the staff of the Joint Committee on Internal Revenue Taxation which functions as the tax staff of the House Ways and Means and Senate Finance Committees.

The Rules Committee version retained the concept of a joint staff for the Budget Committees but broadened it into a Legislative Budget Office. As explained by the Rules Committee, "although it would have a special relationship to the Budget Committees, the legislative budget office would be authorized to provide available data and technical assistance to other committees and Members."^{44/} However, this proposed

^{43/} S. 1641, sec. 201 (b) and 202 (a). Approval by the chairmen of both Budget Committees would have been required for hiring personnel.

^{44/} Only one chairman's approval would have been needed for securing data. H. Rept. No. 93-658 (1973), p. 31.

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arrangement had one major ambiguity: under the rules of the House and the Senate, all standing committees are authorized to establish staffs of their own. Accordingly, even if the new budget office was to "have a special relationship to the Budget Committees," these Committees still could set up their own separate staffs. This issue was addressed during floor debate on H.R. 7130 in a colloquy between Representative Bolling, the floor manager of the bill, and Representative Cleveland who had suggested an amendment entitling the minority party to a portion of the Budget Committee staff. The amendment was withdrawn after Mr. Bolling indicated that the Budget Committees would not have staffs of their own but would use the nonpartisan budget office staff:

MR. CLEVELAND. I do not believe the bill makes it clear, but I gathered from the remarks of the gentleman from Missouri, both in the record and made to me personally, and the committee staff, that this legislative budget director and his staff will be the committee staff.

Is my interpretation of this correct?....

MR. BOLLING. That is the intent of the language. That is the only staff I know of. His staff would be the staff presumably for both committees, the House committee and the Senate committee.^{45/}

In its markup of S. 1541, the Government Operations Committee opted for a Congressional Office of the Budget in addition to the staffs of the House and Senate Budget Committees.^{46/} While its prime duty would have

^{45/} 119 Congressional Record (daily ed., December 5, 1973), H 10700.

^{46/} There was no separate provision for such staffs in the Bill, but these would have been authorized under House and Senate Rules.

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been to assist the Budget Committees, the new congressional office also would have assisted any other committee or Member upon request. In this version of S. 1541, the budget office would have been able to function with little direct control of its operations by the Budget Committee. However, as has been noted, the two Committees were given oversight responsibilities for the budget office.

The Committee on Rules and Administration adhered to this approach but made two alterations that forged a closer relationship between the budget office and the Budget Committees. First, the Committees were given a consultative role in the appointment of the budget office's director. Second, assistance to other committees and members was downgraded, thereby enhancing the priority accorded to the Budget Committees. However, S. 1541 was amended on the floor to give the Appropriations and tax committees parity with the Budget Committees in obtaining assistance from the budget office. ^{47/}

The conference report combined features of both the House and Senate bills, but it accepted the Congressional Budget Office as a legislative agency separate from the staffs of the two Budget Committees. Inasmuch as the Senate conferees indicated that the Senate would provide a staff for its Budget Committee, the House was compelled to accede to the establishment of a separate budget agency. However, various features were devised to assure a close relationship between the Congressional Budget Office and the Committees and these are discussed below in the relevant sections of Title II.

^{47/} 120 Congressional Record (daily ed., March 22, 1971). S 4282. The amendment offered by Senator Byrd was adopted without opposition.

Appointment of the Director. The manner in which the Director of the budget office is to be appointed has undergone various formulations reflecting the relationship between the office and the Budget Committees. In line with its preference for a joint budget staff, the Joint Study Committee provided for the appointment (or removal) of the legislative budget director by the two Budget Committees. H.R. 7130 as reported by the Rules Committee and passed by the House vested the appointment power in the Speaker of the House upon the recommendation of the House Budget Committee, thereby excluding the Senate from any role in the appointment process.

The original version of S. 1541 also gave power of appointment to the Speaker of the House, but this was modified by the Government Operations bill into a two-step procedure involving both the House and the Senate. First, the appointment of the Director (and the Deputy Director) was to be made jointly by the Speaker of the House and the President pro tem of the Senate. Second, the appointment was to be approved by the House and the Senate. This arrangement did not provide any role for the Budget Committees in the selection process.

The Senate Committee on Rules and Administration devised a three-step procedure involving consultation with the Budget Committees, appointment by the Speaker and the President pro tem, and confirmation by the House and Senate. The enacted version deletes the confirmation requirement and clarifies the role of the Budget Committees. Moreover, the deputy director is to be selected by the Director rather than by the appointment process prescribed in the Act.

Term of office. Neither the Joint Study bill nor H.R. 7130 as passed by the House had a fixed term of office for the Director. The Committee on Rules and Administration set a six year term for the office, but in conference the four-year term was adopted. The provision for removal of the Director by vote of either the House or Senate is taken from S. 1541.

Compensation of the Director. Compensation of the Director (and the deputy director) was set at different levels in the several versions. Both the Joint Study bill and H.R. 7130 set the compensation at Level III of the Executive pay schedule, while S. 1541 as reported by the Government Operations and Rules and Administration Committees provided that the Director's pay would be equal to that of the Comptroller General. But by a vote of 43-36, the Senate adopted an amendment pegging the Director's salary at the level provided for the Secretary of the Senate. ^{48/} Under this amendment, the salary of the deputy director would have been equivalent to the highest salary authorized for administrative assistants to Senators.

The Act conforms to the Level III provision of the House bill and also provides Level IV compensation for the deputy director.

^{48/} 120 Congressional Record (daily ed., March 22, 1974) S 4314.

Implementation

Although the Act does not specifically require that the House and Senate Budget Committees jointly submit, or agree upon, recommendations concerning the appointment of the Director, in 1975 the two Committees forwarded only one recommendation and did not act until they agreed on a single candidate. As provided in section 905 (b) of the Act, Title II establishing the Congressional Budget Office took effect on the day that the first Director was appointed. Alice Rivlin was named the first Director of the Congressional Budget Office on February 24, 1975 and the CBO came into existence on that date.

Sec. 201 (b) & (c) Personnel, Experts, and Consultants.

(b) **PERSONNEL.**—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) **EXPERTS AND CONSULTANTS.**—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

Legislative History

In accord with its conception of a joint Legislative Budget Staff, the Joint Study Committee provided that the Director could hire personnel only after obtaining approval from the chairmen of the two Budget Committees. It also authorized the new budget office to procure the services of experts and consultants. These features were incorporated without change in H.R. 7130.

All versions of S. 1541 vested the hiring power in the Director of the budget office and this approach is adopted in the Act.

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Status of Personnel. Because the House and the Senate have somewhat different compensation systems and operate their own disbursing offices, it was necessary for the Act to determine which of the two systems should govern the new budget office.^{49/} The Joint Study Committee bill designated the budget office employees as House employees for purposes of pay and other benefits. S. 1541 as introduced did not provide for the status of budget office employees. The bill reported by the Government Operations Committee designated the Director and deputy director as employees of the Senate and all other personnel as House employees. The Rules and Administration Committee bill designated all budget office personnel (except the Director and deputy director who were specifically provided for in the legislation) as Senate employees for purposes of pay and other benefits. In conference, it was decided to treat the personnel as if they were employees of the House.

^{49/} Although employees of the Congressional Budget Office will not be covered by the Civil Service System, section 201 provides for their selection on a non-partisan basis.

Sec. 201 (d) Relationship to Executive Branch

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall furnish the Director any available material which he determines to be necessary in the performance of his duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

Legislative History

All versions of the budget legislation have provided broad authority for the new budget office to secure information from executive agencies. The Joint Study Committee bill required approval by the chairman of either Budget Committee in order for the budget staff to directly request information from the executive branch. H.R. 7130 as reported by the Rules Committee and passed by the House contained a similar provision.

The first version of S. 1541 required agencies to provide the budget office with information "to the extent permitted by law." This was revised by the Government Operations Committee into an authorization to obtain all information developed by executive agencies "in the normal course of their operations and activities" and to utilize the services and facilities of executive agencies. The Rules Committee added a

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clause exempting information "the disclosure of which is specifically prohibited by law" from the requirement. The enacted provision closely conforms to the language of the Senate bill. The Congressional Budget Office can secure information without prior approval of the Budget Committees and also is authorized to utilize executive personnel, facilities, and services.

One issue considered in the course of developing the legislation is the access of Congress to agency budget estimates. For many years, the President and his budget agency have taken the position that section 206 of the Budget and Accounting Act of 1921 prohibits agencies from giving their budget requests to Congress.^{50/} Generally, the practice has been to transmit such estimates to the Appropriations Committees upon their request, but only after the budget has been submitted to Congress.^{51/} During the 93rd Congress, Senator Muskie introduced legislation to require agencies to provide Congress with their estimates at the same

^{50/} 31 U.S.C. 15 reads: "No estimate or request for an appropriation ... shall be submitted to Congress or any committee thereof by any officer or employee of any department or establishment, unless at the request of either House of Congress."

^{51/} Administration policy regarding the release of estimates is contained in Circular No. A-10 (revised, January 18, 1964), U.S. Bureau of the Budget.

time they are transmitted to the Office of Management and Budget.^{52/}
Due to strong Administration objections, it was decided not to incorporate this requirement in the budget reform legislation. Although the House bill had a waiver of the section 206 provision which had been used to deny congressional requests for budget estimates, it was deleted in conference.

The issue thus remains unresolved by the new legislation. The Congressional Budget Office might claim entitlement to agency estimates, but it is likely that OMB will insist that disclosure of such information would violate section 206 of the 1921 Act.

^{52/} S. 1214, 93rd Congress.

Sec. 201 (e) Relationship to Congressional Agencies

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.—In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services, and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, the Library of Congress, and the Office of Technology Assessment, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Librarian of Congress, and the Technology Assessment Board are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

Legislative History

Neither the Joint Study Committee nor the House bill considered the relationship between the budget staff and other congressional agencies. This posture was appropriate for their conception of the new staff as an arm of the Budget Committees.

Subsection (e) derives from the original S. 1541 which empowered the budget office "to coordinate and utilize" the GAO and the Library of Congress in the performance of its functions. This formulation was revised by the Government Operations Committee at the request of the Comptroller General who urged that the new law encourage a cooperative relationship among all congressional agencies. The Government Operations Committee draft--which was not substantively changed by the Rules Committee--directed the budget office to cooperate with and utilize the information and services of the GAO, Library of Congress, and Office of Technology Assessment. It also disclaimed any modification in the existing authority or responsibilities of the other congressional agencies.

The enacted provision is an abbreviation of the Senate version. The disclaimer was dropped on the ground that it was unnecessary, but the statement of managers accompanying the conference report declares the expectation that the Congressional Budget Office "will utilize most effectively the resources and capabilities available in existing congressional agencies....[and] will not needlessly duplicate the work of other congressional agencies...."^{53/}

^{53/} H. Rept. No. 93-1101 (93rd Cong., 1974) p. 52.

Sec. 201 (f) Authorization of Appropriation

(f) APPROPRIATIONS.—There are authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this subsection, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director.

Legislative History

In line with its conception of the budget staff as an arm of congressional committees, the Joint Study Committee bill provided that expenses would be paid from the contingent fund of the House of Representatives. H.R. 7130 authorized the appropriation of funds for the operation of the budget office, but also provided for drawing from the contingent fund of the House until the initial appropriation was available. A similar provision was included in S. 1541 as reported by the Senate Government Operations Committee, but this was changed by the Rules and Administration Committee to authorize interim funding through the contingent fund of the Senate.

The Act provides a permanent authorization of appropriations with interim funding—for not more than one year—from the contingent fund of the Senate. The purpose is to assure that activation of the Congressional Budget Office is not delayed by a lack of regular appropriations. Under law, payments from the contingent fund of the Senate must be sanctioned by the Senate Committee on Rules and Administration.

Sec. 202 Assistance to Committees and Members

SEC. 202. (a) ASSISTANCE TO BUDGET COMMITTEES.—It shall be the duty and function of the Office to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions; including (1) information with respect to the budget, appropriation bills, and other bills authorizing or providing budget authority or tax expenditures, (2) information with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions, and (3) such related information as such Committees may request.

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE.—At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the Office shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in clauses (1) and (2) of subsection (a) and such related information as the Committee may request.

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS.—

(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent practicable, such additional information related to the foregoing as may be requested.

(2) At the request of any Member of the House or Senate, the Office shall provide to such Member any information compiled in carrying out clauses (1) and (2) of subsection (a), and, to the extent available, such additional information related to the foregoing as may be requested.

(d) ASSIGNMENT OF OFFICE PERSONNEL TO COMMITTEES AND JOINT COMMITTEES.—At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office may be assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b) or (c).

Legislative History

The duties and functions of the budget office have varied with its role and relationship to the Budget Committees. In the Joint Study Committee bill, the only prescribed duty of the legislative budget staff was to serve the House and Senate Budget Committees. This was expanded in H.R. 7130 as passed by the House into an authorization to

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provide other committees and Members "any information and data readily available in the files of the Legislative Budget Office, and related technical assistance." This arrangement would have maintained a "special relationship" between the Budget Committees and the budget office but it would also have permitted limited assistance to Congress as a whole.

The first version of S. 1541 would have recognized little difference between service to the Budget Committees and other committees of Congress. However, by the time S. 1541 was reported by the Government Operations Committee, a distinction had been drawn between assistance to the Budget Committees and to all others. For the Budget Committees, the new office was to have "the duty and function" to provide budget data and upon the request of either Committee to provide any related information or to assign personnel on a temporary basis. Other committees and Members were to be entitled to available information and, to the extent practicable, other budget related data. The budget office was given discretion to assign personnel to other committees and Members on a temporary basis.

The bill reported by the Senate Committee on Rules and Administration retained the priority status of the Budget Committees but distinguished between the assistance to other committees and Members. Committees were to receive available and requested information and, at the discretion of the budget office, temporary staff assistance. Assistance to Members was to be limited to available information and, to the extent practicable, other information.

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This three-tier hierarchy was modified on the floor of the Senate by an amendment that accorded the Appropriations, House Ways and Means, and the Senate Finance Committees the same status as the Budget Committees.^{54/} The enacted legislation establishes a four-level hierarchy:

(1) Highest priority is accorded to the two Budget Committees which, in the words of the managers statement, "must command first claim on the time and resources of the Budget Office. Accordingly, it is made the duty and function of the Budget Office to furnish information and assign personnel for all matters relating to the congressional budget process."^{55/}

(2) High priority also was given to the Appropriations, House Ways and Means, and Senate Finance Committees which upon request may obtain budget information and staff assistance from the Congressional Budget Office.

(3) All other congressional committees are entitled to available budget information and, to the extent practicable, additional related information. At its discretion, the Budget Office may assign personnel for a limited time. The manager's statement specified that assistance to such committees "must not interfere with priority service to the several budget related committees."

(4) Members are entitled only to obtain available budget information.

^{54/} 120 Congressional Record (daily ed., March 22, 1974). S. 4282.
^{55/} H. Rept. No. 93-1101, (1973), p. 53.

Sec. 202 (e) Joint Committee on Reduction of Federal Expenditures

(e) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE ON REDUCTION OF FEDERAL EXPENDITURES.—

(1) The duties, functions, and personnel of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is abolished.

(2) Section 601 of the Revenue Act of 1941 (55 Stat. 726) is repealed.

Legislative History

This provision was inserted by the Senate Government Operations Committee and expanded by the Committee on Rules and Administration. The Joint Committee on Reduction of Federal Expenditures (initially named the Committee on Nonessential Federal Expenditures) was established by section 601 of the Revenue Act of 1941. Its main function has been the preparation of periodic scorekeeping reports on Federal personnel and expenditures. When it is established, the Congressional Budget Office will take over the scorekeeping work.

Sec. 202 (f) Reports to Budget Committees

(f) REPORTS TO BUDGET COMMITTEES.—

(1) On or before April 1 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report, for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including (A) alternative levels of total revenues, total new budget authority, and total outlays (including related surpluses and deficits), and (B) the levels of tax expenditures under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year. Such report shall also include a discussion of national budget priorities, including alternative ways of allocating budget authority and budget outlays for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United States.

(2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising the report required by paragraph (1)) as may be necessary or appropriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

Legislative History

Neither the Joint Study Committee bill nor H.R. 7130 provided for an annual report by the budget office. This subsection derives from two sources: S. 1541 and S. 5, introduced in the 93d Congress by Senators Mondale and Javits. S. 1541 originally required an annual report to the Budget Committees recommending the budget surplus or deficit appropriate for the "growth and stability of the economy of the United States." The scope and purpose of the annual report of the budget office was subsequently altered by the Senate Government Operations Committee in three significant ways. First, the report was to be submitted to Congress rather than to the Budget Committees. Second, the

report was to "consider alternative levels of revenues and outlays" and not present any recommended course of action. Third, the report was to include an itemization of existing and projected levels of tax expenditures. The first of these changes was made in the anticipation that a report to Congress would have more status than one submitted only to the Budget Committees; the second because of the belief that it would be inappropriate for an agency of Congress to publicly recommend the course of action that Congress should take.

The Senate Committee on Rules and Administration retained this feature but revised some of the wording slightly, particularly in regard to tax expenditures and the date for submission of the annual report. The Senate added an entirely new section, adapted from Title II of S. 5 which had been introduced on January 5, 1973.^{56/} Title II would have established a new congressional agency--the Office of Goals and Priorities Analysis--and given it various functions, including the issuance of an annual report on national goals and priorities. Title II subsequently was separated from S. 5 and offered as an amendment to S. 1541.^{57/} However, the legislation reported by the Government Operations and Rules and Administration Committees did not include the goals and priorities proposal. But one feature of Title II, relating to the annual report was added to S. 1541 by floor

^{56/} 119 Congressional Record (January 4, 1973), p. 150.
^{57/} Amdt. No. 457 (93rd Cong., 1st Sess.), August 3, 1973.

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amendment on March 22, 1974.^{58/} The report would have been prepared by the budget office and although it would have been separate from the annual budget report, it was to focus on the spending priorities in the budget.

The conferees decided to combine the two separate reporting requirements into a single provision, thereby assuring a closer linkage of national priorities to budgetary policies. The annual report to be submitted by April is to deal with budget alternatives, tax expenditures, and national budget priorities. In another major shift, the conferees converted the annual report into a submission to the Budget Committees rather than to Congress itself. The managers statement depicted this report "as a major resource for the Budget Committees in their formulation of concurrent resolutions on the budget. For this reason, the reports are to be submitted directly to the Budget Committees and are timed to coincide with preparation of the first budget resolution."^{59/}

^{58/} 120 Congressional Record (daily ed., Marcy 22, 1974), S 4302.
^{59/} H. Rept. No. 93-1101 (1974), p. 54.

Sec. 202 (g) Use of Computers by the Budget Office

(g) USE OF COMPUTERS AND OTHER TECHNIQUES.—The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

Legislative History

The first version of this subsection, in the Joint Study Committee bill, charged the Joint Legislative Budget Staff to "develop methods of using computers and other techniques for the analysis of information to improve not only the quantitative but the qualitative evaluation of budgetary requirements." This was dropped in the House bill, apparently because of concern that a broad authorization to use computers would lead to duplication of the capabilities being developed by the House Information Systems under the direction of the House Administration Committee.

The enacted subsection was developed by the Senate Government Operations Committee and modified by the Senate Rules and Administration Committee which inserted the parenthetical requirement that approval be obtained from the designated House and Senate Committees.

The managers' statement on the conference report sets forth three understandings concerning the implementation of this section, limiting the approval requirement to "the acquisition and installation in the Office of major computer capability."^{60/} Prior approval of the House and Senate committees is not required for the securing of peripheral equipment, computer software, time sharing and data processing services, or experts.

^{60/} Ibid., p. 55.

Sec. 203 Public Access to Budget Data

Sec. 203. (a) RIGHT TO COPY.—Except as provided in subsections (c) and (d), the Director shall make all information, data, estimates, and statistics obtained under sections 201(d) and 201(e) available for public copying during normal business hours, subject to reasonable rules and regulations, and shall to the extent practicable, at the request of any person, furnish a copy of any such information, data, estimates, or statistics upon payment by such person of the cost of making and furnishing such copy.

(b) INDEX.—The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a) applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS.—Subsection (a) shall not apply to information, data, estimates, and statistics—

- (1) which are specifically exempted from disclosure by law; or
- (2) which the Director determines will disclose—

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS.—Subsection (a) shall apply to any information, data, estimates, and statistics obtained at the request of any committee, joint committee, or Member unless such committee, joint committee, or Member has instructed the Director not to make such information, data, estimates, or statistics available for public copying.

Legislative History

This provision was added by the full Government Operations Committee shortly before it reported S. 1541. The Rules and Administration Committee made a few changes, primarily to delete any specific right to

inspect budget data and to authorize the Director of the budget office to prescribe reasonable rules and regulations. The only revision made in conference was to conform the section to other references in the Act.

Section 203 establishes a right of public access to budget data provided to CBO by the executive branch or congressional agencies pursuant to sections 201 (d) and (e). This right does not apply to information specifically exempted from disclosure by law, national defense data, confidential business information, or personnel or medical data. Information obtained for a committee or member may not be made available if CBO is instructed not to release it.

A specific right of public access was deemed necessary because congressional agencies are not covered by the Freedom of Information Act (5 U.S.C. 552).

TITLE III. CONGRESSIONAL BUDGET PROCESS

Section 300. Timetable of the Congressional Budget Process

SEC. 300. The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
November 10.....	President submits current services budget.
15th day after Congress meets....	President submits his budget.
March 15.....	Committees and joint committees submit reports to Budget Committees.
April 1.....	Congressional Budget Office submits report to Budget Committees.
April 15.....	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15.....	Committees report bills and resolutions authorizing new budget authority.
May 15.....	Congress completes action on first concurrent resolution on the budget.
7th day after Labor Day.....	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15.....	Congress completes action on second required concurrent resolution on the budget.
September 25.....	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1.....	Fiscal year begins.

Legislative History

Section 300 lists the major dates in the congressional budget process in chronological order. These are briefly discussed here and in greater detail in the particular sections of the Act in which they are provided. Section 300 has no independent legal authority but merely is a convenient listing of dates authorized elsewhere in the Act or in other laws. At all stages in the development of the budget legislation, there was agreement that the various parts of the process must be time-related to one another and that a change in one deadline would affect other parts of the process. A delay at any key point can prevent completion of the process prior to the start of the fiscal year. Thus, appropriations cannot be considered until the first budget resolution has been adopted and necessary authorizations have been enacted. Further, the reconciliation process can be best implemented if all regular appropriations and entitlements have been enacted. The interlocking character of the process means that breakdown in any of the parts can ripple to the whole.

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Current Services Budget. The idea of a current services budget was advanced by Charles Schultze and first appeared in a draft bill proposed by Senator Muskie. The purpose of a current services presentation is two-fold: to give Congress an early start and to provide information on year-to-year changes in the budget. The November 10 date is a modification of the December 1 deadline provided in S. 1541 as reported by the Senate Government Operations Committee.

Submission of the President's Budget. The date for submission of the annual budget is retained at 15 days after Congress convenes. OMB wanted a later date (February 15), claiming that with the September 30 close of the preceding fiscal year, it would not be possible to obtain final figures for the next budget unless its submission was deferred to a later date. Against this view, conferees argued that (1) OMB could substantially reduce the time required for producing final data; (2) OMB has near-complete data shortly after the close of a fiscal year and does not require 100 percent accuracy for its own budget preparation; (3) Congress needs all the time it can get to implement its own budget process.

If the President requests a delay in submission of his budget, the probability is that it will be granted by Congress. This has been the practice in the past (the President requested and obtained a brief delay for the 1976 budget), ^{61/} and it is reinforced by a colloquy between Representatives Bolling and Martin during floor consideration of the conference report on H.R. 7130. In response to a query by Mr. Martin, Mr. Bolling stated his expectation that a reasonable request for delay would be granted as a matter of routine by Congress. ^{62/}

^{61/} P.L. 94-1.

^{62/} 120 Congressional Record (Daily ed., June 18, 1974) H 5184.

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Committee Reports to Budget Committees. A new step in the budget process is submission of views and recommendations by all standing committees of the Senate and House to the Budget Committees. These reports are due by March 15, one month in advance of the date for reporting of the first budget resolution in order to provide the Budget Committees with an early and comprehensive indication of spending plans for the next fiscal year. These reports are mandatory.

CBO Report to Budget Committees. This report is scheduled for April 1, after the standing committees have reported but before the first budget resolution has been issued. The report is to deal with alternative budget levels and national budget priorities.

First Budget Resolution Reported. April 15 is fixed as the deadline for reporting of the first concurrent resolution on the budget by the House and Senate Budget Committees. This date allows one month for floor consideration and conference prior to the adoption deadline.

Deadline on the Reporting of New Authorizing Legislation. May 15 is the deadline for reporting of authorizing legislation. This requirement does not apply to omnibus social security legislation or to entitlement measures. The latter are excluded because (under section 303) their consideration is barred prior to adoption of the first budget resolution; the former because of the desire to allow consideration of related programs in a single measure. The May 15 deadline can be waived by resolution in either the House or Senate.

Adoption of the First Budget Resolution. May 15 also is set as the deadline for adoption of the first budget resolution by Congress. Prior to adoption, Congress may not consider revenue, spending, entitlement, or debt legislation, but certain exceptions are provided. Failure to meet the May 15 date would

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reduce the amount of time available for budget-related legislation. In recent years, Congress has rarely considered appropriation, revenue, or debt legislation prior to May 15, but it has passed entitlement bills before this date.

Completion of Action on Appropriation and Entitlement Bills. The date is set at seven days after Labor Day, which leaves only three weeks (or less) for completion of the remaining steps in the congressional budget process. The legislation passed by the House and the Senate had earlier dates (the House had an August 1 date; the Senate, by August 7th or five days before an August recess) but in conference it was agreed to set a later date. A main reason was that with removal of a deadline on the enactment of authorizations and the fixing of a May 15 reporting deadline, conferees felt that they could no longer assure an August completion for appropriation bills.

Adoption of Second Budget Resolution. September 15 is the date for adoption of the required second budget resolution. Although this is only a handful of days after the deadline for appropriations, it is anticipated that if Congress acts expeditiously, the second resolution might be reported during August. Section 310 (a) authorizes the reporting of such resolution while Congress is not in session. Accordingly, the report might be issued during an August recess and considered immediately after Congress returns.

Action on Reconciliation Measures. Any required reconciliation bill (or resolution) would be adopted by September 25, only 10 days after the scheduled passage of the second budget resolution. Inasmuch as the reconciliation depends entirely on the directives provided in the second resolution, little advance work can be done.

Congress may not adjourn sine die unless it has completed action on the second budget resolution and any required reconciliation. However, Congress can adjourn until a date certain even if it has not completed these measures.

The reconciliation can be either in the form of a bill or concurrent resolution, depending on whether or not it has made use of an optional procedure to hold spending bills at the enrolling desk.

Section 301 (a) Adoption and Content of Budget Resolution

SEC. 301. (a) ACTION TO BE COMPLETED BY MAY 15.—On or before May 15 of each year, the Congress shall complete action on the first concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth—

- (1) the appropriate level of total budget outlays and of total new budget authority;
- (2) an estimate of budget outlays and an appropriate level of new budget authority for each major functional category, for contingencies, and for undistributed intragovernmental transactions, based on allocations of the appropriate level of total budget outlays and of total new budget authority;
- (3) the amount, if any, of the surplus or the deficit in the budget which is appropriate in light of economic conditions and all other relevant factors;
- (4) the recommended level of Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;
- (5) the appropriate level of the public debt, and the amount, if any, by which the statutory limit on the public debt should be increased or decreased by bills and resolutions to be reported by the appropriate committees; and
- (6) such other matters relating to the budget as may be appropriate to carry out the purposes of this Act.

Legislative History

Each year Congress is to adopt a concurrent resolution on the budget setting forth the appropriate total levels of outlays, new budget authority, revenues, surplus or deficit, and public debt. The first budget resolution shall provide targets to guide Congress during its subsequent consideration of money legislation.

The concept of a congressional budget determination by means of a concurrent resolution was maintained from initiation through enactment of the legislation. By utilizing this approach, Congress directs its budget decisions toward its own actions rather than to those of the executive branch. Concurrent resolutions on the budget impose no constraint on executive action, nor do they limit actual governmental expenditures. Their sole effect is to influence and constrain congressional consideration of revenue, spending, and debt legislation.

As the core of the congressional budget process, the budget resolution attracted much attention during development of the legislation. The main issues are discussed below.

Adoption date. In an effort to balance the need for early adoption with other components of the budget process, Congress gave consideration to a number of dates. The Joint Study Committee proposed a May 1 adoption, two months after the first budget resolution was to be reported by the House committee. The May 1 date also was provided in H.R. 7130 as passed by the House. But the Senate preferred later dates in order to give authorizing committees more time to develop their legislative proposals. The Senate Government Operations Committee bill had a July 1 date while the Rules and Administration Committee proposed a June 1 adoption deadline. The May 15 date in the Act is a compromise between the House and Senate positions.

No Fallback in Case of Failure to Adopt. None of the "fallback" procedures devised in earlier versions has survived in the Act. The Joint Study Committee proposed a fallback to the President's budget in case of congressional failure to meet the deadline for adoption of the first budget resolution. S. 1541 as reported by the State Government Operations Committee had a triple fallback sequence, depending on the stage to which the budget resolution had progressed. But the bill reported by the Rules and Administration Committee modified this to require only that a deadlocked conference committee report the arithmetic mean of any item in disagreement. The Act merely requires in section 305 (d) that the conference committee recommend all matters in agreement and report those still in disagreement.

Concurrent Action by the House and the Senate. The Act does not explicitly address the issue as to whether House action is to precede that of the Senate but one can infer from the language of section 301 (d) authority for both Houses to proceed concurrently. The relevant words are "On or before April 15 of each year, the Committee on the Budget of each House shall report to its House the first concurrent resolution on the budget...."

The legislation developed by the Joint Study Committee provided for the House to complete its action before consideration commenced in the Senate. Two months were to elapse between reporting by the House Budget Committee and adoption by Congress because House and Senate action was to be sequential. First the House Budget Committee was to report, then the House was to act. After House action, the Senate Budget Committee was to report, followed by Senate action and any conference. This sequence was intended to preserve the precedence possessed by the House in revenue and appropriation measures.

H.R. 7130 as passed by the House would have allowed both Houses to proceed concurrently provided that final Senate action was on the House resolution with the Senate provisions substituted therefor. (The wording in the House bill was somewhat unclear and the language was not entirely consistent with the intent.) S. 1541 as reported by the Senate Government Operations Committee would have permitted concurrent action as well as adoption of the Senate resolution if that body had acted first. The legislation formulated by the Rules and Administration Committee provided for concurrent action, but with final adoption of the House resolution if it had acted first.

The conferees decided that silence would be the best course and they removed all provisions bearing on this issue. The two Houses will have to devise an accommodation that reconciles House prerogatives with the new budget process. Inasmuch as H.R. 7130 conceded the authority of the Senate to Act contemporaneously, it is unlikely that the procedure used for revenue and appropriation measures will be applied to budget resolutions. Moreover, time constraints bar sequential action in which the second body waits until the first House has completed its consideration.

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The Act cannot directly alter the constitutional requirement of House initiative on revenue measures. Therefore, to the extent that a budget resolution directs changes in revenues, it might be possible to argue that the House must act first even though a concurrent resolution on the budget does not have legal effect. If the Senate acts first or concurrently, the effect of the constitutional requirement will be substantially affected.

The Budget Resolution as a Target. The Joint Study Committee conceived of the first budget resolution as a ceiling which would limit subsequent congressional action on spending legislation. The amounts in the first resolution would have been "overall limitations" which could not be exceeded by Congress when it acted on appropriations or other spending bills. The House Rules Committee converted these to "appropriate levels" which would guide but not constrain later congressional action. In its markup of S. 1541, the Senate Government Operations Committee sought to strike a compromise between ceilings and targets. The totals in the first budget resolution would function as ceilings, but they could be exceeded by Congress in its action on spending bills. However, if the limitations had been breached, Congress would have had to consider a "ceiling enforcement bill" which reduced budget authority and outlays to the levels in the budget resolution. Only if it was unable to adopt a ceiling enforcement bill would Congress have been authorized to consider a second budget resolution that adjusted the totals to conform to its previous decisions on spending measures.

The Rules and Administration Committee oriented S. 1541 toward targets rather than ceilings and its formulation was for "appropriate levels" in the first budget resolution. By a vote of 23-57, the Senate rejected an amendment which would have required a two-thirds vote to raise the spending limit established in the first budget resolution.

^{63/} Amdt. No. 1055 by Senator Roth, 120 Congressional Record (daily ed. March 22, 1974) S 4295.

Although the first budget resolution has target status, under section 311 once the second resolution and any required reconciliation bill have been adopted, the levels serve as limitations which must be adhered to in subsequent action on revenue, spending, or debt legislation.

Spending Totals. All versions have called for the determination of total outlays and new budget authority in the budget resolution. As provided in the managers statement on the conference report, the outlays and budget authority of off-budget agencies are not included in these totals. ^{64/}

Revenue Amounts in the Budget Resolution. The first budget resolution sets total revenues as well as any changes in these totals. It does not itemize either the sources of revenues or tax expenditures. These two categories are to be listed in the report accompanying the budget resolution, as provided in subsection (d).

The Joint Study Committee bill did not directly provide for any change in revenues by means of the budget resolution. Rather, if the amount of surplus or deficit in the budget would not be achieved with the estimated level of revenues, Congress would be required to adopt a tax surcharge (or a substitute measure producing an equivalent increase in revenues). The mandatory surtax provision was struck from later versions prepared by House and Senate committees.

The House Rules Committee bill distinguished between the content of the first and second budget resolutions. Only total revenues would be included in the first resolution, but the second resolution would be able to "call for adjustments in tax rates ... and direct that legislation to implement such adjustments be reported" by the House Ways and Means and Senate Finance Committees.

^{64/} H. Rept. No. 93-1101, p. 49.

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Extensive revenue itemizations would have been required in the budget resolutions conceived by the Senate Government Operations Committee. In addition to estimated revenues and their major sources, the resolution would have listed tax expenditures and could also recommend changes in total revenues.

Further changes were made by the Rules and Administration Committee which conformed S. 1541 in significant details to the approach taken in H.R. 7130. The first resolution would have listed both estimated and recommended total levels of revenue, but tax expenditures and sources of revenue would not have been included. The second resolution could have directed appropriate committees to make changes in revenues through the reconciliation process.

As enacted section 301 (a) provides for recommended total revenues and any changes. Estimated revenues are not included because they are not actionable amounts. Although the Act does not explicitly direct committees to report revenue legislation implementing the recommendations in the first budget resolutions, the status of a concurrent resolution as a means of establishing congressional policy carries with it the understanding that committees will respond to any recommendation in the budget resolution. Otherwise, the recommendations would be without effect.

Allocations of New Budget Authority and Outlays. One of the troublesome issues in designing the legislation was the distribution of total outlays and new budget authority in the budget resolution. Some held to the view (reflected in H.R. 10961) that the budget resolutions should deal only with spending totals and should not contain any allocations. This "macro" approach generally was rejected on the grounds that unless Congress went on record concerning the components of its budget, it would be difficult to defend the totals. Others believed that the budget resolution should be subdivided in a way that readily enables Congress to compare its budget allocations with the

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amounts in specific spending measures. This viewpoint was espoused by the Joint Study Committee which wanted the budget resolution to allocate total budget authority and outlays among congressional committees and within each committee among its subcommittees or programs. Under this arrangement, there would have been a line in the budget resolution for each appropriations subcommittee and (accordingly) for each regular appropriation bill. ^{65/}

S. 1541 as reported by the Senate Government Operations Committee followed this approach. It would have mandated an allocation to each committee with jurisdiction over spending legislation and also would have permitted suballocations by subcommittee or major program.

However, the bills which passed the House and the Senate favored allocations by functional categories. H.R. 7130 provided for an allocation to each of the functional categories in the budget, with the report accompanying each budget resolution showing how the amounts were derived. The bill reported by the Rules and Administration Committee would have required functional allocations and within each function further divisions between permanent and current appropriations, existing and proposed programs, and controllable and other amounts.

The conference committee decided to require breakdowns below the functional level in Budget Committee reports but not in the resolution itself. But the managers statement indicates that suballocations within each function "may be included in the concurrent resolution." ^{66/} Under this authority, the Budget Committees have discretion to frame budget resolutions which allocate

^{65/} Occasionally, a regular appropriations bill does not conform to subcommittee jurisdiction. An example was the Energy Appropriation Act for fiscal 1975.

^{66/} H. Rept. No. 93-1101, p. 59.

budget authority and outlays among the various subfunctions (or clusters of subfunctions) in the budget. Moreover, the broad language of paragraph (6) in this subsection permits the inclusion of any germane matter in the budget resolution.

Contingencies. The President's budget usually contains a small amount for allowances, generally for pay adjustments and other contingencies. ^{67/} The amount does not cover all of the additional requirements which emerge during the course of the fiscal year. Thus, if Congress determines its first budget within the framework of the President's initial budget request, it is likely that the appropriate levels will have to be revised upwards later in the year.

Partly to avert this problem and partly to inject some flexibility into the budget process, the Joint Study Committee conceived of two new reserves for which allocations would be made in the budget resolution. A general contingency reserve for new and expanded programs would be set aside for allocation by a later budget resolution while an emergency reserve (limited to no more than 2 percent of total appropriations) would be allocated by the Appropriations Committee. Neither reserve fund was retained in the versions reported by the House and Senate committees, but the Act provides for an allocation for contingencies in the budget resolution. The utility of a contingency allocation will be bolstered by section 604's requirement that the President include allowances for contingencies and uncontrollable expenses in his budget.

^{67/} The fiscal 1976 budget has \$8 billion for allowances, but most of this (\$7 billion) is for energy tax proposals which accompanied the budget rather than for genuine contingencies.

Section 301 (b) Optional Matters in Budget Resolution

(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION.—The first concurrent resolution on the budget may also require—

(1) a procedure under which all or certain bills and resolutions providing new budget authority or providing new spending authority described in section 401(c)(2)(C) for such fiscal year shall not be enrolled until the concurrent resolution required to be reported under section 310(a) has been agreed to, and, if a reconciliation bill or reconciliation resolution, or both, are required to be reported under section 310(c), until Congress has completed action on that bill or resolution, or both; and

(2) any other procedure which is considered appropriate to carry out the purposes of this Act.

Not later than the close of the Ninety-fifth Congress, the Committee Report to on the Budget of each House shall report to its House on the implementation of procedures described in this subsection.

Legislative History

This provision authorizes Congress, by means of its first budget resolution, to require that appropriation and entitlement bills for the ensuing fiscal year not be sent to the President until the congressional budget process has been completed for that year. Congress also has the option to specify any other procedure appropriate for its budget process.

The origins of this provision can be traced to H.R. 7130 and S. 1541, both of which had procedures to bring spending measures under the purview of the new budget process. In H.R. 7130, spending bills would be held (not enrolled or sent to the President) pending adoption of the second budget resolution and any necessary reconciliation, except for those bills within the functional targets of the latest budget resolution. The simple purpose was to bring such spending measures under effective control of the reconciliation process. It was felt that once appropriations had been enacted, authority to rescind would be futile. This procedure was attacked on the floor of the House but an amendment to require that all appropriation bills be sent to the President was rejected 117-289.^{68/}

^{68/} Amendment offered by Rep. Bingham, 119 Congressional Record (daily ed., December 5, 1973) H 10696-99.

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A somewhat different approach was incorporated into S. 1541 as reported by the Government Operations Committee. It would have required all regular spending bills to contain a provision that the new budget authority would not become effective until a special measure "effectuating" such authority had been enacted. This triggering legislation would be considered at the end of the congressional budget process, and only when the amounts of new budget authority and outlays enacted by Congress were within the limits of the latest budget resolution. Thus, under this arrangement, no new appropriations would become available until Congress had established a budget policy consistent with its actions on spending bills.

One problem with this procedure, however, was that at the time the spending bills were sent to the President, he would not be sure as to the actual amount of budget authority that would be provided by them. Another problem was that this rigid procedure might invite deadlock and could not be varied to fit the circumstances of a particular fiscal year.

For this reason, the Rules and Administration Committee fashioned an optional procedure which would be put into effect only if Congress so required in its first budget resolution. Three specific options were offered and an additional "any other procedure" alternative was made available. One option was to require that new budget authority not become effective until effectuating legislation was enacted (the Senate Government Operations Committee approach); a second option was to hold spending bills until completion of the congressional budget process (the H.R. 7130 approach); a third option was to require omnibus appropriations (such as had been tried in 1950).

The conferees decided to specify only one option plus the "any other procedure" alternative. If Congress decides to hold appropriations and entitlements, any required reconciliation might have to be implemented (at least in part) by means of a concurrent resolution directing the enrolling clerk to adjust some of the amounts in the spending bills which have been held. For this reason, section 310 (c) refers to both reconciliation bills and resolutions. The requirement that the Budget Committees report by the close of the 95th Congress on the implementation of the optional procedure is based on a floor amendment offered by Senator Nunn.^{69/}

With regard to the option to devise "any other procedure" the managers stated that it shall apply "only to the specific procedures for the enactment of budget authority and spending authority legislation for the coming fiscal year and not to the jurisdiction of committees, the authorization of budget authority, or to permanent changes in congressional procedure."^{70/}

^{69/} Modified Amdt. No. 1036, 120 Congressional Record (daily ed., March 21, 1974) S-4059.

^{70/} H. Rept. No. 93-1101, p. 58.

Section 301 (c) Reports by Legislative Committees

(c) VIEWS AND ESTIMATES OF OTHER COMMITTEES.—On or before March 15 of each year, each standing committee of the House of Representatives shall submit to the Committee on the Budget of the House, each standing committee of the Senate shall submit to the Committee on the Budget of the Senate, and the Joint Economic Committee and Joint Committee on Internal Revenue Taxation shall submit to the Committees on the Budget of both Houses—

(1) its views and estimates with respect to all matters set forth in subsection (a) which relate to matters within the respective jurisdiction or functions of such committee or joint committee; and

(2) except in the case of such joint committees, the estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within the jurisdiction of such committee which such committee intends to be effective during the fiscal year beginning on October 1 of such year.

The Joint Economic Committee shall also submit to the Committees on the Budget of both Houses, its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946. Any other committee of the House or Senate may submit to the Committee on the Budget of its House, and any other joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsection (a) which relate to matters within its jurisdiction or functions.

Legislative History

By March 15 of each year, all standing committees of the House and Senate, the Joint Economic Committee, and the Joint Committee on Internal Revenue Taxation are to submit their views and estimates with regard to all matters within their jurisdiction to the Budget Committees. The Joint Economic Committee also is to submit its recommendations with regard to the appropriate fiscal policy for the United States.

The Joint Study Committee mandated reports only from those committees of Congress having direct involvement in budget matters. H.R. 7130 added a clause permitting any other congressional committee to report on its views and estimates to the Budget Committee of its House. Mandatory reports by the budget-related Committees and permissive reports by other committees also was provided in S. 1541 as reported by the Government Operations Committee. But the Rules and Administration Committee converted the provision into mandatory reports by all legislative committees and it expanded the reporting requirement to cover

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the spending and authorizing legislation within the jurisdiction of each committee. In this way, the report serves to notify the Budget Committees of prospective congressional consideration of all legislation affecting the budget. The wording in paragraph (2) refers to legislation which the committee "intends to be effective", but it does not commit the committee as to the legislation which it will report nor Congress as to the measures which it will enact. Each committee, therefore, possesses some discretion in determining which amounts and legislation to bring to the attention of the Budget Committees.

The special reporting requirement for the Joint Economic Committee was suggested by the Rules and Administration Committee.

S. 1541 as passed by the Senate would have required the Budget Committees to publish the views and recommendations submitted to them by legislative committees in their reports on the first budget resolution. The Budget Committees also would have been required to explain their actions with respect to the recommendations received by other committees. This requirement was removed in conference.

Section 301 (d) Hearings and Reports on Budget Resolutions

(d) HEARINGS AND REPORT.—In developing the first concurrent resolution on the budget referred to in subsection (a) for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. On or before April 15 of each year, the Committee on the Budget of each House shall report to its House the first concurrent resolution on the budget referred to in subsection (a) for the fiscal year beginning on October 1 of such year. The report accompanying such concurrent resolution shall include, but not be limited to—

- (1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;
- (2) a comparison of the appropriate levels of total budget outlays and total new budget authority, as set forth in such concurrent resolution, with total budget outlays estimated and total new budget authority requested in the budget submitted by the President;
- (3) with respect to each major functional category, an estimate of budget outlays and an appropriate level of new budget authority for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts, and each such division being subdivided between controllable amounts and all other amounts;
- (4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;
- (5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and alternative economic assumptions and objectives which the committee considered;
- (6) projections, not limited to the following, for the period of five fiscal years beginning with such fiscal year of the estimated levels of total budget outlays, total new budget outlays, total new budget authority, the estimated revenues to be received, and the estimated surplus or deficit, if any, for each fiscal year in such period, and the estimated levels of tax expenditures (the tax expenditures budget) by major functional categories;
- (7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments; and
- (8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution, and the relationship of such matters to other budget categories.

Legislative History

The Budget Committees are required to conduct hearings prior to reporting the first budget resolution by April 15. In reports accompanying this resolution they shall include comparisons with the President's budget, suballocations within each functional category, economic assumptions and objectives, a breakdown of revenues by major sources, five-year projections of budget items including tax expenditures, changes in Federal aid to states and localities, and information on how each of the matters in the budget resolution was determined.

Some of the matters to be included in the committee reports were required in the budget resolution itself in earlier versions of the Act.

Hearings. Hearings are mandated only for the first budget resolution, in accord with S. 1541 as passed by the Senate. The House bill would have prescribed hearings for both the first and the second budget resolutions. H.R. 7130 also identified certain executive officials as witnesses while the Senate bill merely provided for testimony from Members of Congress and public witnesses. The Act provides for testimony from legislative and executive officials, the public, and national organizations as deemed desirable by the Budget Committees.

Reporting Date. April 15 is the reporting deadline, one month before the date set for adoption. Unlike the Joint Study Committee bill, the House does not have to report first and in fact the language of this subsection suggests that neither House has precedence in reporting.

Suballocations Within Functional Categories. Within each functional category, the report shall distribute funds between existing and proposed programs, with the amounts for existing programs divided between current and permanent appropriations, and further subdivided between controllable and other amounts. As explained in the discussion of subsection (a) S. 1541 would have required the placement of these suballocations in the budget resolution, but the conference committee relocated them to the Budget Committee reports. However, the Committees may include these breakdowns in the budget resolution.

Revenue Data. Itemizations of the major sources of revenue and tax expenditures are to be included in the report, while S. 1541 as reported by the Senate Government Operations Committee would have placed them in the budget. The tax expenditure estimates are to be incorporated into five-year projections.

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Economic Assumptions and Objectives. The Committee report shall indicate the objectives and assumptions upon which its budget resolution is based as well as any alternatives which it considered. This is adapted from a provision developed by the Government Operations Committee. As originally formulated, the Budget Committees would report on economic assumptions and program objectives, but "program" was dropped in conference because of some apprehension that it might impel the Committees to focus on program appropriations rather than on larger budget aggregations.

Changes in Federal Assistance. This also originated with the Government Operations Committee, but was subsequently revised to require a "statement" rather than "an explanation" of significant changes in Federal assistance.

Information on How the Budget Resolution was Determined. When the House Rules and the Senate Rules and Administration Committees shifted from appropriation-based to functional allocations, it was necessary to develop a means of bridging from the functional amounts in budget resolutions to the figures in individual appropriation bills. The Rules Committee bill provided that the Budget Committees shall "include information and data indicating the manner in which, and the basis on which, it arrived at the levels and figures" in the budget resolution.

The Rules and Administration Committee devised a two-step crosswalk procedure for converting the functional allocations into categories to be used for scoring congressional action on spending measures. First, the Budget Committee report accompanying a budget resolution would allocate the total new budget authority and outlays among House and Senate Committees, with the allocations to the Appropriations Committees being further subdivided among subcommittees; second, after adoption of the first budget resolution, the Budget Committees would allocate the adopted amounts among legislative committees. The second step in the crosswalk is covered in section 302 of the Act and is

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The pre-adoption step was modified in conference to provide for "information, data, and comparisons" rather than for specific allocations to committees. But, in addition, the report is to show the relationship between the items in the budget resolution to "other budget categories." The managers statement explains the type of information which is to be provided:

The managers expect that the relationship with other budget categories will be shown in sufficient detail and with appropriate categories to enable Members of Congress and the public to ascertain the budget status of appropriations and other spending measures and to provide a reliable basis for scorekeeping at all stages of the congressional budget process. Although they concur in the need for adequate crosswalk procedures, the managers do not consider it necessary to specify the particular type of crosswalk that is to be used in the report on the first budget resolution.^{71/}

Thus, the comparisons must be in such form and detail as to enable Members of Congress to comprehend the relationship between the functional allocations in the budget resolution and the amounts in appropriations and other spending bills.

^{71/} H. Rept. No. 93-1101, p. 59.

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Section 302 Allocation of Budget Totals Among Committees

SEC. 302. (a) ALLOCATION OF TOTALS.—The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays and total new budget authority among each committee of the House of Representatives and the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

(b) REPORTS BY COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to—

(1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House, (A) subdivide among its subcommittees the allocation of budget outlays and new budget authority allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and (B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

(2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made, (A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and (B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report to its House the subdivisions made by it pursuant to this subsection.

(c) SUBSEQUENT CONCURRENT RESOLUTIONS.—In the case of a concurrent resolution on the budget referred to in section 304 or 310, the allocation under subsection (a) and the subdivisions under subsection (b) shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

Legislative History

This section establishes a procedure for "crosswalking" between budget resolutions and spending bills. The managers statement accompanying a conference report on a budget resolution shall allocate the total new budget authority and outlays specified in the resolution among all House and Senate committees with jurisdiction over spending bills. The two Appropriations Committees are to subdivide their allocations among their respective subcommittees

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and they are to further subdivide their subcommittee allocations between controllable and other amounts. All other House or Senate committees to which an allocation has been made shall make suballocations by subcommittee or program as well as between controllable and other amounts.

Before making their allocations, each committee (including Appropriations) is to consult with the corresponding committee in the other House. The suballocations are to be reported by each committee to its House.

This crosswalk procedure is required for the first budget resolution as well as for any subsequent resolution which revises the new budget authority or outlay levels.

The enacted procedure has three variations from the method formulated by the Senate Rules and Administration Committee in S. 1541. First, S. 1541 would have required suballocations only by the Appropriations Committees; the Act extends this to all committees with jurisdiction over spending. Second, the earlier approach called for the allocations to be made by the Budget Committees after Congress had adopted the budget resolution, while the Act provides for allocations by the conference committee prior to final adoption. The change was made to assure that Congress is informed of the allocations before it approves a budget resolution. Third, the Act requires the appropriate House and Senate Committees to consult with one another while S. 1541 had no such provision.

Until the new congressional budget process is fully implemented, one cannot be sure as to how the section 302 procedure will function. One issue is the relationship between the functional allocations in the budget resolution and the allocations by committee. Section 302 does not specifically require a crosswalk between the functions and committees; rather the relationship is to be forged with the totals in the budget resolution. But if this is the case, the functional allocations will have little practical utility.

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A second issue pertains to the status of the allocations by committees. Clearly, Congress will "keep score" against these as it considers various spending bills. It also appears likely that these allocations will be used to control budget-related legislation. For example, in determining whether an entitlement bill exceeds the budget resolution, section 401 (b) specifically refers to the allocations in section 302 (b). Presumably, also, the committee allocations will be used for purpose of section 311 limitations.

A third issue goes to the fact that House and Senate committees do not have identical jurisdictions so that they may not always be able to arrive at common allocations through the consultation mandated in section 302. Even where their jurisdictions are identical--as in the case of the Appropriations Committees--they still might opt for differing suballocations.

Section 303 When Spending, Revenue, and Debt Legislation May be Considered

SEC. 303. (a) IN GENERAL.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides—

- (1) new budget authority for a fiscal year;
 - (2) an increase or decrease in revenues to become effective during a fiscal year;
 - (3) an increase or decrease in the public debt limit to become effective during a fiscal year; or
 - (4) new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year;
- until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

(b) EXCEPTIONS.—Subsection (a) does not apply to any bill or resolution—

- (1) providing new budget authority which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or
- (2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

(c) WAIVER IN THE SENATE.—

(1) The committee of the Senate which reports any bill or resolution to which subsection (a) applies may at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to the bill or resolution to which the resolution so agreed to applies.

Legislative History

This section prohibits (with exceptions) floor consideration of revenue, spending, and debt legislation prior to adoption of the first budget resolution. If adoption is not achieved by the scheduled May 15 date, consideration

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budget resolution might not be adopted. As a consequence, the Senate approved an amendment permitting action on money legislation only if the budget resolution has been adopted.^{72/}

The Rules and Administration Committee added to the types of legislation exempted from the limitation. Its four exemptions were for: advance appropriations; advance revenue changes; contract, borrowing, and entitlement authority; and trust funds. But the conference committee deleted the latter two exemptions on the ground that all actions which directly impact on the ensuing year's budget should be subject to the discipline of the new budget process. Thus, advance revenue and spending matters are exempt because they have no direct effect on the next budget year.

The Senate waiver was devised by the Rules and Administration Committee, but its prospective utility is limited by the House precedence on revenue and appropriation measures.

^{72/} The amendment by Senator Nunn was approved by voice vote. 120 Congressional Record (daily ed., March 21, 1974) S 4055-57.

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of these measures would be delayed. The ban against prior action does not apply to advance spending or revenue actions, that is, to changes in revenues or new spending which take effect in the fiscal year following the year to which the budget resolution applies. Without the exception, section 303 might have been interpreted to bar such advance actions. A waiver procedure to allow prior consideration in the Senate is detailed in subsection (c).

Most versions of the budget reform legislation have banned prior consideration; otherwise the purposes of the congressional budget process could be easily circumvented. By holding money legislation until after the first resolution has been adopted, Congress has a means of acting within the framework of its initial budget determinations.

In the Joint Study Committee bill, no exceptions were provided to the ban against early consideration. But inasmuch as the Joint Study Committee provided an automatic fallback to the President's budget in case of congressional failure to adopt a budget resolution, the ban would not have extended beyond the scheduled adoption date.

H.R. 7130 had no fallback so that consideration could not proceed until a budget resolution had been adopted. Advance appropriations were to be excepted from the ban. S. 1541 as reported by the Senate Government Operations Committee had a fallback arrangement in case Congress does not adopt the first resolution by the prescribed date. It also had an exception for advance funding.

The bill reported by the Rules and Administration Committee would have allowed consideration of spending, revenue, and debt legislation if no budget resolution was adopted by the scheduled date. The purpose was to assure that congressional action does not come to a standstill for want of a budget resolution. But a side effect would have been to increase the possibility that a

Section 304 Permissible Revisions of Budget Resolutions

Sec. 304. At any time after the first concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises the concurrent resolution on the budget for such fiscal year most recently agreed to.

Legislative History

Authority to revise the budget resolution any time during the fiscal year was implied but not specifically provided in the Joint Study Committee bill.^{73/} Both H.R. 7130 and S. 1541 authorized permissible revisions. As enacted, the procedures specified in section 305 apply to any optional budget resolution.

^{73/} The Joint Study Committee anticipated that a "third" resolution would be considered as part of next year's first resolution. See Joint Study Committee on Budget Control, Recommendations for Improving Congressional Control over Budgetary Outlay and Receipt Totals (April 18, 1973), footnote No. 5, p. 20.

Section 305 (a) Floor Procedures in the House of Representatives

SEC. 305. (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE.—

(1) When the Committee on the Budget of the House has reported any concurrent resolution on the budget, it is in order at any time after the tenth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution has been available to Members of the House (even though a previous motion to the same effect has been disagreed to), to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be read for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(4) Debate in the House of Representatives on the conference report or any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(5) Motions to postpone, made with respect to the consideration of any concurrent resolution on the budget, and motions to proceed to the consideration of other business, shall be decided without debate.

(6) Appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

Legislative History

The Joint Study Committee specified the same procedures for consideration in the House and the Senate, but in subsequent development of the legislation, the House and the Senate formulated separate sets of procedure. The purpose of the special procedures is to expedite consideration and to prevent dilatory tactics.

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Layover Rule. The standard layover period between the reporting and floor consideration of a measure is three days in the House.^{74/} H.R. 7130 as reported by the Rules Committee had a five day layover, but two floor amendments (the only such amendments adopted) established a 10-day period excluding Saturdays, Sundays, and holidays.^{75/} The aim of this extended period is to furnish Members ample opportunity to examine all facets of the budget, including fiscal policies and national priorities. Because the budget ramifies to all agencies and programs, a more prolonged review might be warranted than for ordinary legislation. The special layover rule also differs from the 3-day standard in that its computation begins the day after the report is available to Members and consideration may commence only after the 10th day has been completed. The net effect is to add two days to the layover period.

The extended layover is required for all budget resolutions, including the second resolution scheduled for September and any optional resolution. But a strict reading of the rule strongly suggests that it is not required for conference reports on a budget resolution.

Under some circumstances, the layover rule might make it impossible to meet the adoption deadline. This is particularly applicable to the second resolution for which only a small number of days are available in September. But even the 30 days between reporting and adoption of the first resolution might not suffice. Half of this period will be idled by the layover; perhaps 3-5 days will be required for floor debate; and as much as seven days can elapse before conferees report. At least two amelioratives are feasible; to report prior to the April 15 deadline; or to bring the resolution to the floor with a rule reducing the layover period.

^{74/} Rule XI, Clause 27, Paragraph (d) (4) Rules of the House of Representatives.
^{75/} 119 Congressional Record (daily ed., December 5, 1973) H 10682. The amendment to exclude Saturdays, Sundays, and Holidays was offered by Rep. Matsunaga; the amendment to provide a 10-day layover by Rep. Bell.

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Motions. Certain motions may not be offered during consideration of a budget resolution; others are to be decided without debate. A budget resolution is highly privileged and can be brought to the floor without a rule.

It is not in order to recommit a budget resolution or a conference report nor is it permissible to limit debate to less than the amount of time provided in this subsection. Motions to postpone or to proceed to other business as well as appeals from rulings of the chair are to be decided without debate.

Debate. Ten hours are allowed for generate debate and amendments are to be read under the five-minute rule. ^{76/} Five hours are provided for debate on any conference report. The time for debate is to be divided equally between the majority and minority parties.

Debate in the Committee of the Whole. Consideration of the budget resolution is to be in the Committee of the Whole. The procedure will be in three stages: (1) general debate limited to 10 hours; (2) consideration of amendments under the 5-minute rule; and (3) final passage in the House.

Amendments and Consistency. There is no special bar to the offering of amendments in the Committee of the Whole, though the Joint Study Committee would have required advance printing of amendments and a rigid rule of consistency for all amendments. Section 305 (a) does not require that an amendment maintain the consistency of a budget resolution, nor that a budget resolution be consistent before it is adopted. (However, a consistency rule applies to the Senate and hence no conference report could be presented to the House in inconsistent form.) But after the Committee of the Whole has reported, the

^{76/} Rule XXIII, Clause 5. Rules of the House of Representatives.

House may consider an amendment (or series of amendments en bloc) to make a budget resolution mathematically consistent. While consistency is not defined, it means that the functional allocations add up to the appropriate levels of outlays and budget authority and that the level of budget surplus or deficit is the difference between total outlays and total revenues.

Section 305 (b) Floor Procedure in the Senate(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE;
AMENDMENTS.—

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours, except that, with respect to the second required concurrent resolution referred to in section 310(a), all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

(4) Notwithstanding any other rule, an amendment, or series of amendments, to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

Legislative History

Most of the procedures for Senate consideration were devised by the Rules and Administration Committee and these tend to be less restrictive than those initially developed by the Joint Study Committee. The procedures in this subsection apply to consideration of any reconciliation bill or resolution, except as to the time provided for debate. (Section 310 (d)).

Debate. For the first budget resolution and any optional revision, 50 hours are provided for debate on the resolution and all amendments, with not more than two hours allowed for any amendment. Fifteen hours are allowed for the second budget resolution.

Motions. A motion to further limit debate is not debatable. A motion to recommit is in order only if it instructs the Budget Committee to report back within not more than three days.

Amendments and Consistency. An amendment must be germane to the budget resolution, that is, it must pertain to one of the matters listed in section 301 (a) and (b). This germaneness rule is stricter than that generally applied to Senate amendments, but not as restrictive as was proposed by the Joint Study Committee which would have only permitted amendments relating to amounts in the budget resolution.

An amendment always is in order to achieve or maintain mathematical consistency. The version reported by the Government Operations Committee would have allowed amendments to make the budget resolution consistent. Amendments which maintain consistency were authorized in the bill reported by the Rules and Administration Committee. The effect is to permit an amendment at any time if (1) the budget resolution in its pre-amendment form is inconsistent and the amendment would make it consistent or (2) the resolution already is consistent and the amendment would not make it inconsistent. Thus, an amendment in the third degree would be permitted if it maintains consistency.^{77/} In effect, a budget resolution would be open to amendment until final passage in the Senate.

^{77/} See Senate Procedure: Precedents and Practices, Senate Doc. No. 93-21, p. 64 for the general rule barring amendments in the third degree.

Section 305 (c) Senate Action on Conference Reports

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE.—

(1) The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report on any concurrent resolution on the budget, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

Legislative History

The Rules and Administration Committee provided detailed procedures for consideration of conference reports.

The 3-day layover rule is somewhat more stringent than that provided for reports from standing committees of the Senate. ^{78/} Ten hours are provided for floor debate and 30 minutes for debate on any amendments in disagreement between the House and the Senate.

Time limits are provided for the appointment or instruction of conferees if the conference report has been rejected.

Section 305 (d) Required Action if Conference Committee is Deadlocked

(d) REQUIRED ACTION BY CONFERENCE COMMITTEE.—If, at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session—

(1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or

(2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts a substitute text.

Legislative History

This provision traces its origin and evolution to efforts to devise a "fallback" in case Congress is unable to adopt the first budget resolution by its prescribed date.

The Joint Study Committee bill provided that if Congress failed to adopt the budget resolution by May 1, the figures in the President's budget would be used for purposes of the congressional budget process until Congress has adopted its own resolution. No fallback to the President's budget was contained in H.R. 7130 as passed by the House. It was felt that reliance on the President's figures would be improper for a congressional budget and might encourage procrastination by those who favor the President's budget proposals.

The Senate Government Operations Committee constructed a triple fallback arrangement, with recourse to the President's budget only if no other option was available. (1) If both Houses have adopted budget resolutions but are unable to agree in conference, the lower figure for each item would be used;

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(2) If only one House has acted, its budget figures would be used; (3) If neither House has acted, the President's budget would be used. In each case, the fallback would terminate once Congress adopted a budget resolution.

The Rules and Administration Committee scaled back the fallback mechanism to deadlocks in conference committee. If the conferees were unable to agree, they would recommend the average of the House and Senate figures, and the two Houses would decide whether to adopt the compromise figures.

In the conference on H.R. 7130, it was decided to eliminate any mechanical fallback and to require instead that the conferees on a budget resolution report all matters in agreement and disagreement as enacted. The mandatory report applies to all budget resolutions.

The language of the enacted provision provides for instances in which the second House adopts an amendment in the nature of a substitute to the resolution passed by the first House as well as for cases where the second House adopts numbered amendments to items on which it disagrees with the determination of the first House. The numbered amendment procedure is used for measures (such as appropriations) where the House action precedes that of the Senate and the Senate considers amendments to the House-passed bill rather than an original bill of its own. The amendment-as-substitute route generally is used when neither House enjoys precedence. By providing both procedures, subsection (d) remains neutral as to the procedure that will be used by the House and Senate for budget resolutions. The matter of precedence is discussed in section 301 (a).

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Section 305 (e) Consistency Requirement in the Senate

(e) CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE.—It shall not be in order in the Senate to vote on the question of agreeing to—

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

Legislative History

This is the only remnant of the "rule of consistency" proposed by the Joint Study Committee for floor action on budget resolutions, though subsections (a) and (b) give broad opportunity for amendments to achieve mathematical consistency.

The Joint Study Committee's rule of consistency would have barred any floor amendment which would have made a budget resolution inconsistent. If a proposed amendment would have raised the allocation for one category, it also would have had to increase total spending or propose an offsetting reduction in another category. In the Senate Government Operations Committee, the rule of consistency was shifted to final passage rather than to individual floor amendments. Four types of inconsistency were identified and a procedure was specified for the recommittal of inconsistent resolution. The Rules and Administration Committee devised the rule that was enacted as subsection (e).

Although the rule applies only to the Senate, because it covers conference reports, it applies final passage by the House as well. Inconsistency can occur because (1) the functional allocations do not equal total new budget authority

or outlays; (2) the budget surplus or deficit is not the difference between total outlays and total revenues; or (3) the proposed change in the public debt limit is not sufficient to achieve the total public debt specified in the budget resolution.

Section 306 Budget Committee Jurisdiction

Sec. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

Legislative History

The purpose of this provision is to assure that the congressional budget process is not circumvented by floor amendments or by measures reported by committees other than the Budget Committees. A matter within the jurisdiction of the Budget Committee may be considered only if that Committee has reported, has been discharged, or if it is an amendment to a Budget Committee measure. This jurisdictional provision originated with the Joint Study Committee and comparable provisions were in H.R. 7130 and S. 1541.

The meaning of this provision is somewhat cloudy. In the case of concurrent resolutions on the budget such as are provided for in section 301, the exclusivity of Budget Committee jurisdiction is clearcut. But what about enactments (bills or joint resolutions) which set ceilings on Federal spending? Could such a measure be reported by another committee? In fact, can a spending limitation bill be reported by the Budget Committees or is their jurisdiction strictly limited to the concurrent resolution process set forth in Title III? One possible answer is contained in the Report of the Senate Rules and Administration Committee on S. 1541:

It would not be in order, for example, to consider a concurrent resolution on the budget reported by the Appropriations Committee of either House. Nor would it be in order to consider an amendment to the debt-ceiling bill which would establish the appropriate level of total outlays for the coming fiscal year.^{79/}

^{79/} S. Rept. No. 93-688, p. 48.

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Some clue as to the intent of section 306 might be gleaned from variations in wording in the several formulations of this jurisdictional rule. The Joint Study Committee bill not only vested full jurisdiction in the Budget Committees but explicitly required that their actions be only in the form of concurrent resolutions on the budget. H.R. 7130 had a similar provision but it referred to measures or proposals rather than to bills or resolutions. S. 1541 as reported by the Government Operations Committee had language similar to that in the Joint Study Committee bill.

Thus, these three versions would have ruled out Budget Committee action on spending limitation bills. However, the final form of section 306 emerged from the Rules and Administration Committee which struck the reference to concurrent resolutions and generalized the jurisdiction to encompass bills or resolutions. The immediate reason for the change was that the Rules and Administration bill gave the Budget Committees limited jurisdiction over reconciliation bills so that a reference to concurrent resolutions no longer was sufficient. But an additional reason, for which some support may be found in the report quoted above, is that the Rules and Administration Committee wanted to assure that all forms of spending limitation would be routed through the Budget Committees. Inasmuch as the report language refers to "the appropriate level" rather than to spending ceilings, it can be interpreted to apply only to the types of action taken by means of concurrent resolutions on the budget.

On balance, an interpretation which gives the Budget Committees jurisdiction over spending limit bills would appear to be more consonant with the purposes of the Act, the proper functioning of the congressional budget process, and the Senate Rules and Administration Committee Report.

Section 307 House Appropriations Committee Action

Sec. 307. Prior to reporting the first regular appropriation bill for each fiscal year, the Committee on Appropriations of the House of Representatives shall, to the extent practicable, complete subcommittee markup and full committee action on all regular appropriation bills for that year and submit to the House a summary report comparing the committee's recommendations with the appropriate levels of budget outlays and new budget authority as set forth in the most recently agreed to concurrent resolution on the budget for that year.

Legislative History

This provision attempts to achieve more coordinated consideration of appropriation bills without resort to the omnibus approach which was tried in 1950. Individual appropriation bills are retained but no bill will be reported until the House Appropriations Committee has, to the extent practicable, completed action on all regular bills. Although the provision applies only to the House Appropriations Committee, it is bound to affect Senate procedure as well because floor consideration in the Senate commences only after the House has acted.

This requirement appeared in H.R. 10961 introduced by Rep. Whitten on October 16, 1973, and it was incorporated into H.R. 7130 reported by the Rules Committee. The House bill also provided that appropriation (and other spending) measures would be held and not sent to the President for signature until the second budget resolution and any required reconciliation had been adopted. An exception was to be made for measures not in excess of the relevant amounts in the latest budget resolution. This feature was dropped in conference and the provision relating to Appropriations Committee action was modified to require completion of markup only "to the extent practicable." If consideration of an appropriation measure is delayed for lack of authorizing legislation, the Appropriations Committee probably would report the other bills without waiting for markup of the delayed one.

The new provision was incorporated into the rules of the House ^{80/} Appropriations Committee at the start of the 94th Congress.

Section 308. Reports on Budget Authority and Tax Expenditure Legislation

SEC. 308. (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY OR TAX EXPENDITURES.—Whenever a committee of either House reports a bill or resolution to its House providing new budget authority (other than continuing appropriations) or new or increased tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, prepared after consultation with the Director of the Congressional Budget Office, detailing—

(1) in the case of a bill or resolution providing new budget authority—

(A) how the new budget authority provided in that bill or resolution compares with the new budget authority set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(B) a projection for the period of 5 fiscal years beginning with such fiscal year of budget outlays, associated with the budget authority provided in that bill or resolution, in each fiscal year in such period; and

(C) the new budget authority, and budget outlays resulting therefrom, provided by that bill or resolution for financial assistance to State and local governments; and

(2) in the case of a bill or resolution providing new or increased tax expenditures—

(A) how the new or increased tax expenditures provided in that bill or resolution will affect the levels of tax expenditures under existing law as set forth in the report accompanying the first concurrent resolution on the budget for such fiscal year, or, if a report accompanying a subsequently agreed to concurrent resolution for such year sets forth such levels, then as set forth in that report; and

(B) a projection for the period of 5 fiscal years beginning with such fiscal year of the tax expenditures which will result from that bill or resolution in each fiscal year in such period.

No projection shall be required for a fiscal year under paragraph (1) (B) or (2) (B) if the committee determines that a projection for that fiscal year is impracticable and states in its report the reason for such impracticability.

(b) UP-TO-DATE TABULATION OF CONGRESSIONAL BUDGET ACTIONS.—The Director of the Congressional Budget Office shall issue periodic reports detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority and changing revenues and the public debt limit for a fiscal year. Such reports shall include, but are not limited to—

(1) an up-to-date tabulation comparing the new budget authority for such fiscal year in bills and resolutions on which Congress has completed action and estimated outlays, associated with such new budget authority, during such fiscal year to the new budget authority and estimated outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year and the reports submitted under section 302;

(2) an up-to-date status report on all bills and resolutions providing new budget authority and changing revenues and the public debt limit for such fiscal year in both Houses;

(3) an up-to-date comparison of the appropriate level of revenues contained in the most recently agreed to concurrent resolution on the budget for such fiscal year with the latest estimate of revenues for such year (including new revenues anticipated during such year under bills and resolutions on which the Congress has completed action); and

(4) an up-to-date comparison of the appropriate level of the public debt contained in the most recently agreed to concurrent resolution on the budget for such fiscal year with the latest estimate of the public debt during such fiscal year.

(c) FIVE-YEAR PROJECTION OF CONGRESSIONAL BUDGET ACTION.—As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year—

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period; and

(3) tax expenditures for each fiscal year in such period.

Legislative History

This section requires any committee reporting budget authority or tax expenditure legislation to compare the amounts in the legislation with the relevant figures in the latest budget resolution, project the five-year costs, and indicate the amount of assistance to states and localities. The Congressional Budget Office is to issue periodic scorekeeping reports as well as five-year projections.

The provision has two distinct sources. One was the effort to establish outlay ceilings in expenditure legislation; the other was the need to keep track of congressional spending actions in comparison with the determinations in the budget resolution.

Outlay limitations. Congress cannot directly control outlays through its decisions on appropriations and other spending legislation. In appropriating funds, Congress gives government agencies authority to obligate money (budget authority). Outlays occur when payment is made pursuant to an obligation, sometimes with little lag after the obligation has been incurred, sometimes a number of years after the obligation was made. This means that once Congress votes budget authority, it has no effective control over the timing of expenditure. Congress does not go on record as to the total amount of payments that will be made in the fiscal year or as to the outlays that will ensue in the next year in consequence of its current actions. For any particular year, outlays result from a combination of past and present decisions.

But inasmuch as the quest for outlay limitations (the \$250 billion spending ceiling issue) was a prime goad of budget reform, Congress has sought to devise some means of exercising control over outlays. A partial solution is the specification of outlay levels in the budget resolution. However, these

levels cannot be enforced if Congress is not informed of the outlay implications of spending legislation. For this reason, the Joint Study Committee proposed that when the first budget resolution so directs, budget authority legislation be required to specify the amount of outlays which may be made during the year pursuant to both new and any carryover authority. This requirement was to apply only if and to the extent that the first budget resolution prescribed the inclusion of outlay limits in spending bills. A permanent or comprehensive outlay limitation was not required because of concern that the "state of the art" does not permit reliable estimates for many programs. Some programs have indefinite appropriations for which outlays depend on outside circumstances; others have extended pipelines with actual payments depending on the fulfillment of past obligations; still others provide new budget authority for which expenditure will not be required until future years. By triggering the requirement through the budget resolution, Congress would be able to make an annual determination as to the efficacy of such limitations.

H.R. 7130 as passed by the House did not contain outlay limitations. This was in line with the House bill's conversion of the budget levels into targets rather than ceilings. S. 1541 as reported by the Senate Government Operations Committee retained the outlay limitations in the manner conceived by the Joint Study Committee. But the Rules and Administration Committee opted for committee reports in lieu of statutory limitations. In addition to reports accompanying budget authority legislation, it would have required the Appropriations Committees to report on uncontrollable outlays and the Budget Committees to report on outlays resulting from backdoor spending or permanent appropriations. In conference, these special reporting requirements were combined into the provisions for budget authority legislation.

Reports on Budget Authority Legislation. All versions of the legislation have provided for reports on spending measures. The Joint Study Committee would have barred floor consideration of any spending measure which did not attest that the limitations in the budget resolution would be adhered to. In addition, the legislative budget director would have certified the accuracy of the committee statement. A similar statement would have been required for any floor amendments.

H.R. 7130 did not provide for outlay limitations nor did it require outlay estimates for floor amendments. But committees reporting budget authority legislation would have been required to file projections of the five-year outlays of the legislation. This statement was to be prepared "in consultation with" the budget director.

S. 1541 reported by the Government Operations Committee also would have required statements and projections prepared in consultation with the congressional budget director. As explained above, this was expanded by the Rules and Administration Committee into a comprehensive reporting system covering new budget authority legislation, uncontrollable outlays, and permanent appropriations. The statements were to be prepared "after consultation with" the congressional budget director, a change in wording intended to signify the independence of the committee in developing its estimates. In conference, the special reporting provisions for uncontrollables and permanent appropriations were dropped.

As enacted, reporting committees must compare the budget authority in spending bills with the amounts in the latest budget resolution and with the allocations made pursuant to section 302. Significantly, no comparisons are required for outlays, though five-year projections are to be made of the outlays

ensuing from the new budget authority. These projections will be waived if the reporting committee certifies that they are impracticable.

Assistance to state and local governments. S. 1541 would have required impact statements detailing the effects of the legislation on state and local governments. The conference modified this to require a statement on the amount of financial assistance that would be provided to states and localities.

Tax expenditures. The reporting requirement for tax expenditures was introduced by the Senate Government Operations Committee. Because tax expenditure data are not to be included in the budget resolution, comparisons are to be made with the amounts included in the Budget Committees' reports.

Virtually every tax measure has an impact on tax expenditures. For example, legislation raising tax rates will have the effect of increasing the level of tax expenditures.

Congressional budget Office Tabulations. Subsection (b) gives the CBO the duty of preparing periodic scorekeeping reports on spending, revenue, and debt legislation. CBO will inherit the scorekeeping functions performed by the Joint Committee on Reduction of Federal Expenditures. These reports will be in addition to the cost analyses to be prepared by CBO pursuant to section 403. At the start of each fiscal year, CBO also is to issue five-year projections of new budget authority, outlays, revenues, budget surplus or deficit, and tax expenditures.

Section 309. Deadline for Enactment of Appropriation and Entitlement Legislation

Sec. 309. Except as otherwise provided pursuant to this title, not later than the seventh day after Labor Day of each year, the Congress shall complete action on all bills and resolutions—

- (1) providing new budget authority for the fiscal year beginning on October 1 of such year, other than supplemental, deficiency, and continuing appropriation bills and resolutions, and other than the reconciliation bill for such year, if required to be reported under section 310(c); and
 - (2) providing new spending authority described in section 401(c)(2)(C) which is to become effective during such fiscal year.
- Paragraph (1) shall not apply to any bill or resolution if legislation authorizing the enactment of new budget authority to be provided in such bill or resolution has not been timely enacted.

Legislative History

As part of the timetable of the congressional budget process, the deadline for enactment of regular appropriations and entitlements is set at seven days after Labor Day. However, there is no bar against the consideration of such legislation after the deadline. The effect of the section, therefore, is to encourage rather than require enactment by the seventh day after Labor Day. But in view of the need to complete action on a second budget resolution and possible reconciliation by the start of the fiscal year which ordinarily will be less than three weeks away, any slippage beyond the deadline can complicate the budget process.

Even though the deadline is permissive, it shall not apply if consideration of appropriations has been delayed by the failure to "timely" enact authorizations. This is interpreted in the managers statement to "justify non-compliance with the deadline fixed by this section when the delay is of such duration as to make it impracticable to complete action on an appropriation bill by the seventh day after Labor Day."^{81/}

Both H.R. 7130 and S. 1541 as passed by their respective Houses had earlier deadlines for appropriation measures. The date in the House bill was August 1; in the Senate bill, it was August 7 in years when there is no "August recess" and five days before the recess in other years. The specification of a

later date by the conferees was due to their decision that the section 402 deadline for authorizing legislation shall apply only to the reporting and not to the enactment of such legislation.

The conferees also extended the coverage of section 309 to entitlement legislation. This is one of a number of provisions in the Act where entitlements are accorded the same status for purposes of congressional budgeting as appropriations. This (and other provisions) apply only to entitlements which provide new budget authority, not to those for which funds are provided through the appropriations process.

⁸¹/ H. Rept. No. 93-1101, p. 63.

Section 310 (a) and (b). Second Budget Resolutions

SEC. 310. (a) REPORTING OF CONCURRENT RESOLUTION.—The Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget shall also, to the extent necessary—

- (1) specify the total amount by which—
 - (A) new budget authority for such fiscal year;
 - (B) budget authority initially provided for prior fiscal years; and
 - (C) new spending authority described in section 401(c)(2) which is to become effective during such fiscal year,
 contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;
- (2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;
- (3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or
- (4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

Any such concurrent resolution may be reported, and the report accompanying it may be filed, in either House notwithstanding that that House is not in session on the day on which such concurrent resolution is reported.

(b) COMPLETION OF ACTION ON CONCURRENT RESOLUTION.—Not later than September 15 of each year, the Congress shall complete action on the concurrent resolution on the budget referred to in subsection (a).

Legislative History

Probably the most important change made by Congress during its consideration of the budget reform legislation was to shift the procedure for establishing consistency between the budget resolution and spending bills from the start to the end of the process. While the Joint Study Committee proposed that the first resolution establish ceilings which could not be breached by appropriation measures, the Act sets targets at the start and provides for a reconciliation of the budget resolution and spending legislation as the final stage in the congressional budget process. This reconciliation is to be achieved by means of

a second budget resolution to be considered after action has been completed on all spending bills and by a reconciliation bill (or resolution) which implements the directives in the second resolution.

Second budget resolution. The Joint Study Committee provided for a second budget resolution, primarily as a means of allocating the general contingency reserve and for any necessary supplemental appropriations. The second resolution was to come before the sine die adjournment of Congress, but after the start of the fiscal year to which the resolution applied. Thus, the resolution was to be in the nature of a "wrap up," not a reconciliation.

H.R. 7130 mandated a second resolution by September 15 of each year, several weeks before the start of the new fiscal year. This resolution was to be the "final determination" by Congress, though it could be subsequently revised by an optional resolution. The second resolution would call for any necessary actions to implement the spending, revenue, and debt levels established in the congressional budget. Congress would not be permitted to adjourn sine die until it had adopted and implemented the second resolution.

In its version of S. 1541, the Senate Government Operations Committee sought to combine ceilings at the start with some opportunity for reconciliation at the end. The first budget resolution would serve as a ceiling, but not to the extent of preventing action on spending bills in excess of the budgeted levels. Even though they had been enacted, appropriations could not take effect until special triggering legislation had been approved, and this could be done only if the spending amounts were consistent with the budget totals. If the budget totals had been exceeded, Congress would have to go through a prescribed sequence of steps in an effort to reconcile the discrepancies. First, it would consider a ceiling enforcement bill rescinding appropriations to bring them into line with

the congressional budget. Second, if this was not possible, Congress would adopt a second budget resolution. Third, it would then adopt a ceiling enforcement bill consistent with the second resolution. Fourth, if it was not possible to adopt a second budget resolution or a pursuant enforcement bill, Congress would consider a rescission bill providing pro rata reductions in controllable appropriations.

This complicated process concentrated on the spending side of the budget. It did not specifically provide for reconciliation by means of adjustments in revenues or debt, though these might have been possible through recommendations in the second budget resolution. However, if the second resolution were to call for such adjustments, there was no procedure in the Government Operations Committee bill for implementing them.

The Senate Rules and Administration Committee formulated a comprehensive reconciliation process similar in its significant aspects to that in H.R. 7130. The figures in the first budget resolution would be targets and the appropriations process would proceed without impediment. Congress would adopt a second budget resolution specifying any changes it wished to have made in expenditures, revenues, and debt. These changes would be implemented by means of reconciliation legislation.

Adoption of second budget resolution. No deadline is prescribed for the reporting of this resolution, but the Act provides that it can be reported when the House is not in session. While the second resolution does not have to wait for the enactment of all appropriation bills, its effectiveness might be impaired if the appropriations process has not been completed. The managers statement anticipates "that the Budget Committees may report in some years during

the August recess and that such reports shall be available to Members, so that Congress will be able to consider the concurrent resolution upon its return."^{82/}
This statement suggests that the 10-day layover in the House and the three-day period in the Senate (required by section 305) may include days during which Congress is not in session. Without this interpretation, it might be impossible to adopt the second resolution by September 15.

Content of the second resolution. All of the items specified in section 301 (a) for the first resolution apply to the second one as well. But, in addition, the second resolution may direct the appropriate committees to report legislation changing (1) new or carryover budget authority, (2) new entitlements, (3) revenues, or (4) the public debt limit. Section 301 (a) states that the changes prescribed in the budget resolution are to relate to total spending and total revenues. The intent is to preserve the jurisdiction of the appropriate committees to determine how revenues and spending are to be adjusted. Thus, the budget resolution may not itemize changes in revenues; the specification of these is to be made in the reconciliation bill. But in the case of new budget authority, the role of the second resolution need not be so restricted. Inevitably, the budget resolution will indicate the types of changes that are to be made to bring total spending into line with the congressional budget. For one thing, the resolution itself will provide functional allocations and if these are to have any meaning, they must guide subsequent reconciliation actions. Second, as required in section 302, the managers statement accompanying the resolution is likely to allocate the totals among congressional committees so that there will be a distribution of the changes between appropriations and backdoor spending, and within the latter among the various committees affected by the changes.

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As provided in section 311, once adopted, the second budget resolution establishes limitations on subsequent revenue, entitlement, and spending legislation.

In accord with section 401 (b) new entitlements cannot take effect until the fiscal year starts. The purpose is to make them subject to the second budget resolution and reconciliation.

82/ H. Rept. No. 93-1101, p. 63.

Section 310 (c), (d), (e), and (f). Reconciliation Process

(c) **RECONCILIATION PROCESS.**—If a concurrent resolution is agreed to in accordance with subsection (a) containing directions to one or more committees to determine and recommend changes in laws, bills, or resolutions, and—

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House a reconciliation bill or reconciliation resolution, or both, containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations, whether such changes are to be contained in a reconciliation bill or reconciliation resolution, and submit such recommendations to the Committee on the Budget of its House, which upon receiving all such recommendations, shall report to its House a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

(d) **COMPLETION OF RECONCILIATION PROCESS.**—Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (c) not later than September 25 of each year.

(e) **PROCEDURE IN THE SENATE.**—

(1) Except as provided in paragraph (2), the provisions of section 305 for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills and reconciliation resolutions reported under subsection (c) and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill or resolution reported under subsection (c), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

(f) **CONGRESS MAY NOT ADJOURN UNTIL ACTION IS COMPLETED.**—It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless action has been completed on the concurrent resolution on the budget required to be reported under subsection (a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill or resolution, or both, is required to be reported under subsection (c) for such fiscal year, unless the Congress has completed action on that bill or resolution, or both.

Legislative History

The reconciliation concept was suggested by Charles Schultze in testimony on the budget reform legislation. He proposed that Congress use the same method for finalizing its budget as is used by the executive branch.^{83/} The purpose of the reconciliation process is to implement the determinations made in the second resolution. As indicated, its derivation is from H.R. 7130 and the Rules and Administration Committee bill.

Deadline. September 25 is the scheduled adoption date, only five days before the start of the next fiscal year. Any delay in the congressional budget process can impair the reconciliation process. If the fiscal year has started, it would be difficult to rescind appropriations or entitlements which already have taken effect. On the other hand, if major programs or agencies still are functioning under continuing resolution, it will be difficult to establish firm levels in the second budget resolution. In the Act, the only formal spur to completion of the congressional budget process is the bar against sine die adjournment until Congress has adopted the second budget resolution and any required reconciliation measure.

Type of reconciliation. Reconciliation can be by means of a bill, a concurrent resolution, or both, depending on the procedures used by Congress in its consideration of spending bills. If appropriations, entitlements, and other budget authority legislation proceed to enactment in the ordinary manner, reconciliation will be by means of a bill. However, if Congress exercises the option provided in section 301 (b) requiring that spending legislation not be enrolled until the congressional budget process has been completed, the reconciliation will be implemented by a concurrent resolution directing the enrolling officer in each

House to make certain changes in the bills which have been held. Both a reconciliation bill and a resolution will be needed if Congress uses its section 301 (b) option in the same year that it directs that changes be made in revenues or the public debt.

Implementing Procedure. Implementation of the changes directed in the second budget resolution is to be handled by the committees holding jurisdiction over the particular legislation. The Budget Committees are to be involved in the process only if more than one committee must report implementing legislation, and their role is to be limited to assembling the parts prepared by the various committees into a single bill or resolution. This restricted role is taken from the version of S. 1541 reported by the Rules and Administration Committee.

Floor procedures. No special procedures have been developed for consideration in the House, though the tight deadlines confronting Congress compel the use of expediting methods. The Senate procedures are to be the same as are used for budget resolution (section 305), with the exception that debate is to be limited to 20 hours.

⁸³/ House Committee on Rules, Hearings on Budget Control Act of 1973, 93d Congress, 1st Session (1973). pp. 316-18.

Section 311. Limitation on Budget Authority, Entitlement, and Revenue Legislation

SPC 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER.—After the Congress has completed action on the concurrent resolution on the budget required to be reported under section 310(a) for a fiscal year, and, if a reconciliation bill or resolution, or both, for such fiscal year are required to be reported under section 310(c), after that bill has been enacted into law or that resolution has been agreed to, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing additional new budget authority for such fiscal year, providing new spending authority described in section 401(c) (2) (C) to become effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if—

- (1) the enactment of such bill or resolution as reported;
- (2) the adoption and enactment of such amendment; or
- (3) the enactment of such bill or resolution in the form recommended in such conference report;

would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of revenues set forth in such concurrent resolution.

(b) DETERMINATION OF OUTLAYS AND REVENUES.—For purposes of subsection (a), the budget outlays to be made during a fiscal year and revenues to be received during a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

Legislative History

This section establishes the second budget resolution (subject to revision by a subsequent optional resolution) as a limitation on spending and revenue. After the second resolution and any required reconciliation have been adopted, Congress may not consider any appropriation, entitlement, or other spending measure which would cause the total level of new budget authority or outlays to be exceeded. Nor may Congress consider a revenue bill which would reduce total revenues below the level in the latest budget resolution. The Budget Committees are assigned the task of estimating whether legislation would cause the level of outlays or of revenues to be breached.

This section was introduced by the Senate Government Operations Committee during markup of S. 1541 in conjunction with its decision to change the first budget resolution from a "ceiling" into a "target." As part of a package of changes

made in Title III, the Committee decided to impose a ceiling at the end of the congressional budget process rather than at the start, and it thus devised a bar against spending legislation in excess of the final congressional budget determination. As designed by the Government Operations Committee, the ceiling was to be applied only to budget authority legislation, and it was to be keyed to a "ceiling enforcement bill" rather than to a budget resolution. The Rules and Administration Committee retained this concept but utilized the second budget resolution as the determinant of the ceiling.

The conference committee broadened the limitation in a number of ways. First, it extended the prohibition to revenue and entitlement legislation, not only to appropriations. Second, it applied the limitation to regular appropriation bills if their consideration occurs after adoption of the second budget resolution and reconciliation. Third, it gave the Budget Committee the responsibility of determining the effects of legislation on the appropriate levels in the budget resolution. This role is confined on the spending side to outlay estimates, not to budget authority, presumably because of the expectation that the affected legislation would specify the amount of budget authority to be provided. However, much budget authority legislation, particularly in the case of entitlements, is indefinite, with the amount of budget authority determined by outside factors.

It should be noted that the limitation applies to total budget authority and outlays, not to the functional allocations in the budget resolution or allocation to committees. Thus, if an appropriation measure would cause an allocation to be exceeded without breaching the spending total, its consideration would not be barred by section 311. With regard to revenues, the limitation has the effect of prohibiting the consideration of tax expenditure legislation which would reduce total revenues below the appropriate level of the most recent budget resolution.^{84/}

^{84/} See Statement of Managers in H. Rept. No. 93-1101, p. 64.

TITLE IV. PROVISIONS TO IMPROVE FISCAL PROCEDURES

Section 401 (a) and (b) Procedures for Contract, Borrowing, and Entitlement Authority

SEC. 401. (a) LEGISLATION PROVIDING CONTRACT OR BORROWING AUTHORITY.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C) which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 802(b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

Legislative History

The term "spending authority" was introduced by the Joint Study Committee to describe legislation which authorizes the expenditure of funds outside of or prior to the appropriations process. The Joint Study Committee identified three types of spending authority which are defined in subsection (c). The common feature of contract, borrowing, and entitlement authority is that Federal agencies are authorized to enter into obligations or make payments through "backdoor" legislation. (S. 1541 as reported by the Senate Government

Operations Committee used the term "advance budget authority" to describe these types of legislation; the Rules and Administration Committee used the term "advance spending authority.")

As proposed by the Joint Study Committee and passed by the House, the legislation would have subjected the three types of spending authority to the same procedure. New contract, borrowing, or entitlement authority could be effective "only to such extent or in such amounts as are provided in appropriation Acts." The Senate Government Operations Committee bill had a similar provision except that it would have allowed such authority to be "exercised" to such extent or in such amounts as are provided in appropriations or other laws. The Government Operations Committee conceived of a new type of exercising legislation which would have the same relation to backdoor spending as appropriations have to standard authorizations. S. 1541 initially gave jurisdiction over backdoors to the Budget Committees, but in later versions the Appropriations Committees were assigned jurisdiction.

The Rules and Administration Committee devised separate procedures for contract and borrowing authority on the one hand and entitlement legislation on the other, and its approach has been followed in the final version. Contract and borrowing authority are to have the status of ordinary authorizations for which funds are to be available only to the extent provided in appropriations. There are a number of exceptions to this rule, as specified in subsection (d). Entitlements, however, are to continue as authorizations of expenditure but such legislation shall be referred to the Appropriations Committee (from the Committee of original jurisdiction) prior to floor consideration if the amount of new budget authority would exceed the appropriate committee allocation made pursuant to section 302. This referral shall be for no more than 15 days and the jurisdiction of the Appropriations Committee shall be limited to the cost

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of the program and not to substantive changes in the program."^{85/} The Appropriations Committee may report the bill with an amendment limiting the total amount of new entitlement authority, but it shall be automatically discharged from consideration if it has failed to report within 15 days.

One reason for specifying a different procedure for entitlements is that if they were converted to standard authorizations, there might be a tendency to inflate an entitlement in the expectation that a lower amount would be appropriated, thus generating the authorizations-appropriations gap which has plagued many Federal programs in recent years. But if an entitlement is authorized at an inflated level, it might be difficult to lower it by means of the appropriations process.

As devised by the Rules and Administration Committee, the referral procedure would have applied to (1) all entitlement legislation and (2) to floor amendments providing new entitlements.^{86/} The conference committee altered both of these features, first by limiting the referral step to entitlements in excess of the budget resolution; second, by striking the requirement that floor amendments be referred to the Appropriations Committee.

The conferees added paragraph (1) of section 401 (b) providing that new entitlements may not take effect before the start of the fiscal year. The purpose of this new provision is to make entitlements fully subject to the reconciliation process prescribed in section 310 and to thereby keep open the option of reducing entitlements as one way of reconciling the budget resolution with expenditures. The conferees also banned the consideration of entitlement legislation prior to adoption of the first budget resolution

^{85/} H. Rept. No. 93-1101, p. 65.

^{86/} An amendment offered on the floor by Senator Ribicoff to allow the Appropriations Committees to provide their recommendations but not to report amendments was rejected by a vote of 31-55. 120 Congressional Record (daily ed. March 21, 1974) S 4104.

(section 303). Having subjected entitlements to the discipline of both the first and the second budget resolution, the conferees decided that referral to the Appropriations Committees should not be required if the entitlement is within the allocations set pursuant to the latest resolution. In such case, Congress has already expressed its will as to the appropriate amount of entitlement. It can further alter its will when it considers the entitlement on the floor, but there should be no need for review by the Appropriations Committee.

The second change was made because referral of floor amendments after they have been adopted would be an awkward and extraordinary procedure. The reason for including amendments in the referral scheme was to avert the attachment of an entitlement as a rider to other legislation as a means of evading Appropriations Committee review. But once an amendment has been adopted by the House or the Senate, referral would slow the legislative process and reverse the usual relationship between a committee and its House.

In determining whether an entitlement measure must be referred to the Appropriations Committee, two matters must be taken into account. First, the relevant amount is budget authority, not outlays. Regardless of the impact of an entitlement on outlays, referral would take place only if the appropriate level of new budget authority would be exceeded. This means that in instances where Congress raises the level of payments without adjusting the amount of new budget authority, the referral process would not apply. In the case of social security programs, this situation sometimes occurs because budget authority is computed in terms of the receipts of the trust funds. If Congress raises benefits but not taxes, the entire impact would register on outlays, not on budget authority.

The second issue relates to the computation of the budget authority impact of entitlement legislation. Many entitlements are open ended and indefinite, with their cost determined by exogenous factors such as the number of beneficiaries, rate of inflation, etc. The legislation itself does not specify the cost and, therefore, comparisons with the section 302 allocations to committees might be difficult. The managers statement on the conference report states that "the Budget Committees shall provide background information as to such allocations,"^{88/} so that their judgment as to the prospective budget authority impact would prevail. A similar role is assigned to the Budget Committees by section 311 (b) of the Act.

^{88/} H. Rept. No. 93-1101, p. 65.

Section 401 (c) Definitions of New Spending Authority

(c) DEFINITIONS.—

(1) For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this section, including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term "spending authority" means authority (whether temporary or permanent)—

(A) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;

(B) to incur indebtedness (other than indebtedness incurred under the Second Liberty Bond Act) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts; and

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law.

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

Legislative History

This subsection supplies the definitions of contract, borrowing, and entitlement authority referred to in subsections (a) and (b). The basic definitions are taken without substantive change from the Joint Study Committee bill. The Joint Study Committee bill as well as H.R. 7130 had a residual definition for any type of spending authority not covered by the three definitions, but this was struck from S. 1541 by the Senate Rules and Administration Committee.

The proviso that the definition does not cover insured or guaranteed indebtedness was added by the Rules and Administration Committee and is comparable to the exception in section 3 (a) (2). However, outlays ensuing from defaults on such indebtedness would be in the definitions of spending or budget authority.

Under the definition of new spending authority, any increase in the amount of existing contract, borrowing, or entitlement authority would be covered by the new procedures.

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The effective date for this section determines whether contract, borrowing, or entitlement legislation is subject to the new procedures. Section 905 sets the effective date as the first day of the second session of the 94th Congress (1976), but section 906 gives the Budget Committees the option to make it effective one year earlier.

Section 401 (d) Exceptions(d) EXCEPTIONS.—

(1) Subsections (a) and (b) shall not apply to new spending authority if the budget authority for outlays which will result from such new spending authority is derived—

(A) from a trust fund established by the Social Security Act (as in effect on the date of the enactment of this Act); or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.

(2) Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

(3) Subsections (a) and (b) shall not apply to new spending authority to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act), or (ii) a wholly owned Government corporation (as defined in section 101 of such Act) which is specifically exempted by law from compliance with any or all of the provisions of that Act; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

Legislative History

This subsection exempts certain types of legislation from the new procedures for contract, borrowing, and entitlement authority. The exempted categories are (1) social security trust funds, (2) other trust funds which are at least 90 percent self financed, (3) general revenue sharing to the extent provided in renewal legislation, (4) the outlays of certain government corporations and (5) gifts to the United States.

The only exception provided in the Joint Study Committee bill was for fully self-financed trust funds. H.R. 7130 added exemptions for insured and guaranteed loan programs, government corporations, and gifts. In the Senate, S. 1541 as reported by the Senate Government Operations Committee had no exceptions, but the Rules and Administration Committee provided exemptions for general revenue sharing, existing social security trusts, government

corporations, and gifts. The Committee also distinguished between existing and new trust funds. Existing funds (other than those for social security) would be exempt if they were "substantially" self financing--defined in the Committee report to mean that at least 30 percent of their receipts were self generated.^{89/} New trust funds (including social security) would be exempt only if they were 90 percent self financed. But this distinction was removed by a floor amendment and both existing funds (other than social security) and new trust funds were to be exempt only if at least 90 percent of their income was self generated.^{90/} The Act conforms to the provision passed by the Senate.

The special status of general revenue sharing was formulated by the Rules and Administration Committee. It does not dispose the issue one way or the other, but allows Congress to decide the matter without encumbrance when the legislation is considered for renewal. If future revenue sharing legislation reported by committee has an exemption clause, the section 401 (b) procedures will not apply, unless such clause was struck by floor amendment.

^{89/} S. Rept. No. 93-688, p. 58.

^{90/} The amendment, adopted 80-0, was offered by Senator Nunn. 120
Congressional Record, S 4305.

Section 402(a) Reporting Deadline for Authorizing Legislation

SEC. 402. (a) REQUIRED REPORTING DATE.—Except as otherwise provided in this section, it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

Legislative History

The deadline for authorizing legislation was one of the most controversial features of the budget bill. The Joint Study Committee proposed a prohibition on the enactment of authorizing legislation after the start of the fiscal year to which it applied. H.R. 7130 as reported by the House Rules Committee set a March 31 deadline for enactments and a floor amendment to change this to June 30 was rejected 106-300.^{91/} The Senate Government Operations Committee reported a bill with a May 31 deadline but the Rules and Administration Committee abandoned a deadline on enactment and devised a May 15 deadline for reporting by authorizing committees. With only slight revision, that provision was enacted. It is expected that with the advance authorization procedure set in section 607 of the Act, it will be possible for committees to meet the reporting date without much difficulty.

^{91/} The amendment was offered by Rep. Hebert. 119 Congressional Record (daily ed. December 5, 1973) H 10682.

Section 402 (b), (c) and (d) Waiver of Reporting Deadline

(b) **EMERGENCY WAIVER IN THE HOUSE.**—If the Committee on Rules of the House of Representatives determines that emergency conditions require a waiver of subsection (a) with respect to any bill or resolution, such committee may report, and the House may consider and adopt, a resolution waiving the application of subsection (a) in the case of such bill or resolution.

(c) **WAIVER IN THE SENATE.**—

(1) The committee of the Senate which reports any bill or resolution may, at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate, within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees, and the time on any debatable motion or appeal shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to that bill or resolution referred to in the resolution.

(d) **CERTAIN BILLS AND RESOLUTIONS RECEIVED FROM OTHER HOUSE.**—Notwithstanding the provisions of subsection (a), if under that subsection it is in order in the House of Representatives to consider a bill or resolution of the House, then it shall be in order to consider a companion or similar bill or resolution of the Senate; and if under that subsection it is in order in the Senate to consider a bill or resolution of the Senate, then it shall be in order to consider a companion or similar bill of the House of Representatives.

Legislative History

H.R. 7130 determined the waiver procedure applicable to the House; S. 1541 provided the waiver rules for the Senate. Subsection (b) provides for an emergency waiver in the House by means of a resolution reported by the Rules Committee and adopted by the House. This waiver route is the same as was provided for the House in the Joint Study Committee bill.

Subsection (c) provides for a waiver in the Senate if (1) the authorizing committee reports a waiver resolution, (2) the Senate Budget Committee reports or is discharged from consideration of the resolution, and (3) the Senate adopts the resolution. The Joint Study Committee had proposed a waiver procedure controlled by the majority leadership, while the Government Operations Committee bill had no waiver provision. The enacted procedure was devised by the Rules and Administration Committee.

Subsection (d) is a technical provision that allows one House to consider legislation passed by the other House. The second House may consider legislation companion to a measure reported by one of its committees prior to the reporting deadline.

Section 402(e) Exceptions**(e) EXCEPTIONS.—**

(1) Subsection (a) shall not apply with respect to new spending authority described in section 401(c)(2)(C).

(2) Subsection (a) shall not apply with respect to new budget authority authorized in a bill or resolution for any provision of the Social Security Act if such bill or resolution also provides new spending authority described in section 401(c)(2)(C) which, under section 401(d)(1)(A), is excluded from the application of section 401(b).

Legislative History

This subsection exempts entitlement and omnibus social security legislation from the May 15 reporting deadline. The exception was formulated by the conference committee as part of an integrated timetable for the congressional budget process. When they decided to prohibit the consideration of entitlement legislation before adoption of the first budget resolution (section 303), the conferees were faced with the predicament of compressing the time available for the development of such legislation. Consequently, they decided to exempt entitlements from the May 15 deadline.

Social security legislation poses a somewhat different problem. Often such legislation combines trust funds and other programs, because the social security benefits are directly related to other forms of assistance. If the social security portion were reported after May 15 while the related programs were subject to the deadline, Congress would be compelled to split related matters into separate measures. The exemption in subsection (e) allows Congress to consider all facets of social security legislation concurrently even if they are reported after May 15.

Section 402(f) Study of Spending Authority and Permanent Appropriations

(f) STUDY OF EXISTING SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS—The Committees on Appropriations of the House of Representatives and the Senate shall study on a continuing basis those provisions of law in effect on the effective date of this section, which provide spending authority or permanent budget authority. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

Legislative History

This study requirement was devised as a substitute for a provision in H.R. 7130 which would have terminated most existing spending authority (contract, borrowing, and entitlement authority) as of October 1, 1978. In lieu of the expiration date, the Appropriations Committees are directed to study existing spending authority laws and to report any recommendations for terminating or revising them.

The same study provision applies to permanent appropriations--funds which become available for expenditure without any current action by Congress. The Joint Study Committee bill and H.R. 10961, introduced by Representative Whitten on October 16, 1973, would have permitted permanent budget authority legislation only if it was reported by the Appropriations Committee.^{92/} The conference committee opted for a study of permanent appropriations.

^{92/} Indirectly, H.R. 7130 would have reached permanent appropriations by requiring the termination of most existing contract, borrowing, and entitlement authority after October 1, 1978.

Section 403. Cost Analyses by the Congressional Budget Office

SEC. 403. The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate; and

(2) a comparison of the estimate of costs described in paragraph (1) with any available estimate of costs made by such committee or by any Federal agency.

The estimate and comparison so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

Legislative History

The Congressional Budget Office is to prepare, to the extent practicable, cost analyses to be included in the reports of all committees other than the Appropriations Committees. This procedure will be in addition to the requirement in section 252 of the Legislative Reorganization Act of 1970 mandating cost analyses by all committees (other than Appropriations) in their reports on legislation and the new Section 308 requirement for committees and the CBO.

The new provision was devised by the Senate Government Operations Committee and modified by the Rules and Administration Committee. Originally, it would not have been in order to consider a bill unless the report contained a cost estimate prepared by the budget office. However, this arrangement would have made Members and Committees of Congress dependent upon a congressional agency for the progress of their legislation. Accordingly, the requirement for a cost analysis was modified to make it operative only "to the extent practicable" and only if the analysis is "timely submitted" to the reporting committee. The managers statement defines timely submitted

"to mean that the cost analysis is submitted to the reporting committee sufficiently in advance to allow the committee an opportunity to examine the analysis prior to its publication."^{93/}

The exemption of the Appropriations Committees corresponds to their status in section 252 of the 1970 Act. Originally, the Budget Committees also were exempted, but this was subsequently deemed to be unnecessary because these Committees do not report spending legislation.

^{93/} H. Rept. No. 93-1101, 93d Congress, 2d Session, p. 67.

Section 404. Jurisdiction of Appropriation Committees

SEC. 404. (a) AMENDMENT OF HOUSE RULES.—Clause 2 of rule XI of the Rules of the House of Representatives is amended by redesignating paragraph (b) as paragraph (e) and by inserting after paragraph (a) the following new paragraphs:

“(b) Rescission of appropriations contained in appropriation Acts (referred to in section 105 of title 1, United States Code).

“(c) The amount of new spending authority described in section 401(c)(2)(A) and (B) of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.

“(d) New spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act).”

(b) AMENDMENT OF SENATE RULES.—Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended to read as follows:

“(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

“1. Except as provided in subparagraph (r), appropriation of the revenue for the support of the Government.

“2. Rescission of appropriations contained in appropriation Acts (referred to in section 105 of title 1, United States Code).

“3. The amount of new spending authority described in section 401(c)(2)(A) and (B) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act).

“4. New advance spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2) of that Act (but subject to the provisions of section 401(b)(3) of that Act).”

Legislative History

The jurisdiction of the House and Senate Appropriations Committees is expanded to include (1) the rescission of appropriations, (2) entitlement legislation referred pursuant to section 401 (b) of the Act, and (3) the funding of contract and borrowing authority.

Jurisdiction over rescissions was proposed in the Joint Study Committee bill. It applies to rescissions considered in the context of regular appropriation bills, not to the rescission process established in the Impoundment Control Act. Because the House Appropriations Committees had taken the position that its jurisdiction did not extend to rescissions, it needed to obtain a rule before bringing an appropriation bill containing any rescissions to the floor. This special procedure no longer is necessary.

The additional jurisdiction over entitlement, contract, and borrowing authority takes into account the procedures established in section 401 of the Act.

Title V. CHANGE OF FISCAL YEAR

Section 501. Fiscal Year to Begin October 1

SEC. 501 Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"Sec. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations—

"(1) shall, through June 30, 1976, commence on July 1 of each year and end on June 30 of the following year; and

"(2) shall, beginning on October 1, 1976, commence on October 1 of each year and end on September 30 of the following year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

Legislative History

The shift to an October 1-September 30 fiscal calendar was recommended in the bills reported by the Senate Government Operations and the House Rules Committees. Both committees began their consideration of congressional budget legislation without any proposal to change the fiscal cycle, but as they examined the problems associated with the existing timetable, they became convinced that it would not be feasible to operate the new budget process within the available time. Thus, the sole motivation for converting to an October 1 fiscal start was to give Congress three additional months during which to complete its budget process.

The two committees considered a number of alternatives to the existing budget cycle, including conversion to a calendar-year basis and a fiscal year beginning on August 1. But, in the words of the House Rules Committee report, "an October 1 fiscal start is most in accord with the contemporary work schedule of Congress and would not cause undue disruption to the budget processes of state and local governments which receive Federal assistance."^{94/}

^{94/} H. Rept. No. 93-658 (1973), p. 31. Also, S. Rept. No. 93-579 (1973), pp. 61-63.

Section 502. Transition to new Fiscal Year

SEC. 502. (a) As soon as practicable, the President shall prepare and submit to the Congress—

(1) after consultation with the Committees on Appropriations of the House of Representatives and the Senate, budget estimates for the United States Government for the period commencing July 1, 1976, and ending on September 30, 1976, in such form and detail as he may determine; and

(2) proposed legislation he considers appropriate with respect to changes in law necessary to provide authorizations of appropriations for that period.

(b) The Director of the Office of Management and Budget shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use of the fiscal year in effect on the date of enactment of this Act to the use of the new fiscal year prescribed by section 237 (a)(2) of the Revised Statutes. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

(c) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office jointly shall conduct a study of the feasibility and advisability of submitting the Budget or portions thereof, and enacting new budget authority or portions thereof, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Budget Office each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than 2 years after the effective date of this subsection.

Legislative History

This section provides for a three-month transition period (July 1-September 30, 1976), for which budget estimates shall be submitted in such form and detail as is determined by the President after consultation with the Appropriations Committees. It also provides for OMB to establish regulations for the transition to the new fiscal cycle and to request any necessary implementing legislation. Finally, section 502 directs CBO and OMB to jointly study (but separately report on) the feasibility and advisability of advance or multiyear budgeting.

Both the House and Senate passed bills provided a transition from the July 1-June 30 to an October 1-September 30 fiscal calendar. H.R. 7130 had a comparatively simple provision authorizing OMB to promulgate regulations and propose necessary legislation. It also would have converted all laws and regulations to the new fiscal year. S. 1541 as reported by the Senate Government Operations Committee provided for a 15-month fiscal year as the means of bridging from the old to the new

schedule. The bill developed by the Rules and Administration Committee also had a 15-month transitional year but it also introduced the provisions which, with slight change, were incorporated into section 502 (b) and (c) of the Act.

The conference committee introduced the concept of a 3-month interim period as a means of avoiding a 15-month fiscal year and in order to maintain the comparability of historical series. For the 3-month period, the Act permits the President to decide on the appropriate form of the estimates, taking "into account the needs of Congress and the public for sufficient information, the desirability of maintaining continuity in accounts, and the amount of time available for preparation of the three-month estimates."^{95/}

Implementation

The Administration has taken a number of steps to implement the shift to the new fiscal timetable. Federal agencies were asked to identify and report to OMB any statutes that need to be amended to provide for the transition or to conform to the new fiscal year.^{96/} At the request of the President,^{97/} Congress has provided a blanket extension of all appropriations scheduled to expire on June 30, 1976 until September 30, 1976.^{98/} Appropriation language for the transition period--but not detailed schedules--has been included in the 1976 Budget.

^{95/} H.Rept. No. 93-11101, p. 68.

^{96/} U.S. Office of Management and Budget, Bulletin No. 75-9, October 24, 1974.

^{97/} S. Doc. No. 93-124.

^{98/} Public Law 93-554, section 204.

Section 503. Accounting for Obligated and Unobligated Balances

Sec. 503. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes", approved July 25, 1956, as amended (31 U.S.C. 701), is amended to read as follows:

"(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligation, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows.

"(A) for any fiscal year or years ending on or before June 30, 1976, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and

"(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, on September 30 of the second fiscal year following that period or the fiscal year or years, as the case may be, for which the appropriation is available for obligation.

"(2) The withdrawals required by subsection (a)(2) of this section shall be made—

"(A) for any fiscal year ending on or before June 30, 1976, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, not later than November 15 following such period or fiscal year, as the case may be, in which the period of availability for obligation expires."

Legislative History

This is a technical amendment adjusting the time for the transfer of obligated balances and the lapsing of unobligated balances after the close of the fiscal year. The only substantive change from existing procedures is to shorten from three months to 45 days the deadline for the reversion of unobligated balances to the Treasury. Its purpose is to accelerate the closing of accounts for the past fiscal year because the period of time between the end of a fiscal year and the presentation of the next budget has been reduced from more than six months to approximately three and one half months.

Section 504. Conversion of Authorizations to New Fiscal Calendar

Sec. 504. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1975, be considered as meaning October 1 of that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1976, be considered as meaning September 30 of that year. Any law providing for an authorization of appropriations for the fiscal year 1977 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.

Legislative History

This section adjusts all annual and multiyear authorizations to the October 1-September 30 fiscal cycle. June 30 dates for authorizations automatically will be converted to September 30.

This section is taken from S. 1541 without substantive change. The Senate bill as reported by the Government Operations Committee also had a provision automatically adding 25 percent to the amounts specified in definite authorizations (authorizations specifying a certain amount or maximum) but this provision was deleted by the Committee on Rules and Administration. It was felt that adaptation to the new fiscal schedule could best be accomplished through the flexible procedures provided in section 502 rather than by means of an across-the-board increase in all authorizations.

Sections 505 & 506. Conforming Amendments

Sec. 505. The following provisions of law are repealed:

(1) the ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1032; 2 U.S.C. 66); and

(2) the proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

Sec. 506. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "September 30".

(b) The provisions of subsection (a) of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after October 1, 1976.

Legislative History

Section 505 repeals two provisions of law setting a July 1-June 30 fiscal year for the Senate and House of Representatives. Section 506 changes the ending date for fiscal years in appropriation acts beginning with the 1977 fiscal year.

TITLE VI. AMENDMENTS TO THE BUDGET AND ACCOUNTING ACT

Section 601. Matters to be Included in the President's Budget

SEC. 601. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by adding at the end thereof the following new subsections:

"(d) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth separately the items enumerated in section 301(a) (1)-(5) of the Congressional Budget Act of 1974.

"(e) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth the levels of tax expenditures under existing law for such fiscal year (the tax expenditure budget), taking into account projected economic factors, and any changes in such existing levels based on proposals contained in such Budget. For purposes of this subsection, the terms 'tax expenditures' and 'tax expenditures budget' have the meanings given to them by section 3(a)(3) of the Congressional Budget Act of 1974.

"(f) The Budget transmitted pursuant to subsection (a) for each fiscal year shall contain—

"(1) a comparison, for the last completed fiscal year, of the total amount of outlays estimated in the Budget transmitted pursuant to subsection (a) for each major program involving uncontrollable or relatively uncontrollable outlays and the total amount of outlays made under each such major program during such fiscal year;

"(2) a comparison, for the last completed fiscal year, of the total amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the total amount of revenues received during such year, and, with respect to each major revenue source, the amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the amount of revenues received during such year; and

"(3) an analysis and explanation of the difference between each amount set forth pursuant to paragraphs (1) and (2) as the amount of outlays or revenues estimated in the Budget submitted under subsection (a) for such fiscal year and the corresponding amount set forth as the amount of outlays made or revenues received during such fiscal year.

"(g) The President shall transmit to the Congress, on or before April 10 and July 15 of each year, a statement of all amendments to or revisions in the budget authority requested, the estimated outlays, and the estimated receipts for the ensuing fiscal year set forth in the Budget transmitted pursuant to subsection (a) (including any previous amendments or revisions proposed on behalf of the executive branch) that he deems necessary and appropriate based on the most current information available. Such statement shall contain the effect of such amendments and revisions on the summary data submitted under subsection (a) and shall include such supporting detail as is practicable. The statement transmitted on or before July 15 of any year may be included in the supplemental summary required to be transmitted under subsection (b) during such year. The Budget transmitted to the Congress pursuant to subsection (a) for any fiscal year, or the supporting detail transmitted in connection therewith, shall include a statement of all such amendments and revisions with respect to the fiscal year in progress made before the date of transmission of such Budget.

"(h) The Budget transmitted pursuant to subsection (a) for each fiscal year shall include information with respect to estimates of appropriations for the next succeeding fiscal year for grants, contracts, or other payments under any program for which there is an authorization of appropriations for such succeeding fiscal year and such appropriations are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

"(i) The Budget transmitted pursuant to subsection (a) for each fiscal year, beginning with the fiscal year ending September 30, 1979, shall contain a presentation of budget authority, proposed budget authority, outlays, proposed outlays, and descriptive information in terms of—

"(1) a detailed structure of national needs which shall be used to reference all agency missions and programs;

"(2) agency missions; and

"(3) basic programs.

To the extent practicable, each agency shall furnish information in support of its budget requests in accordance with its assigned missions in terms of Federal functions and subfunctions, including mission responsibilities of component organizations, and shall relate its programs to agency missions"

Legislative History

This section adds six matters to be included in the President's budget or in periodic updates. The six items are: (1) estimates for all matters contained in the concurrent resolution on the budget; (2) tax expenditure data; (3) variances between expected and actual revenues and uncontrollable outlays; (4) twice yearly updates of the budget; (5) information on advance appropriations; and (6) a statement of national needs.

Estimates for matters in the budget resolution. This item is taken from S. 1541 as reported by the Senate Government Operations Committee and passed by the Senate. Its purpose is to require the President to go on record concerning total revenues, budget authority, outlays, debt, budget surplus or deficit, and functional allocations. The President--like Congress--will have to be explicit about the fiscal policy and priorities in the budget.

Tax expenditure data. Both H.R. 7130 and S. 1541 required the President to include estimates of tax expenditures in his budget. Tax expenditure estimates, under the Act, also would be included in Budget Committee reports on the budget resolutions (section 301) and in committee reports on tax expenditure legislation (section 308). Tax expenditure tables and a special analysis were included for the first time in the 1976 Budget.^{99/}

Variance reports. The Senate Rules and Administration Committee introduced the requirement that the President report on variances between projected and actual revenues and uncontrollable outlays for the last completed fiscal year. In recent years, revenues and uncontrollable outlays have varied substantially from initial estimates and the purpose of this requirement is to encourage more accurate

^{99/} The Budget of the United States Government, Fiscal Year 1976, pp. 67-69, and Special Analysis F.

estimates in the future. In reporting on variances, the President also shall analyze and explain all deviations from the original estimates. The 1976 Budget contains a listing and explanation for variances between estimated and actual uncontrollable outlays.^{100/}

Budget Updates. Twice a year updates of the budget are required by April 10 and July 15, timed to the consideration of the first budget resolution and to the period during which floor action on appropriations and other spending legislation is likely to be scheduled. The provision formulated by the Rules and Administration Committee requires the President to present a comprehensive statement of all budget amendments and revisions proposed or accepted by the executive branch subsequent to submission of the budget.

Under the Legislative Reorganization Act of 1970 as amended by section 602 of this Act, the President is required to submit updated estimates by July 15 of each year. Both the estimates required by the 1970 Act and those newly imposed may be included in the same report.

Advance Appropriations. The President's budget is to present information with respect to any program for which appropriations have been authorized to be made one year in advance of the fiscal year for which they will be available. At the present time, the President has discretion to include advance estimates in his budget; the Act makes such information mandatory, but only for instances (comparatively few thus far) in which advance appropriations have been authorized.

The source of this provision is a floor amendment offered by Senator McGovern requiring estimates for advance appropriations authorized by law.^{101/} The McGovern amendment cited the General Education Provisions Act which authorizes advance appropriations for certain programs and it would have required supplemental budget estimates for the current fiscal year.

^{100/} Ibid. pp. 29-32.

The conferees deleted the reference to education programs as well as the supplemental estimates, and it also modified the language to require the submission of "information" rather than "estimates". Because estimates in the context of the Budget and Accounting Act carry a specific meaning, it was believed that a less formal term--information--would be more appropriate. The 1976 Budget Appendix has a brief list, but no estimates for advance 1977 appropriations.^{102/}

National Needs. The final additional information is for the presentation in the budget of a statement of national needs, agency missions, and programs. The derivation of this requirement is in S. 1414, legislation requiring the budget to be organized on the basis of national needs, agency programs, and basic program steps. S. 1414 was reported by the Senate Government Operations Committee on February 4, 1974,^{103/} and its main features were incorporated into S. 1541 by floor amendment on March 22, 1974.^{104/} The adopted amendment prescribed a series of steps for the formulation and implementation of programs and gave extensive definitions to certain key concepts such as national needs, agency missions, and programs.

The conferees retained only the first portion of this amendment in the enacted bill, dropping both the definitions and specification of program steps. In the managers statement, the conferees suggested "that this need not be a separate classification but can be incorporated, if the President deems it appropriate, into the main budget classifications."^{105/}

^{102/} Appendix, p. 1077.

^{103/} S. Rept. No. 93-675 (1974).

^{104/} Amendment No. 1056, 120 Congressional Record (daily ed.) March 22, 1974, S. 4311.

^{105/} H. Rept. No. 93-1101, p. 70.

Section 602. Midyear Review

Sec. 602. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by striking out "on or before June 1 of each year, beginning with 1973" and inserting in lieu thereof "on or before July 15 of each year".

Legislative History

The Legislative Reorganization Act of 1970 requires the submission of updated budget estimates and five-year projections by June 1 of each year.^{106/} This section changes the submission date to July 15, making it the same as the date for submission of the additional material required by section 601 of this Act. It is anticipated that a single submission will satisfy the midyear requirements of the 1970 Act and the July 15 requirements of the new Act.

^{106/} 31 U.S.C. 11(b) and (c).

Section 603. Five-Year Budget Projections

SRC. 603. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended—

(1) by inserting after "ensuing fiscal year" in paragraph (5) "and projections for the four fiscal years immediately following the ensuing fiscal year";

(2) by striking out "such year" in paragraph (5) and inserting in lieu thereof "such years"; and

(3) by inserting after "ensuing fiscal year" in paragraph (6) "and projections for the four fiscal years immediately following the ensuing fiscal year".

Legislative History

Five-year budget projections were required in both the House and Senate bills. This new provision is in addition to existing requirements for projections such as (1) five-year estimates for new and expanded programs; (2) five-year forecasts in the midyear budget review; and (3) projections by congressional committees.^{107/} The Congressional Budget Act also requires five-year projections of budget authority and tax expenditure legislation reported by congressional committees (section 308(a)) as well as annual five-year forecasts by the Congressional Budget Office (section 308(c)), and 5-year cost analysis on bills by the CBO (section 403).

^{107/} The Legislative Reorganization Act of 1970, sections 221(a) and (c) and 252(a) and (b).

ection 604. Allowances for Supplemental and Uncontrollable Expenditures

Sec. 604. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is further amended--

- (1) by striking out "and" at the end of paragraph (11);
- (2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof "and"; and
- (3) by adding at the end thereof the following new paragraph:
"(13) an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures for the ensuing fiscal year."

Legislative History

This section, devised by the Senate Committee on Rules and Administration, provides that the President's annual budget shall include an estimate for supplemental appropriations and uncontrollable expenditures. Its purpose is to provide Congress with a more comprehensive and realistic estimate of budget requirements for the ensuing fiscal year. Although the Federal budget has included an allowance for contingencies, it generally has been a token amount (in fiscal 1975, only \$1 billion in a \$304 billion budget), and has been inadequate to cover either supplemental appropriations which have been averaging approximately \$10 billion a year or uncontrollable costs which often exceed their budget estimates.

As provided for in section 301 (a), it is anticipated that the first concurrent resolution on the budget will have an allocation for contingencies. The draft bill prepared by the Joint Study Committee made provision for contingencies and emergency reserves, but these were dropped in later versions of the legislation. The enacted section requires an estimate for all uncontrollable expenses while the Senate-passed bill required it only for uncontrollables not funded in appropriations.

Section 605. Current Services Budget

Sec. 605. (a) On or before November 10 of each year (beginning with 1975), the President shall submit to the Senate and the House of Representatives the estimated outlays and proposed budget authority which would be included in the Budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal year in progress and without policy changes in such programs and activities. The estimated outlays and proposed budget authority submitted pursuant to this section shall be shown by function and subfunctions (in accordance with the classifications in the budget summary table entitled "Budget Authority and Outlays by Function and Agency"), by major programs within each such function, and by agency. Accompanying these estimates shall be the economic and programmatic assumptions underlying the estimated outlays and proposed budget authority, such as the rate of inflation, the rate of real economic growth, the unemployment rate, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated outlays and proposed budget authority so submitted, and shall submit to the Committees on the Budget of both Houses an economic evaluation thereof on or before December 31 of each year.

Legislative History

The idea of a current services budget first appeared in an amendment proposed by Senator Muskie as a substitute for S. 1541.^{108/} The concept was incorporated into the bill reported by the Senate Government Operations Committee and was expanded by the Rules and Administration Committee to include an evaluation by the Joint Economic Committee. The only change made by the conference committee was to delete the provision that the JEC evaluation include a determination of the accuracy, completeness, and validity of the current services estimates.

The purposes of a current services budget are to give Congress an early start on its budget work and to provide "baseline" information against which the President's budget and alternatives can be compared.

^{108/} Amdt. No. 559 (September 28, 1973). 93d Congress, 1st Session.

The November 10 submission date is a modification of the December 1 deadline set in S. 1541 as reported by the Government Operations Committee. At hearings before the Rules and Administration Committee, OMB Director Roy Ash complained that the December 1 date would interfere with preparation of the President's budget and he indicated that an earlier date might be preferable.^{109/} The November 10 date always occurs after Presidential and congressional elections and comes after the preceding fiscal year has ended.

Section 605 does not require a current services budget in the same detail as the President's budget. However, a summary presentation--only by agency or function--would not satisfy the needs of Congress or the intent of this section. As specified in the Act, the current services must go down to the major program level and must spell out the economic and program assumptions upon which it is based.

^{109/} U. S. Senate, Committee on Rules and Administration, Hearings on Federal Budget Control by the Congress, 93d Congress, 2d Session (1974), p. 74.

Off-budget status generally means that an agency's spending is not counted in Federal budget totals and that the agency is not subject to any limitation that might be placed on Federal expenditures.

During Senate consideration of S. 1541, Senator Taft offered but subsequently withdrew an amendment that would have continued the off-budget status of the Federal Financing Bank.^{113/} In conference, section 606 was revised to provide for a study of off-budget agencies rather than for a change in their status.

Implementation

At the time Congress was considering the budget legislation, it also was considering legislation to remove the off-budget status of the Export-Import Bank. During Senate debate on the conference report, Senator Proxmire inquired whether the study provision in section 606 would "preclude any action by the relevant authorizing committees to put exempt agencies like the Export-Import Bank back in the budget...." Senator Percy answered that such action would not be precluded, but he also suggested that the Budget Committees be allowed a reasonable period of time to study the off-budget problem before any change in status is legislated.^{114/}

When the House considered Export-Import Bank legislation during 1974, section 606 was used as an argument against an amendment that would have

^{113/} 120 Congressional Record (daily ed., March 22, 1974) S-4301. Remarks of Senators Taft and Ervin.

^{114/} 120 Congressional Record (daily ed.) June 21, 1974, S-11231. See remarks of Senators Proxmire and Percy.

terminated the Bank's exempt status. Although the House defeated this amendment,^{115/} it was included in the bill that passed the Senate. The provision was deleted in conference, but the conference report was rejected by the Senate and the bill as finally enacted provides for inclusion of the Export-Import Bank in the budget as of October 1, 1976 unless Congress decides to the contrary.^{116/} Approximately one month after the Congressional Budget Act was enacted, Congress gave off-budget status to the Housing to the Elderly or Handicapped Fund.^{117/}

^{115/} The amendment to put the Bank into the budget was defeated 191-202.
¹²⁰ Congressional Record (daily ed., August 21, 1974) H-8816-H-8823.
In particular, see remarks of Representative Bolling, at H-8817.

^{116/} Public Law 93-646.

^{117/} Section 210 (d) Housing and Community Development Act of 1974.

Section 606. Off-Budget Agencies

SEC. 606. The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis those provisions of law which exempt agencies of the Federal Government, or any of their activities or outlays, from inclusion in the Budget of the United States Government transmitted by the President under section 201 of the Budget and Accounting Act, 1921. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

Legislative History

This section provides for studies by the House and Senate Budget Committees of off-budget agencies, that is, of agencies whose activities and expenditures are not included in the Federal budget.^{110/} Concern with the growth of off-budget agencies was expressed by the Comptroller General in testimony before House and Senate committees^{111/} and a provision removing the off-budget status of six designated agencies and funds was included in the bill reported by the Senate Committee on Rules and Administration. The six off-budget agencies were: (1) Environmental Financing Authority; (2) Export-Import Bank; (3) Federal Financing Bank; (4) Rural Electrification and Telephone Revolving Fund; (5) Rural Telephone Bank; and (6) United States Railway Association.^{112/}

^{110/} Although off-budget agencies are not included in the budget, information and financial statements of these agencies are "annexed" to the budget Appendix.

^{111/} The Comptroller General mentioned only two of the off-budget agencies--the Export-Import Bank and the Rural Electrification Administration's loan programs in arguing for a return to the unified budget. See U. S. Congress, House Committee on Rules, Hearings on Budget Control Act of 1973, 93d Congress, 1st Session (1973), p. 216; and U. S. Congress, Senate Committee on Rules and Administration, Hearings on Federal Budget Control by the Congress, 93rd Congress, 2d Session (1974). p. 47.

^{112/} Apart from its Federal contribution, the Postal Service also is an off-budget agency.

Section 607. Advance Requests for Authorizations

Sec. 607. Notwithstanding any other provision of law, any request for the enactment of legislation authorizing the enactment of new budget authority to continue a program or activity for a fiscal year (beginning with the fiscal year commencing October 1, 1976) shall be submitted to the Congress not later than May 15 of the year preceding the year in which such fiscal year begins. In the case of a request for the enactment of legislation authorizing the enactment of new budget authority for a new program or activity which is to continue for more than one fiscal year, such request shall be submitted for at least the first 2 fiscal years.

Legislative History

This section was added in conference and had no direct antecedent in the bills that initially passed the House and the Senate. It requires the submission of requests for authorizing legislation no later than May 15 of the calendar year preceding the year in which the fiscal year to which the legislation applies will begin. For example, authorizing legislation for fiscal year 1977 is to be submitted by May 15, 1975. It also requires authorizations for new programs to be submitted for at least the first two fiscal years.

This section is one of a number of provisions in the new law encouraging advance budgeting. Section 502 (c) provides for a joint CBO-OMB study of the feasibility and advisability of advance budgeting while section 601 provides for the inclusion of advance information when authorized by law. The purpose of advance authorization requests is to enable committees to complete the reporting of authorizing legislation by the May 15 deadline set in section 402. Among the House and Senate conferees, there was agreement that the new congressional budget timetable will work only if authorizing committees develop procedures to consider advance authorizations:

The managers believe that in the future it will be necessary to authorize programs a year or more in advance of the period for which appropriations are to be made. When this is done, Congress will have adequate time for considering budget-related legislation within the timetable of the congressional budget process. The managers call attention to section 607 which requires advance submission of proposed authorizing legislation, and to the expectation that Congress will develop a pattern of advance authorizations for programs now authorized on an annual or multiyear basis. ^{118/}

Section 607 does not preclude "supplementary" authorizations nor does it affect the duty of the President under the Constitution "from time to time [to] give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."^{119/}

Implementation

On October 24, 1974, the Office of Management and Budget issued instructions to all Federal agencies concerning the implementation of section 607. Agencies were directed to submit authorization requests (to OMB) for fiscal years 1976 and 1977. OMB further directed agencies to submit fiscal 1977 authorization requests no later than January 31, 1975. The amounts requested "should be consistent with the five-year projections included in the 1976 Budget."^{120/}

^{118/} H. Rept. No. 93-1101, p. 56.

^{119/} Article II, Section 3.

^{120/} U. S. Office of Management and Budget, Bulletin No. 75-8 (October 24, 1974).

Title VII. PROGRAM REVIEW AND EVALUATION

Section 701. Review and Evaluation by Congressional Committees

SEC. 701. Section 136(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190d) is amended by adding at the end thereof the following new sentences: "Such committees may carry out the required analysis, appraisal, and evaluation themselves, or by contract, or may require a Government agency to do so and furnish a report thereon to the Congress. Such committees may rely on such techniques as pilot testing, analysis of costs in comparison with benefits, or provision for evaluation after a defined period of time."

Legislative History

This section was devised by the Senate Rules and Administration Committee as a partial substitute for Title VII of the bill reported by the Government Operations Committee. Title VII would have required the pilot testing of major new programs before implementation and would have mandated broad evaluation duties for congressional committees.

The enacted section amends section 136 (a) of the Legislative Reorganization Act of 1946 which provides for continuing reviews by standing committees of the House and Senate of laws within their jurisdictions. The added sentences specifically authorize the conduct of the required reviews by contract, by government agencies, and through techniques such as pilot testing and cost-benefit analysis.

Section 702. Review and Evaluation by the Comptroller General

SEC. 702. (a) Section 204 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154) is amended to read as follows:

"Sec. 204. (a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

"(b) The Comptroller General, upon request of any committee of either House or any joint committee of the two Houses, shall—

"(1) assist such committee or joint committee in developing a statement of legislative objectives and goals and methods for assessing and reporting actual program performance in relation to such legislative objectives and goals. Such statements shall include, but are not limited to, recommendations as to methods of assessment, information to be reported, responsibility for reporting, frequency of reports, and feasibility of pilot testing; and

"(2) assist such committee or joint committee in analyzing and assessing program reviews or evaluation studies prepared by and for any Federal agency.

Upon request of any Member of either House, the Comptroller General shall furnish to such Member a copy of any statement or other material compiled in carrying out paragraphs (1) and (2) which has been released by the committee or joint committee for which it was compiled.

"(c) The Comptroller General shall develop and recommend to the Congress methods for review and evaluation of Government programs and activities carried on under existing law.

"(d) In carrying out his responsibilities under this section, the Comptroller General is authorized to establish an Office of Program Review and Evaluation within the General Accounting Office. The Comptroller General is authorized to employ not to exceed ten experts on a permanent, temporary, or intermittent basis and to obtain services as authorized by section 3109 of title 5, United States Code, but in either case at a rate (or the daily equivalent) for individuals not to exceed that prescribed, from time to time, for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(e) The Comptroller General shall include in his annual report to the Congress a review of his activities under this section, including his recommendations of methods for review and evaluation of Government programs and activities under subsection (c)."

(b) Item 204 in the table of contents of such Act is amended to read as follows:

"Sec. 204. Review and evaluation."

Legislative History

This section expands the authority given the Comptroller General in section 204 of the Legislative Reorganization Act of 1970 to assist Congress in

the performance of its oversight responsibilities. A somewhat different section was contained in the bill reported by the Senate Government Operations Committee but a number of modifications were made by the conference committee.

Subsection (a) is identical to the original section 204 (a) of the 1970 Act with the exception that specific mention of cost-benefit studies is deleted. Subsection (b) authorizes the Comptroller General to assist congressional committees in developing statements of legislative objectives and in assessing program evaluations done by Federal agencies. The main difference between the enacted and original provision is that comparable assistance would have been provided upon request to any Member of Congress, but the Act restricts this assistance to committees. However, statements of legislative intent prepared by the Comptroller General are to be made available to Members.

The remaining subsections instruct the Comptroller General to develop evaluation methods, authorize the establishment of an Office of Program Review and Evaluation in the GAO, and provide for the reporting of evaluation activities.

Section 703. Studies of Budget Reform Proposals

Sec. 703. (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budget-making. The proposals to be studied shall include, but are not limited to, proposals for--

(1) improving the information base required for determining the effectiveness of new programs by such means as pilot testing, survey research, and other experimental and analytical techniques;

(2) improving analytical and systematic evaluation of the effectiveness of existing programs;

(3) establishing maximum and minimum time limitations for program authorization; and

(4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.

(b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under subsection (a), together with its recommendations.

(c) Nothing in this section shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.

Legislative History

This section originated as a floor amendment offered by Senator Brock during Senate debate on S. 1541.^{121/} The Brock amendment called for continuing study by the Budget Committees in seven broad areas and it further provided that other congressional committees would not be precluded from conducting budget improvement studies of their own. The study concept was a partial substitute for two titles in the bill reported by the Government Operations Committee but struck by the Rules and Administration Committee. Both titles initially were part of a budget reform bill introduced by Senator Brock.^{122/} Title VII of the Senate Government Operations Committee bill would have mandated the review and evaluation of programs while Title VIII would have set a three-year limit on authorizing legislation.

The seven study subjects listed in the Brock amendment were combined into four areas relating to information, analysis and evaluation, time limitations for program authorizations, and human resource accounting.

^{121/} 120 Congressional Record (daily ed., March 20, 1974) S-4017.

^{122/} S. 40, 93d Congress, 1st Session.

TITLE VIII. FISCAL AND BUDGETARY INFORMATION

Section 801. Fiscal and Budgetary Information (section 201)

SEC. 801. (a) So much of title II of the Legislative Reorganization Act of 1970 (31 U.S.C. chapter 22) as precedes section 204 thereof is amended to read as follows:

"TITLE II—FISCAL AND BUDGETARY INFORMATION
AND CONTROLS

"PART I—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND
INFORMATION

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND
INFORMATION SYSTEMS

"SEC. 201. The Secretary of the Treasury and the Director of the Office of Management and Budget, in cooperation with the Comptroller General of the United States, shall develop, establish, and maintain, for use by all Federal agencies, standardized data processing and information systems for fiscal, budgetary, and program-related data and information. The development, establishment, and maintenance of such systems shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level.

Legislative History

Section 801 amends sections 201, 202, and 203 of the Legislative Reorganization Act of 1970 to provide for the development of budgetary information systems, standardized terminologies, classifications and codes, and the availability of information to Congress and State and local governments. In order to facilitate a discussion of section 801, it is divided into three parts, corresponding to sections 201, 202, and 203 of the Legislative Reorganization Act of 1970 as amended.

This portion of section 801 amends section 201 of the 1970 Legislative Reorganization Act.^{123/} As enacted in 1970, section 201 provided for the development of a standardized data processing system by the Treasury and OMB in cooperation with the General Accounting Office. The revised section retains the relationship between

^{123/} 84 Stat. 1167.

the three agencies but provides for the development of standardized information systems (not a single system) so as to meet the needs of the Federal Government and, insofar as practicable, those of states and localities.

The main changes, therefore, are to allow multiple systems, to expand the systems to program-related data, and to require that, if practicable, the needs of states and localities be taken into account.

This amendment was developed by the Senate Government Operations Committee and no substantive change was made during subsequent consideration of the legislation.

Title VIII. FISCAL AND BUDGETARY INFORMATION

Section 801. Standardization of Terminology, Etc. (section 202).

"Sec. 202. (a) (1) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Director of the Congressional Budget Office, shall develop, establish, maintain, and publish standard terminology, definitions, classifications, and codes for Federal fiscal, budgetary, and program-related data and information. The authority contained in this section shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects, and activities. Such standard terms, definitions, classifications, and codes shall be used by all Federal agencies in supplying to the Congress fiscal, budgetary, and program-related data and information.

"(2) The Comptroller General shall submit to the Congress, on or before June 30, 1975, a report containing the initial standard terminology, definitions, classifications, and codes referred to in paragraph (1), and shall recommend any legislation necessary to implement them. After June 30, 1975, the Comptroller General shall submit to the Congress additional reports as he may think advisable, including any recommendations for any legislation he may deem necessary to further the development, establishment, and maintenance, modification, and executive implementation of such standard terminology, definitions, classifications, and codes.

"(b) In carrying out this responsibility, the Comptroller General of the United States shall give particular consideration to the needs of the Committees on the Budget of the House and Senate, the Committees on Appropriations of the House and Senate, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Congressional Budget Office.

"(c) The Comptroller General of the United States shall conduct a continuing program to identify and specify the needs of the committees and Members of the Congress for fiscal, budgetary, and program-related information to support the objectives of this part.

"(d) The Comptroller General shall assist committees in developing their information needs, including such needs expressed in legislative requirements, and shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in their reporting requirements to meet congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users and to eliminate duplicative or unneeded reporting.

"(e) On or before September 1, 1974, and each year thereafter, the Comptroller General shall report to the Congress on needs identified and specified under subsection (c); the relationship of these needs to the existing reporting requirements; the extent to which the executive branch reporting presently meets the identified needs; the specification of changes to standard classifications needed to meet congressional needs; the activities, progress and results of his activities under subsection (d); and the progress that the executive branch has made during the past year.

"(f) On or before March 1, 1975, and each year thereafter, the Director of the Office of Management and Budget and the Secretary of the Treasury shall report to the Congress on their plans for addressing the needs identified and specified under subsection (c), including plans for implementing changes to classifications and codes to meet the information needs of the Congress as well as the status of prior year system and classification implementations.

Legislative History

This portion of section 801 amends section 202 of the Legislative Reorganization Act of 1970. The amendment initially was formulated by the Government Operations Committee, revised by the Rules and Administration Committee, and enacted with only minor change.

The original section 202 charged the Treasury and OMB to develop standard budget classifications in cooperation with GAO. The new Act vests lead authority in the Comptroller General who, in cooperation with the Treasury, OMB, and CBO, shall devise standard terminology, definitions, classifications, and codes for use by all Federal agencies in supplying budget related data to Congress. The version reported by the Government Operations Committee would have required that these standards be developed to meet the needs of the various branches of the Federal Government and, insofar as practicable, of states and localities. The enacted amendment implies that the standards are to be used for congressional needs rather than for the Federal Government as a whole.

The Comptroller General is to report his initial determinations by June 30, 1975 and thereafter shall report and recommend legislation as appropriate. In developing the standard classifications, the Comptroller General is to give particular consideration to the needs of the Budget, Appropriations, House Ways and Means, and Senate Finance Committees, as well as to those of the CBO. The Comptroller General shall assist congressional committees in developing their informational needs and shall report annually on the extent to which existing reporting requirements meet the identified needs. Each year, also, OMB and the Treasury shall report to Congress on their plans for satisfying such congressional needs.

Although section 801 gives the Comptroller General authority to prescribe standard classifications for submission of budget information to Congress, it does not preclude--in the words of the managers statement--"either House of Congress

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from establishing an office or commission to develop, supervise, and maintain an information classification system for that House, and its committees and Members.^{124/} This language was inserted in anticipation of the establishment of a Legislative Classification Office in the House of Representatives. As established by H. Res. 988, the new Office shall develop "a system linking Federal programs and expenditures to the authorizing statutes,...showing the committee jurisdiction for each authorization."^{125/} The House Office will be concerned primarily with authorizations and appropriations rather than with accounting and budget procedures.

The origin of section 801's transfer of prime responsibility to the Comptroller General is found in congressional dissatisfaction with implementation of section 202 of the 1970 Act. In a 1972 report, the Joint Committee on Congressional operations criticized OMB for the slow pace and low priority of implementation.^{126/} The revision of section 202 reflects the judgment of Congress that design and implementation must be directed by its own agent if the needs of Congress are to be met in a timely and effective manner.^{127/} However, the amended section does not completely delineate the respective roles of the Comptroller General and OMB or the effects of the new standards on the President's budget. In testimony before the Senate Committee on Rules and Administration, OMB Director Roy Ash questioned

the propriety of requiring...that the President develop his budget using terminology, definitions, classifications, and codes developed by the Comptroller General of the United States.

Section 201(a) of the Budget and Accounting Act of 1921 states that the budget shall be presented "in such form and detail as the President may determine." We believe that removal of this authority from the executive raises serious questions about the proper roles of the executive and legislative branches. ^{128/}

^{124/} H. Rept. No. 93-11101, p. 73.

^{125/} H. Res. 988, section 203. H. Rept. No. 93-916, pp. 86-87.

^{126/} H. Rept. No. 92-1337 (1972).

^{127/} See Report of the Senate Committee on Government Operations, S. Rept. No. 93-579, pp. 69-72.

^{128/} U.S. Senate, Committee on Rules and Administration, Hearings on Federal Budget Control by the Congress, 93d Cong., 2d Sess. (1974), p. 77.

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The Rules and Administration Committee subsequently revised the amendment to section 202 to delete any suggestion that the standard classifications would have to serve executive branch requirements.

In its report on S. 1541, the Committee affirmed the power of Congress to determine the form and detail of the budget, but it also expressed the hope that "the President's discretion can be preserved," and it agreed "that the President should be allowed to present budget information in the manner that he desires as well as in the manner needed by the Congress." Thus, the committee does not recommend amending section 201(a) of the Budget and Accounting Act now.^{129/} Moreover, the Committee pointed out that section 206 of the 1970 Legislative Reorganization Act preserves the authority given to OMB.^{130/} However, the Committee also suggested that it would seek changes in such authority if OMB did not cooperate fully in the use of the standard classifications.^{131/}

In sum, section 801 does not preclude different budget classifications by the President and Congress as long as the budget also has the classifications promulgated by the Comptroller General in behalf of Congress. But the preferred course would be for the Comptroller General and OMB to work cooperatively to develop and use a set of classifications that satisfies both executive and congressional needs. Finally, section 801 leaves open the possibility of future legislative changes if cooperation is not forthcoming.

^{129/} S. Rept. No. 93-688, p. 69.

^{130/} 84 Stat. 1168. Section 206 provides: "Nothing contained in this Act shall be construed as impairing any authority or responsibility of the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Comptroller of the United States under the Budget and Accounting Act, 1921 as amended, and the Budget and Accounting Procedures Act of 1940, as amended, or any other statutes."

^{131/} The Committee noted that under the new section 202, the Comptroller General is directed to recommend legislation necessary to carry out the standard requirements.

Section 801. Availability of Information (section 203).

"AVAILABILITY TO AND USE BY THE CONGRESS AND STATE AND LOCAL GOVERNMENTS OF FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 203. (a) Upon request of any committee of either House, of any joint committee of the two Houses, of the Comptroller General, or of the Director of the Congressional Budget Office, the Secretary of the Treasury, the Director of the Office of Management and Budget, and the heads of the various executive agencies shall—

"(1) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office information as to the location and nature of available fiscal, budgetary, and program-related data and information;

"(2) to the extent practicable, prepare summary tables of such data and information and any related information deemed necessary by such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office; and

"(3) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office any program evaluations conducted or commissioned by any executive agency

"(b) The Comptroller General, in cooperation with the Director of the Congressional Budget Office, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall—

"(1) develop, establish, and maintain an up-to-date inventory and directory of sources and information systems containing fiscal, budgetary, and program-related data and information and a brief description of their content,

"(2) provide, upon request, assistance to committees, joint committees, and Members of Congress in securing Federal fiscal, budgetary, and program-related data and information from the sources identified in such inventory and directory; and

"(3) furnish, upon request, assistance to committees and joint committees of Congress and, to the extent practicable, to Members of Congress in appraising and analyzing fiscal, budgetary, and program-related data and information secured from the sources identified in such inventory and directory.

"(c) The Comptroller General and the Director of the Congressional Budget Office shall, to the extent they deem necessary, develop, establish, and maintain a central file or files of the data and information required to carry out the purposes of this title. Such a file or files shall be established to meet recurring requirements of the Congress for fiscal, budgetary, and program-related data and information and shall include, but not be limited to, data and information pertaining to budget requests, congressional authorizations to obligate and spend, apportionment and reserve actions, and obligations and expenditures. Such file or files and their indexes shall be maintained in such a manner as to facilitate their use by the committees of both Houses, joint committees, and other congressional agencies through modern data processing and communications techniques.

"(d) The Director of the Office of Management and Budget, in cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropriate representatives of State and local governments, shall provide, to the extent practicable, State and local governments such fiscal, budgetary, and program-related data and information as may be necessary for the accurate and timely determination by these governments of the impact of Federal assistance upon their budgets."

(b) The table of contents of the Legislative Reorganization Act of 1970 is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART 1—BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201 Budgetary and fiscal data processing system.

"Sec. 202 Budget standard classifications.

"Sec. 203. Availability to Congress of budgetary, fiscal, and related data."
and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"Sec. 201 Federal fiscal, budgetary, and program-related data and information systems.

"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary, and program-related data and information

"Sec. 203 Availability to and use by the Congress and State and local governments of Federal fiscal, budgetary, and program-related data and information."

Legislative History

The revised section 203 provides for the furnishing of budget and related information to Congress, including the development of data directories and assistance to Congress in analyzing budget data. The Comptroller General is authorized to establish central files for congressional use. OMB, in cooperation with GAO, and CBO shall, to the extent practicable, provide budget impact information to states and localities.

The revised section emanated from the Senate Government Operations Committee and was altered by the Rules and Administration Committee limiting certain assistance to Members of Congress and State and local governments "to the extent practicable."

Section 802. Changes in Functional Categories

Sec. 802. Any change in the functional categories set forth in the Budget of the United States Government transmitted pursuant to section 201 of the Budget and Accounting Act, 1921, shall be made only in consultation with the Committees on Appropriations and the Budget of the House of Representatives and Senate.

Legislative History

This provision as developed by the House Rules Committee provided for consultation with the Budget Committees before any functional categories were changed. In conference, provision was made for consultation with the Appropriations Committees as well.

The congressional Budget Act converts the functional categories from informational to decisional classifications. Congress will determine budget priorities by function and it therefore must have a voice in shaping those categories.

Section 802 impliedly retains executive authority to set the functional categories, though OMB is not mentioned. But as was discussed earlier, section 801 empowers the Comptroller General to establish standard budget classifications, including functional categories..

Implementation

In early 1974, the Office of Management and Budget launched a comprehensive review of the functional classifications used in the budget, the first such review in a dozen years. Following discussions with the Appropriations Committees, new functional codes were promulgated in August 1974.^{132/} Although section 802 permits revisions only in consultation with the Budget and Appropriations Committees, OMB has explained that its work on the 1976 budget classification was well advanced by the time the Budget Committees were established and hence it was unable to consult

^{132/} A listing and explanation of the new functional codes is printed in House Committee on the Budget, The Congressional Budget and Impoundment Control Act of 1974: A General Explanation, December 1974.

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with them. OMB was not cognizant of the new status of the functional categories when it undertook its review. Its guidelines for developing the new codes noted that "the appropriation account structure is the one used by the Congress in its review of the budget."^{133/}

^{133/} See Allen Schick, "The New Functional Classification and Its Implications for the Congressional Budget Process," Congressional Research Service, September 1974.

TITLE IX. MISCELLANEOUS PROVISIONS

Section 901. Amendments to the Rules of the House

Sec. 901. (a) Rule XI of the Rules of the House of Representatives (as amended by section 101(c) of this Act) is amended by inserting immediately after clause 22 the following new clause:

"22A. The respective areas of legislative jurisdiction under this rule are modified by title I of the Congressional Budget Act of 1974."

(b) Paragraph (c) of clause 29 of Rule XI of the Rules of the House of Representatives (as redesignated by section 101(c) of this Act) is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,"

(c) Subparagraph (5) of paragraph (a) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end thereof.

(d) Subparagraph (4) of paragraph (b) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end hereof.

(e) Paragraph (d) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by striking out "the Committee on Appropriations may appoint" and inserting in lieu thereof "the Committee on Appropriations and the Committee on the Budget may each appoint".

(f) Clause 32 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,"

(g) Paragraph (a) of clause 33 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately after "the Committee on Appropriations".

Legislative History

Subsection (a) modifies the jurisdiction of various House committees to the extent required by the Congressional Budget Act. The affected committees are Appropriations, Ways and Means, and Government Operations. Subsection (b) exempts the Budget Committee from the oversight duties given to other House committees.

Subsection (c) exempts the Budget Committee from limitations on the size of its professional staff and subsection (d) contains a similar exemption from limitations on the size of its clerical staff. The Budget Committee thus has the same status as the Appropriations Committee and is able to hire personnel above the levels set in the House Rules without receiving special authorization. Subsection (e) similarly authorizes the Budget Committee to appoint such staff as it determines to be necessary. These rule changes were inadvertently omitted from

the codification of Rule XI made by H. Res. 988 during the 93d Congress, but were restored by the House when it readopted the Rules at the start of the 94th Congress.^{134/}

Subsection (f) authorizes the Budget Committee to sit without special leave while the House is in session under the five-minute rule.

Subsection (g) authorizes the Budget Committee to draw from the contingent fund of the House without first obtaining authorization through a primary expense resolution.

^{134/} See 121 Congressional Record (daily ed. January 14, 1975) H7.

Section 902. Amendments to Senate Rules

Sec. 902. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended—

(1) by striking out "Revenue" in subparagraph (h)1 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, revenue";

(2) by striking out "The" in subparagraph (h)2 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, the"; and

(3) by striking out "Budget" in subparagraph (j) (1) (A) and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, budget".

Legislative History

This section adjusts the jurisdictions of the Senate Finance and Government Operations Committees to take into account the establishment of the Senate Budget Committee. The Finance Committee's jurisdiction over revenue and debt measures will continue except to the extent that jurisdiction has been given to the Budget Committee. The jurisdiction of the Government Operations Committee over matters relating to budget and accounting similarly will be limited to the extent that jurisdiction has been given to the Budget Committee.

Section 903. Amendments to Legislative Reorganization Act of 1946

Sec. 903. (a) Section 134(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190b(b)) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(b) Section 136(c) of such Act (2 U.S.C. 190d(c)) is amended by striking out "Committee on Appropriations of the Senate and the Committees on Appropriations," and inserting in lieu thereof "Committees on Appropriations and the Budget of the Senate and the Committees on Appropriations, the Budget."

Legislative History

These two amendments give the Senate Budget Committee the same status as the Senate Appropriations Committee with regard to meetings and oversight responsibilities. The Senate Budget Committee may sit, without special leave, while the Senate is in session. The Budget Committee is exempt from oversight responsibilities given to other Senate Committees. The reason for this exemption is that the Budget Committee does not have regular legislative jurisdiction over particular agencies or programs.

Section 904. Exercise of Rulemaking Authority

Src 904. (a) The provisions of this title (except section 905) and of titles I, III, and IV and the provisions of sections 606, 701, 703, and 1017 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(b) Any provision of title III or IV may be waived or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.

(c) Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV or section 1017 shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be

Legislative History

Subsection (a) is a standard provision allowing the House or Senate to change any of the rules enacted in the Congressional Budget and Impoundment Control Act unilaterally. Thus, provisions in Title I pertaining to the House and Senate Budget Committees can be altered by the affected House in accord with procedures for changing its rules. In fact, both the House and the Senate modified the provisions pertaining to the size of their Budget Committees at the start of the 94th Congress. This subsection does not permit unilateral changes in laws; only in those portions of the Act incorporated into the rules of the House or Senate. Only the provisions identified in the subsection have the status of legislative rules.

Subsection (b) is a departure from both the Senate Rules and the proposal of the Joint Study Committee. It permits the waiver or suspension of any provision of Title III or IV by majority vote or unanimous consent of the Senate. There is no comparable provision in the Act for the House of Representatives.

Senate Rule XL states that

No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing, specifying precisely the rule or part proposed to

be suspended, modified, or amended, and the purpose thereof. Any rule may be suspended without notice by the unanimous consent of the Senate, except as otherwise provided in clause 1, Rule XII.

Although Rule XL makes no mention of a two-thirds requirement to suspend a rule,

Senate Procedure stipulates that:

The standing rules of the Senate may be amended by a majority vote, but a two-thirds vote of the Senators present, a quorum being present, is required for their suspension, including suspensions for the purpose of proposing legislative amendments to general appropriation bills. 135/

The Joint Study Committee proposed that a two-thirds vote be required to waive or suspend any of the new House or Senate rules for the congressional budget process. This provision was struck from H.R. 7130 as passed by the House, thus giving the budget procedures the same status as other House or Senate rules. The two-thirds requirement was retained in S. 1541 as reported by the Senate Government Operations Committee but the Rules and Administration Committee devised the provision which allows suspension or waiver by majority vote or unanimous consent.

Subsection (c) also is a modification of the Joint Study Committee proposal applicable only to the Senate. It provides one-hour of debate on appeals from decisions of the chair.

135/ Senate Procedure: Precedents and Practices: S. Doc. No. 93-21 (1973), p.803. For an analysis of the development of the two-thirds requirement, see Joseph E. Cantor, "The Precedent for the Two-Thirds Requirement to Suspend a Standing Rule in the U.S. Senate," Congressional Research Service, August 15, 1973.

Section 905. Effective Dates

Sec. 905. (a) Except as provided in this section, the provisions of this Act shall take effect on the date of its enactment.

(b) Title II (except section 201(a)), section 403, and section 502(c) shall take effect on the day on which the first Director of the Congressional Budget Office is appointed under section 201(a).

(c) Except as provided in section 906, title III and section 402 shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years, and section 401 shall take effect on the first day of the second regular session of the Ninety-fourth Congress.

(d) The amendments to the Budget and Accounting Act, 1921, made by sections 601, 603, and 604 shall apply with respect to the fiscal year beginning on July 1, 1975, and succeeding fiscal years, except that section 201(g) of such Act (as added by section 601) shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years and section 201(i) of such Act (as added by section 601)

shall apply with respect to the fiscal year beginning on October 1, 1978, and succeeding fiscal years. The amendment to such Act made by section 602 shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years.

Legislative History

This section establishes the effective dates for the various provisions of the Congressional Budget and Impoundment Control Act. Rather than a uniform effective date, the section provides for staggered implementation, with certain features taking effect on the date of enactment and others deferred until one or two years after the initial steps have been taken. The schedule of effective dates as set forth below must be considered in tandem with section 906 which authorizes an optional implementation for fiscal year 1976. For this reason, the legislative history and purpose of section 905 will be reviewed under section 906.

Although section 905 is not explicit on the point, it has been interpreted to establish the date of enactment as the effective date for Title X, the Impoundment Control Act.

Implementation Schedule

<u>Provision</u>	<u>Takes Effect</u>
Budget Committees	Upon enactment
Congressional Budget Office	When the first CBO Director is appointed
Congressional Budget Procedures	1977 fiscal year, or fiscal year 1976 to the extent specified by Budget Committees.
Backdoor Spending Controls	January 1976
Advance Authorization Submissions	1976 fiscal year
Shift in Fiscal Year	October 1, 1976
Current Services Budget	November 10, 1975
Executive Budget Changes (most)	1976 fiscal year
Program Evaluation and Budget Information Titles	Upon Enactment
Impoundment Control	Upon Enactment

Section 906. Optional Implementation for Fiscal Year 1976

SEC. 906. If the Committees on the Budget of the House of Representatives and the Senate both agree that it is feasible to report and act on a concurrent resolution on the budget referred to in section 301 (a), or to apply any provision of title III or section 401 or 402, for the fiscal year beginning on July 1, 1975, and submit reports of such agreement to their respective Houses, then to the extent and in the manner specified in such reports, the provisions so specified and section 202(f) shall apply with respect to such fiscal year. If any provision so specified contains a date, such reports shall also specify a substitute date.

Legislative History

This section authorizes Congress, pursuant to agreement and reports by the House and Senate Budget Committees to apply the new budget process to the 1976 fiscal year. This optional implementation shall be "to the extent and in the manner" specified by the Budget Committees and the Committees may adjust the congressional budget timetable to facilitate this implementation. If the Budget Committees do not opt for an early application, the provisions of the new Act relating to the congressional budget process will first become effective for fiscal year 1977, as provided in section 905.

The section 906 option was devised by the Senate Committee on Rules and Administration as part of its scheme to phase-in the new budget process over a three-year period. H.R. 7130 as passed by the House did not have an optional feature, nor did S. 1541 as reported by the Senate Committee on Government Operations. But during its consideration of S. 1541, the Senate Rules and Administration Committee decided that it would be unwise to schedule the initial application of new congressional procedures during the transition to an October 1-September 30 fiscal cycle. Inasmuch as the bill then provided for a 15-month fiscal year--from July 1, 1975 through September 30, 1976--the Committee decided to defer the congressional

budget process to fiscal 1977. An additional consideration was the Committee's strong conviction that the congressional budget process would succeed only if ample advance provision was made for organizing and staffing the new budget committees and budget office.

However, the Rules and Administration Committee also was alert to pressures for early implementation of the budget procedures. There was widespread feeling that Congress should take advantage of the prevailing support for budget reform and not risk a loss of momentum and interest by delaying the new process for 2-3 years. The solution was to schedule the new procedures as the final phase of budget reform but to permit their implementation in the second year. This approach was explained in the report of the Senate Committee on Rules and Administration.^{136/}

Past efforts at budget reform suggest that when Congress is not adequately prepared for its new tasks, failure often ensues. It takes time to build staffs, acquire data and information, implement new budget procedures and, most importantly, provide Members and committees with an understanding of how the new process works.

It would be prudent to proceed with a step by step transition from current budget practices to the full process prescribed in S. 1541. A sensible first step would be to set up the Budget Committees and the Congressional Office of the Budget. Provisions relating to these new instrumentalities would take effect on the date of enactment of S. 1541. It is anticipated that these steps will be taken before or during the 1975 fiscal year. Fiscal year 1976 will run from July 1, 1975 to September 30, 1976 and it will provide an orderly transition to the new fiscal calendar.

The Committee believes that it would be appropriate to defer mandatory activation of the concurrent resolution process until the following fiscal year which will begin on October 1, 1976. However, the Budget Committees may report that it is feasible to launch the new process for fiscal year 1976 and if the House and Senate do not disapprove, the earlier date would take effect.

^{136/} S. Rept. No. 93-688, p. 24.

As reported by the Rules and Administration Committee and adopted by the Senate, S. 1541 provided that separate determinations were to be made concerning the feasibility of activating the first and second budget resolutions and the various procedures associated with each. The reasoning was that even if the Budget Committees decided to implement the first "targeting" resolution, they still might be unprepared to report a final "ceiling" resolution and reconciliation measure. S. 1541 also provided that the Budget Committees' determination to apply the budget process to fiscal 1976 could be disapproved by either the House or the Senate.

Although there was no parallel provision in H.R. 7130, House conferees endorsed the concept of a phased implementation coupled with an optional procedure for fiscal 1976. However, they regarded the option as a "dry run" to test and familiarize Members and Committees with the new procedures rather than as a full-scale implementation. The House staff conferees generally wanted Congress to proceed slowly and cautiously while their Senate counterparts tended to prefer a more rapid implementation. The Statement of the Managers tilts toward the House view in urging a cautious and limited implementation:^{137/}

The managers anticipate that this advance application will be undertaken only if adequate preparation has been made, that it will be limited to certain parts of the congressional budget process, and that to the extent necessary substitute dates will be used. The managers recognize that it may not be feasible to go beyond the first budget resolution.

The conference substitute simplified and extended the optional application in four ways. First, the separate determinations relating to the first and second budget resolutions were combined into a single determination by the House and Senate Budget Committees. The net effect remains the same because the Committees have the option of applying Section 906 "to the extent and in the manner" they

^{137/} H. Rept. No. 93-1101, p. 75.

consider appropriate. Second, the provision allowing disapproval of the advance implementation by either the House or the Senate was deleted. As incorporated in S. 1541, disapproval by one House still would have permitted implementation by the other House. Of course, the congressional budget process cannot operate properly in one House alone. The unworkable disapproval feature also would have injected an element of uncertainty into the determination by Congress of whether the new procedures are to apply to fiscal 1976. Although the disapproval clause has been dropped, it is likely that the Budget Committees would implement section 906 only if they believe that such a move commands broad support in the House and the Senate.

Third, the fiscal 1976 option was extended to include section 401 procedures for new backdoor legislation. (Section 402 relating to deadlines for the reporting of authorization already was covered.) This was done because of the interdependence of backdoor controls and the new budget process. For example, entitlement legislation in excess of the amounts specified in the budget resolution is to be referred to the Appropriations Committees. Finally, section 202(f) providing for an annual report by the Congressional Budget Office also was made subject to the option.

Implementation

Both the House and the Senate Budget Committees have signalled their expectation that the congressional budget process will be implemented for fiscal 1976 to the extent that time, resources, and circumstances allow. On December 18, 1974, House Budget Committee Chairman Al Ullman issued a progress report in which he stated that

The Budget Committee has tentatively agreed to a plan that will include as much of the new process as is reasonable and practical in that test. In cooperation with the Senate Committee, we intend to present a mutually acceptable plan to the leadership and to the Congress. 138/

Concrete implementation plans for fiscal 1976 were filed by the House and Senate budget committees in March, 1975.^{139/} The following excerpt from the House Committee's report summarizes the plans for the year:

The following major parts of the new budget process will be implemented for fiscal year 1976:

- (1) Budget Committees to hold hearings on the budget and economy (section 301(d));
- (2) Committees and joint committees to submit reports to the Budget Committees by March 15 (section 301(c));
- (3) Budget Committees to report first concurrent resolutions on the budget (containing budget aggregates only) by April 15 (section 301(d));
- (4) Congress to adopt first budget resolution by May 15 (section 301(a));
- (5) Budget Committee to report and Congress to complete action on second budget resolution by September 15 (section 310(b)); and
- (6) Congress to complete reconciliation process (to the extent necessary) by September 25 (section 310(d)).

In addition, new backdoor contract and loan authorities would be limited to amounts approved in appropriation acts (section 401(a)) and new entitlement authority legislation could not take effect prior to the start of the new fiscal year (section 401(b)).

The following important parts of the new budget process would *not* be implemented:

- (1) the prohibition against consideration of spending, revenue, and debt legislation prior to adoption of the first concurrent resolution on the budget (section 303(a));
- (2) the April 1 report on budget alternatives, fiscal policy, and national budget priorities by the Congressional Budget Office (section 202(f));
- (3) the inclusion within the first concurrent resolution of budget authority and outlay totals for each major functional category of the budget (section 301(a)(2));
- (4) the May 15 deadline for reporting of authorizing legislation (section 402);
- (5) the allocation of budget authority and outlays to appropriate committees pursuant to the May 15 budget resolution (section 302(a));
- (6) Appropriations Committee review of entitlement authority legislation which exceeds allocations made in the most recent budget resolution (section 401(b)); and
- (7) the deadline—seven days after Labor Day—for completing action on spending bills (section 309).

^{139/} Implementation of New Congressional Budget Procedures for Fiscal Year 1976, H. Rept. No. 94-25; also S. Rept. No. 94-27.



Background to “Assessing Russian Activities and Intentions in Recent US Elections”: The Analytic Process and Cyber Incident Attribution

6 January 2017

Background to “Assessing Russian Activities and Intentions in Recent US Elections”: The Analytic Process and Cyber Incident Attribution

“Assessing Russian Activities and Intentions in Recent US Elections” is a declassified version of a highly classified assessment that has been provided to the President and to recipients approved by the President.

- The Intelligence Community rarely can publicly reveal the full extent of its knowledge or the precise bases for its assessments, as the release of such information would reveal sensitive sources or methods and imperil the ability to collect critical foreign intelligence in the future.
- Thus, while the conclusions in the report are all reflected in the classified assessment, the declassified report does not and cannot include the full supporting information, including specific intelligence and sources and methods.

The Analytic Process

The mission of the Intelligence Community is to seek to reduce the uncertainty surrounding foreign activities, capabilities, or leaders’ intentions. This objective is difficult to achieve when seeking to understand complex issues on which foreign actors go to extraordinary lengths to hide or obfuscate their activities.

- On these issues of great importance to US national security, the goal of intelligence analysis is to provide assessments to decisionmakers that are intellectually rigorous, objective, timely, and useful, and that adhere to tradecraft standards.
- The tradecraft standards for analytic products have been refined over the past ten years. These standards include describing sources (including their reliability and access to the information they provide), clearly expressing uncertainty, distinguishing between underlying information and analysts’ judgments and assumptions, exploring alternatives, demonstrating relevance to the customer, using strong and transparent logic, and explaining change or consistency in judgments over time.
- Applying these standards helps ensure that the Intelligence Community provides US policymakers, warfighters, and operators with the best and most accurate insight, warning, and context, as well as potential opportunities to advance US national security.

Intelligence Community analysts integrate information from a wide range of sources, including human sources, technical collection, and open source information, and apply specialized skills and structured analytic tools to draw inferences informed by the data available, relevant past activity, and logic and reasoning to provide insight into what is happening and the prospects for the future.

- A critical part of the analyst’s task is to explain uncertainties associated with major judgments based on the quantity and quality of the source material, information gaps, and the complexity of the issue.
- When Intelligence Community analysts use words such as “we assess” or “we judge,” they are conveying an analytic assessment or judgment.
- Some analytic judgments are based directly on collected information; others rest on previous judgments, which serve as building blocks in rigorous analysis. In either type of judgment, the tradecraft standards outlined above ensure that analysts have an appropriate basis for the judgment.

- Intelligence Community judgments often include two important elements: judgments of how likely it is that something has happened or will happen (using terms such as "likely" or "unlikely") and confidence levels in those judgments (low, moderate, and high) that refer to the evidentiary basis, logic and reasoning, and precedents that underpin the judgments.

Determining Attribution in Cyber Incidents

The nature of cyberspace makes attribution of cyber operations difficult but not impossible. Every kind of cyber operation—malicious or not—leaves a trail. US Intelligence Community analysts use this information, their constantly growing knowledge base of previous events and known malicious actors, and their knowledge of how these malicious actors work and the tools that they use, to attempt to trace these operations back to their source. In every case, they apply the same tradecraft standards described in the Analytic Process above.

- Analysts consider a series of questions to assess how the information compares with existing knowledge and adjust their confidence in their judgments as appropriate to account for any alternative hypotheses and ambiguities.
- An assessment of attribution usually is not a simple statement of who conducted an operation, but rather a series of judgments that describe whether it was an isolated incident, who was the likely perpetrator, that perpetrator's possible motivations, and whether a foreign government had a role in ordering or leading the operation.

This report is a declassified version of a highly classified assessment; its conclusions are identical to those in the highly classified assessment but this version does not include the full supporting information or key elements of the reference campaign.



ICA

INTELLIGENCE COMMUNITY ASSESSMENT

Assessing Russian Activities and Intentions in Recent US Elections

ICA 2017-01D | 6 January 2017

This report is a declassified version of a highly classified assessment; its conclusions are identical to those in the highly classified assessment but this version does not include the full supporting information on key elements of the influence campaign.

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This report is a declassified version of a highly classified assessment; its conclusions are identical to those in the highly classified assessment but this version does not include the full supporting information on key elements of the influence campaign.

Scope and Sourcing

Information available as of 29 December 2016 was used in the preparation of this product.

Scope

This report includes an analytic assessment drafted and coordinated among The Central Intelligence Agency (CIA), The Federal Bureau of Investigation (FBI), and The National Security Agency (NSA), which draws on intelligence information collected and disseminated by those three agencies. It covers the motivation and scope of Moscow's intentions regarding US elections and Moscow's use of cyber tools and media campaigns to influence US public opinion. The assessment focuses on activities aimed at the 2016 US presidential election and draws on our understanding of previous Russian influence operations. When we use the term "we" it refers to an assessment by all three agencies.

- This report is a declassified version of a highly classified assessment. This document's conclusions are identical to the highly classified assessment, but this document does not include the full supporting information, including specific intelligence on key elements of the influence campaign. Given the redactions, we made minor edits purely for readability and flow.

We did not make an assessment of the impact that Russian activities had on the outcome of the 2016 election. The US Intelligence Community is charged with monitoring and assessing the intentions, capabilities, and actions of foreign actors; it does not analyze US political processes or US public opinion.

- New information continues to emerge, providing increased insight into Russian activities.

Sourcing

Many of the key judgments in this assessment rely on a body of reporting from multiple sources that are consistent with our understanding of Russian behavior. Insights into Russian efforts—including specific cyber operations—and Russian views of key US players derive from multiple corroborating sources.

Some of our judgments about Kremlin preferences and intent are drawn from the behavior of Kremlin-loyal political figures, state media, and pro-Kremlin social media actors, all of whom the Kremlin either directly uses to convey messages or who are answerable to the Kremlin. The Russian leadership invests significant resources in both foreign and domestic propaganda and places a premium on transmitting what it views as consistent, self-reinforcing narratives regarding its desires and redlines, whether on Ukraine, Syria, or relations with the United States.

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Assessing Russian Activities and Intentions in Recent US Elections

ICA 2017-01D

6 January 2017

Key Judgments

Russian efforts to influence the 2016 US presidential election represent the most recent expression of Moscow's longstanding desire to undermine the US-led liberal democratic order, but these activities demonstrated a significant escalation in directness, level of activity, and scope of effort compared to previous operations.

We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. We have high confidence in these judgments.

- **We also assess Putin and the Russian Government aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him.** All three agencies agree with this judgment. CIA and FBI have high confidence in this judgment; NSA has moderate confidence.
- Moscow's approach evolved over the course of the campaign based on Russia's understanding of the electoral prospects of the two main candidates. When it appeared to Moscow that Secretary Clinton was likely to win the election, the Russian influence campaign began to focus more on undermining her future presidency.
- Further information has come to light since Election Day that, when combined with Russian behavior since early November 2016, increases our confidence in our assessments of Russian motivations and goals.

Moscow's influence campaign followed a Russian messaging strategy that blends covert intelligence operations—such as cyber activity—with overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users or “trolls.” Russia, like its Soviet predecessor, has a history of conducting covert influence campaigns focused on US presidential elections that have used intelligence officers and agents and press placements to disparage candidates perceived as hostile to the Kremlin.

- Russia's intelligence services conducted cyber operations against targets associated with the 2016 US presidential election, including targets associated with both major US political parties.
- We assess with high confidence that Russian military intelligence (General Staff Main Intelligence Directorate or GRU) used the Guccifer 2.0 persona and DCLLeaks.com to release US victim data

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obtained in cyber operations publicly and in exclusives to media outlets and relayed material to WikiLeaks.

- Russian intelligence obtained and maintained access to elements of multiple US state or local electoral boards. **DHS assesses that the types of systems Russian actors targeted or compromised were not involved in vote tallying.**
- Russia's state-run propaganda machine contributed to the influence campaign by serving as a platform for Kremlin messaging to Russian and international audiences.

We assess Moscow will apply lessons learned from its Putin-ordered campaign aimed at the US presidential election to future influence efforts worldwide, including against US allies and their election processes.

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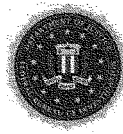
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Russia's Influence Campaign Targeting the 2016 US Presidential Election



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Russia's Influence Campaign Targeting the 2016 US Presidential Election

Putin Ordered Campaign To Influence US Election

We assess with high confidence that Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election, the consistent goals of which were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. When it appeared to Moscow that Secretary Clinton was likely to win the election, the Russian influence campaign then focused on undermining her expected presidency.

- We also assess Putin and the Russian Government aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him. All three agencies agree with this judgment. CIA and FBI have high confidence in this judgment; NSA has moderate confidence.
- In trying to influence the US election, we assess the Kremlin sought to advance its longstanding desire to undermine the US-led liberal democratic order, the promotion of which Putin and other senior Russian leaders view as a threat to Russia and Putin's regime.
- Putin publicly pointed to the Panama Papers disclosure and the Olympic doping scandal as US-directed efforts to defame Russia, suggesting he sought to use disclosures to discredit the image of the United States and cast it as hypocritical.

- Putin most likely wanted to discredit Secretary Clinton because he has publicly blamed her since 2011 for inciting mass protests against his regime in late 2011 and early 2012, and because he holds a grudge for comments he almost certainly saw as disparaging him.

We assess Putin, his advisers, and the Russian Government developed a clear preference for President-elect Trump over Secretary Clinton.

- Beginning in June, Putin's public comments about the US presidential race avoided directly praising President-elect Trump, probably because Kremlin officials thought that any praise from Putin personally would backfire in the United States. Nonetheless, Putin publicly indicated a preference for President-elect Trump's stated policy to work with Russia, and pro-Kremlin figures spoke highly about what they saw as his Russia-friendly positions on Syria and Ukraine. Putin publicly contrasted the President-elect's approach to Russia with Secretary Clinton's "aggressive rhetoric."
- Moscow also saw the election of President-elect Trump as a way to achieve an international counterterrorism coalition against the Islamic State in Iraq and the Levant (ISIL).
- Putin has had many positive experiences working with Western political leaders whose business interests made them more disposed to deal with Russia, such as former Italian Prime Minister Silvio Berlusconi and former German Chancellor Gerhard Schroeder.
- Putin, Russian officials, and other pro-Kremlin pundits stopped publicly criticizing the US election process as unfair almost immediately

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after the election because Moscow probably assessed it would be counterproductive to building positive relations.

We assess the influence campaign aspired to help President-elect Trump's chances of victory when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to the President-elect. When it appeared to Moscow that Secretary Clinton was likely to win the presidency the Russian influence campaign focused more on undercutting Secretary Clinton's legitimacy and crippling her presidency from its start, including by impugning the fairness of the election.

- Before the election, Russian diplomats had publicly denounced the US electoral process and were prepared to publicly call into question the validity of the results. Pro-Kremlin bloggers had prepared a Twitter campaign, #DemocracyRIP, on election night in anticipation of Secretary Clinton's victory, judging from their social media activity.

Russian Campaign Was Multifaceted

Moscow's use of disclosures during the US election was unprecedented, but its influence campaign otherwise followed a longstanding Russian messaging strategy that blends covert intelligence operations—such as cyber activity—with overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users or “trolls.”

- We assess that influence campaigns are approved at the highest levels of the Russian Government—particularly those that would be politically sensitive.
- Moscow's campaign aimed at the US election reflected years of investment in its capabilities, which Moscow has honed in the former Soviet states.

- By their nature, Russian influence campaigns are multifaceted and designed to be deniable because they use a mix of agents of influence, cutouts, front organizations, and false-flag operations. Moscow demonstrated this during the Ukraine crisis in 2014, when Russia deployed forces and advisers to eastern Ukraine and denied it publicly.

The Kremlin's campaign aimed at the US election featured disclosures of data obtained through Russian cyber operations; intrusions into US state and local electoral boards; and overt propaganda. Russian intelligence collection both informed and enabled the influence campaign.

Cyber Espionage Against US Political Organizations.

Russia's intelligence services conducted cyber operations against targets associated with the 2016 US presidential election, including targets associated with both major US political parties.

We assess Russian intelligence services collected against the US primary campaigns, think tanks, and lobbying groups they viewed as likely to shape future US policies. In July 2015, Russian intelligence gained access to Democratic National Committee (DNC) networks and maintained that access until at least June 2016.

- The General Staff Main Intelligence Directorate (GRU) probably began cyber operations aimed at the US election by March 2016. We assess that the GRU operations resulted in the compromise of the personal e-mail accounts of Democratic Party officials and political figures. By May, the GRU had exfiltrated large volumes of data from the DNC.

Public Disclosures of Russian-Collected Data.

We assess with high confidence that the GRU used the Guccifer 2.0 persona, DCLeaks.com, and WikiLeaks to release US victim data obtained in

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cyber operations publicly and in exclusives to media outlets.

- Guccifer 2.0, who claimed to be an independent Romanian hacker, made multiple contradictory statements and false claims about his likely Russian identity throughout the election. Press reporting suggests more than one person claiming to be Guccifer 2.0 interacted with journalists.
- Content that we assess was taken from e-mail accounts targeted by the GRU in March 2016 appeared on DCLeaks.com starting in June.

We assess with high confidence that the GRU relayed material it acquired from the DNC and senior Democratic officials to WikiLeaks. Moscow most likely chose WikiLeaks because of its self-proclaimed reputation for authenticity. Disclosures through WikiLeaks did not contain any evident forgeries.

- In early September, Putin said publicly it was important the DNC data was exposed to WikiLeaks, calling the search for the source of the leaks a distraction and denying Russian "state-level" involvement.
- The Kremlin's principal international propaganda outlet RT (formerly Russia Today) has actively collaborated with WikiLeaks. RT's editor-in-chief visited WikiLeaks founder Julian Assange at the Ecuadorian Embassy in London in August 2013, where they discussed renewing his broadcast contract with RT, according to Russian and Western media. Russian media subsequently announced that RT had become "the only Russian media company" to partner with WikiLeaks and had received access to "new leaks of secret information." RT routinely gives Assange sympathetic coverage and provides him a platform to denounce the United States.

These election-related disclosures reflect a pattern of Russian intelligence using hacked information in targeted influence efforts against targets such as Olympic athletes and other foreign governments. Such efforts have included releasing or altering personal data, defacing websites, or releasing e-mails.

- A prominent target since the 2016 Summer Olympics has been the World Anti-Doping Agency (WADA), with leaks that we assess to have originated with the GRU and that have involved data on US athletes.

Russia collected on some Republican-affiliated targets but did not conduct a comparable disclosure campaign.

Russian Cyber Intrusions Into State and Local Electoral Boards. Russian intelligence accessed elements of multiple state or local electoral boards. Since early 2014, Russian intelligence has researched US electoral processes and related technology and equipment.

- DHS assesses that the types of systems we observed Russian actors targeting or compromising are not involved in vote tallying.

Russian Propaganda Efforts. Russia's state-run propaganda machine—comprised of its domestic media apparatus, outlets targeting global audiences such as RT and Sputnik, and a network of quasi-government trolls—contributed to the influence campaign by serving as a platform for Kremlin messaging to Russian and international audiences. State-owned Russian media made increasingly favorable comments about President-elect Trump as the 2016 US general and primary election campaigns progressed while consistently offering negative coverage of Secretary Clinton.

- Starting in March 2016, Russian Government-linked actors began openly supporting President-elect Trump's candidacy in media

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aimed at English-speaking audiences. RT and Sputnik—another government-funded outlet producing pro-Kremlin radio and online content in a variety of languages for international audiences—consistently cast President-elect Trump as the target of unfair coverage from traditional US media outlets that they claimed were subservient to a corrupt political establishment.

- Russian media hailed President-elect Trump's victory as a vindication of Putin's advocacy of global populist movements—the theme of Putin's annual conference for Western academics in October 2016—and the latest example of Western liberalism's collapse.
- Putin's chief propagandist Dmitriy Kiselev used his flagship weekly newsmagazine program this fall to cast President-elect Trump as an outsider victimized by a corrupt political establishment and faulty democratic election process that aimed to prevent his election because of his desire to work with Moscow.
- Pro-Kremlin proxy Vladimir Zhirinovskiy, leader of the nationalist Liberal Democratic Party of Russia, proclaimed just before the election that if President-elect Trump won, Russia would "drink champagne" in anticipation of being able to advance its positions on Syria and Ukraine.

RT's coverage of Secretary Clinton throughout the US presidential campaign was consistently negative and focused on her leaked e-mails and accused her of corruption, poor physical and mental health, and ties to Islamic extremism. Some Russian officials echoed Russian lines for the influence campaign that Secretary Clinton's election could lead to a war between the United States and Russia.

- In August, Kremlin-linked political analysts suggested avenging negative Western reports

on Putin by airing segments devoted to Secretary Clinton's alleged health problems.

- On 6 August, RT published an English-language video called "Julian Assange Special: Do WikiLeaks Have the E-mail That'll Put Clinton in Prison?" and an exclusive interview with Assange entitled "Clinton and ISIS Funded by the Same Money." RT's most popular video on Secretary Clinton, "How 100% of the Clintons' 'Charity' Went to...Themselves," had more than 9 million views on social media platforms. RT's most popular English language video about the President-elect, called "Trump Will Not Be Permitted To Win," featured Assange and had 2.2 million views.
- For more on Russia's past media efforts—including portraying the 2012 US electoral process as undemocratic—please see Annex A: Russia—Kremlin's TV Seeks To Influence Politics, Fuel Discontent in US.

Russia used trolls as well as RT as part of its influence efforts to denigrate Secretary Clinton. This effort amplified stories on scandals about Secretary Clinton and the role of WikiLeaks in the election campaign.

- The likely financier of the so-called Internet Research Agency of professional trolls located in Saint Petersburg is a close Putin ally with ties to Russian intelligence.
- A journalist who is a leading expert on the Internet Research Agency claimed that some social media accounts that appear to be tied to Russia's professional trolls—because they previously were devoted to supporting Russian actions in Ukraine—started to advocate for President-elect Trump as early as December 2015.

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Influence Effort Was Boldest Yet in the US

Russia's effort to influence the 2016 US presidential election represented a significant escalation in directness, level of activity, and scope of effort compared to previous operations aimed at US elections. We assess the 2016 influence campaign reflected the Kremlin's recognition of the worldwide effects that mass disclosures of US Government and other private data—such as those conducted by WikiLeaks and others—have achieved in recent years, and their understanding of the value of orchestrating such disclosures to maximize the impact of compromising information.

- During the Cold War, the Soviet Union used intelligence officers, influence agents, forgeries, and press placements to disparage candidates perceived as hostile to the Kremlin, according to a former KGB archivist.

Since the Cold War, Russian intelligence efforts related to US elections have primarily focused on foreign intelligence collection. For decades, Russian and Soviet intelligence services have sought to collect insider information from US political parties that could help Russian leaders understand a new US administration's plans and priorities.

- The Russian Foreign Intelligence Service (SVR) Directorate S (Illegals) officers arrested in the United States in 2010 reported to Moscow about the 2008 election.
- In the 1970s, the KGB recruited a Democratic Party activist who reported information about then-presidential hopeful Jimmy Carter's campaign and foreign policy plans, according to a former KGB archivist.

Election Operation Signals "New Normal" in Russian Influence Efforts

We assess Moscow will apply lessons learned from its campaign aimed at the US presidential election to future influence efforts in the United States and worldwide, including against US allies and their election processes. We assess the Russian intelligence services would have seen their election influence campaign as at least a qualified success because of their perceived ability to impact public discussion.

- Putin's public views of the disclosures suggest the Kremlin and the intelligence services will continue to consider using cyber-enabled disclosure operations because of their belief that these can accomplish Russian goals relatively easily without significant damage to Russian interests.
- Russia has sought to influence elections across Europe.

We assess Russian intelligence services will continue to develop capabilities to provide Putin with options to use against the United States, judging from past practice and current efforts. Immediately after Election Day, we assess Russian intelligence began a spearfishing campaign targeting US Government employees and individuals associated with US think tanks and NGOs in national security, defense, and foreign policy fields. This campaign could provide material for future influence efforts as well as foreign intelligence collection on the incoming administration's goals and plans.

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Annex A

Russia -- Kremlin's TV Seeks To Influence Politics, Fuel Discontent in US*

RT America TV, a Kremlin-financed channel operated from within the United States, has substantially expanded its repertoire of programming that highlights criticism of alleged US shortcomings in democracy and civil liberties. The rapid expansion of RT's operations and budget and recent candid statements by RT's leadership point to the channel's importance to the Kremlin as a messaging tool and indicate a Kremlin-directed campaign to undermine faith in the US Government and fuel political protest. The Kremlin has committed significant resources to expanding the channel's reach, particularly its social media footprint. A reliable UK report states that RT recently was the most-watched foreign news channel in the UK. RT America has positioned itself as a domestic US channel and has deliberately sought to obscure any legal ties to the Russian Government.

In the runup to the 2012 US presidential election in November, English-language channel RT America -- created and financed by the Russian Government and part of Russian Government-sponsored RT TV (see textbox 1) -- intensified its usually critical coverage of the United States. The channel portrayed the US electoral process as undemocratic and featured calls by US protesters for the public to rise up and "take this government back."

- RT introduced two new shows -- "Breaking the Set" on 4 September and "Truthseeker" on 2 November -- both overwhelmingly focused on criticism of US and Western governments as well as the promotion of radical discontent.
- From August to November 2012, RT ran numerous reports on alleged US election fraud and voting machine vulnerabilities, contending that US election results cannot be trusted and do not reflect the popular will.
- In an effort to highlight the alleged "lack of democracy" in the United States, RT broadcast, hosted, and advertised third-party candidate debates and ran reporting supportive of the political agenda of these candidates. The RT hosts asserted that the US two-party system does not represent the views of at least one-third of the population and is a "sham."

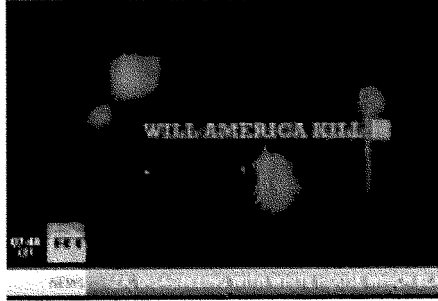


Messaging on RT prior to the US presidential election (RT, 3 November)

* This annex was originally published on 11 December 2012 by the Open Source Center, now the Open Source Enterprise.

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- RT aired a documentary about the Occupy Wall Street movement on 1, 2, and 4 November. RT framed the movement as a fight against "the ruling class" and described the current US political system as corrupt and dominated by corporations. RT advertising for the documentary featured Occupy movement calls to "take back" the government. The documentary claimed that the US system cannot be changed democratically, but only through "revolution." After the 6 November US presidential election, RT aired a documentary called "Cultures of Protest," about active and often violent political resistance (RT, 1-10 November).

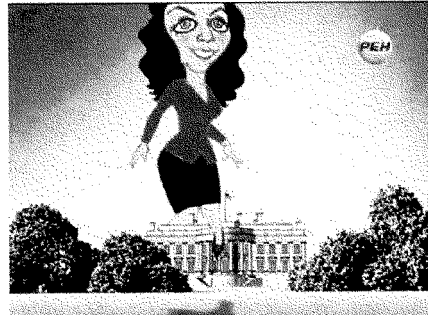


RT new show "Truthseeker" (RT, 11 November)

RT Conducts Strategic Messaging for Russian Government

RT's criticism of the US election was the latest facet of its broader and longer-standing anti-US messaging likely aimed at undermining viewers' trust in US democratic procedures and undercutting US criticism of Russia's political system. RT Editor in Chief Margarita Simonyan recently declared that the United States itself lacks democracy and that it has "no moral right to teach the rest of the world" (*Kommersant*, 6 November).

- Simonyan has characterized RT's coverage of the Occupy Wall Street movement as "information warfare" that is aimed at promoting popular dissatisfaction with the US Government. RT created a Facebook app to connect Occupy Wall Street protesters via social media. In addition, RT featured its own hosts in Occupy rallies ("Minaev Live," 10 April; RT, 2, 12 June).
- RT's reports often characterize the United States as a "surveillance state" and allege widespread infringements of civil liberties, police brutality, and drone use (RT, 24, 28 October, 1-10 November).
- RT has also focused on criticism of the US economic system, US currency policy, alleged Wall Street greed, and the US national debt. Some of RT's hosts have compared the United States to Imperial Rome and have predicted that government corruption and "corporate greed" will lead to US financial collapse (RT, 31 October, 4 November).



Simonyan steps over the White House in the introduction from her short-lived domestic show on REN TV (REN TV, 26 December 2011)

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RT broadcasts support for other Russian interests in areas such as foreign and energy policy.

- RT runs anti-fracking programming, highlighting environmental issues and the impacts on public health. This is likely reflective of the Russian Government's concern about the impact of fracking and US natural gas production on the global energy market and the potential challenges to Gazprom's profitability (5 October).
- RT is a leading media voice opposing Western intervention in the Syrian conflict and blaming the West for waging "information wars" against the Syrian Government (RT, 10 October-9 November).



RT anti-fracking reporting (RT, 5 October)

- In an earlier example of RT's messaging in support of the Russian Government, during the Georgia-Russia military conflict the channel accused Georgians of killing civilians and organizing a genocide of the Ossetian people. According to Simonyan, when "the Ministry of Defense was at war with Georgia," RT was "waging an information war against the entire Western world" (*Kommersant*, 11 July).

In recent interviews, RT's leadership has candidly acknowledged its mission to expand its US audience and to expose it to Kremlin messaging. However, the leadership rejected claims that RT interferes in US domestic affairs.

- Simonyan claimed in popular arts magazine *Afisha* on 3 October: "It is important to have a channel that people get used to, and then, when needed, you show them what you need to show. In some sense, not having our own foreign broadcasting is the same as not having a ministry of defense. When there is no war, it looks like we don't need it. However, when there is a war, it is critical."
- According to Simonyan, "the word 'propaganda' has a very negative connotation, but indeed, there is not a single international foreign TV channel that is doing something other than promotion of the values of the country that it is broadcasting from." She added that "when Russia is at war, we are, of course, on Russia's side" (*Afisha*, 3 October; *Kommersant*, 4 July).
- TV-Novosti director Nikolov said on 4 October to the Association of Cable Television that RT builds on worldwide demand for "an alternative view of the entire world." Simonyan asserted on 3 October in *Afisha* that RT's goal is "to make an alternative channel that shares information unavailable elsewhere" in order to "conquer the audience" and expose it to Russian state messaging (*Afisha*, 3 October; *Kommersant*, 4 July).
- On 26 May, Simonyan tweeted with irony: "Ambassador McFaul hints that our channel is interference with US domestic affairs. And we, sinful souls, were thinking that it is freedom of speech."

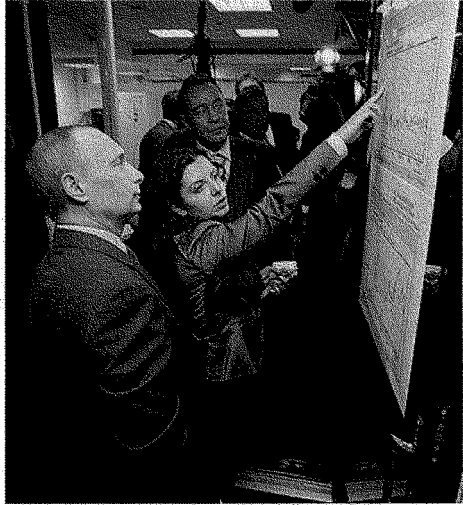
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RT Leadership Closely Tied to, Controlled by Kremlin

RT Editor in Chief Margarita Simonyan has close ties to top Russian Government officials, especially Presidential Administration Deputy Chief of Staff Aleksey Gromov, who reportedly manages political TV coverage in Russia and is one of the founders of RT.

- Simonyan has claimed that Gromov shielded her from other officials and their requests to air certain reports. Russian media consider Simonyan to be Gromov's protege (*Kommersant*, 4 July; *Dozhd TV*, 11 July).
- Simonyan replaced Gromov on state-owned Channel One's Board of Directors. Government officials, including Gromov and Putin's Press Secretary Peskov were involved in creating RT and appointing Simonyan (*Afisha*, 3 October).
- According to Simonyan, Gromov oversees political coverage on TV, and he has periodic meetings with media managers where he shares classified information and discusses their coverage plans. Some opposition journalists, including Andrey Loshak, claim that he also ordered media attacks on opposition figures (*Kommersant*, 11 July).

The Kremlin staffs RT and closely supervises RT's coverage, recruiting people who can convey Russian strategic messaging because of their ideological beliefs.



Simonyan shows RT facilities to then Prime Minister Putin. Simonyan was on Putin's 2012 presidential election campaign staff in Moscow (Rospress, 22 September 2010, Ria Novosti, 25 October 2012).

- The head of RT's Arabic-language service, Aydar Aganin, was rotated from the diplomatic service to manage RT's Arabic-language expansion, suggesting a close relationship between RT and Russia's foreign policy apparatus. RT's London Bureau is managed by Darya Pushkova, the daughter of Aleksey Pushkov, the current chair of the Duma Russian Foreign Affairs Committee and a former Gorbachev speechwriter (*DXB*, 26 March 2009; *MK.ru*, 13 March 2006).
- According to Simonyan, the Russian Government sets rating and viewership requirements for RT and, "since RT receives budget from the state, it must complete tasks given by the state." According to Nikolov, RT news stories are written and edited "to become news" exclusively in RT's Moscow office (*Dozhd TV*, 11 July; *AKT*, 4 October).
- In her interview with pro-Kremlin journalist Sergey Minaev, Simonyan complimented RT staff in the United States for passionately defending Russian positions on the air and in social media. Simonyan said: "I wish you could see...how these guys, not just on air, but on their own social networks, *Twitter*, and when giving interviews, how they defend the positions that we stand on!" ("*Minaev Live*," 10 April).

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RT Focuses on Social Media, Building Audience

RT aggressively advertises its social media accounts and has a significant and fast-growing social media footprint. In line with its efforts to present itself as anti-mainstream and to provide viewers alternative news content, RT is making its social media operations a top priority, both to avoid broadcast TV regulations and to expand its overall audience.

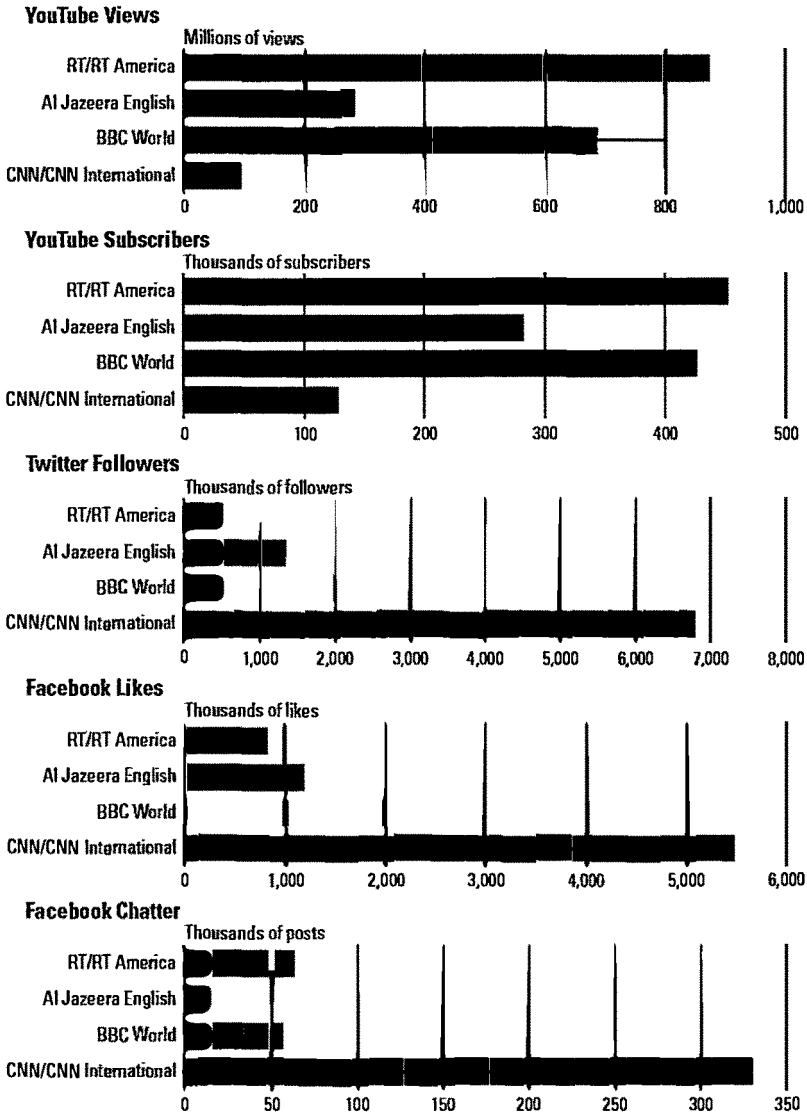
- According to RT management, RT's website receives at least 500,000 unique viewers every day. Since its inception in 2005, RT videos received more than 800 million views on *YouTube* (1 million views per day), which is the highest among news outlets (see graphics for comparison with other news channels) (*AKT*, 4 October).
- According to Simonyan, the TV audience worldwide is losing trust in traditional TV broadcasts and stations, while the popularity of "alternative channels" like RT or Al Jazeera grows. RT markets itself as an "alternative channel" that is available via the Internet everywhere in the world, and it encourages interaction and social networking (*Kommersant*, 29 September).
- According to Simonyan, RT uses social media to expand the reach of its political reporting and uses well-trained people to monitor public opinion in social media commentaries (*Kommersant*, 29 September).
- According to Nikolov, RT requires its hosts to have social media accounts, in part because social media allows the distribution of content that would not be allowed on television (*Newreporter.org*, 11 October).
- Simonyan claimed in her 3 October interview to independent TV channel Dozhd that Occupy Wall Street coverage gave RT a significant audience boost.

The Kremlin spends \$190 million a year on the distribution and dissemination of RT programming, focusing on hotels and satellite, terrestrial, and cable broadcasting. The Kremlin is rapidly expanding RT's availability around the world and giving it a reach comparable to channels such as Al Jazeera English. According to Simonyan, the United Kingdom and the United States are RT's most successful markets. RT does not, however, publish audience information.

- According to market research company Nielsen, RT had the most rapid growth (40 percent) among all international news channels in the United States over the past year (2012). Its audience in New York tripled and in Washington DC grew by 60% (*Kommersant*, 4 July).
- RT claims that it is surpassing Al Jazeera in viewership in New York and Washington DC (*BARB*, 20 November; RT, 21 November).
- RT states on its website that it can reach more than 550 million people worldwide and 85 million people in the United States; however, it does not publicize its actual US audience numbers (RT, 10 December).

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TV News Broadcasters: Comparative Social Media Footprint



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Formal Disassociation From Kremlin Facilitates RT US Messaging

RT America formally disassociates itself from the Russian Government by using a Moscow-based autonomous nonprofit organization to finance its US operations. According to RT's leadership, this structure was set up to avoid the Foreign Agents Registration Act and to facilitate licensing abroad. In addition, RT rebranded itself in 2008 to deemphasize its Russian origin.

- According to Simonyan, RT America differs from other Russian state institutions in terms of ownership, but not in terms of financing. To disassociate RT from the Russian Government, the federal news agency RIA Novosti established a subsidiary autonomous nonprofit organization, TV-Novosti, using the formal independence of this company to establish and finance RT worldwide (Dozhd TV, 11 July).
- Nikolov claimed that RT is an "autonomous noncommercial entity," which is "well received by foreign regulators" and "simplifies getting a license." Simonyan said that RT America is not a "foreign agent" according to US law because it uses a US commercial organization for its broadcasts (AKT, 4 October; Dozhd TV, 11 July).
- Simonyan observed that RT's original Russia-centric news reporting did not generate sufficient audience, so RT switched to covering international and US domestic affairs and removed the words "Russia Today" from the logo "to stop scaring away the audience" (*Afisha*, 18 October; *Kommersant*, 4 July).
- RT hires or makes contractual agreements with Westerners with views that fit its agenda and airs them on RT. Simonyan said on the pro-Kremlin show "Minaev Live" on 10 April that RT has enough audience and money to be able to choose its hosts, and it chooses the hosts that "think like us," "are interested in working in the anti-mainstream," and defend RT's beliefs on social media. Some hosts and journalists do not present themselves as associated with RT when interviewing people, and many of them have affiliations to other media and activist organizations in the United States ("Minaev Live," 10 April).

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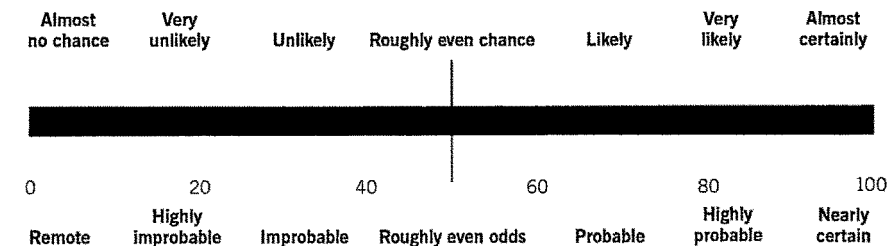
Annex B

ESTIMATIVE LANGUAGE

Estimative language consists of two elements: judgments about the likelihood of developments or events occurring and levels of confidence in the sources and analytic reasoning supporting the judgments. Judgments are not intended to imply that we have proof that shows something to be a fact. Assessments are based on collected information, which is often incomplete or fragmentary, as well as logic, argumentation, and precedents.

Judgments of Likelihood. The chart below approximates how judgments of likelihood correlate with percentages. Unless otherwise stated, the Intelligence Community's judgments are not derived via statistical analysis. Phrases such as "we judge" and "we assess"—and terms such as "probable" and "likely"—convey analytical assessments.

Percent



Confidence in the Sources Supporting Judgments. Confidence levels provide assessments of the quality and quantity of the source information that supports judgments. Consequently, we ascribe high, moderate, or low levels of confidence to assessments:

- **High confidence** generally indicates that judgments are based on high-quality information from multiple sources. High confidence in a judgment does not imply that the assessment is a fact or a certainty; such judgments might be wrong.
- **Moderate confidence** generally means that the information is credibly sourced and plausible but not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence.
- **Low confidence** generally means that the information's credibility and/or plausibility is uncertain, that the information is too fragmented or poorly corroborated to make solid analytic inferences, or that reliability of the sources is questionable.

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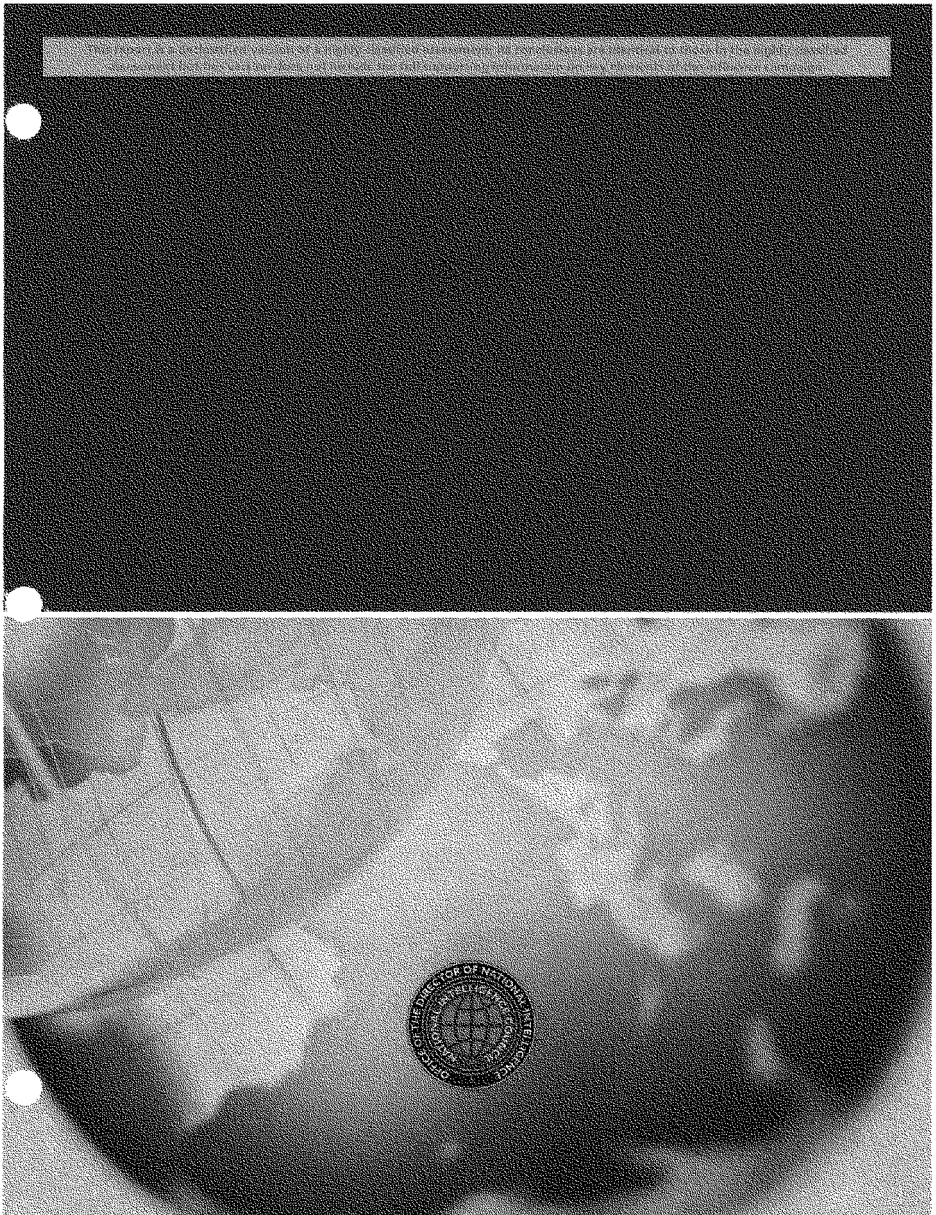
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March 26, 2018

MINORITY VIEWS

On March 1, 2017, the House Permanent Select Committee on Intelligence (HPSCI) approved a bipartisan “Scope of Investigation” to guide the Committee’s inquiry into Russia’s interference in the 2016 U.S. election.¹ In announcing these parameters for the House of Representatives’ only authorized investigation into Russia’s meddling, the Committee’s leadership pledged to undertake a thorough, bipartisan, and independent probe.

The Committee explained at the time that it would “conduct interviews, take witness testimony, and review all reporting underlying” the January 6, 2017 Intelligence Community Assessment (ICA) on Russia’s covert campaign.² Importantly, Chairman Devin Nunes and Ranking Member Adam Schiff promised the American public that the Committee would “seek to ensure [...] that allegations of Russian collusion with any U.S. Persons and the leaks of classified information are fully investigated.” Chairman Nunes vowed that “on a bipartisan basis, we will fully investigate all the evidence we collect and follow that evidence wherever it leads,” a promise echoed by Ranking Member Schiff, who said that the Committee “must follow the facts wherever they may lead, leaving no stone unturned, and that must also include both the Russian hacking and dumping of documents as well as any potential collusion between Russia and U.S. citizens.”³

One year later, the Committee’s Majority has shattered its commitment by rushing to end its investigation prematurely, even as it continues to investigate President Donald Trump’s political opponents, our intelligence agencies, law enforcement, and diplomatic corps, and former members of the Administration of President Barack Obama.

In so doing, the Majority has not only failed to meet the mandate given to the HPSCI by the Speaker of the House and the Minority Leader, but they have engaged in a systematic effort to muddy the waters, and to deflect attention away from the President, most recklessly in their assault on the central pillars of the rule of law. Their report, as with their overall conduct of the investigation, is unworthy of this Committee, the House of Representatives, and most importantly, the American people, who are now left to try to discern what is true and what is not.

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The Majority's report reflects a lack of seriousness and interest in pursuing the truth. By refusing to call in key witnesses, by refusing to request pertinent documents, and by refusing to compel and enforce witness cooperation and answers to key questions, the Majority hobbled the Committee's ability to conduct a credible investigation that could inspire public confidence. The Majority's conduct has also undermined Congress' independent investigative authority. Their repeated deferrals to the White House allowed witnesses to refuse cooperation, and permitted the Administration to dictate the terms of their interaction with Congress, or evade congressional oversight altogether, setting a damaging precedent for future non-cooperation by this President and, possibly, by his successors.

These Views memorialize the Minority's profound disappointment with and objections to the manner in which the Majority subverted this investigation, and highlight for the public some of the most glaring misrepresentations, distortions, and inaccuracies in the Majority's report.

A majority of the report's findings are misleading and unsupported by the facts and the investigative record. They have been crafted to advance a political narrative that exonerates the President, downplays Russia's preference and support for then-candidate Trump, explains away repeated contacts by Trump associates with Russia-aligned actors, and seeks to shift suspicion towards President Trump's political opponents and the prior administration.

One can find no better example of the Majority's willingness to contort facts to support its politicized narrative than the report's *Finding* #35. The Majority argues that evidence that Trump associates sought after the election to establish secret back channels to communicate with the Russians without the U.S. government finding out – and then lied about it – actually proves there was no collusion with Russia. The sophistry of this kind of analysis, and the report as a whole, wither under scrutiny. Even before its public release, the report suffered in the face of public revelations that bear directly on the investigation and contradicted the Majority's conclusions.

Tragically, for a country in need of the truth and an election system in need of greater security, the Majority diverted the investigation in the service of President Trump by launching parallel probes to promote baseless allegations of wrongdoing by the Obama Administration and our law enforcement agencies. The Majority's efforts have cultivated doubt about what occurred during the 2016 elections; cast suspicion on the Federal Bureau of Investigation (FBI) and Department of Justice (DOJ), including the FBI's basis for and handling of its counterintelligence investigation into links between Russia and the Trump campaign; and sought to undercut Special Counsel Robert Mueller's ongoing investigation, including by attempting to tarnish the credibility of numerous current and former officials with knowledge pertinent to the Special Counsel's probe.

Despite these setbacks and the constraints of being in the Minority, the Committee's Democratic Members remain committed to continuing the investigation. We have significantly advanced our understanding of key aspects of the investigation, including Russia's covert activities and the

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issues of collusion and obstruction of justice. We have assembled to date a significant body of evidence from witness interviews, hearings, classified intelligence, and materials produced to the Committee, which has in turn identified new leads, persons, and entities of interest.

Our charge remains clear and unchanged: ensure a full accounting of Russia's meddling, including the involvement by any U.S. persons; inoculate the public against future foreign influence campaigns; and provide a roadmap for securing future elections. These Minority Views are not a substitute for a comprehensive report, which the Minority will present to the American public after completing the necessary investigatory work. Instead, the Minority Views will highlight a small portion of the evidence that has come to our attention, the many important leads which the Majority made a deliberate decision not to pursue, and the reasons to reject the Majority's attempt to explain away conduct by the Trump campaign that was clearly deceptive and unethical, and may very well have violated U.S. laws.

We have drafted our analysis in these Views in unclassified form for the public, which means we have not included crucial, but classified, intelligence reporting, including post-election collection, that has informed our analysis and advanced our understanding of Russia's active measures and links with U.S. persons. Our ultimate report will draw on and weave together this rich corpus of classified and unclassified information.

The Minority has also incorporated into the body of these Views the transcripts of all 64 transcribed interviews conducted by the Committee during the investigation, as well as the Committee's March 22, 2018 business meeting to adopt the Majority's report. Chairman Nunes and Representative Mike Conaway committed to the Minority, and stated publicly on repeated occasions, that the Committee would release all interview transcripts once the Majority issued its report. In the absence of a bipartisan report, and recognizing that the Minority still needs to investigate substantial areas of inquiry before issuing a comprehensive account, publication of these transcripts, pursuant to appropriate declassification review, is a necessary step. Doing so affords the American public the opportunity to evaluate for themselves the Majority's assertions with the benefit of a core component of the underlying investigative record: testimony by key witnesses who have thus far appeared before the Committee. And importantly, the transcripts also make clear how perfunctory an effort the Majority made to get to the truth.

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APPENDICES

Note: The appendices follow Chapter VI of the Minority Views (Transcripts)

Appendix A: “Status of the Russia Investigation,” HPSCI Minority, March 13, 2018.

Appendix B: Letter to Representative Conaway from Ranking Member Schiff, November 7, 2017.

Appendix C: Additional Witnesses Requested by HPSCI Minority During Investigation

Appendix D: Ranking Member Schiff Opening Statement, HPSCI Open Hearing on Russia Investigation, March 20, 2017.

Appendix E: Ranking Member Schiff Opening Statement, HPSCI Business Meeting on “Adoption of the Committee’s Investigative Report into Russian Active Measures During the 2016 Presidential Election,” March 22, 2018.

Appendix F: HPSCI Minority Memorandum, “Correcting the Record – The Russia Investigations,” January 29, 2018. Released publicly on February 24, 2018.

Appendix G: HPSCI Exchange of Letters with the White House regarding Memorialization of Communications between President Trump and former FBI Director Comey, June 2017.

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I. THE COMMITTEE'S INVESTIGATION AND COUNTER-INVESTIGATION

On March 12, 2018, the Committee Majority announced publicly that it had finished its Russia investigation and previewed several conclusions reached by the Republican Members.⁴ The Majority's announcement was made without advance notice to, or consultation with, the Minority, which learned about the decision from press reports. The Majority subsequently scheduled for March 22, 2018 a vote to adopt a report that it drafted unilaterally and in secret. The Minority received a copy of the Majority's report for the first time on March 13, 2018, only to learn that the Majority would continue to make substantive modifications and revisions to its report up until the eve of the vote.

In the ten days between its announcement and the Committee vote on adoption of the report, the Majority faced considerable public criticism after previewing that, contrary to both classified and unclassified evidence, its report would (1) dispute the Intelligence Community's assessment that Russian President Vladimir Putin aspired to help candidate Trump and (2) conclude that the Committee's Republicans have found no evidence of collusion.⁵

In public appearances announcing their results, Majority Members contradicted themselves in trying to explain away evidence of Russia's support for Donald Trump's candidacy and justify how Russian efforts to hurt the Clinton campaign did not simultaneously help Trump. As explained in Chapter II, the Majority revised this core finding prior to the vote to make it less explicit in the body of the report. President Trump nonetheless quickly endorsed the Committee Majority's exculpatory conclusion in tweets on March 12 and March 17, 2018.⁶ On March 23, 2018, the day after the Majority's March 22, 2018 vote to adopt the report, the President touted their findings again:

*"House Intelligence Committee votes to release final report. FINDINGS: (1) No evidence provided of Collusion between Trump Campaign & Russia. (2) The Obama Administrations Post election response was insufficient. (3) Clapper provided inconsistent testimony on media contacts."*⁷

The Kremlin's propaganda channels, RT and Sputnik, also favorably reported the Majority's conclusions.⁸

At the same time the Majority announced that its Russia probe had gone on too long and would be shut down, the Chairman also stated that its side or counter-investigations would be "still ongoing" and would likely expand after the ostensible end of its Russia investigation.⁹ Since the inception of the Committee's Russia investigation in March 2017, the Majority has initiated unilateral counter-investigations into fringe and debunked allegations of: improper "unmasking" by Obama Administration officials; Foreign Intelligence Surveillance Act (FISA) "abuses" by the FBI and DOJ in the course of their counterintelligence investigation of Russia and links to Trump campaign associates; a Hillary Clinton-tied conspiracy to procure and disseminate the "dossier" compiled by Christopher Steele; and improprieties related to Clinton during the

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Committee on Foreign Investment in the United States' (CFIUS) 2010 review of uranium mining company Uranium One's sale to a subsidiary of Rosatom, Russia's Atomic Energy Agency. The Majority has recently indicated that it is also investigating the State Department for links to Steele.

Investigative Process

The rushed manner in which the Majority has sought to end its investigation of Russia's actions, and adopt, along party lines, its flawed and partisan report, is a fitting capstone to the Majority's conduct during the Russia investigation.

As the Committee's Majority, the Republican Members, led by Chairman Nunes, held the power to dictate the pace and terms for our investigation, including which witnesses to call in and when; which documents to request; whether to issue subpoenas; and, when necessary, whether to enforce Congress' power to compel testimony and production of documents. Regrettably, following a brief spell of bipartisanship after the Chairman announced on April 6, 2017 that other Majority Members would "temporarily take charge of the Committee's Russia investigation" due to a House Ethics Committee investigation into his actions, the Majority wielded their power to stymie the investigation.¹⁰

The Majority circumscribed severely, and at times affirmatively blocked, important aspects of our work. Most distressing, they exhibited a fundamental disinterest in pursuing core lines of inquiry authorized by the Committee's Scope of Investigation. Their report reflects this lack of investigative vigor.

On March 13, 2018, the Committee Minority released an update – "Status of the Russian Investigation" – to inform the American public of the Committee's outstanding areas of inquiry (see Appendix A).¹¹ This status update provides a snapshot of the investigative leads and steps left unaddressed as the Majority moved to shutter the investigation. These include more than 30 key witnesses yet to be interviewed (selected from a more extensive witness list, which is attached at Appendix C); more than 20 entities from which documents have yet to be requested; and more than 15 subpoenas that the Majority never issued or enforced. This followed a November 7, 2017 letter from Ranking Member Schiff to Representative Conaway, attached at Appendix B, in which the Minority outlined over 60 individuals and entities from which the Committee should request or compel cooperation. The Committee subsequently interviewed fewer than half the individuals on the list, many of whom provided incomplete or potentially misleading testimony, and did not request the specified documents.

As the Minority's investigative updates demonstrate, the Majority consistently short-circuited investigative best practices and refused to hear relevant testimony and seek pertinent records. Beginning in the summer of 2017, and accelerating in the fall, the Majority placed increasingly counterproductive restrictions on the investigation:

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- **Witnesses:** The Majority refused to seek testimony from dozens of witnesses proposed by the Minority, as described above. The Majority also failed to call in a significant number of current and former U.S. government officials, as well as outside experts, who could have shed light on Russia's active measures campaign, the U.S. government's response under the Obama and Trump administrations, and policy and legislative recommendations to protect the United States and our elections infrastructure moving forward. This includes numerous Intelligence Community personnel with unique insight who were or are currently in sensitive positions and are engaged in pertinent operational activity, such as the FBI's new Foreign Influence Task Force.

The Majority also made no effort to engage the Special Counsel about interviewing central witnesses in this probe: Michael Flynn, Paul Manafort, Rick Gates, George Papadopoulos, and George Nader. To ensure a credible investigation, particularly on the issues of collusion, financial leverage and money laundering, and obstruction of justice, the Committee must interview these individuals. All but Manafort have entered into cooperation agreements with the Special Counsel, and the Committee should have engaged with his office to determine when interviews could proceed without impairing his work. The Minority made a motion to do so at the time the Majority sought adoption of its report, but the Majority voted against pursuing interviews of these key witnesses. The transcript of the March 22, 2018 Committee business meeting is incorporated in Chapter VI.

The Majority's refusal to seek testimony from George Papadopoulos exemplifies its efforts to impair the investigation. Without interviewing Papadopoulos and seeking relevant records to determine whom on the campaign he would have reported this overture to and assess whether any follow-up occurred, the Committee was unable to examine the precise facts regarding Russia's approach to Papadopoulos, during which they informed him they possessed stolen Clinton-related emails and, crucially, previewed their later dissemination of this information. Only weeks later, the President's son, Donald Trump, Jr., would take a meeting in Trump Tower with other Russian emissaries offering dirt on Clinton. This yawning gap in the investigative record, and many others, fundamentally undermines the credibility of the Majority's findings.

The Majority often rushed to conduct other interviews – particularly with witnesses associated with the Trump campaign or the White House – before the Committee had adequately processed relevant documents, or even received them. Interviews were scheduled with little regard for investigative strategy. For instance, witnesses of particular interest, like Jared Kushner and Michael Cohen, were brought in before the Committee could hear from other foundational witnesses with relevant testimony, prior to receiving important document production, and without sufficient time to conduct a forensic assessment of material in the Committee's possession. The Majority has since rebuffed the Minority's requests to bring these witnesses back, despite commitments that they would do so if necessary.

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Key witnesses, moreover, were scheduled during overlapping timeframes, impairing the ability of Minority Members to attend certain interviews and straining the ability of staff to prepare Members, who were juggling two or even three interviews in a single day. In their haste to finish interviews, the Majority unilaterally conceded to conducting some in other cities or by video-teleconference, rather than in the Committee's spaces, and on days Members had votes and could not easily attend, or could not attend at all. Interviews were conducted in New York with two witnesses who expressed readiness to come to the Committee to be interviewed instead. The interview of Alexander Nix was conducted by video-teleconference, even though he informed the Committee during the interview that he traveled to the United States almost every month and would have been willing to come in — if he had been asked.

As the attached interview transcripts show, the interviews themselves revealed the stark difference in questioning and preparation between the Majority and Minority. Too often, the few Majority Members present asked limited questions, anchored by a superficial inquiry about whether self-interested witnesses were aware of any “collusion, coordination, or cooperation” between the Trump campaign and Russia. The Majority systematically denied Minority requests to compel production of records—electronic, phone, and other material—to assess the veracity of these responses. Taken as a whole, the testimonial record demonstrates the profound disinterest the Majority has exhibited throughout the Russia investigation. Even Mr. Nix, caught on camera in a British undercover news investigation, would ridicule this lack of seriousness of the Majority's abbreviated questioning.¹²

- **Open Hearings:** The Majority held only four open hearings during the course of the investigation. Though limited in number, these hearings served an important educational function. The public heard directly about key aspects of Russia's active measures campaign from FBI Director James Comey on March 20, 2017 (during which he revealed the existence of the FBI counterintelligence investigation), former CIA Director John Brennan on May 23, 2017, former DHS Secretary Jeh Johnson on June 21, 2017, and senior executives from Facebook, Twitter, and Google on November 1, 2017. Unfortunately, the Majority cancelled the hearing with Sally Yates and Director of National Intelligence James Clapper, and refused additional hearings, including about election security. Such a hearing could have served as an opportunity to clarify for the public the extent of Russia's intrusion into our election systems, highlight vulnerabilities in our elections infrastructure, and identify technical and other solutions necessary to protect our country.
- **Document Production:** At the outset of the investigation, the Majority agreed to request documents from key persons and entities, including the Trump Organization, Trump campaign, and presidential transition. In practice, it imposed unnecessarily narrow criteria for cooperation, limiting requests to only particular search terms and to material dating back only to 2015. Despite repeated entreaties, the Majority refused follow-up document requests informed by new information and leads. For instance, the Committee has not received from the Trump campaign and transition all correspondence to and from George Papadopoulos,

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Carter Page, and other key persons of interest, thereby making it impossible to determine whether the Committee has reviewed the complete universe of relevant correspondence. Similarly, the Majority refused to seek documents from over 20 entities, despite repeated Minority requests. During the business meeting in which the Majority sought to release its report, the Minority moved to issue subpoenas to relevant organizations, telecommunications providers, banks and other entities, but the Majority refused on a party line basis (see Chapter VI for transcript of March 22, 2017 business meeting).

- **Compulsory Process:** The Majority's systematic refusal to use the Committee's subpoena power to advance the Russia investigation has weakened Congress' independent investigative powers. Combined with the Trump Administration's disregard for congressional authority and disdain for the investigation, this sets a dangerous precedent for future relations between the White House and Congress.

Contrary to the assertion in the Majority report, Chairman Nunes authorized the majority of the Committee's subpoenas in service of his unilateral counter-investigations into "unmasking," against the FBI and DOJ, and to compel witnesses who the Majority believed had information they could exploit to tar Christopher Steele and his research. By contrast, the Majority opposed more than 15 subpoena requests by the Minority, some of which were necessary to compel testimony in the face of non-existent, overly broad, or farcical claims of executive and attorney-client privilege.

Steve Bannon was the only witness the Majority was willing to subpoena in the face of White House-directed defiance, and even there, the Majority ultimately backed down. Committee Republicans refused to consider a contempt recommendation for Bannon after the White House continued to bar Bannon from key testimony, save for answering "no" to 25 questions furnished by the White House that were meant to cover the entire period from the transition through Bannon's tenure at the White House.

During Bannon's February 15, 2018 follow-up interview, with the subpoena still in effect, Bannon refused to answer questions beyond those authorized by the White House. In response to a question from Ranking Member Schiff as to whether Bannon ever discussed the Russia investigation with either Speaker Paul Ryan or Chairman Nunes, Bannon denied communicating with Speaker Ryan, but claimed he was unauthorized by the White House to answer the question about the Chairman. Under subsequent questioning about his contacts since leaving the White House, Bannon had no choice but to acknowledge communicating with Chairman Nunes, but did not answer questions about the frequency, means, and subject matter of their communications.¹³ Bannon's refusal to answer demonstrates how the White House, in confining pertinent witnesses to carefully-worded questions, sought to mislead the Committee. Although Bannon remained under subpoena, the Majority refused during the interview to order Bannon to answer questions beyond those authorized by the White House. A motion to hold Steve Bannon in contempt was also defeated on a party-line vote (see Chapter VI for transcript of March 22, 2017 business meeting).

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Through January and February 2018, the Majority scheduled only five remaining witness interviews (two of those interviewed, Steve Bannon and Corey Lewandowski, would appear twice) and signaled that they would not invite additional witnesses to testify. The Majority also opposed repeated Minority efforts to hold a Committee-wide Members meeting to discuss the status of the investigation, seek common ground, and develop a joint plan to work towards a bipartisan report. Instead, the Majority consumed the Committee's time and resources by initiating a never-before used parliamentary process to release to the public a profoundly misleading, now-debunked classified memorandum alleging serious FISA-related abuses by DOJ and FBI in the course of the FBI's counterintelligence investigation. In response, the Minority wrote a rebuttal memorandum (see Appendix F), which the Majority and the White House delayed releasing for weeks.¹⁴

Progress and Outstanding Lines of Inquiry

The Majority's actions have, at this stage, deprived the Committee and country of a credible and thorough investigation. Even under these constraints, however, the Minority has been able to make significant progress in understanding what occurred during the 2016 U.S. elections and identifying new leads as well as persons and entities of interest. The Minority has amassed significant material that helps clarify, among other investigative threads:

- The intelligence information, sources and methods, and analysis underlying the January 6, 2017 Intelligence Community Assessment;
- Russia's covert cyber efforts preceding and during the elections, including its hacking and dissemination operation aimed at weaponizing stolen information for political gain;
- Russia's intelligence operations during the election, in which it used intermediaries and cutouts to probe, establish contact, and possibly glean valuable information from a diverse set of actors associated with President Trump and his campaign; and
- Russia's sophisticated and well-funded online and social media operation, which exploited platforms such as Facebook, Twitter, and Google, but appears to have also taken advantage of other mediums, such as Reddit, Tumblr, Snapchat, and Imgur.

As the Minority's March 13 Status Update makes clear (see Appendix A), however, significant questions remain that require greater investigation. Although important evidence has been found on the issues of collusion and obstruction, much work remains on these and other vital lines of inquiry and key unanswered questions:

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- Whether and to what extent certain U.S. persons, including individuals associated with then-candidate Trump, his companies, and his campaign, knew of, abetted, or were otherwise involved in Russia's active measures, including its anonymous dissemination efforts;
- The precise circumstances of and reasons for contact by Trump associates with Russian actors and intermediaries in the lead up to, during, and immediately following the election, including communications that may have occurred surrounding and during these encounters and why President Trump and associates have sought to deny, cover up, and deceive Congress and the public about these contacts;
- Whether and to what extent Russia – directly or through proxies, financial institutions, or other state or non-state actors – exploited financial transactions or other dealings to launder funds, gain financial leverage, or otherwise influence and benefit Trump or his associates, including close advisors such as Jared Kushner;
- Contact and coordination between Trump transition officials and Russia after the election, including in response to the Obama Administration's decision to impose new sanctions to punish Russia for its election interference, and the Administration's false statements about these contacts, including the precise circumstances that led Vice President Mike Pence to misrepresent Flynn's activities;
- Efforts by President Trump and his associates to interfere with, obstruct or discredit the FBI and then the Special Counsel's investigation, including through pressure on senior law enforcement officials to drop investigations or make exonerating public representations; by firing FBI Director Comey and issuing instructions to fire Special Counsel Mueller; and crafting and disseminating statements intended to mislead investigators and the public, and possibly suppressing evidence that would contradict revelations about contact with Russian actors;
- The full extent of Russia's infiltration of state-based voter systems, identification of vulnerabilities that Russia exploited in 2016, and persistent vulnerabilities that require effective remedial measures, and practical safeguards to harden our elections infrastructure.

Congress has an obligation to find out the truth and inform the American people. The Committee's Minority therefore remains fully committed to conducting this investigation as originally envisioned, leaving no stone unturned in determining the facts of Russia's interference in the 2016 U.S. elections and the steps we must take to ensure the future integrity of our democratic process. To the best of our ability, we will continue to do so, until such time as the full Congress once again lives up to its oversight responsibilities.

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II. THE MAJORITY'S RUSSIA REPORT FINDINGS

The Majority's report lists 44 key findings across five chapters: *Russian Campaigns in Europe*; *Russia Attacks the United States*; *America Reacts*; *Campaign Links to Russia*; and *Intelligence Community Assessment Leaks*. Many of the findings are misleading, at odds with the investigative record, and crafted to advance a political narrative beneficial to President Trump. The report's underlying analysis, moreover, is rife with significant inaccuracies, mischaracterizations, vital omissions of fact and context, and often risible attempts to explain away inconvenient truths discovered in the course of the Committee's investigation.

Rather than strain to debunk and fact-check every misleading assertion in the Majority report, these Minority Views instead address two of the report's most unsupported and controversial claims:

- That the Intelligence Community erred in its core judgment that Russian President Vladimir Putin aspired to help candidate Donald Trump; and
- That the Committee found no evidence of Trump campaign collusion with Russia.

Putin's Preference for Trump

January 2017 Intelligence Community Assessment

Despite the Majority's inclusion of a significant body of Intelligence Community reporting on Russian interference in Europe, and its claim to have supported the conclusions of the January 6, 2017 declassified Intelligence Community Assessment (ICA) on Russian interference in the U.S. election,¹⁵ the report concludes, without offering evidence, that analytic "tradecraft failures" provide reason to doubt a key assessment in the ICA – that Russia "aspired to help [Trump's] election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him."¹⁶ The Majority previewed this conclusion in a one-page description of its report, which it released publicly on March 12, 2018 to severe criticism. The press release stated that Committee Republicans concurred with "the Intelligence Community Assessment's judgments, except with respect to Putin's supposed preference for candidate Trump."

Over the course of substantively revising its report in the days prior to the March 22, 2018 business meeting, the Majority modified this finding and dropped an explicit reference to the ICA's judgment about Putin's preference for Trump. In the first draft provided to the Minority on March 13, 2018, the Majority argued that the ICA's "judgements on Putin's strategic intentions raise tradecraft concerns." In the March 21, 2018 draft provided on the eve of the business meeting, this finding was changed to state that the ICA's "judgements on Putin's strategic intentions *did not employ proper analytic tradecraft*" (emphasis added). Moreover, the March 21, 2018 version specifically omits a previously included quote from the ICA that made clear that the Majority took issue with the ICA's judgment that Putin aspired to help candidate

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Trump. Instead, the revised section only refers vaguely to “a key assessment on Putin’s strategic intentions.”¹⁷

Neither the report, nor the press release, provide any evidence or analysis as to why the Majority came to this conclusion—a finding at odds with the Intelligence Community, the House Intelligence Committee Minority, the Majority and Minority leaders of the Senate Intelligence Committee, and the Special Counsel.¹⁸

Upon a thorough review of the underlying source material that informed the ICA’s findings, briefings with the analysts and senior leaders who authored and reviewed the report, and classified and unclassified hearings with directors of the agencies responsible—CIA, NSA, and FBI—the Minority has found no evidence that calls into question the quality and reliability of the ICA’s underlying reporting and key judgments, including the assessment about President Putin’s desire to help candidate Trump. The Minority likewise has found no reason to doubt the subject matter expertise and analytic rigor of the ICA’s authors, nor the review standards and process leading to the assessment’s production and release.

Revelations since the release of the ICA in January 2017 have only strengthened our agreement with its assessment of Putin’s motives. Most recently, the Special Counsel Office’s February 16, 2018 indictment of the St. Petersburg-based and Kremlin-linked Internet Research Agency (IRA) and 12 of its associates makes clear that, “by early to mid-2016, Defendants’ operations included supporting the presidential campaign of then-candidate Donald J. Trump (“Trump campaign”) and disparaging Hillary Clinton.”¹⁹

The Majority notes in its Russia report that a more detailed accounting of its finding disagreeing with the ICA will be forthcoming later in 2018. We will carefully review the Majority’s secondary report, which it failed to share with the Minority prior to adoption of its primary report, once received. However, having reviewed the same body of intelligence as the Majority and coming to no such disagreement with the IC, we are left to presume that the Majority has sought release of this finding publicly, while withholding from the Minority and the public the underlying analysis it claims informs its conclusion, in an attempt to sow doubt about the IC’s credibility and reliability on this matter and perhaps to appeal to President Trump.

Russia’s Social Media Campaign

Consistent with its attempt to undermine the ICA assessment on Putin’s support of Trump, the Majority’s analysis reflects a consistent blind spot about Russia’s social media campaign—and its clear preference for Donald Trump. For instance, it acknowledges RT’s (formerly Russia Today) role as a propaganda vehicle for the Russian government, and its effort to weaken Clinton. However, the Majority persistently ignores Russian-directed activity in support of Trump, as this report excerpt demonstrates:

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“RT was critical of presidential candidates from both major parties but was consistently critical of candidate Clinton through the election. RT’s attacks against candidate Clinton were wide-ranging, including the insinuation that the Clinton family were criminals. RT also used advertising to promote material leaked by Russian intelligence, which targeted candidate Clinton and the Democratic Party.”²⁰

As Facebook and Twitter material released to the public by the Committee illustrates, Russia pumped material into the online ecosystem that promoted Trump over Clinton. The Special Counsel’s indictment of the Russia-based IRA outlines the same finding: “Defendants posted derogatory information about a number of candidates, and by early to mid-2016, Defendants’ operations included supporting the presidential campaign of then-candidate Donald J. Trump (“Trump Campaign”) and disparaging Hillary Clinton.”²¹

Also absent from the Majority’s social media findings are updates provided by the companies themselves since the Committee’s November 1, 2017 open hearing. For example, Twitter informed Congress on January 19, 2018 that it had “identified an additional 1,062 accounts that appear to be IRA-linked,” bringing the total to 3,814 handles—not the 2,752 number listed in the Majority report.²² That update also revealed that Russian-linked automated accounts retweeted the @realDonaldTrump Twitter handle nearly ten times as much as the @HillaryClinton handle from the period of September 1, 2016 to November 15, 2016—another data point that underscores Russian intent to boost the viability of candidate Trump’s campaign.²³

The Majority also seeks to downplay the scope and impact of Russia’s malign activities against Clinton on Facebook. The report paints Russia’s online messaging as generally divisive and implies broadly equal criticism of both presidential candidates. This cursory analysis of activity on Twitter, Facebook, and Google fails to mention the trove of online activity that the Committee has received from the companies that highlight how Russian online operatives explicitly sought to damage Clinton and boost Trump, consistent with the ICA assessment and the Special Counsel’s indictment. For instance, the Minority has highlighted Facebook and Instagram ads that promoted pro-Trump rallies in Florida before the election, which aligns squarely with the Special Counsel’s own findings.²⁴

Other ads in production received by the Committee reinforce the pro-Trump tenor of the overall Russian IRA online campaign: one fake “Being Patriotic” page described Clinton as the “main hardliner against cops” and said that “[a]mong all the candidates Donald Trump is the one and only who can defend the police from terrorists.”²⁵

Moreover, the Majority fails to appreciate that many of the Facebook pages and ads that appeared at first to be unrelated to specific candidates or focused on socio-political issues or discrete populations (such as African- or Muslim-Americans), at times used language, images, and graphics intended to purposefully associate candidate Clinton with particular groups in an effort to reinforce assumptions and prejudices among potential voters who harbored suspicions and concerns about her.^{26 27}

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Russian exploitation of other social media platforms, such as Reddit, Tumblr, Imgur, or Snapchat, remain unexplored by the Majority, despite classified and unclassified intelligence indicating the need for further inquiry. As recently as March 23, 2018 – a day after the Majority voted to end its investigation – Tumblr publicly acknowledged it had “uncovered 84 Tumblr accounts linked to the Russian government through the Internet Research Agency, or IRA.”²⁸ The platform has published a list of these accounts and has committed to add to that registry if it discovers more Russian foreign influence-linked users moving forward.²⁹ This is but one example of how the Majority neglected to pursue other valid leads about the activities of Russian operatives online, to the clear detriment of compiling a comprehensive accounting of the scope and depth of Kremlin-directed activities on social media platforms.

In a final effort to obscure Russia’s social media operation in support of Trump, the Majority report argues that “Russian malign influence activities on Facebook were significant but they were not well-funded or large-scale operations relative to the overall scope of election-related activity on these platforms.”³⁰ In its February 16, 2018 indictment, the Special Counsel revealed that the IRA’s operation was in fact well-funded and organized. The Committee, moreover, was unable to fully investigate and determine the financial backing, scope, and reach of Russia’s covert effort. This is an area that will require greater investigation.

As detailed below, Russia’s hacking of Democratic National Committee (DNC) and Clinton-related emails, and the weaponization of this information through anonymous dissemination, served the very objective identified in the ICA: to help Trump and hurt Clinton.

Moreover, even as the Majority shutters its own investigation into Russia’s meddling, new developments have emerged related to Cambridge Analytica, which ran the Trump campaign’s digital media operation. On March 17, 2018, news organizations in the United States and United Kingdom began publishing a series of reports detailing the role of Cambridge Analytica in the 2016 U.S. election and the misappropriation of Facebook data of more than 50 million users. This data reportedly provided the basis for the algorithms underlying Cambridge Analytica’s election support to U.S. political candidates, thereby allowing it to exploit the private social media activity of a large swath of the American electorate and develop techniques that potentially underpinned its work on President Trump’s campaign.³¹

These revelations are in stark contrast to the testimony of Cambridge Analytica CEO Alexander Nix.

QUESTION: Has Cambridge Analytica acquired bulk data through Facebook?

*MR. NIX: No, it has not.*³²

QUESTION: Did Cambridge Analytica use any other third-party data that was not purchased?

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*MR. NLX: As far as I'm aware, it did not.*³³

In addition to Nix's questionable testimony, the new reports raise questions about potential Russian access to and use of this data. Cambridge Analytica may have sought business in Russia and with sanctioned Russian entities, such as Lukoil, and the researcher the company worked through to access the Facebook data appears to have research links at a Russian state university.³⁴ This is an area that the Minority will focus on intensively in the next phase of its investigation.

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III. COLLUSION

What We Know

One year into the Russia investigation, the Minority has obtained a body of classified and unclassified evidence pointing to an unprecedented effort by the Russian government – consistent with Russian intelligence tradecraft – to gain entrée to and influence with individuals associated with the Trump campaign, including the candidate himself. Also unprecedented was the willingness by Trump campaign officials to accept those overtures.

The Committee has identified numerous meetings and contacts between Trump officials – from the campaign, transition, and administration – and representatives of the Russian government dispatched by the Kremlin. These meetings included repeated offers of assistance, a willingness by the campaign to accept that assistance, and even a conspiracy to undermine Obama Administration sanctions responding to Russia's election interference. The pattern of deception surrounding these meetings – first denying they took place; then, when discovered, denying their content; and then denying their significance – suggests a consciousness of wrongfulness, if not illegality.

The following unclassified overview addresses only some of these contacts and does not incorporate important classified information, including sensitive intelligence, that has otherwise informed the Minority's analysis.

April 2016 – George Papadopoulos Email Hack Revelations

Early in the Presidential race, Russia made one of its initial approaches to the Trump campaign through one of candidate Trump's five original foreign policy advisors, George Papadopoulos, who Trump had described publicly as an "excellent guy." In their approach to Papadopoulos, the Russians used common tradecraft and employed a cutout—a Maltese professor named Joseph Mifsud. In late April 2016, Mifsud informed Papadopoulos that the Kremlin had "dirt" on Hillary Clinton in the form of "thousands of emails," and, crucially, previewed the Russians' release of this information. The early timing of this approach is significant; in April of 2016, not even the DNC or Clinton campaign appears to have been aware that the Russians were in possession of private emails.

The Russians followed up this initial approach with additional meetings and overtures. On or about April 18, 2016, Mifsud introduced Papadopoulos to a Russian individual connected to the Ministry of Foreign Affairs (MFA). Papadopoulos and the MFA contact engaged in multiple conversations by Skype and email over the next several weeks, attempting to link Trump campaign officials and Russian officials. In early May, the person connected to the Russian MFA informed Papadopoulos that MFA officials were open for cooperation, and suggested a meeting between Papadopoulos and the Russian government's North American Desk in Moscow.

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Papadopoulos reported this communication to a “High-Ranking” campaign official to seek guidance on how the Trump campaign wished to proceed. The next day, Papadopoulos spoke by phone with the “Campaign Supervisor,” and, following that call, forwarded the email from the MFA connection to the Campaign Supervisor – adding to the top of the email “Russia updates.”³⁵

From mid-June through mid-August 2016, Papadopoulos pursued an “off the record” meeting between Trump campaign officials and officials from President Putin’s office as well as the Russian MFA. On about June 19, 2016, Papadopoulos emailed the “High-Ranking” campaign official with the subject line “New message from Russia”: “The Russian ministry of foreign affairs messaged and said that if Mr. Trump is unable to make it to Russia, if a campaign rep (me or someone else) can make it for meetings? I am willing to make the trip off the record if it’s in the interest of Mr. [T]rump and the campaign to meet specific people.”³⁶ After several weeks of additional communications discussing a potential “off the record” meeting with Russian officials, in mid-August 2016, the “Campaign Supervisor” informed Papadopoulos, “I would encourage you” and another campaign foreign policy advisor to “make the trip[], if it is feasible.”³⁷

The Majority portrays Papadopoulos as an inconsequential campaign volunteer – a “coffee boy,” according to campaign officials – who made only minor contributions to the campaign, and downplays the significance of Papadopoulos’s contacts with Kremlin-linked Mifsud and a connection to Russia’s Ministry of Foreign Affairs. This characterization of Papadopoulos contradicts public reports, testimony, and documents produced to the Committee, which indicate that he was involved in coordinating meetings between candidate Trump and foreign leaders during the campaign and the transition, and communicated with high-level Trump associates throughout.

For example, during the 2016 Republican National Convention in Cleveland, Papadopoulos spoke at a foreign policy panel hosted by the American Jewish Committee. Other program panelists included Senator Bob Corker and Representatives Tom Marino and Ted Yoho.³⁸ Similarly, a foreign policy advisor on the Trump campaign testified that Papadopoulos was directly involved in arranging a meeting between then-candidate Trump and Egyptian President Sisi in September 2016.³⁹ This witness also indicated that Papadopoulos was directed by the campaign to engage in outreach to “Orthodox Christian” constituencies across the U.S. as part of the campaign’s get out of the vote effort prior to election day.⁴⁰

The Majority claims that no witness “shed light on the provenance of the emails” offered by the Kremlin-linked actor.⁴¹ In the same section, the Majority claims that no witness “clarified] that [Kremlin-affiliated] Mifsud was referring to emails actually stolen by the Russians (as opposed to, for example, emails missing from Clinton’s private server).” The Majority also states that it found no evidence that Papadopoulos told anyone affiliated with the Trump campaign about Mifsud’s claims that the Russians had ‘dirt’ on candidate Clinton.”⁴²

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The Majority, in fact, has refused to engage the Special Counsel's office to seek Papadopoulos' testimony before the Committee. It opposed pursuing his production of documents, and turned down requests to interview campaign officials that Papadopoulos interacted with and may have communicated with about the Russian overture. The Majority also refused to interview other individuals who may be knowledgeable about Papadopoulos's receipt of information on the stolen emails, including his wife, Simona Magiante. By failing to take these natural investigative steps, the Majority has made clear that it is not interested in determining "the provenance of the emails," with whom on the campaign Papadopoulos shared this information, or any other information that might implicate the Trump campaign in collusion with the Russians. You cannot find what you do not seek.

The Majority's suggestion that the emails to which Mifsud referred might be those connected to Hillary Clinton's private server, instead of those stolen from the DNC, is equally disingenuous. The FBI determined in 2016 that there is no evidence to indicate that Clinton's private email server was ever successfully hacked.⁴³ More significant, only weeks after Papadopoulos learned that the Russians had stolen emails and previewed their dissemination, the Russian government, through WikiLeaks and other intermediaries, began their anonymous release of these materials.

Papadopoulos's foreknowledge of the Russian dissemination of the stolen emails raises questions about the extent to which specific individuals within the campaign sought to or did collude, conspire, or coordinate with Russia in the campaign against the 2016 U.S. elections. The Committee has an obligation to determine what precisely the Russians relayed to Papadopoulos, how they relayed it, and, most important, with whom on the campaign Papadopoulos shared this information. The Majority failed to do so, and made no effort to interview Papadopoulos after he agreed to cooperate with authorities.

Not long after establishing a communication channel with Papadopoulos, the Kremlin reached out to the highest levels of the Trump campaign. Once again, using standard Russian tradecraft, the Kremlin approached the candidate through an intermediary – a Russian oligarch close to Putin, Aras Agalarov – to facilitate a meeting in Trump Tower with the promise of "dirt" on Hillary Clinton. A Russian attorney would be dispatched from Moscow for the meeting with the President's son, Donald Trump Jr., son-in-law, Jared Kushner, and campaign manager, Paul Manafort, at a critical moment in the campaign, when their time was at an absolute premium. Whether Trump Jr.'s eagerness for the meeting, his acceptance of the offer of Russian government help ("love it"), and disappointment that better "dirt" was not produced at the meeting, was informed by the information George Papadopoulos obtained that the Russians did indeed have "dirt" to offer, or other signals, remains a matter still under investigation by the Minority.

May 2016 – National Rifle Association (NRA) Connections

Just weeks after an intermediary for the Russian government told Papadopoulos that the Russians had "dirt" on Hillary Clinton in the form of "thousands of emails," a senior Russian official

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approached the Trump campaign through the National Rifle Association (NRA) to try and arrange a meeting between candidate Trump and President Putin. The Kremlin-linked individual appears to have used the group to befriend and establish a backchannel to senior Trump campaign associates through their mutual affinity for firearms – a strategy consistent with Russian tradecraft.

Alexander Torshin, the deputy governor of the Central Bank of Russia, with the assistance of his deputy, Maria Butina, have used their affiliation with the NRA to cultivate relationships with Russia-friendly politicians in the United States. In 2015, a delegation from the NRA traveled to Russia at the invitation of Torshin and Butina's organization, the Right to Bear Arms. An intermediary to the Trump campaign and longtime NRA member, Rick Erickson, was part of that delegation, and reportedly maintains close ties with Torshin and Butina.

On May 10, 2016, Erickson reached out to Rick Dearborn, a longtime senior advisor to Jeff Sessions and a senior campaign official:

*"Switching hats! I'm now writing to you and Sen. Sessions in your roles as Trump foreign policy experts / advisors. [...] Happenstance and the (sometimes) international reach of the NRA placed me in a position a couple of years ago to slowly begin cultivating a back-channel to President Putin's Kremlin. Russia is quietly but actively seeking a dialogue with the U.S. that isn't forthcoming under the current administration. And for reasons that we can discuss in person or on the phone, the Kremlin believes that the only possibility of a true re-set in this relationship would be with a new Republican White House."*⁴⁴

The email goes on to say that Russia planned to use the NRA's annual convention to make "first contact" with the Trump campaign and that "Putin is deadly serious about building a good relationship with Mr. Trump. He wants to extend an invitation to Mr. Trump to visit him in the Kremlin before the election."⁴⁵

Dearborn communicated this request on May 17, 2016 to the highest levels of the Trump campaign, including Paul Manafort, Rick Gates, and Jared Kushner. The effort to establish a back-channel between Russia and the Trump campaign included a private meeting between Torshin and "someone of high rank in the Trump Campaign."⁴⁶ The private meeting would take place just prior to then-candidate Trump's speech to the NRA. As explained in Dearborn's email, such a meeting would provide Torshin an opportunity "to discuss an offer he claims to be carrying from President Putin to meet with DJT. They would also like DJT to visit Russia for a world summit on the persecution of Christians at which Putin and Trump would meet."⁴⁷

Despite numerous questions raised by Committee testimony and document production regarding Russia's potential use of the NRA as part of its larger influence operations, the Majority report focuses exclusively on the attendance of Trump Jr. at the annual convention in Kentucky in May 2016. The Majority's finding on this topic affirms that Trump Jr. met with a Russian government

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official, Alexander Torshin, at the event, but conveniently concludes that “the Committee found no evidence that the two discussed the presidential election.”⁴⁸ As with many findings in the report, this relies solely on the voluntary and self-interested testimony of the individual in question, in this case Trump Jr. The Majority refused multiple requests by the Minority to interview witnesses central to this line of inquiry, including Torshin, Butina, Erickson, and others.

The Majority report outlines conversations between Trump campaign personnel and associates in planning the meeting but makes no judgments about the questionable circumstances under which NRA associates wished to help the Trump campaign set up a “back-channel to President Putin’s Kremlin”⁴⁹ through Torshin and Butina. It also ignores significant outstanding questions about individuals who sought to set up this backchannel, including why Torshin and Butina were interested in connecting the Trump campaign to Putin, what they sought to get out of that connection, why they enlisted the support of NRA colleagues, and whether others in the campaign were communicating with Russia through the NRA.

According to press reports that emerged after the Majority announced the end of its investigation, the Federal Election Commission has launched a preliminary investigation into whether the NRA accepted illegal contributions from Russians in support of the Trump Campaign.⁵⁰ The NRA reportedly spent a record \$21 million to support Trump’s campaign and another \$14 million to attack Hillary Clinton. Despite this open question, the Majority refused to investigate whether Russian-linked intermediaries used the NRA to illegally funnel money to the Trump Campaign, to open lines of communication with or approaches to Trump or his associates, and how those approaches may have informed Russia’s active measures campaign as it unfolded throughout 2016.

Cultivation of the Agalarov-Trump Relationship

By June 2016, Donald Trump Jr. and other senior Trump campaign officials signaled openness to the type of support Russia had previewed to George Papadopoulos several weeks earlier. In early June, the Russians capitalized on then-candidate Trump’s friendship with Russian oligarch Aras Agalarov, who arranged for a Russian delegation offering “dirt” on Trump’s opponent to meet with Trump Jr. at Trump Tower.

Agalarov had cultivated a friendship with Trump since their joint venture to hold the 2013 Miss Universe pageant in Moscow. The immediate fruit from the Miss Universe pageant for Mr. Trump was the prospect of finally building a Trump Tower in Moscow. While the business opportunity failed to materialize, the Agalarovs continued to nurture and cultivate a personal and professional relationship with the Trumps.

The trust between the Trump family and the Agalarov family appears to have deepened over the years. Evidence obtained by the Committee suggests a particularly close familiarity between Trump Jr and Aras’ son, Emin Agalarov, which appears to have transcended professional

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bounds.⁵¹ This documentary evidence contrasts with Trump Jr.'s testimony in which he attempts to minimize the relationship.⁵²

Aras and Emin Agalarov expressed strong support for Trump's candidacy throughout the election – starting the day Trump announced his candidacy⁵³ – and offered to serve as an intermediary with President Putin.

At key campaign milestones, the Agalarovs sent notes wishing good luck, conveying congratulations, and offering gifts to Donald Trump. These communications generally occurred through Rob Goldstone, Emin Agalarov's business partner, who then emailed them to Rhona Graff, candidate Trump's trusted personal assistant. On each occasion, Graff made sure that Mr. Trump saw these communications, and made it clear that doing so was "*important*." Mr. Trump replied more than once to these gestures with hand-written notes of his own.⁵⁴ For example, on July 24, 2015, Goldstone emailed Graff asking if then-candidate Trump would be tempted to come to Moscow (for Aras Agalarov's 60th birthday) for a "meeting with President Putin which Emin would set up."⁵⁵ Later, on the eve of Super Tuesday in late February 2016, Agalarov congratulated then-candidate Trump and offered "his support and that of many of his important Russian friends and colleagues – especially with reference to U.S./Russian relations."⁵⁶

Soon after election night – at 3:00 am on November 10, 2016 – Emin Agalarov texted Trump Jr.:

*"Don!!! Amazing run and a glorious victory!!!! Congratulations to you and your dad, we are proud and happy for you !!!!! Always at your disposal here in Russia [] Emin and Aras Agalarov@."*⁵⁷

June 9, 2016 – Trump Tower Meeting

The Agalarovs appear to have seized on Trump's potential presidency as a means of pursuing one of Putin's top priorities: lifting U.S. sanctions on Russia imposed by the Magnitsky Act. The June 9, 2016 meeting at Trump Tower proved to be one entrée in this regard.

On June 9, 2016, Trump Jr., Jared Kushner, and Trump campaign chairman Paul Manafort participated in a meeting in Trump Tower in New York, with a Russian government attorney and others to receive "official documents" from the Russian government that was represented to be part of the Russian government's support for Donald Trump.

The initial email offer was sent to Trump Jr. by Rob Goldstone at 10:36 a.m. on June 3:

"The Crown prosecutor of Russia [Yuri Chaika, Russian Prosecutor General] met with his father Aras [Agalarov] this morning and in their meeting offered to provide the Trump campaign with some official documents and information that would incriminate Hillary and her dealings with Russia and would be very useful to your father. This is obviously

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very high level and sensitive information but is part of Russia and its government's support for Mr. Trump—helped along by Aras and Emin [Agalarov].” Goldstone also offered to “send this info to your father via Rhona, but it is ultra sensitive so wanted to send to you first.”⁵⁸

As explained to Trump Jr., the clear purpose of this meeting was to provide information from the Russian government that was damaging to then-candidate Trump’s opponent, explicitly as part of the Russian “government’s support for Mr. Trump.” Trump Jr. acknowledged as much in his testimony before the Committee:

MR. SCHIFF: But she [Veselnitskaya] started off the meeting discussing this [donors of Hillary Clinton]. This was the first topic that she raised.

MR. TRUMP JR.: That’s my recollection, yes.

MR. SCHIFF: Which would indicate that she understood the purpose – ostensible purpose of the meeting as you did, which was to provide derogatory information about Clinton.

MR. TRUMP JR.: To my understanding, yes.⁵⁹

Less than 20 minutes after receiving Goldstone’s email about the offer of dirt on Clinton from the Russian government, Trump Jr replied, “*if it’s what you say I love it especially later in the summer*” [emphasis added]. Trump Jr was “on the road” and suggested a call with Emin Agalarov directly.⁶⁰ Trump Jr’s response to this offer indicates an eagerness to obtain the information.

Three days later, on June 6, 2016, Trump Jr. and Goldstone exchanged a flurry of back and forth messages to arrange for a call between Trump Jr. and Emin Agalarov.

- At 12:40 pm, Goldstone emailed Trump Jr.: “Let me know when you are free to talk with Emin by phone about this Hillary info – you had mentioned early this week so wanted to try to schedule a time and day. Best to you and family.”
- At 3:03 pm, Trump Jr. emailed Goldstone, “Rob could we speak now?”
- Approximately thirty minutes later, Goldstone emailed Trump Jr.: “Let me track him down in Moscow[.] What number [can he] call?”
- One minute later, Trump Jr. replied to Goldstone and provided his cellphone number.
- At 3:43 pm, Goldstone emailed Trump Jr.: “Ok he’s on stage in Moscow but should be off within 20 minutes so I am sure can call.”⁶¹

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Trump Jr.'s phone records show two calls to and from the same Russian number on June 6, 2016.⁶² The first call occurred at 4:04 pm on June 6, 2016 – just 21 minutes after Goldstone emailed Trump Jr. to say that Emin Agalarov was “*on stage in Moscow but should be off within 20 minutes so I am sure can call.* [emphasis added]”⁶³ At 4:38 pm, Trump Jr. emailed Goldstone, “Rob, thanks for the help.”⁶⁴

This documentary evidence indicates that a call likely took place between Trump Jr. and Emin Agalarov. During his interview, Trump Jr. confirmed that the Russian phone number belonged to Agalarov, though he claimed to not recall whether he actually spoke with him. Rather, despite one of the two calls reflecting a two-minute connection, Trump Jr. suggested that Agalarov may have left voice messages.⁶⁵

The phone records also show a “blocked” number at 4:27 pm, between the two calls to and from Emin Agalarov. Trump Jr. claimed he did not know who was associated with the blocked number.⁶⁶ While the Committee has not pursued leads to determine who called Trump Jr. at this crucial time from a blocked number, Corey Lewandowski told the Committee that Mr. Trump’s “primary residence has a blocked [phone] line.”⁶⁷ Despite the Minority’s repeated efforts to obtain home or cell phone records for then-candidate Trump to determine whether the blocked call was Trump Jr.’s father, the Majority was unwilling to pursue the matter.

The following day, on June 7, 2016, Trump Jr. and Goldstone arranged for the meeting to take place at 3:00 pm on June 9. Within an hour of confirming the meeting, Trump Jr. emailed Goldstone, “will likely be Paul Manafort (campaign boss) my brother in law and me.”⁶⁸ The following day, on June 8, 2016, Goldstone asked Trump Jr. if they could shift the meeting back an hour, to 4:00 pm instead of 3:00 pm. Trump Jr. then forwarded the entire email exchange to Jared Kushner and Paul Manafort with the message “meeting got moved to 4 tomorrow at my offices.” Manafort confirmed his attendance within the hour.⁶⁹

Also on June 7, just as Trump Jr. and Goldstone confirmed the Friday meeting, candidate Trump secured the Republican nomination. In public remarks after the final Republican primaries, Trump previewed his intention to give a speech about the Clintons the following week: “I am going to give a major speech on probably Monday of next week and we’re going to be discussing all of the things that have taken place with the Clintons. I think you’re going to find it very informative and very, very interesting.”⁷⁰

Two days later, candidate Trump’s eldest son, son-in-law, and campaign manager would meet with the delegation, led by a Russian attorney with close ties to Russian officials, who had promised damaging information on his opponent. The same day, candidate Trump tweeted about Hillary Clinton’s alleged “missing” emails – only the second time he had done so by this point: “How long did it take your staff of 823 people to think that up—and where are your 33,000 emails that you deleted?”⁷¹

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The delegation to Trump Tower included:

- *Natalia Veselnitskaya*: The Russian government attorney dispatched from Moscow for the meeting is reportedly a close associate of Russia's chief prosecutor, Yuri Chaika. Chaika and Veselnitskaya have campaigned extensively in recent years to overturn the Magnitsky Act, a top Putin foreign policy objective. While many outstanding questions remain as to Veselnitskaya's involvement in the June 9 meeting, the Majority has repeatedly denied requests by the Minority to bring her in for an interview, despite her publicly-acknowledged willingness to speak to U.S. congressional investigators.⁷²
- *Rinat Akhmetshin*: A Russian-American and former Soviet intelligence officer, Akhmetshin is a registered lobbyist and has conducted lobbying activities on behalf of Veselnitskaya's organization.
- *Irakly ("Ike") Kaveladze*: Kaveladze is the vice president of Aras Agalarov's company Crocus Group International. Kaveladze has worked for Agalarov for more than 30 years. He attended the meeting as Aras Agalarov's representative.
- *Rob Goldstone*: A publicist who represented Emin Agalarov, Goldstone is a close associate of the Agalarov family, and appears to have acted as Aras Agalarov's intermediary with Donald Trump, via Trump's assistant Rhona Graff and Trump Jr.
- *Anatoli Samochornov*: Samochornov is a Russian-American who worked for many years as an interpreter for a wide range of organizations, including the U.S. State Department. He served as Veselnitskaya's interpreter during the meeting.

By most accounts, the meeting lasted approximately 20 minutes. While accounts of the meeting varied among the attendees with whom the Committee spoke, most acknowledged that the Magnitsky Act was raised.

MR. SCHIFF: During the course of your meeting in Trump Tower, were the sanctions imposed [by] the Magnitsky Act discussed?

MR. TRUMP JR.: I believe they were. Generally speaking, as part of the Magnitsky Act, this sounds reasonably familiar, so –

MR. SCHIFF: And what do you recall what was discussed about sanctions?

MR. TRUMP JR.: I don't recall much, only that the sanctions, I guess, were what prompted Russia shutting down the adoption program for the U.S.

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MR. SCHIFF: And did Ms. Veselnitskaya make it clear that the Russians were hoping that if Mr. Trump were successful, he would eliminate those sanctions?

MR. TRUMP JR.: I don't know if she said that, but it was apparent that she was lobbying for the removal of sanctions.⁷³

The Committee spoke with two of the three Trump campaign officials who attended the meeting – Jared Kushner and Donald Trump Jr. Both expressed dissatisfaction with the meeting, in apparent disappointment at not having received the derogatory information on Clinton that had been promised. Trump Jr. described the meeting as a “bait-and-switch”:⁷⁴

MR. SCHIFF: Right. How much of the time was spent discussing that [the Magnitsky Act], and how much of the time was spent discussing dirt on Secretary Clinton?

MR. TRUMP JR.: Again, the majority was really split up between – really started off as Russian adoption, which was sort of the, you know, what I perceive to be sort of the feel-good segue to probably lobbying for something as it related to that Act. So, you know, I'd say we spent less than, you know, 5 minutes of the 20 minutes, again, speaking through a translator about the quote/unquote “dirt”, and the rest was a quick segue, bait-and-switch, whatever you want to call it, to speak about Russian adoption and the Magnitsky Act.⁷⁵

Most attendees acknowledged the meeting was a waste of time. Trump Jr. likely would not have taken the meeting had he not hoped to get dirt on Hillary Clinton:

MR. SCHIFF: Well, you said it was essentially a bait-and-switch and a waste of time, did you not?

MR. TRUMP JR.: I did.⁷⁶

One member of the delegation recalled Trump Jr. asking whether Veselnitskaya had incriminating information on Hillary Clinton:

MR. SCHIFF: And do you recall Don Jr. asking whether Veselnitskaya had anything on Hillary Clinton?

MR. KAVELADZE: Yes.⁷⁷

Trump Jr. also indicated that he likely would not have invited Manafort and Kushner had he known what the Russian lawyer had actually planned to discuss:

MR. SCHIFF: But it's fair to say you were hoping for something more useful than what you got?

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MR. TRUMP JR.: That's fair.

MR. SCHIFF: And is it fair to say you wouldn't have invited the campaign chairman to the meeting if all you knew you were going to get was what they provided in terms of derogatory information?

MR. TRUMP JR.: In hindsight, that's probably accurate, but I don't know.

MR. SCHIFF: And in hindsight, you wouldn't have invited Mr. Kushner if you weren't going to get anything more useful than that?

MR. TRUMP JR.: I may not have. I don't know.

MR. SCHIFF: And it's also fair to say that you were hoping that the derogatory information you were going to get was going to be useful to your campaign?

MR. TRUMP JR.: I imagine so.⁷⁸

Immediately after the meeting, the delegation proceeded to the bar in Trump Tower to discuss the meeting. According to Kaveladze, Veselnitskaya “expressed her dissatisfaction,” though “she said it’s good that he [Trump Jr.] suggested that they might return to the topic again, you know, if – if they win the election.” Kaveladze left the bar after a few minutes to take a call from Agalarov to discuss the meeting.⁷⁹

The very next day, on June 10, 2016, Aras Agalarov delivered to candidate Trump an expensive painting for the candidate’s birthday.⁸⁰

Candidate Trump sent Agalarov a thank you note on June 17, 2016:

“There are few things better than receiving a sensational gift from someone you admire – and that’s what I’ve received from you. You made my birthday a truly special event by your thoughtfulness – not to mention your remarkable talent. I’m rarely at a loss for words, but right now I can only say how much I appreciate your friendship and to thank you for this fantastic gift. This is one birthday that I will always remember.”⁸¹

When news broke five days after this meeting that Russians were behind the hacked DNC emails, Rob Goldstone sent a news article to Emin Agalarov and Ike Kaveladze, “*Top story right now – seems eerily weird based on our Trump meeting last week with the Russian lawyers etc.*”⁸²

While the Majority opted not to investigate the underlying facts surrounding the June 9, 2016 meeting, the preliminary record speaks volumes about the Russians’ approach to convey

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damaging information on Clinton, as well as the Trump campaign's eagerness to receive that information.

The Majority's report admits that Trump Jr. was "open to discussing derogatory information from Russian government sources that could be useful to candidate Trump."⁸³ Not only did Trump Jr. believe that the meeting was about such information, but a separate attendee at the meeting testified that he, the attendee, contacted an associate who informed him that the purpose of the meeting would be to provide negative information on Clinton.⁸⁴ That third-party associate – Roman Beniaminov, a friend and business associate of Emin Agalarov who had prior knowledge of the Trump Tower meeting and its purpose – was never called to testify before the Committee despite repeated requests by the Minority.

Despite these significant gaps in the record, the Majority attempts to explain away this offer of damaging information on candidate Trump's opponent, and the campaign's enthusiastic desire to receive it, claiming that witnesses questioned about the meeting testified that "there was no mention of derogatory or incriminating information directly relating to Hillary Clinton" during the meeting.⁸⁵ Instead, the report notes that witnesses testified that the meeting centered on adoptions and the Magnitsky Act.⁸⁶

This argument ignores two key points: first, that the Trump campaign officials themselves wished to receive a thing of value from a foreign government, namely damaging information on their opponent. Second, that the meeting was also about what the Trump campaign could do for Russia in return – help lift Magnitsky Act sanctions against the country, a top priority for Putin.⁸⁷ Since the campaign was likely already on notice, via George Papadopoulos' contact with Russian agents, that Russia in fact had damaging information on Trump's opponent, the June 9 meeting may have been an effort by Russian intelligence to gain insight into the Trump campaign's receptivity to receiving their assistance and how Trump and his associates might respond once Russia began anonymously releasing such information – or "dirt" – on Hillary Clinton.

Significantly, within days of Trump's election, the Russians reached out to the Trump family again, seeking a follow up meeting on the Magnitsky Act. In an email dated November 28, 2016, Goldstone emailed Graff, explaining that "Aras Agalarov has asked me to pass on this document in the hope it can be passed on to the appropriate team." Later that day, Graff forwarded to Steve Bannon the email with Agalarov's document regarding the Magnitsky Act as an attachment, explaining, "The PE [President Elect] knows Aras well. Rob is his rep in the US and sent this on. Not sure how to proceed, if at all. R."⁸⁸

Two weeks later, on December 13, 2016, Emin Agalarov texted Donald Trump Jr. about a business venture:

"Hi Don! Hope all is well, quick question for you. I've been in discussion with the Trump furniture producers from Turkey to open a store and a distribution Chanel in Moscow. Just wanted to check with you if you are ok with us partnering up with them and

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*launching the project. Wanted to check with you before committing [] thank you, Emin (Moscow)@.*⁸⁹

Public Disclosure of June 9, 2016 Meeting

On July 8, 2017, the *New York Times* reported on the fact of the June 9, 2016 meeting at Trump Tower.

The Committee is in receipt of extensive documentary evidence – including text messages, voice messages, and email correspondence – outlining extensive efforts by the Trump campaign meeting participants, at least one Trump organization lawyer, and the Agalarovs, to control the public narrative surrounding the meeting. Despite the extensive documentary record, which the Minority will outline in detail as part of its final report, the Majority has denied requests to interview all of the parties involved in this effort.

In response to press revelations, Trump Jr. posted online an email chain of his communications setting up the meeting, saying, “In order to be totally transparent, I am releasing the entire email chain of my emails with Rob Goldstone about the meeting on June 9, 2016.”

In assessing how to respond, Trump Jr. acknowledged that Hope Hicks presented him with options:

MR. SCHIFF: And what was Hope Hicks' suggestion vis-à-vis the emails?

*MR. TRUMP JR: I believe we had presented multiple statements, a longer-form version and a shorter-form version. And I believe she preferred, in speaking with people, whoever they were, to go with a shorter form version of the statements that we had started preparing with counsel.*⁹⁰

MR. SCHIFF: So if you would, getting back to your text exchange with Hope Hicks, I asked if it concerned the scope of the emails that would be released or the scope of the statement that would be released. I think you said neither.

MR. TRUMP JR: It was only about the statement.

MR. SCHIFF: In your text communications with Hope Hicks, did you discuss whether to release emails?

MR. TRUMP JR: I don't believe I did.

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MR. SCHIFF: And in terms of the statement, did you draft a statement yourself and send to her, did she draft one and send to you? What was the nature of the communication?

MR. TRUMP: I worked with counsel on the statement, and counsel may have sent to Hope.⁹¹

Mr. Trump Jr. acknowledged having had at least one conversation with his father about the public release of his email and his public statements on the issue. However, Trump Jr. asserted attorney-client privilege to avoid testifying about the substance of those communications, despite that neither he nor his father are attorneys. Rather, Trump Jr. claimed a privilege existed by the mere presence of attorneys. These conversations pertain to important matters under investigation. As the Minority made clear following Trump Jr.'s interview, this assertion of privilege, invoked based on Trump and Trump Jr. having attorneys present for at least one phone call, is meritless and merely an effort to shield non-privileged direct communications between father and son on matters unrelated to seeking, obtaining, or providing legal assistance from counsel.

Weaponization of Hacked Information

It was only days after the Trump Tower meeting that WikiLeaks and Julian Assange would first announce receipt of stolen DNC and Clinton-related emails.

On June 14, 2016, the *Washington Post* reported that Russian government hackers penetrated the computer network of the Democratic National Committee.⁹² Crowdstrike, a cybersecurity firm hired by the DNC to address the breach, identified through digital footprints two Russia-linked hacker groups responsible for the hack, Cozy Bear and Fancy Bear.

Hours after *the Post* publicly attributed the hack to Russia-linked groups, the persona Guccifer 2.0 started a WordPress blog disputing CrowdStrike's attribution and claiming exclusive credit for the theft. It was an apparent effort on the part of the Russian Federation to cast public doubt about its involvement. However, the DNC and Crowdstrike were confident in their attribution. Recent reporting indicates that Guccifer 2.0 is not merely a Russian cutout, but appears in fact to be controlled by Russia's military intelligence directorate, the GRU.⁹³

This stolen data would then be systematically released through Guccifer 2.0 and the Russian cutouts DC Leaks and WikiLeaks, throughout the summer of 2016.

Just days before the Democratic National Convention would kick off, on July 22, 2016, WikiLeaks released nearly 20,000 emails hacked from the Democratic National Committee (DNC). The release was clearly designed to sow discord within the Democratic Party just as the convention approached.

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Candidate Trump's Public Statements

The dissemination of stolen Clinton campaign information tracked closely with public comments from Trump officials, including Trump Jr., Roger Stone, and candidate Trump throughout the summer of 2016. As the Russians anonymously pushed out stolen information through its intermediaries, Trump and his campaign publicly touted the hacked emails on a daily basis, and attempted to cast doubt on Russian attribution.

On Monday, July 25, 2016, the FBI confirmed that it had opened an investigation into the hacking of the DNC computer network, which sources and experts had already attributed to hackers in Russia. That same day, then-candidate Trump tweeted, "The new joke in town is that Russia leaked the disastrous DNC e-mails, which should never have been written (stupid), because Putin likes me."⁹⁴

On July 27, two days after the start of the Democratic National Convention, candidate Trump called on Russia to hack Clinton again, telling a crowd: "Russia if you're listening, I hope you're able to find the 30,000 [Clinton] emails that are missing."⁹⁵ Earlier in the day, Trump had tweeted: "Funny how the failing @nytimes is pushing Dems narrative that Russia is working for me because Putin said 'Trump is a genius.' America 1st!"⁹⁶

On September 26, 2016, at the first presidential debate of the general election, candidate Trump publicly doubted the attribution: "I don't know if we know it was Russia who broke into the DNC. She's saying Russia, Russia, Russia. Maybe it was. It could also be China, it could be someone sitting on their bed that weighs 400 pounds."⁹⁷

Over the last few months of the campaign, then-candidate Trump tweeted more than 100 times, praising WikiLeaks and casting doubt on claims that Russia was behind the hacked emails and broader misinformation campaign. Such a willingness by a U.S. presidential candidate to accept and encourage assistance from a hostile foreign adversary is unprecedented.

Donald Trump Jr. and WikiLeaks

During the course of the campaign, Trump Jr. openly tweeted about WikiLeaks and expressed a clear willingness to obtain any helpful information from the group.

On September 21, 2016, Trump Jr. emailed several senior campaign officials, including Kellyanne Conway, Steve Bannon, Jared Kushner, David Bossie, and Brad Parscale:

*"Guys I got a weird Twitter DM from [W]ikileaks. See below. I tried the password and it works and the about section they reference contains the next pic in terms of who is behind it. Not sure if this is anything but it seems like it's really wikileaks asking me as I follow them and it is a DM. Do you know the people mentioned and what the conspiracy they are looking for could be? These are just screen shots but it's a bully built out page claiming to be a PAC let me know your thoughts and if we want to look into it."*⁹⁸

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Trump Jr. claimed he did not respond to this message though he “believe[d] Brad Parscale responded.”⁹⁹

On October 3, 2016, Wikileaks sent Trump Jr. a private direct message, asking that “you guys” comment on or “push” a story Wikileaks’ twitter page had promoted earlier that day. Wikileaks’ tweet, linking to a page on “truepundit.com” said: “Hillary Clinton on Assange ‘Can’t we just drone this guy’”¹⁰⁰ Trump Jr. replied to WikiLeaks, “Already did that earlier today. It’s amazing what she can get away with. What’s behind this Wednesday leak I keep reading about?”¹⁰¹

As election day grew near, Trump Jr.’s interaction with Russian cutouts increased. For example, on October 5, Trump Jr. retweeted Wikileaks: “RT @wikileaks: NEW: Guccifer 2.0 archive of 860Mb of various “Clinton campaign” related documents. Use “7zip” to unpack.”

Two days later, on October 7, Trump Jr. retweeted Wikileaks: “RT @wikileaks: RELEASE: the first 2050 of well over 50000 emails from Clinton Campaign Chairman John Podesta.” Also on October 7, Trump Jr. retweeted the following:

- “RT @wikileaks: Secret paid Clinton speech: “You need to have a public position and a private position on policy” #PodestaEmails <https://t.c...>”
- “RT @CNNPolitics: WikiLeaks posts emails hacked from Clinton campaign chairman John Podesta”
- “RT @wikileaks: RELEASE: Hillary Clinton Goldman Sachs paid speech transcript excerpts 2013 & 2014 #PodestaEmails”
- “RT @FoxNews: @wikileaks appears to release transcripts of @HillaryClinton’s paid speeches”
- “RT @TwitchyTeam: OCTOBER SURPRISE? WikiLeaks just dropped the first batch of ‘well over 50,000’ emails allegedly from John Podesta”

Roger Stone, WikiLeaks, and Guccifer 2.0

Roger Stone, candidate Trump’s longtime associate and surrogate throughout the campaign, suggested during the campaign he was in communications with WikiLeaks and Julian Assange. He also sought to viciously attack Hillary Clinton and wrote at least one article raising the likelihood that the election was rigged.

On August 5, 2016, Stone wrote a column for Breitbart entitled, “Dear Hillary: DNC Hack Solved, So Now Stop Blaming Russia.” In that article, Stone stated, “It doesn’t seem to be the Russians that hacked the DNC, but instead a hacker who goes by the name Guccifer 2.0.”

Later in August, Stone engaged in a series of tweets with or about Guccifer 2.0.

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- On August 13, 2016, Stone replied to a tweet from @WikiLeaks about Twitter suspending @Guccifer_2, writing “Outrageous ! Clintonistas now nneed [sic] to censor their critics to rig the upcoming election.”
- On August 14, 2016, Stone tweeted: “First #Milo, now Guccifer 2.0 - why are those exposing the truth banned? @RealAlexJones @infowars #FreeMilo.”
- Once @Guccifer_2’s account had been reinstated, Stone then sent that account a private message: “Delighted you are reinstated. Fuck the State and their MSM lackeys.”
- @Guccifer_2 responded to Stone’s message with a private response, on August 15: “wow thank u for writing back and thank you for an article about me!!! do u find anything interesting in the docs i posted?”¹⁰²

The following day Stone wrote an op-ed for TheHill.com entitled, “Can the 2016 election be rigged? You bet.”¹⁰³ That same day, Stone privately messaged @Guccifer_2 on Twitter, referencing his Hill column and asking Guccifer to retweet: “PLZ RT,” with a hyperlink to the article. Guccifer_2 replied with two private messages: “done”; and “i read u’d been hacked.”

On August 17, 2016, Guccifer 2.0 sent Stone a Direct Message, “please let me know if I can help you in any way it would be a great pleasure to me.”

On September 9, 2016, @Guccifer_2 privately messages Stone with a link to a blog post from “HelloFLA.com” about Democratic voter turnout, particularly among marginal voters who are persuadable, writing:

hi, what do u think of the info on the turnout model for the democrats entire presidential campaign? Basically how it works is there are people who will vote party line no matter what and there are folks who will actually make a decision. The basic premise of winning an election is turnout your base (marked turnout) and target the marginal folks with persuadable advertising (marked persuadable). They spend millions calculating who is persuadable or what we call a ‘soft democrat’ and who is a ‘hard democrat.’

Stone replied to Guccifer, via Twitter private message thread, that such efforts were “pretty standard.”

On October 1, Stone Tweeted, “Wednesday @HillaryClinton is done #WikiLeaks.” Two days later, Stone Tweets, “I have total confidence that @Wikileaks and my hero Julian Assange will educate the American people soon #lockherup.” On election night, November 9, 2016, Guccifer 2.0 sent Stone a Direct Message, “Happy? We are now more free to communicate.”¹⁰⁴

Throughout the campaign, Stone regularly represented that he was either in communication with Assange or communication through an intermediary with Assange. Despite these public proclamations during the election, Stone claimed during his interview that he had never met with or spoken with Assange.

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MR. QUIGLEY: *You never met with Julian Assange.*

MR. STONE: *Correct.*

MR. QUIGLEY: *You never communicated directly with him.*

MR. STONE: *Correct.*

MR. QUIGLEY: *You've never spoken to him on the phone.*

MR. STONE: *I never communicated directly with him during the election, correct.*

MR. QUIGLEY: *Did you ever communicate with him outside of that timeframe?*

MR. STONE: *We had some, I think, direct message responses in April of this year.*

MR. QUIGLEY: *You and Julian Assange?*

MR. STONE: *Correct.*

MR. QUIGLEY: *Can you make those available to the committee?*

MR. STONE: *Yes, we can.*

MR. QUIGLEY: *Okay. Had you ever communicated with him before the campaign?*

MR. STONE: *No.*

MR. QUIGLEY: *So, back on this other streak, you've never emailed with him?*

MR. STONE: *Correct*

MR. QUIGLEY: *Have you ever sent or received texts/SMS to and from Mr. Assange?*

MR. STONE: *No.*

MR. QUIGLEY: *Have you ever communicated with Mr. Assange over any other social media platform or encrypted application –*

MR. STONE: *No¹⁰⁵.*

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Seeking to explain his public statements about communications with Assange, Stone claimed during his testimony that his knowledge had been obtained through an intermediary.

MR. QUIGLEY: And so, just to reiterate, in an August 12th, 2016, interview with Alex Jones on Infowars, you reiterated your contact with Julian Assange, quote, "in communication with Assange," adding, quote, "I am not at liberty to discuss what I have." That was correct too?

MR. STONE: That is correct.

MR. QUIGLEY: But you were referencing the same thing you pointed to before?

MR. STONE: Again, I have sometimes referred to this journalist as a go-between, as an intermediary, as a mutual friend. It was someone I knew had interviewed Assange. And I merely wanted confirmation of what he had tweeted on the 21st. And that's what I refer to.

MR. QUIGLEY: -- like Twitter, LinkedIn, anything?

MR. STONE: No.

MR. QUIGLEY: Have any of your employees, associates, or individuals acting on your behest or encouragement been in any type of contact with Julian Assange?

MR. STONE: No.

MR. QUIGLEY: Have you ever been in direct contact with a member of Wikileaks, whether by phone, email, text, Twitter, encrypted message platforms, other social media platforms, or other means of communication?

MR. STONE: I'm not certain, but I don't think so.¹⁰⁶

Mr. Stone refused in the interview to disclose his intermediary's name.

MR. SCHIFF: Mr. Stone, I wanted to ask you, on October 12th [2016], you gave an interview to NBC News where you said that: We have a mutual friend who's traveled to London several times, and everything I know is through that channel of communication.

MR. STONE: Yes.

MR. SCHIFF: Referring to a friend of Assange.

MR. STONE: Yes.

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MR. SCHIFF: And you said something similar in another interview on October – to CBS Miami. Did the intermediary tell you how often he traveled to London to meet with Mr. Assange?

MR. STONE: No. I just knew he had been there a couple times.¹⁰⁷

MR. SCHIFF: So throughout the many months in which you represented you were either in communication with Assange or communication through an intermediary with Assange, you were only referring to a single fact that you had confirmed with the intermediary –

MR. STONE: That –

MR. SCHIFF: -- was the length and the breadth of what you were referring to?

MR. STONE: That is correct, even though it was repeated to me on numerous separate occasions.¹⁰⁸

MR. SWALWELL: If we were to send you a request asking for any direct messages with respect to the 2016 campaign, particularly around Guccifer 2.0 and Wikileaks, you would be cooperative and turn that over to us?

MR. STONE: Well, I attached the exchange with Guccifer as an exhibit, and you're welcome to look at it. Beyond that, we'd have to go review the material. I don't know what's there.¹⁰⁹

MR. CASTRO: You have now just told us that the intermediary told you in August that the emails would be released in October. Is that prior knowledge?

MR. STONE: I guess you could consider it prior knowledge. I would have to go back and look. I think that Assange himself had said October on Twitter. I was seeking a confirmation of what he'd already said.

MR. CASTRO: Mr. Stone, you've said multiple times here today that you had no prior knowledge. You've just now admitted that you had prior knowledge that these emails would be released.

MR. STONE: I believe that was a – I think that was publicly known, in all honesty.¹¹⁰

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Stone also attempted to explain away his tweets about John Podesta's emails by claiming he was referring to a business deal that Stone had expected Assange to publish.¹¹¹

Podesta's personal email account was the subject of a phishing email in or around May 2016. Mr. Podesta, however, was unaware at the time that his emails had been stolen. On August 21, 2016, Stone tweeted: "Trust me, it will soon be Podesta's time in the barrel. #CrookedHillary." WikiLeaks would not begin publishing Clinton campaign chairman John Podesta's emails until October 7, 2016. Stone's tweet prompted Podesta to suspect his account might have been hacked.¹¹²

The systematic release and weaponization of stolen emails over the course of the 2016 campaign was designed to inflict maximum harm on one candidate – Hillary Clinton – and boost her opponent, Donald Trump. As Mr. Podesta explained:

MR. SCHIFF: I'm sorry, campaign chair, what do you think the effect of the continual dumping of the emails was on your campaign? And can you quantify it for us in any terms? Let me start with that.

MR. PODESTA: Well, look, I think the manner in which it was done, constant release, day by day, from October 7 through the election, was intended to inflict damage on the campaign by keeping the press focused on whatever tidbits of campaign gossip they might find in those emails, and to distract from the ability to be talking about the real issues in the campaign. I think the timing of the first release is relevant. I think the timing of the first release is also relevant. In the wake of – on the same day, the letter from Jey Johnson and Jim Clapper noting that the intelligence Community had included that the Russians were involved in active measures, as it were – not quoting from the letter, but you remember that letter on October 7 – followed by the release of the Access Hollywood tape. And within a half an hour of that release, the emails started to get dumped. So I think that was –"¹¹³

Peter Smith Operation

The Majority concludes in their report that no Trump campaign associates were "involved in the theft or publication of Clinton-campaign related emails," but that Trump associates nevertheless had some "'ill-advised' contacts with WikiLeaks." Lines of inquiry the Majority refused to pursue, or pursued only tepidly, leave this finding open to doubt.

An example involves efforts by Peter W. Smith, a Republican activist with ties to the Trump Campaign. During the 2016 U.S. election cycle, Smith sought to find and authenticate emails which, according to a contact of Smith's from the "Dark Web," had been harvested from Hillary

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Clinton's private server. For this project, Smith in September sought the technical assistance of a leading cybersecurity expert, Matthew Tait.

Smith made clear to Tait that he was well acquainted with Flynn and his son. Additionally, on September 7, Smith sent Tait a document describing his overall political efforts, as well as the role Smith proposed for Tait. That document, among other things:

[D]etailed a company Smith and his colleagues had set up as a vehicle to conduct the research: "KLS Research", set up as a Delaware LLC "to avoid campaign reporting," and listing four groups who were involved in one way or another."

The first group, entitled "Trump Campaign (in coordination to the extent permitted as an independent expenditure)" listed a number of senior campaign officials: Steve Bannon, Kellyanne Conway, Sam Clovis, Lt. Gen. Flynn and Lisa Nelson.¹¹⁴

For his part, Tait suspected that Smith could have "been contacted by a Russian intelligence front with intent to use Smith as part of their scheme by laundering real or forged documents," and thus explained to Smith that "if someone had contacted him via the 'Dark Web' with Clinton's personal emails, he should take very seriously the possibility that this may have been part of a wider Russian campaign against the United States." Smith, however, "didn't seem to care."¹¹⁵

Tait never confirmed the identity of Smith's dark web contact. And Smith died in May, after speaking about his experience.¹¹⁶ After interviewing Tait and one additional witness, Jonathan Safron (by phone), the Majority refused to pursue further inquiries into Smith's activities.

Rigged Election Messaging

As the hacking and dissemination of emails unfolded, then-candidate Trump regularly drummed the idea that the election was rigged. In parallel, WikiLeaks had suggested to Donald Trump Jr. that the campaign should challenge the election results should Mr. Trump lose. On October 21, 2016, WikiLeaks sent Donald Trump Jr. a Twitter direct message: "Hi Don, if your father 'loses' we think it is much more interesting if he DOES NOT concede and spends time CHALLENGING the media and other types of rigging that occurred — as he has implied that he might do."

Majority Report

The Majority report states that communication between WikiLeaks and campaign personnel such as Donald Trump Jr. and Roger Stone, as well as attempts by Cambridge Analytica CEO Alexander Nix to acquire Clinton campaign emails from WikiLeaks founder Julian Assange, were "imprudent in light of WikiLeaks' role in disseminating stolen emails in line with Russian interests."¹¹⁷ In fact, these surreptitious contacts between WikiLeaks and Trump campaign

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associates are further evidence of an active effort to obtain Russian stolen Clinton emails either directly from the Russians or from their intermediaries.

The Majority concludes in their report that “the Committee did not find that multiple Trump associates went beyond mere praise and established lines of communication with WikiLeaks during the campaign.”¹¹⁸ The Committee, however, did not seek to validate claims by campaign personnel that this was the case, relying instead on witness testimony about their own communications.

For example, the Majority report notes that, “Trump Jr. testified that he did not reply to any of these messages [from WikiLeaks], nor did he have any communications with WikiLeaks before September 20 or after October 3, 2016. He testified that the direct message exchanges discussed above ‘is a complete record of any communications [he] had with WikiLeaks.’”¹¹⁹ The Committee has no way of determining the veracity of this statement because the Majority refused numerous requests by the Minority to subpoena Twitter to determine whether the communications publicly revealed and later provided to the Committee by Trump Jr. comprised the full record of communication between WikiLeaks and the witness.

Similarly, Committee Republicans refused to subpoena the company for records related to communication between WikiLeaks, its founder Julian Assange, or Russian cutouts responsible for disseminating hacked emails—such as Guccifer 2.0 and DC Leaks—and Trump campaign personnel, including Roger Stone and Cambridge Analytica. As such, any conclusions reached about witness interaction between the Trump campaign and WikiLeaks or other Russian cutouts is based on an incomplete investigative record. The Majority also has refused to require a reappearance of several witnesses, such as Stone, despite public reporting inconsistent with their testimony, including reports indicating that Stone may have been in direct contact with Assange during the 2016 campaign.¹²⁰

Significant questions still remain, including: whether the Trump campaign received advanced knowledge of or access to the anonymously leaked, stolen information; whether the stolen emails informed campaign activity, including voter persuasion and targeting through its online operation—including through its sub-contractor Cambridge Analytica; and whether anyone directly or indirectly affiliated with the Trump campaign was in the chain of custody of the hacked and disseminated emails beyond sharing what was made publicly available in 2016.

July 2016 – Carter Page Travel to Moscow

As the summer progressed, the Russians reached out to an additional Trump campaign official, Carter Page. Like Papadopoulos, Page was one of the initial group of five publicly-announced foreign policy advisors to the Trump campaign. He was invited to travel to Moscow to give a speech at a prominent university, notwithstanding his lack of stature or requisite expertise. In Moscow, Page met with high-level Russian government and Putin-aligned business associates.¹²¹

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As with Papadopoulos, Russia's interest in Page had little to do with his experience in the energy sector and everything to do with his affiliation with the Trump campaign.

Page is the type of susceptible and ambitious individual with impressionable views broadly aligned with the Russian government's worldview who would be a prime target of the Russian intelligence services. He resided in Moscow from 2004 to 2007, where he pursued a variety of business deals, including with Russia's state-owned energy company Gazprom. The Russians had actually tried to recruit Page in the past. In 2013, prosecutors indicted three Russian spies, two of whom targeted Page for recruitment. Indeed, the FBI had interviewed Page multiple times about his Russian intelligence contacts, including in March 2016 – the very month then-candidate Trump announced Page as one of his five initial foreign policy advisors.¹²²

Prior to his testimony, Page made numerous and false public statements about his trip, denying that he met with Russian government officials and claiming to have only sought the input of the “man on the street.” He also claimed to have visited Moscow in purely a personal capacity. But during his testimony, he was forced to acknowledge having had contact with senior members of the Russian government - including Deputy Prime Minister Arkady Dvorkovich – and reporting back to the campaign using the campaign's reporting mechanism.

On July 8, 2016, he emailed campaign foreign policy advisors Tera Dahl and JD Gordon to preview a readout of his visit:

“[...] On a related front, I'll send you guys a readout soon regarding some incredible insights and outreach I've received from a few Russian legislators and senior members of the Presidential Administration here. Suffice to say that after watching their national economy and relationships with Europe get derailed by Washington mismanagement with disastrous consequences over recent years, Russians from the highest levels of government to the average man on the street have a new optimism and hope for the future based on Mr. Trump's common sense statements about his foreign policy approaches over the past year.”¹²³

In the follow-up readout, also sent on July 8, 2016, Page wrote:

“On Thursday and Friday (July 7 & 8, 2016), campaign advisor Carter Page presented before gatherings at the New Economic School (NES) in Moscow including their 2016 Commencement Ceremony. Russian Deputy Prime Minister and NES Board Member Arkady Dvorkovich also spoke before the event. In a private conversation, Dvorkovich expressed strong support for Mr. Trump and a desire to work together toward devising better solutions in response to the vast range of current international problems. Based on feedback from a diverse array of other sources close to the Russian Presidential Administration, it was readily apparent that this sentiment is widely held at all levels of the government.”¹²⁴

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Page also testified that, in advance of this trip, he alerted several members of the campaign to ensure he obtained the appropriate approvals. In one email, Page suggested the then-candidate Trump travel to Moscow to give the speech.

Trump officials have sought to minimize Page's role in the campaign, calling him "low level," one of the "hangers-on," and someone with little influence. Yet, in his testimony to this Committee and in documents produced to the Committee, we have learned that Mr. Page had regular communications with senior campaign officials and met with high-ranking foreign officials.

The Majority admits in its report that Carter Page's testimony and document production, as cited in his publicly-released transcript, show that Page informed Trump campaign officials several times before traveling to Moscow to speak at the university; that he was given permission by campaign chairman Corey Lewandowski to take the trip; and that he provided to senior campaign personnel an official read-out of his visit while still in Moscow, in which he detailed the senior Presidential Administration, Rosneft, and Gazprom employees with whom he met. The Majority writes off these activities, claiming that Page did not travel on behalf of the Trump campaign.¹²⁵ Yet, this blanket dismissal ignores the reality that Page was invited to Moscow precisely because he had been named a foreign policy advisor to candidate Trump.

Furthermore, in September 2016, Mr. Page traveled to Budapest, Hungary, where he again presented himself as a member of then-candidate Trump's foreign policy team. There, he held a 45-minute meeting with Jenő Megyesy, a close adviser to Hungarian Prime Minister Viktor Orbán who focuses on relations with the United States. The meeting was held at Megyesy's office in Budapest. Page held a second meeting at a hotel in Budapest with Hungary's then-Ambassador to the United States Reka Szemerkenyi. Page initially met Szemerkenyi at the Republican National Convention in Cleveland. The two reportedly met a third time in October at an embassy function in Washington.

This section of the Majority's report is internally illogical and inconsistent. First, the finding claims that the Majority is "concerned about his seemingly incomplete accounts of his activity in Moscow."¹²⁶ But, the Majority then cites the fact that Page has "repeatedly and consistently denied meeting"¹²⁷ Russians of interest. It is unclear whether the Majority believes that Page's "consistent" denials or his "inconsistent accounts" are sufficient to answer serious questions about his travel and activities during the campaign. The FBI's FISA application and its renewals to conduct surveillance on Page shed light on these important questions. This material is conveniently omitted from the Majority report.

The Majority repeats spurious claims from its widely-criticized "FISA Abuse memorandum," which alleged FBI and DOJ abuses in seeking authorization to surveil Page. As the Minority's publicly-released memorandum of January 29, 2018 made clear,

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“DOJ’s October 21, 2016 FISA application and three subsequent renewals carefully outlined for the Court a multi-pronged rationale for surveilling Page, who at the time of the first application, was no longer with the Trump campaign. DOJ detailed Page’s past relationship with Russian spies and interaction with Russian officials during the 2016 campaign [REDACTED]. DOJ cited multiple sources to support the case for surveilling Page—but made only narrow use of information from Steele’s sources about Page’s specific activities in 2016, chiefly his suspected July 2016 meetings in Moscow with Russian officials.”¹²⁸ (See Appendix F.)

The FBI’s January 31, 2018 statement about Chairman Nunes’ memorandum, in which it expressed “grave concerns about material omissions of fact that fundamentally impact the memorandum’s accuracy,”¹²⁹ could apply equally to the Majority’s recycled assertions in this report.

The Majority report also notes in this section that it is concerned about whether Russian disinformation found its way into the Steele dossier without providing evidence. Steele was a well-regarded FBI contact whose reporting and source network had been found credible over several years.

Moreover, as the Minority’s January 29, 2018 memorandum points out, in the course of investigating Page’s activities in Moscow in 2016, the DOJ obtained information through “multiple independent sources that corroborated Steele’s reporting,”¹³⁰ lending credibility to Steele’s claims about Page’s activity in Moscow in July 2016.

December 2016/January 2017 – Backchannel Meetings with Russia

Once election day had passed and Donald Trump was declared the winner, the preponderance of the evidence indicates that the Trump campaign-turned-transition set about to establish additional secret backchannels to the Russians.

On December 1, 2016, Jared Kushner and Michael Flynn held a secret meeting with then-Russian Ambassador Sergey Kislyak at Trump Tower in New York, in which they reportedly discussed using Russian diplomatic facilities in the United States for secure communications between the Trump transition and the Kremlin.¹³¹ The meeting followed numerous contacts between Trump campaign officials and Ambassador Kislyak throughout the election season, which would only come to light after they were revealed in press reporting and following attempts by campaign officials to deny the meetings and approaches. Likewise, the White House affirmed the existence of the December 1, 2016 meeting only in March 2017, following its public revelation. The Committee has yet to fully investigate for what purpose and from whom Flynn and Kushner wished to hide their communications, and what necessitated secret communications through Russian intermediaries and using Russian infrastructure.

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Later that month, on December 13, at the request of Ambassador Kislyak, Kushner took another secret meeting at Trump Tower,¹³² this time with Sergey Gorkov, the head of Vnesheconombank, or VEB, a state-run financial entity under U.S. sanctions since 2014 and alleged to have ties to Russian intelligence services.¹³³

Accounts differ regarding the purpose of the meeting. Then-White House spokeswoman Hope Hicks stated on May 29, 2017 that “Mr. Kushner was acting in his capacity as a transition official,” and the meeting was unrelated to business.¹³⁴ In his July 2017 statement to congressional committees, Kushner claimed that, “[Gorkov] told me a little about his bank and made some statements about the Russian economy. He said that he was friendly with President Putin.”¹³⁵ During Committee testimony, Kushner noted that he took the meeting in part so that Gorkov could “provide insight into what Putin’s thoughts were on a potential new relationship.”¹³⁶

When the meeting was first revealed publicly in March 2017, however, Gorkov and the bank claimed that it was part of an effort to meet with representatives of “business circles of the U.S., including with the head of Kushner Companies, Jared Kushner.”¹³⁷ Whether the meeting was to establish Gorkov as an intermediary for Putin, consider a business deal between soon-to-be White House official Kushner and Gorkov, or—most troubling—a mixture of both, remains unanswered. Public flight logs indicate that VEB’s private jet flew from Moscow to Newark airport on December 13, 2016 – the day of Gorkov’s meeting with Kushner – departing the afternoon of December 14 to Japan, where President Putin was visiting on December 15 and 16. Press reporting indicates Gorkov met Putin there.¹³⁸

In mid-December, shortly after the Kushner-Gorkov meeting, the transition held yet another meeting at Trump Tower, this time with an official delegation from the United Arab Emirates, which the Trump transition and the UAE hid from Obama Administration officials.¹³⁹ The meeting, attended by Kushner, Flynn, and Steve Bannon—and, according to March 2018 press reports, UAE advisor George Nader¹⁴⁰—preceded yet another secret meeting in January 2017 in the Seychelles between Trump associate Erik Prince and a Russian close to Putin, facilitated by the same UAE officials. Committee testimony by two of the attendees at the December Trump Tower meeting—Kushner and Bannon—has shed little light on the purpose of the meeting and why, as with others throughout December, it was originally shielded from discovery.

On January 11, 2017, shortly after the UAE meeting in Trump Tower and only days before Donald Trump’s inauguration as President, Erik Prince, a Trump supporter and brother of Education Secretary Betsy DeVos, traveled to a resort island off the African coast during which he met with senior UAE officials and held a private meeting with a Russian close to Putin: Kirill Dmitriev, the head of Russia’s sovereign wealth fund, the Russian Direct Investment Fund, which, like VEB, is subject to U.S. sanctions.

During his November 30, 2017 testimony before the Committee, Prince noted that he spoke with Bannon about the December transition team-UAE meeting before he traveled to the Seychelles,

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but claimed that the December meeting was unrelated to his own trip to see UAE officials and Dmitriev.¹⁴¹ When asked whether he was testifying that it was a coincidence that Dmitriev was in the same hotel as Prince and meeting with the same UAE officials in the Seychelles on January 11, Prince claimed that the UAE had “good relationships with a lot of other countries, so it’s not a surprise that other leaders, other people from other countries would’ve been waiting to see or having met with any of that leadership.”¹⁴² Prince, however, refused to answer numerous questions about the meeting or its genesis.

The Majority argues perplexingly that these numerous contacts were themselves evidence against a broader campaign conspiracy. According to the Majority’s report, “potential Russian efforts to set up a ‘back channel’ after the election suggest the absence of collusion during the campaign, since the communications associated with collusion would have rendered such a ‘backchannel’ unnecessary.”¹⁴³ The logical fallacy so clearly on display in this finding ignores the obvious possibility that the Trump transition may have been seeking (1) to create new lines of communication or expand existing communication channels with the Russians, (2) to deliver on any secret arrangements considered or made during the campaign, and/or (3) hoped to undermine existing and bipartisan U.S. policies towards Russia and its interference in our election.

To support this assertion, the Majority again relies merely on the self-interested testimony of Kushner and Prince. After a brief section explaining the allegations against the two, which references only the December Gorkov meeting and the January Seychelles meeting, the Majority concludes, again without explanation, that the Committee found no evidence that either Kushner or Prince “did anything inappropriate during or following their meetings with [Russian oligarchs Sergey] Gorkov and [Kirill] Dmitriev.”¹⁴⁴

In reaching this assessment, the report spends one paragraph noting that Kushner attended the meeting with Gorkov at the request of Ambassador Kislyak.¹⁴⁵ The Majority quotes Kushner’s testimony that Gorkov primarily spoke about VEB, offering no suggestions or assessments as to what the significance of that meeting could be, what specifically may have been discussed about VEB’s business, or “Putin’s thoughts...on a potential new relationship.”

The Majority likewise seeks to exonerate Prince. After quoting Prince’s Committee testimony that his meeting with Dmitriev focused on “trade matters” but not sanctions, the Majority concludes with no further information that the Committee “did not find evidence that...Prince did anything inappropriate” during or following the meeting with Dmitriev. The Majority, however, did not seek to validate Prince’s claims about the meeting, did not require that he produce relevant material to the Committee on his travel, nor did it seek to interview anyone else who may have knowledge about the meeting.

March 2018 press reporting indicates that George Nader, a Lebanese-American businessman and advisor to Abu Dhabi’s leadership, was present for Prince’s meetings with the UAE delegation as well as Prince’s subsequent meeting with Dmitriev.¹⁴⁶ In his testimony, Prince did not

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acknowledge the presence of others, such as Nader, during his encounters in the Seychelles. Similarly, Kushner did not acknowledge Nader's presence in the Trump Tower meeting with the UAE delegation.

Despite reports, the Majority has refused to interview Nader or anyone else with potential knowledge about the Seychelles meeting to confirm whether Prince's testimony is accurate. The Majority voted down on a party-line basis our request to bring Nader before our Committee and compel Prince's full cooperation.¹⁴⁷ Without corroboration, the Majority cannot credibly reach any definitive conclusion about whether Prince's meeting represented a secret Trump transition backchannel to Russia, nor whether Prince "did anything inappropriate" with respect to his meeting with Dmitriev.

December 2016 – Attempts to Undermine U.S. Sanctions

Once the Obama Administration imposed sanctions and expelled Russian personnel in December 2016, the president-elect's designated White House national security adviser, Michael Flynn — with the knowledge of other high-ranking Trump transition officials—conspired secretly with Russian Ambassador Kislyak to undermine the effect of the sanctions. From Flynn's December 1, 2017 guilty plea, and documents in the Committee's possession, we know that Flynn communicated by phone with Ambassador Kislyak contemporaneously with the imposition of sanctions.

According to Flynn's Statement of the Offense:

*"On or about December 28, 2016, the Russian Ambassador contacted FLYNN. On or about December 29, 2016, FLYNN called a senior official of the Presidential Transition Team (PTT official) who was with other senior members of the Presidential Transition Team at the Mar-a-Lago resort in Palm Beach, Florida, to discuss what, if anything, to communicate to the Russian Ambassador about the U.S. sanctions. On that call, FLYNN and the PTT official discussed the U.S. sanctions, including the potential impact of those sanctions on the incoming administration's foreign policy goals. The PTT official and FLYNN also discussed that the members of the Presidential Transition Team at Mar-a-Lago did not want Russia to escalate the situation. Immediately after his conversation with the PTT official, FLYNN called the Russian Ambassador and requested that Russia not escalate the situation and only respond to the U.S. sanctions in a reciprocal manner. Shortly after his call with the Russian Ambassador, FLYNN spoke with the PTT official to report on the substance of his call with the Russian Ambassador, including their discussion of the U.S. sanctions."*¹⁴⁸

Despite the clear knowledge of Flynn's discussion with Kislyak by at least one senior transition official and potentially others (including Steve Bannon, who was in Mar-a-Lago with Trump and others on December 29, according to press reports), Trump transition official and former press secretary Sean Spicer claimed publicly on January 13, 2017 that Flynn's discussion with Kislyak

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was focused only on the “logistics” surrounding a Trump-Putin phone call.¹⁴⁹ The statement followed press reporting the day before that Flynn had held the calls.¹⁵⁰

On January 14, according to Vice President-elect Mike Pence, Flynn told him that the call did not include the discussion of sanctions. On January 15, Pence appeared on *Meet the Press*, claiming that Flynn did not discuss sanctions with Ambassador Kislyak during his call. Despite Trump transition officials’ knowledge that what Pence was telling the American people was untrue, no one sought to clarify the public or private record. For that, then-Acting Attorney General Sally Yates would have to travel to the White House on January 26 to inform White House Counsel Donald McGahn that Flynn had lied to FBI investigators about his conversations with Ambassador Kislyak and, it appeared, to Vice President Pence.¹⁵¹ The next day, McGahn asked to see the underlying evidence regarding Flynn’s conversation, which he relayed to President Trump. That night, Trump would invite FBI Director Comey to a private one-on-one dinner at the White House in which the President asked Comey whether he wished to keep his job and told Comey that he needed and expected loyalty.¹⁵² On December 2, 2017, Trump would himself tweet that he was aware in late-January 2017 that Flynn was under FBI investigation.¹⁵³

Instead of investigating these facts, the Majority seeks to exonerate Flynn. The purpose is evident – to cast doubt about one of the most damning revelations in the Russia investigation to date: that after months of direct and indirect contact with Russian operatives through numerous Trump campaign and transition officials and associates, and only weeks before Trump’s inauguration, Trump’s own National Security Advisor-designate—with the full knowledge or explicit support of at least one other transition official—sought to undermine official U.S. policy meant to punish Russia for its unprecedented attack on the United States. That the attack supported the candidate whose own transition officials were now seeking to help Russia in return is an inescapable fact which the Majority’s report goes to great lengths to ignore.

In its finding on Flynn, the Majority argues that “the FBI agents did not detect any deception” when they interviewed Flynn about these very calls. This conclusion ignores both that Flynn himself admitted in his plea to deceiving FBI agents, and that by the time of his interview with the FBI on January 24, 2017, at least one other official was aware that Vice President-elect Pence had told the same lie on television.

Later, without explanation, the Majority recommends that Congress repeal the Logan Act, a law Flynn likely broke in his communications with Ambassador Kislyak. Not only is this a transparent effort to bolster Flynn by ignoring critical facts regarding his actions and deceit, but it ignored the fact that Flynn was trying to undermine the bipartisan policy of the United States that Russia should be punished for its interference in our election. Is the Majority recommendation to repeal the Logan Act an endorsement of the idea that we should have more than one government at a time, that we should condone lying to the public about secret contacts with an adversary, or that an incoming Administration should seek to undermine the policy of the outgoing Administration without repercussion?

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Russian Financial Leverage

One of the starkest examples of the Majority's failure to conduct a complete investigation into the Russian active measures campaign and its ties to the Trump campaign is its decision not to investigate whether the Russian government may hold financial leverage over Donald Trump, his businesses, or his family. Trump's business history with Russia, dating back at least to 1987, is a tale of failed attempts to secure funding and licenses to build a luxury skyscraper in Moscow—three decades of attempts which continued at least through the early part of 2016, just as the presidential campaign was heating up.

As the Soviet Union was on the verge of collapse in the late 1980s, Trump saw an opportunity. He and his first wife, Ivana, traveled to Moscow in 1987 to look at potential building sites for Trump-owned real estate. No deals materialized, and a decade later, in 1996, Trump announced that he would build a \$250 million luxury residential center in Moscow.¹⁵⁴ Yet again, the opportunity dissolved.

Around the same time, Trump began a relationship with Deutsche Bank, the financial institution that U.S. and U.K. regulators hit with fines of approximately \$630 million in January 2017 for a \$10 billion money laundering scheme that enabled Russian clients to move large amounts of funds improperly to overseas accounts.¹⁵⁵ In 1998, as Deutsche Bank was beginning its real estate business, Trump could not secure funding from major financial firms due to previous failed real estate endeavors.¹⁵⁶ Deutsche Bank would prove to be a lender of last resort for Trump for years; Trump's 2016 financial disclosures shows he owed the bank at least \$130 million that year.¹⁵⁷

As Trump's fortunes improved, thanks to real estate licensing deals and his television show, *The Apprentice*, Trump again sought to find his way into the Russian real estate market. In 2005, he signed an exclusive deal to build Trump Tower Moscow with Bayrock Group—owned and managed by Tefvik Arif and Felix Sater, both of whom have ties to Russia. Sater brought Trump's children, Ivanka and Don Jr., to Moscow in 2006 to scope out potential building sites. Sater testified to the Committee about arrangements he made for Ivanka to sit in President Putin's chair during a tour of the Kremlin and Red Square.¹⁵⁸ Ivanka Trump has said publicly that this "may have" happened.¹⁵⁹ As with Trump's other Russia deals, it never materialized.

A year later, Bayrock Group partnered with the Trump Organization on Trump SoHo, a real estate project subject to numerous lawsuits alleging that the development received questionable funding from Russia and Kazakhstan, and that the Trump Organization defrauded buyers by inflating claims about purchases of the luxury condominiums. Ivanka Trump and Donald Trump Jr. settled, avoiding possible criminal fraud charges.¹⁶⁰

The following year, in 2008, Don Jr. attended the Moscow real estate summit, where he is quoted as saying: "And in terms of high-end product influx into the U.S., Russians make up a pretty disproportionate cross-section of a lot of our assets; say in Dubai, and certainly with our project

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in SoHo and anywhere in New York... We see a lot of money pouring in from Russia.”¹⁶¹ The comment certainly appeared to be true with respect to Donald Trump, who the same year sold a Palm Beach, Florida property to Russian oligarch Dmitry Rybolovlev for a record \$95 million—reportedly the most expensive home in America at the time at more than double its purchase price from 2004, and at a time when the financial crisis was about to shake the country and the world.¹⁶² Rybolovlev would be one of numerous individuals and entities tied directly or indirectly to Russia who would buy up Trump-branded properties in New York, Florida, and elsewhere.¹⁶³

The full scope of Russia-linked investment in Trump properties, and the use of these transactions to facilitate money laundering schemes, requires additional investigation, since a significant number of Trump property sales and resales over the years have involved shell corporations with opaque ownership structures and origin, many based in foreign jurisdictions with secretive bank laws, that paid in cash.¹⁶⁴

Despite the influx of cash, and the loans from financial institutions with questionable ties to Russia, the Trump Moscow project seemed to elude Trump. As described above, in 2013, he brought the Miss Universe pageant to Moscow, one of the only times the event was not held in a sunny vacation locale. On November 11, 2013 Trump signed a deal with Aras Agalarov’s Crocus Group to build a Trump Tower in Moscow. As detailed above, Agalarov cultivated a relationship with Trump and, in Moscow, introduced Trump to the head of one of Russia’s largest lenders, Sberbank; Herman Gref was reported to have joined the pageant group’s dinner at Nobu during the event. Despite the meetings and fanfare, the deal, as others, never came together, but the relationship between Agalarov and Trump continued.

Instead, in what is believed to be the most recent attempt to secure funding and licenses for a Trump property in Moscow, the Trump Organization, through Felix Sater in 2015, again initiated negotiations to build Trump Tower Moscow. This time, funding would be sought from VTB Bank, Russia’s second largest bank and a U.S. sanctioned entity.

In an October 12, 2015 email from Sater to Trump Organization attorney Michael Cohen, titled “Andrey L. Kostin – CEO VTB Bank,” Stater said:

“Kostin who is Putins top finance guy and CEO of 2nd largest bank in Russia is on board and has indicated he would finance Trump Moscow. This is major for us, not only the financing aspect by Kostins position in Russia, extremely powerful and respected. Now all we need is Putin on board and we are golden, meeting with Putin and top deputy is tentatively set for the 14th. See buddy I can not only get Ivanka to spin in Putin’s Kremlin office chair on 30 minutes notice, I can also get a full meeting. I will call you later today to discuss getting the LOI signed.”¹⁶⁵

In a November 3, 2015 email from Sater to Cohen acknowledging receipt of the Trump-signed Letter of Intent (LOI) to build Trump Tower Moscow – a copy of which the Committee

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possesses – Sater wrote, “Buddy our boy can become President of the USA and we can engineer it. I will get all of Putin’s team to buy in on this.”¹⁶⁶ When the deal slowed in early 2016, Cohen took matters into his own hands, attempting on January 14, 2016 to contact Kremlin spokesman Dmitry Peskov via email to move the project forward. However, like so many others, the deal did not materialize.

The Majority, however, addresses few of Trump’s attempted Moscow business deals, questionable funding sources, and ongoing business relationships with Russian oligarchs close to President Putin. Instead, it offers a perfunctory reference to the 2013 Miss Universe Pageant, claiming simply that the Committee “found no evidence that President Trump’s pre-campaign business dealings formed the basis for collusion during the campaign.”¹⁶⁷

As with so many of the Majority’s findings, the Majority did not uncover evidence because it refused look for any. The Majority expended little effort in investigating whether Trump’s business deals may have been part of Moscow’s effort to entangle business and political leaders in corrupt activity, and they actively blocked Minority requests to follow this thread. The Majority rejected numerous appeals by the Minority to request or subpoena Trump financial records from Deutsche Bank, interview pertinent witnesses from the financial entity, and seek testimony or production from other individuals and entities with knowledge of Trump’s business projects in Moscow. The question of whether Trump’s financial vulnerability, reliance on lenders of last resort with illicit ties to Russia, or decades-long desire to secure a real estate deal in Moscow led Russia to hold of leverage against him remains an unexplored but critical investigatory question.

The report also does not deal in any serious way with the actions of campaign chairman Paul Manafort and his deputy Rick Gates, who have been the subject of the Special Counsel investigation and have been indicted or pled guilty to money-laundering and conspiracy charges.¹⁶⁸ In its report, the Majority attempted to explain away inconvenient facts related to his ties to Russia-friendly entities. For example, a finding on the Trump campaign chairman argues that, “Special Counsel Robert Mueller indicted Paul Manafort on several charges, none of which relate to allegations of collusion, coordination, or conspiracy between the Trump campaign and the Russian government.”¹⁶⁹

However, the Special Counsel’s investigation into Manafort is ongoing, and the Committee has no visibility into the status of that investigation, nor what the Special Counsel has found that has not yet been made public. It is possible that new or superseding indictments of Manafort will uncover activities related to the 2016 election.

On February 23, 2018, a federal grand jury in the District of Columbia returned a superseding indictment against Manafort for conspiracy to launder money, among other counts, including related to past work done for Putin-friendly Ukrainian Prime Minister Victor Yanukovich, who is now in exile in Moscow.¹⁷⁰ While those charges, and a separate indictment against Manafort in the Eastern District of Virginia,¹⁷¹ do not explicitly associate this activity with his role on the

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Trump campaign, it remains an open question whether Manafort sought to use his role as Trump campaign chairman to curry favor with prior illicit contacts. Production proffered to the Committee indicates that Manafort indeed sought to use his position on the Trump campaign to inflate his standing with his pro-Russian contacts and possibly obtain additional money or “get whole” for his work on behalf of pro-Russian interests.

For instance, on April 11, 2016, Manafort reached out to Konstantin Kilimnik, a Russian national who previously worked for Manafort in Ukraine. In a December 2017 court filing, the Special Counsel assessed that a long-time Russian colleague and ongoing contact of Manafort’s has “ties to a Russian intelligence service.”¹⁷² Public reports indicate that this person is Kilimnik.¹⁷³ Manafort inquires whether Kilimnik has “shown our friends my media coverage.” Kilimnik responds: “Absolutely. Every article.” Manafort then asks Kilimnik: “How do we use to get whole. Has Ovd operation seen?”

“Ovd” (or “OVD”) refers to Oleg Vladimirovich Deripaska, the Russian oligarch to whom Manafort owed a significant amount of money. Kilimnik confirms in a subsequent email that Deripaska was tracking Manafort’s activities: “Yes, I have been sending everything to Victor, who has been forwarding the coverage directly to OVD. Frankly the coverage has been much better than Trump’s. In any case it will hugely enhance your reputation no matter what happens.”¹⁷⁴ Documents produced to the Committee also confirm that Manafort’s deputy, Rick Gates, remained in email contact with Kilimnik through the summer and fall of 2016.¹⁷⁵

Because the Majority failed to subpoena Manafort to require him to produce the full range of communications with Kilimnik and others, and the Majority refused to engage the Special Counsel about arranging testimony from Manafort, the Committee has an incomplete record about Manafort’s communications prior to, during, and after his tenure on the campaign. As a result, we are unable yet to determine the extent of Manafort’s engagement with his Russian contacts and associates of Deripaska, among others, and whether Manafort used his Russian contacts to help the campaign. The Minority will continue to investigate this line of inquiry.

Investigative Next steps

When the Majority officially closed down their work on the Russia investigation on March 22, 2018, and voted to release their report, they chose to do so outside of the public eye. Although the debate was unclassified, the Majority wished to hide the ignominious end to their efforts behind closed doors. At the meeting, the Minority put forward a series of motions to undertake some of the investigative steps that the Majority refused to authorize throughout the investigation. These measures are necessary to compel important testimony and the production of documents to pursue promising leads, overcome improper assertions of privilege, ensure a complete record about key communications and events, and determine the veracity of statements made by key witnesses. Additionally, the Committee should have engaged the Special Counsel to arrange testimony from George Papadopoulos, Michael Flynn, Rick Gates and, Paul Manafort, George Nader, and potentially others under investigation or who are cooperating with the Special

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Counsel. A transcript of the March 22, 2019 Committee business meeting is incorporated in Chapter VI.

As outlined in the March 13, 2018 status update, among an array of other steps, the Minority believes it necessary to:

- Refer to the House a contempt citation for Steve Bannon, in order to challenge and overcome the White House's direction to Bannon not to testify to matters pertaining to the presidential transition, his tenure at the White House, and his communications with the President since leaving government. A follow-up interview with Bannon would also result in testimony about Bannon's involvement with Cambridge Analytica, his involvement in the company's unauthorized procurement of Facebook data on tens of millions of Americans, and his knowledge of its possible business with Russia-linked entities and persons.
- Issue Committee subpoenas for third-party documents, including, among others, to ensure complete production from the Trump organization, the Trump campaign, and the Trump transition, as well as from Deutsche Bank for financial records related to the Trump Organization and Twitter for direct messages from identified Russian cutouts, such as Guccifer 2.0; proxies, such as WikiLeaks; and persons of interest, Roger Stone, who have sought contact with these Russia-aligned actors.
- Issue Committee subpoenas to the following individuals, many of whom, as explained in the Minority's March 13, 2017 status update (Appendix A), have provided inconsistent or incomplete testimony, or, in the case of Randy Credico, have refused to testify:
 - Former White House Communications Director Hope Hicks, to compel her to testify about her tenure at the White House, as well as specific communications during the presidential transition period – timeframes the White House largely barred her from discussing during her interview (see Chapter VI for Hicks' February 27, 2018 interview transcript);
 - Donald Trump Jr., to compel his testimony regarding communications with his father in July 2017, when he and his father coordinated his public posture in response to press reports about his June 9, 2016 meeting with a Russian delegation, as well as production of records regarding his communications surrounding the June 9, 2016 meeting as well as his foreign travel and engagements during the campaign, including his October 2016 visit to Paris at the paid invitation of a Russia-aligned organization (see Chapter VI for Trump Jr's December 6, 2017 interview transcript);
 - Attorney General Jeff Sessions, to compel his testimony regarding specific communications with the President, after he refused in his interview to answer questions regarding whether President Trump ever instructed him to take any action to hinder the FBI's Russia investigation and whether President Trump ever discussed

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with him the need to investigate and prosecute individuals suspected of sharing information with the press (see Chapter VI for Attorney General Sessions' November 30, 2017 interview transcript);¹⁷⁶

- Jared Kushner, for another interview and additional document production regarding specific communications and involvement in certain meetings, including a meeting with officials from the United Arab Emirates on December 15, 2016, which press reports indicate George Nader attended – an important development, if accurate, that Kushner omitted in his Committee testimony (see Chapter VI for Kushner's July 25, 2017 interview transcript);
- Erik Prince, to compel testimony and production of documents regarding his January 2017 meetings in the Seychelles, in light of reports since his interview that contradict his testimony about the presence of George Nader at his meeting with UAE officials and possibly during his encounter with Kirill Dmitriev, the head of the Russian Direct Investment Fund (see Chapter VI for Prince's November 30, 2017 interview transcript);
- Cambridge Analytica CEO Alexander Nix, for a follow-up interview and more extensive production of personal and corporate documents in light of press reports exposing Nix and Cambridge Analytica's role in misappropriating Facebook data on more than 50 million users, possible communications with Russian entities, and involvement in the Trump campaign's digital operation (see Chapter VI for Nix' December 14, 2017 interview transcript);
- Corey Lewandowski, to compel his testimony about specific matters he refused to answer during his March 8, 2018 interview, including his conversations with President Trump about the June 9, 2016 Trump Tower meeting, the President's firing of former FBI Director Comey, and efforts by the President to fire Special Counsel Mueller (see Chapter VI for Lewandowski's January 17 and March 8, 2018 transcripts);
- Keith Schiller, to reappear in light of testimony by other witnesses, as well as recent public reporting that is inconsistent with his account of the 2013 Miss Universe event in Moscow, that call into Schiller's responses to the Committee (see Chapter VI for Schiller's November 7, 2017 interview transcript);¹⁷⁷
- Roger Stone, to testify again and produce documents to address inconsistent testimony in light of recent public reports that Stone bragged in the spring of 2016 that WikiLeaks' Julian Assange gave him advance notice about the email leaks related to John Podesta and the Democratic National Committee (see Chapter VI for Stone's September 26, 2017 interview transcript).

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At the March 22, 2018 business meeting, the Minority also emphasized the need to require Randy Credico to appear in person. Roger Stone identified Credico to the Committee as his intermediary with Assange, but Credico refused to testify and informed the Committee that he intended to invoke the Fifth Amendment after being subpoenaed on December 12, 2017. The Majority opposed a motion during the business meeting to discuss with the Special Counsel whether any prosecutorial equities would prevent the Committee from entertaining a grant of immunity to secure Credico's testimony, which could provide greater insight into Stone's communications with Assange as well as WikiLeaks' activities during the 2016 elections.

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IV. THE MAJORITY REPORT'S RECOMMENDATIONS

Since many of the Majority's findings are incomplete, slanted, or otherwise flawed, the Minority likewise expresses similar concerns about many of the resulting recommendations. One of the goals of the Committee's investigation should be to develop unique recommendations that genuinely advance future policy discussions or to consider unconventional or newfound legislative approaches to protecting our democratic processes moving forward – not merely recycle prior congressional work.

Some recommendations, notably those directed at our European allies, are relevant, but lack in substantive follow-on. If our Committee had interviewed more regional experts about Russian influence operations targeted across the Atlantic, the Minority feels this subset of recommendations could have been strengthened with concrete steps or courses of action instead of thin, superficial recommendations. For instance, the recommendations are narrowly scoped to focus on Russian-linked mass media, but do not speak to other possible actions, such as encouraging European countries to review and shore up anti-money laundering initiatives to combat Russian illicit financing.

Likewise, recommendations pertaining to the U.S. government reaction to Russia's active measures campaign and election interference are similarly superficial. For instance, our Committee held an open hearing with social media companies last year, learning in great detail how Russian operatives exploited these platforms. Yet, *Recommendation #5*, which purportedly addresses social media vulnerabilities, fails to offer any meaningful proposals, only that the companies "should consider implementing methods to counter malign foreign activity." The recommendation overlooks the need to have all technology and social media companies whose tools and platforms were weaponized by Russian-linked actors pool resources, knowledge, and data so that their experts might collaborate on a comprehensive, public accounting of what transpired online during the 2016 election season.

Other recommendations in this report merely cite legislative provisions that have already been introduced in – or indeed have already passed – either the House or the Senate, and again do not demonstrate a rigorous effort to conceive of new approaches to defending our election systems from outside interference. Some of these provisions were included in the House or Senate versions of the Intelligence Authorization Act (IAA) for Fiscal Year 2018, as the Majority itself notes and were previously proposed by the Ranking Member himself; other elements appear captured in H.R. 5011, the "Election Security Act," which was introduced in February 2018 and cosponsored solely by Democrats to date.

The core of the Majority's *Recommendation #15* was previously proposed by Ranking Member Adam Schiff for the conference version of the IAA for Fiscal Year 2018, and while we appreciate the Majority's adoption of this recommendation, it is not a substitute for a comprehensive response. While the Minority supports any and all efforts to bolster the security of our electoral processes, the fact that the Majority has relied on existing public proposals rather

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than offering original ones reflects its disproportionate lack of focus on election security issues during our investigation. Had the Committee taken the opportunity to interview more witnesses and experts in this field, it would have been better positioned to inform genuinely new recommendations for the Committee report.

The Minority also takes issue with unfair characterizations leveled against the DNC in *Recommendation #7*. Communication and information sharing from the FBI to the DNC was indeed deficient, and the Minority agrees that cyberattack victim notification processes require enhancements to ensure that as complete a picture as possible about the threat reaches senior leadership of the targeted organization, particularly when that organization is involved in an election campaign. However, the Majority needlessly attacks the DNC for “fail[ing] to handle the intrusions with the level of seriousness it deserved,”¹⁷⁸ ignoring the inherent, and daunting challenge that one of the world’s most sophisticated state-sponsored actors—the Russian intelligence services—poses to any non-government entity. Such victim-blaming is needless and deflects attention away from otherwise sound suggestions about involving the Department of Homeland Security and the timely informing victims of foreign attacks on their systems.

As noted earlier, the inclusion of the repeal of the Logan Act as a report recommendation is baffling, as it is uncertain how this law has any bearing either on a retroactive review of Russian election meddling or on preparations for future foreign covert influence campaigns. However, if the Majority is advocating enshrining a better articulated principle of “one government at a time” in law, then the Minority would be open to such a recommendation. Instead, this recommendation appears to be a veiled attempt to retroactively exonerate Michael Flynn for attempts to undermine U.S. policy in December 2016.

The Minority has strong objections to the report recommendations pertaining to campaign links and Intelligence Community Assessment leaks. In particular, *Recommendation #23*, under the guise of improving the transparency of campaign finance reporting, is nothing more than a continuation of Majority attempts to paint the Clinton presidential campaign as having material connections to Russia. At the same time, the report makes no mention of Cambridge Analytica, the British firm retained by the Trump campaign to support its digital operations – a firm now implicated in a major data breach scandal and mired in questions about compliance with Federal Election Commission regulations.

Meanwhile, neither of the Majority’s recommendations that ostensibly relate to “campaign links to Russia” sufficiently address the many publicly known attempts by Trump campaign officials to engage with Russians during the 2016 election. Improving campaign staffs’ awareness about foreign counterintelligence threats is crucial, but this does not adequately resolve unanswered questions about why so many individuals in the Trump orbit appeared so eager to work with a hostile foreign power in order to harm the Clinton campaign.

Finally, the Minority reaffirms that leaks of classified information constitute real harm to national security, and unauthorized leakers should face criminal prosecution and appropriate

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legal repercussions for doing so. But once again, the Majority bases its recommendations on the unsubstantiated findings, including that “senior officials within the IC” were responsible for leaks surrounding the ICA’s publication, as well as on the faulty proposition that leaks were the result of individuals who were “breaking the law for their own political purposes.”¹⁷⁹ Increasing the legal penalties in statute for leaking or the unauthorized dissemination of classified information is one avenue. But as with other recommendations, the Committee did not undertake a serious review of this fourth prong of the investigation, meaning that these recommendations could have been improved had the investigation been allowed to continue on its trajectory before being prematurely shut down by the Majority.

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V. ADDITIONAL MATTERS

Upon public release of the Majority's findings and recommendations, President Trump, Committee Republicans, and others also focused on several other politically-driven allegations in the report. Although these Views do not address all of the flawed assertions and arguments in the report, the following deserved immediate rebuttal.

The Obama Administration's Response

Finding # 14 of the Majority report accuses the United States Government of an insufficient response to the Russian attack after the election. Several Obama administration witnesses told the Committee that the President and the small circle of officials who were becoming increasingly aware of Russia's activities agonized through the summer of 2016 as to how to respond to the attacks and whether to make public attribution. Officials detailed their fear of "putting a thumb on the scale" of the election, which could have fueled charges of bias and favoritism, as a key element in the White House's reluctance to more forcefully respond earlier in the election cycle. At this time, candidate Trump was loudly proclaiming that the election was "rigged" against him, further complicating the political environment and making it more challenging for President Obama to act publicly without being perceived as intervening for political purposes, even as he and his aides confronted Russia privately.

In late December 2016, President Obama acted to expel 35 Russian officials in the United States, ordered the closing of two Russian compounds, and imposed a narrow set of sanctions. This response was never intended to be the United States' last word. Instead, as detailed above, Trump transition officials, with direct involvement by National Security Advisor-designate Michael Flynn and possibly at the direction of President Trump, coordinated with Russia to undermine the U.S. government's response.

The Ranking Member has expressed his concern since these events were ongoing, that the Obama Administration should have made earlier attribution of Russia as behind the hacking of our democratic institutions and begun discussions on sanctions while that attack was unfolding. But this does not absolve the current Administration of its lethargic response, let alone its efforts to undermine the sanctions the prior administration did impose.

Since coming to office, Trump has failed to take steps to harden our electoral infrastructure, defied congressional direction to impose sanctions against a range of Russian actors, and so far refrained from directing the executive branch, including the intelligence and law enforcement agencies, to make countering and deterring Russian active measures a top priority. In February 13, 2018 testimony before the Senate Select Committee on Intelligence, FBI Director Wray, along with National Security Agency Director Admiral Mike Rogers, Director of National Intelligence Dan Coats, and CIA Director Mike Pompeo, were unable to point to specific direction from President Trump to "blunt" and "disrupt" Russian meddling in future elections.¹⁸⁰

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In February 27, 2018 testimony before the Senate Armed Services Committee, National Security Agency (NSA) Director Admiral Rogers confirmed more specifically that the President had not directed, through the Secretary of Defense, that NSA and Cyber Command seek to disrupt malicious cyber activity by Russia at the origin of these attacks.¹⁸¹ Rogers also raised alarm that Russia has not suffered a sufficient cost to deter future action:

*I believe that President Putin has clearly come to the conclusion, 'There's little price to play here [...] and that, therefore, I can continue this activity.' [...] Everything, both as a director of NSA and what I see on the Cyber Command side, leads me to believe that, if we don't change the dynamic here, this is going to continue, and 2016 won't be viewed as something isolated. This is something -- will be sustained over time. So, I think the challenge for all of us is, So what are the tools available to us? And, as the strategy says -- diplomatic, economic, some cyber things -- there are tools available to us. And again, I think, in fairness, you can't say nothing's been done. But, my point would be, it hasn't been enough. [...] Clearly what we've done hasn't been enough.'*¹⁸²

Former Director of National Intelligence James Clapper's Testimony

The fifth chapter of the Majority's report is ostensibly concerned with the question of "[w]hat possible leaks of classified information took place related to the Intelligence Community's assessment of these matters."¹⁸³

Finding #44 claims that former Director of National Intelligence James Clapper "provided inconsistent testimony" to the Committee about his contacts with the media, including CNN. The report also observes that, in January 2017, CNN's Jake Tapper published a story about the Intelligence Community Assessment and Christopher Steele's "dossier"—which in turn, the report argues, was the proximate cause of another media outlet's decision publish the "dossier."¹⁸⁴

Finding #44 is written with the intent to smear Clapper, a decorated military and intelligence professional who served under Republican and Democratic Presidents, and promote a public narrative that former Obama Administration officials, such as Clapper, leaked classified or sensitive information to the media.

Despite this dark insinuation, the report neither cites evidence, nor even alleges, that Clapper disclosed information – classified or unclassified – illegally or improperly. Nor does the report acknowledge that, as Director of National Intelligence, Clapper was authorized to engage with media. Instead the Report seizes on alleged "inconsisten[cy]" in Clapper's testimony:

When initially asked about leaks related to the ICA in July 2017, Clapper flatly denied "discuss[ing] the dossier [compiled by Christopher Steele] or any other intelligence related to Russia hacking of the 2016 election with journalists." Clapper subsequently

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acknowledged discussing the "dossier with CNN journalist Jake Tapper," and admitted that he might have spoken with other journalists about the same topic. Clapper's discussion with Tapper took place in early January 2017, around the time IC leaders briefed President Obama and President-elect Trump, on "the Christopher Steele information," a two-page summary of which was "enclosed in" the highly-classified version of the ICA.¹⁸⁵

Clapper did not "admi[t]" to any criminal or inappropriate conduct regarding media contacts. Clapper explained the following during his interview:¹⁸⁶

MR. ROONEY: Did you personally discuss the dossier or any of the other intelligence related to Russian hacking? You already said that you didn't leak it to the journalists, so I assume that's a no, correct?

MR. CLAPPER: I'm sorry?

MR. ROONEY: Did you discuss the dossier or any other intelligence related to Russia hacking of the 2016 election with journalists?

MR. CLAPPER: No.

MR. ROONEY: Did you confirm or corroborate the contents of the dossier with CNN journalist Jake Tapper?

MR. CLAPPER: Well, by the time of that, they already knew about it. By the time it was -- it was after -- I don't know exactly the sequence there, but it was pretty close to when we briefed it and when it was out all over the place. The media had it by the way. We were kind of behind the power curve, because the media, many media outlets that I understood had that, had the dossier for some time, as did people on the Hill.

MR. ROONEY: Do you have any idea how they had it, how they got it?

MR. CLAPPER: The media?

MR. ROONEY: Yes.

MR. CLAPPER: I do not.

Later during the interview, and consistent with his earlier answer, Clapper acknowledged to Majority staff that he and Tapper may have discussed the dossier once it was in the public domain. The dossier, moreover, is not a classified product, does not contain U.S.-derived intelligence information, and did not inform the Intelligence Community's assessment of Russia's activities.¹⁸⁷

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Q: [W]as it your testimony earlier that you did, in fact, discuss the so-called dossier with CNN journalist Jake Tapper?

MR. CLAPPER: Well, after it was out, yeah.

Q: And by out, what do you mean by that?

MR. CLAPPER: Well, once it was public. It wasn't -- you know, it wasn't like this is an Intelligence Community document or anything. This was out in the media.

Q: And what were the nature of those conversations?

MR. CLAPPER: I don't remember specifically.

Q: Did you discuss the dossier with any other --

MR. CLAPPER: I may -- I probably said much of what I said here, that it was not a part of our report, and the reason was because we could not corroborate the second-, third-order assets that were used, apparently, to put the dossier together.

Q: Did you discuss --

MR. CLAPPER: Our primary purpose -- I do remember this -- was that we felt obliged to alert then President-elect Trump that it was out there.

Q: Did you discuss the dossier with any other journalists besides Mr. Tapper?

MR. CLAPPER: I could have. I don't remember specifically talking about the dossier.

Evaluated in context, Clapper denied leaking classified information, while acknowledging that, as DNI, he engaged in legitimate discussion of unclassified, non-intelligence information with Tapper. There was nothing inappropriate with his doing so, and it is hard to escape the conclusion that the Majority simply wishes to impugn the integrity of a man with a lifetime of service who is now deeply critical of the President.

Abuse of Power and Obstruction of Justice

In the course of the investigation, the Committee found important evidence on the question of whether President Trump and other Administration officials obstructed justice or otherwise abused the power of office.

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The Majority nonetheless sought to limit the Minority's ability to pursue this important line of inquiry by asserting that looking into actions by President Trump and his associates to interfere with congressional and law enforcement investigations into Russia's meddling – to include our own – fell outside the scope of the Committee's investigative parameters. With critical witnesses involved in or with direct knowledge of events under scrutiny, such as the President's role in crafting a misleading statement about the June 9, 2016 meeting or directions he may have provided to senior officials to intervene with the FBI and the Special Counsel, the Majority repeatedly refused to issue or enforce subpoenas to compel testimony or the production of documents that could clarify specific facts about the President's actions and intent.

Although constrained due to the lack of subpoena power, the Minority will continue to gather additional facts on this prong of the investigation. At this stage, however, it is important for the American public to review some of what we know. The portrait that emerges is troubling.

Since President Trump's inauguration, we have witnessed a systematic campaign by the President and his allies to discredit professionally and in the court of public opinion witnesses to possible presidential abuse of power and obstruction of justice. The most prominent – former FBI Director Comey, former FBI Deputy Director Andrew McCabe, former FBI General Counsel James Baker, and Comey's former Chief of Staff James Rybicki – have faced sustained attacks on their credibility and character. Comey and McCabe have been fired, Baker and Rybicki were moved out of their positions, with Rybicki ultimately leaving the Bureau.

This is no accident. And, regrettably, the Committee's Majority contributed to this effort, using the Committee's tools to investigate DOJ and the FBI and undermine public confidence in these institutions and the Special Counsel's ongoing investigation.

Comey memorialized his interactions with the President and ensured that FBI's core leadership was aware of the President's actions in real time. Besides Comey, the fact witnesses with greatest knowledge and visibility on the issue of possible obstruction have faced the brunt of the attacks: McCabe, Baker, and Rybicki. These officials, moreover, were involved to varying degrees in the FBI's Russia counterintelligence investigation, before the Special Counsel took it over. They are uniquely positioned to explain and defend the FBI's investigative decisions.

After his firing by the President, Comey testified publicly to the Senate Select Committee on Intelligence (SSCI) on June 8, 2017 about efforts by President Trump to exert inappropriate pressure on him as FBI Director. President Trump, during a private dinner, told Comey that he expected "loyalty," in what Comey interpreted to be an effort by the President to establish a sort of patronage relationship with him. During another one-on-one meeting, Trump, referencing recently terminated National Security Advisor Michael Flynn, asked Comey to "let this go," which Comey took to be a request for the FBI to drop any investigation or prosecution of Flynn.¹⁸⁸

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Since firing Comey on May 10, 2017 the President has disparaged Comey via Twitter some thirty-six times, mostly by portraying him as a liar or leaker of classified information.¹⁸⁹ In particular, the President suggested that Comey could face unspecified reprisal: “James Comey better hope there are no ‘tapes’ of our conversations before he leaks to the press!”¹⁹⁰ And the President also has denied ever asking “Comey to stop investigating Flynn.”¹⁹¹

It has been the same pattern with McCabe—whose December 20, 2017 testimony to the Committee corroborated and strongly amplified Comey’s testimony to the SSCI. Prior to that appearance, the President already had begun to smear McCabe publicly, starting with his July 25 tweet falsely charging that McCabe received “\$700,000 from H[ilary Clinton] for [his] wife!”¹⁹² A day later the President tweeted again, in two parts. “Why didn’t A.G. Sessions replace Acting FBI Director Andrew McCabe, a Comey friend who was in charge of the Clinton e-mail investigation but got...big dollars (\$700,000) for his wife’s political run from Hillary Clinton and her representatives. Drain the Swamp!”¹⁹³

McCabe testified to the Committee that Comey told him about the fact and contents of Comey’s private talks with President Trump. His testimony also established that Rybicki and Baker also heard Comey’s side of phone conversations with the President, in real time, or were debriefed by Comey, along with McCabe, shortly after telephone discussions or in-person meetings took place.¹⁹⁴

Most importantly, McCabe corroborated, and indeed substantially amplified Comey’s account to the SSCI. Questioning Deputy Director McCabe about these, Ranking Member Schiff referred to, and read from, former Director Comey’s written statement for the record, before the SSCI:¹⁹⁵

The “Patronage Relationship” and Request for Loyalty

MR. SCHIFF: Now, Director Comey also testified about a January 27th meeting. He stated, quote,

[T]he President and I had dinner on Friday, January 27 and 6:30 p.m. in the green room at the White House. He called me at lunch time that day, invited me to dinner that night, saying he was going to invite my whole family, but decided to just have me this time, with the whole family coming the next time. It was unclear from the conversation who else would be at the dinner, although I assumed there would be others.

...

The Director also testified, he stated that lots of people wanted my job, and given the abuse I had taken during the previous year he would understand if I wanted to walk away. My instincts told me that the one-on-one setting and the pretense that

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this was our first discussion about my position meant the dinner, was at least in part, an effort to have me ask for my job and create some sort of patronage relationship. That concerned me greatly given the FBI's traditionally independent status in the executive branch. A few moments later the President said, I need loyalty. I expect loyalty. I didn't move, speak, or change my facial expression in any way during the awkward silence that followed. We simply looked at each other in silence. The conversation then moved on, but he returned to the subject near the end of our dinner.

Near the end of our dinner, the President returned to the subject of my job, saying that he was very glad that I wanted to stay, adding that he had heard great things about me from Jim Mattis, Jeff Sessions, and many others. He then said, I need loyalty. I replied you will always get honest loyalty from me. He paused and then said, that's what I meant, honest loyalty. I paused and then said, you will get that from me. As I wrote in the memo I created immediately after the dinner, it is possible he understood the phrase honest loyalty differently, but I decided it wouldn't be productive to push it further.

Is that account something he related to you after the dinner?

MR. MCCABE: Yes.

MR. SCHIFF: *And did he also on this occasion call you after this meeting with the President to relay what happened?*

MR. MCCABE: *He did.*

MR. SCHIFF: *And what can you tell us that he related to you during that conversation?*

MR. MCCABE: *Essentially – is that his testimony or the memo that you just read, I'm sorry?*

MR. SCHIFF: *That is his testimony.*

MR. MCCABE: *His testimony. So it tracks the memo very closely, as did our conversation. He was very surprised and concerned by the interaction, specifically about the references to the request for loyalty.*

MR. SCHIFF: *And in his view what did he think the President was asking for?*

MR. MCCABE: *It was my impression from our discussion that he believed that the President was asking him to be loyal to the President.*

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MR. SCHIFF: And was it the Director's impression that what the President had in mind was loyalty when it came to his handling of the Russia investigation?

MR. MCCABE: I think that he felt like it was a broad and troubling concept, that the Director of the FBI should be loyal only to the Constitution of the United States.

...

MR. SCHIFF: Anything further you can recall of that conversation with the Director on January 27th?

MR. MCCABE: No. I mean just that we were both really surprised. As I said, he was concerned going into the interaction kind of because he was concerned about, as I said, his – he believed that it was not a good idea for the Director of the FBI to have these kind of one on one meetings with the President. And then lo and behold, they had an exchange that concerned him and me greatly.¹⁹⁶

The Request Regarding Flynn: "I Hope You Can Let This Go."

In his December 19, 2017 testimony before the Committee, McCabe corroborated key elements of Comey's testimony, including that President Trump asked Comey to "end an investigative matter." In the exchange below, Ranking Member Schiff reviewed with McCabe pertinent sections of Comey's June 8, 2017 SSCI testimony:¹⁹⁷

MR. SCHIFF: [...] According to Director Comey, the President told him on February 14th that Flynn hadn't done anything wrong in speaking with the Russians, but that he had to let him go because he had misled the Vice President. [...] Were those facts, though, that the Director related in his testimony, as to what the President said to him, consistent with what he told you after the meeting?

MR. MCCABE: Yes.

MR. SCHIFF: Director Comey also testified he added that he had other concerns about Flynn which he did not then specify. The President then returned to the topic of Flynn, saying he is a good guy and has been through a lot. He repeated that Flynn hadn't done anything on his calls with the Russians, but had misled the Vice President. He then said, I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go. Is that also consistent with what the Director told you contemporaneous with the events?

MR. MCCABE: Yes, that is consistent. That's what he told me.

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Quoting Comey's testimony before SSCI again:

MR. SCHIFF: "I replied only that he is a good guy. In fact, I had positive experience dealing with Mike Flynn when he was a colleague as Director of the Defense Intelligence Agency at the beginning of my term at FBI. I did not say I would let this go. I immediately prepared an unclassified memo of the conversation about Flynn and discussed the matter with senior – with FBI senior leadership. I take it he is referring to you among others?"

MR. MCCABE: Yes.

MR. SCHIFF: And who were the others that he would have been referring to there?

MR. MCCABE: I am sorry, read me the statement again?

MR. SCHIFF: I immediately prepared an unclassified memo of the conversation about Flynn and discussed the matter with the FBI senior leadership.

MR. MCCABE: So that would have been myself, Mr. Baker, likely Jim Rybicki, his chief of staff, possibly Bill Priestap, who is the AD [Assistant Director] of counterintelligence, possibly others.

MR. SCHIFF: He continues, I had understood the President to be requesting that we drop any investigation of Flynn in connection with false statements about his conversations with the Russian Ambassador in December. I did not understand the President to be talking about the broader investigation into Russia or possible links to his campaign. I could be wrong, but I took him to be focusing on what had just happened with Flynn's departure and the controversy around his account of his phone calls. Regardless, it was very concerning given the FBI's role as an independent investigative agency.

What can you tell us about your conversations with Director Comey after his meeting on the same day as to those facts, as to his impression that the President was asking him to drop the matter?

MR. MCCABE: His impression, as he communicated it to me, was that the President was asking him to end an investigative matter, which was greatly concerning to the Director and to me. We were shocked.

MR. SCHIFF: Did you and the Director discuss at that time whether this might constitute obstruction of justice?

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MR. MCCABE: I don't remember that specifically. It's possible that we did. I just don't remember that from that time.

MR. SCHIFF: Did the President's request that the Director let this go, meaning the Flynn matter, have any impact on the Bureau's handling of the investigation concerning Mike Flynn?

MR. MCCABE: Of course not.

MR. SCHIFF: On December 2nd, 2017, President Trump tweeted, I had to fire General Flynn because he lied to the Vice President and the FBI. The President in that tweet – and I know the lawyer has taken the credit or blame for that tweet – appears to acknowledge that he knew at the time that Flynn was fired that he had lied to the FBI.

Prior to the appointment of the Special Counsel –and you may have answered that in large part already but – was the FBI able to confirm whether the President was aware that Flynn had lied to the FBI?

MR. MCCABE: No, sir.

MR. SCHIFF: The Director continued, the FBI leadership agreed with me that it was important not to infect the investigative time with the President's request, which we did not intend to abide. We also concluded that given that it was a one-way conversation, there was nothing available to corroborate in that account. We concluded that it made little sense to report it to Attorney General Sessions, who we expected would likely recuse himself from involvement in Russian-related investigations.

Why was it expected that at that time that the Attorney General would recuse himself?

MR. MCCABE: I think his recusal was already under consideration by the Department of Justice. I assume that that's where that would end up.

MR. SCHIFF: Was there any other basis on which the Director believed that the Attorney General might be forced to recuse himself?

MR. MCCABE: The recusal issue is – I think we knew of the general facts that had raised the recusal issue. I can't speak specifically to what Director Comey was thinking on that. But we certainly knew that the issue would come to the fore as a result of the Attorney General's interactions with Russians and his involvement in the campaign.

MR. SCHIFF: Mr. Chairman, I yield back.

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Veiled Threats: References to Deputy Director McCabe's Wife and 'That Thing'

McCabe told the Committee that he and Comey shared concern that the President had mentioned McCabe's wife's political activities and other matters during private discussions between the President and Comey in order to make veiled threats against McCabe and Comey.¹⁹⁸

MR. SCHIFF: Did – well, let me continue then. I will ask you about other parts of it.

The Director goes on to say:

In an abrupt shift, he turned the conversation to FBI Deputy Director Andrew McCabe saying that he hadn't brought up, quote, "the McCabe thing" because I had said McCabe is honorable, though McAuliffe was close to the Clintons and had given him (I think he meant Deputy Director McCabe's wife) campaign money, although I didn't understand why the President was bringing this up. I repeated that Mr. McCabe was an honorable person.

When you discussed this, did the director mention this in his conversation with you as well?

MR. MCCABE: He did. It was not the first time the President had raised me with the Director.

MR. SCHIFF: And did the Director have any understanding of why he thought the President was bringing this up?

MR. MCCABE: Understanding is probably not the right characterization. Our concern was that he was bringing it up as some sort of an almost a veiled threat.

MR. SCHIFF: That if the Director didn't lift the cloud of the Russian investigation, that he would take action against you?

MR. MCCABE: That's correct. That was my concern, and as I understand it, that was Director Comey's concern as well.

MR. SCHIFF: Director Comey continued saying:

He finished by stressing the cloud that was interfering with his ability to make deals for the country, and said he hoped I could find a way to get out that he wasn't being investigated. I told him I would see what we could do and that we would do our investigative work well and as quickly as we could.

Immediately after that conversation I called Acting Deputy Attorney General Dana Boente, AG Sessions had by then recused himself on all Russia-related matters, to

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report the substance of the call from the President and said I would await his guidance. I did not hear back from him before the President called me again, 2 weeks later.

Is that consistent with what he related to you contemporaneous with the meeting or soon thereafter?

MR. MCCABE: Yes, with the phone call. It was a phone call between he and the President; not a meeting.

MR. SCHIFF: And did Director Comey tell you what he thought the President meant by "lift the cloud?"

MR. MCCABE: Yeah, I mean, I think Director Comey's impression was that the President was still quite frustrated with the fact that we were continuing our investigative efforts into the --- into the campaign and Russia issues.

MR. SCHIFF: And did the Director communicate that the President essentially wanted him to absolve him publicly?

MR. MCCABE: Yes. The President was interested in the Director making some sort of a public statement that the President was not under investigation.

McCabe further testified that both he and Comey likewise took a different remark by the President, during an April 11 phone call between the President and Comey, to constitute a separate threat of reprisal directed at Comey:¹⁹⁹

MR. SCHIFF: Another conversation took place on April 11, 2017. Director Comey testified:

"On the morning of April 11 the President called me and asked what I had done about his request that I get out that he is not personally under investigation. I replied that I'd passed this request to the Acting Deputy Attorney General, but I had not heard back. He replied that the cloud was getting in the way of his ability to do his job. He said that perhaps he would have his people reach out to the Acting Deputy Attorney General. I said that was the way his request should be handled. I said the White House counsel should contact the leadership of DOJ to make the request, which was the traditional channel. He said he would do that and added, quote 'because I have been very loyal to you, very loyal. We had that thing, you know.' I did not reply or ask him what meant by that thing.

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I said that the way to handle it was to have the White House counsel call the Acting Deputy Attorney General. He said that was what he would do and the call ended. That was the last time I spoke with President Trump."

So did the Director also share this conversation with you?

MR. MCCABE: He did.

MR. SCHIFF: And what was his, as you can recall from your conversation rather than his testimony, what did he have to say in terms of the President's comments that "I have been very loyal to you, very loyal. We had that thing, you know." What did the Director tell you he took from that?

MR. MCCABE: He was concerned. He was concerned that the President was still focused on and frustrated by our investigative efforts; the President was really insisting that the Director make some sort of a public statement that, of course, the Director was not comfortable making; and the reference to "that thing," we weren't 100 percent sure what that was. But Director Comey was, you know, interpreted it the same way that we had interpreted the prior comments about me and my wife. That it was some sort of -- it could be some sort of, a, you know, a veiled threat.

MR. SCHIFF: And in this case the veiled threat would be against Director Comey?

MR. MCCABE: That's correct.

MR. SCHIFF: Along the lines of, I the President have been very loyal to you. I want you to lift the cloud. Otherwise I might be less loyal to you. Is that the---

MR. MCCABE: That's correct.

MR. SCHIFF: That was the impression of Director Comey?

MR. MCCABE: It was his and my impression.

The Majority's Attempt to Minimize McCabe's Testimony

In response to Ranking Schiff's exchange with McCabe, Representative Gowdy, on behalf of the Majority, did not directly challenge McCabe's credibility as a witness, but sought to minimize the significance of his testimony with respect to abuse of power and obstruction. Also citing to Comey's Senate testimony, Representative Gowdy's line of questioning suggested that Comey (and thus McCabe) may have misunderstood the President's intended meaning.

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For example, in one exchange, Representative Gowdy read from Comey's public statement regarding Flynn and possible violations of the Logan Act:²⁰⁰

MR. GOWDY: "The President began by saying Flynn hadn't done anything wrong in speaking with the Russians." Are you aware of any criminal code section that would have been implicated by Flynn talking to the Russian Ambassador during the transition period?

MR. MCCABE: Other than the Logan Act, no.

MR. GOWDY: I'm laughing only because we spent most of the day discussing two statutes that have never been enforced – so the gross negligence standard, and the classified email, and the Logan Act. Has there been a prosecution under either one of these?

MR. MCCABE: Not that I'm aware of.

MR. GOWDY: All right. So, absent wanting to make new law, you can't think of a criminal code section other than the Logan Act that could have been implicated by Flynn talking to the Russians in the transition period?

MR. MCCABE: I haven't done a legal analysis on any possible criminal code implications of his contact with his conversation with Ambassador Kislyak, but of course, that was not the subject of our investigation[.]

In another exchange, Representative Gowdy asks McCabe whether the President's statements to Comey amount to obstruction of justice:²⁰¹

MR. GOWDY: Third paragraph. "The President then returned to the topic of Mike Flynn saying: "He is a good guy and he has been through a lot." Is that obstruction?

MR. MCCABE: I'm not going to – you're asking me to give you legal interpretation of that statement kind of in the abstract sense, and I don't think I can do that.

MR. GOWDY: Well let me ask you this: How long have you been in law enforcement?

MR. MCCABE: Twenty-one years.

MR. GOWDY: Have you ever had anyone approach you on behalf of a defendant that is about to be sentenced or someone that you're investigating and putting in a good word for them?

MR. MCCABE: I can't think of an instance off the top of my head, but it's certainly possible.

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MR. GOWDY: You must have been out of a field office for a while. You must have been at headquarters for a long time because it's not unusual for someone to say, hey, I hope this person doesn't get the book thrown at them. They are not a bad person. It happens at every courtroom across America all day long.

MR. MCCABE: It sure does, sir.

MR. GOWDY: Well, is there anything eye-catching to you in the President telling the former Director, "He is a good guy and has been through a lot"?

MR. MCCABE: I think the fact that they are discussing the ongoing FBI investigation is troubling to me.

MR. GOWDY: Troubling because of—troubling in what way? The President is the head of the executive branch, right?

MR. MCCABE: Yes, he is.

MR. GOWDY: Does the President have pardon powers?

MR. MCCABE: He does.

MR. GOWDY: Are they plenary?

MR. MCCABE: Certainly.

MR. GOWDY: Can he pardon someone even before you get a conviction?

MR. MCCABE: That's my understanding.

MR. GOWDY: So the head of the executive branch who has the full ability to pardon anyone even before a conviction, and you were troubled that he said he's a good guy whose [sic] been through a lot.

MR. MCCABE: Yes, troubled because it is not, in my experience, it's not common the President of the United States to weigh in on a specific criminal matter despite the fact that he has pardon power.

MR. GOWDY: Were you equally troubled—did you watch the Super Bowl a couple of years ago? Did you some [sic] President Obama's interview with Bill O'Reilly.

MR. MCCABE: I don't remember that.

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MR. GOWDY: *Were you equally troubled when he said there was not an [sic] smidgeon of corruption during the pendency of an IRS investigation?*

MR. MCCABE: *I don't remember that comment, sir.*

MR. GOWDY: *You don't remember it.*

MR. MCCABE: *I don't.*

MR. GOWDY: *It got a lot of play. The President of the United States --*

MR. MCCABE: *Uh-huh.*

MR. GOWDY: *-- In the middle of an ongoing probe, said there's not a smidgeon of corruption. What about when he commented on Secretary Clinton while you all were in the middle of investigating the email server? How did you take that?*

MR. MCCABE: *It was concerning to us.*

MR. GOWDY: *Not concerning enough to put it in a memo. Did you bring it to anybody's attention, take it to the AG's attention?*

MR. MCCABE: *I'm not aware that President Obama expressed that to the Director of the FBI. So I think the situation was a little bit different.*

MR. GOWDY: *How? How is it different to say to the entire country as opposed to saying it to the head of the FBI?*

MR. MCCABE: *Because they think of the circumstances of a private one-on-one meeting with the President of the United States and the Director of the FBI is kind of a unique and rare occurrence. I don't think Director Comey had any such interactions with President Obama. Not that I'm aware of. And certainly, not about that statement. I would have heard that.*

MR. GOWDY: *Did he take his concerns to anyone at the Department of Justice?*

MR. MCCABE: *Ultimately, he talked to the acting Deputy Attorney General.*

MR. GOWDY: *Who was that?*

MR. MCCABE: *Acting, Dana Boente.*

MR. GOWDY: *About this, about feeling the pressure?*

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MR. MCCABE: *I mean, I know that he had a conversation with Mr. Boente after the first phone call in March to discuss his discomfort with these – with the conversations that he had been having with the President, and also to let DOJ know to try to stay within the requirements of the contacts policy.*

MR. GOWDY: *“I understood the President to be requesting that we drop any investigation of Flynn in connection with false statements about his conversation with the Russian Ambassador in December. I did not understand the President to be talking about the broader investigation into Russia or possible links to his campaign. I could be wrong, but I took him to be focusing on what just happened with Flynn’s departure and the controversy around his account of his phone calls. Regardless, it was very concerning given the FBI’s role as an independent investigative agency.”*

I agree. There are [sic] an independent investigative agency. I would invite your attention to not just this portion of the memo that is including his opening statement, but all eight of them because I have read them twice. Have you read them, all eight?

MR. MCCABE: *Yes.*

MR. GOWDY: *Did you read the section where he said it wasn’t proper for you to be having this conversation with me. It should be done from you to the Department of Justice and then down to me.*

MR. MCCABE: *I remember that.*

MR. GOWDY: *All right. So we are quarrelling about the method by which a message is communicated? He had no problem if the conversation had gone from himself to the Department of Justice, down to the head of the FBI. So was it the conversation that was improper, or was it who he was having it with?*

MR. MCCABE: *I don’t know that you can separate those two things.*

MR. GOWDY: *But he did. Because he laid out the path by which that could be communicated. Agreed?*

MR. MCCABE: *Yeah. That’s the path that’s required by the White House contacts policy. I’m sorry.*

MR. GOWDY: *March 31st, page 6. Middle. He described the Russian investigation as quote “a cloud” that was impairing his ability to act on behalf of the country. He said he had nothing to do with Russia, had not been involved with hookers in Russia, and had always assumed that he was being recorded. So then we have this phrase, “cloud,” and*

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then one sentence removed from the salacious allegations of sexual misconduct. You don't think there is any way the cloud could have been a personal familial cloud, and –

MR. MCCABE: Well, I'm just reading the document. He said he described the Russia investigation as a cloud. So I assume that's what he's referring to.

MR. GOWDY: Yeah, but part of the Russia investigation involved a dossier that had some very salacious allegations in it, didn't it? I mean, I know you have not covered it before. I would invite you to go back and reflect on those eight memos again. I've read them. I'm not defending what the President asked and the manner in which he did it. I don't think it is unreasonable for a husband and a father who is not the target of an ongoing probe to ask: Can you let other people know that? I think there's one memo where he makes specific reference to questions he was getting from his wife and his kids. Do you remember that one?

MR. MCCABE: Generally.

Minority Follow-Up Questions

In response to Representative Gowdy's questioning, Ranking Member Schiff returned to Comey's Senate testimony:²⁰²

MR. SCHIFF: Just returning to some of the areas that my colleague covered, in the written testimony of the Director's – concerning the February 14th Oval Office meeting, he stated: "The President began by saying Flynn hadn't done anything wrong in speaking with the Russians."

In Mike Flynn's statement of the offence, he acknowledges informing high- and senior-transition officials of his contacts with the Russian Ambassador. Do you know, or did you find out prior to the appointment of the Special Counsel whether the President was saying that Flynn hadn't done anything wrong in speaking with the Russians because the President was aware from the transition team that Flynn had, in fact, done that, or it was done with his acquiescence. Do you know whether either of those were the case?

MR. MCCABE: I don't know that.

MR. SCHIFF: The Director testified about his reservations in terms of making a public statement about the President's status. And as I understand it from your testimony, it sounds like there were two concerns. One is that his campaign was under investigation.

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MR. MCCABE: That's correct. It would also have put us in the awkward position of then going out and having to change the statement that we had made earlier and it seemed to be – that would be a concerning place for us to be.

MR. SCHIFF: Now, my colleague asked you about whether it would violate any laws to be secretly communicating with the Russian Ambassador and the Logan Act was brought up. And I want to ask you about that because there's been a lot of diminishing significance of the Logan Act because it hasn't been utilized before.

MR. MCCABE: Uh-huh.

MR. SCHIFF: If someone violates a U.S. law, does the FBI generally view it as worthy of investigation regardless of whether that particular statute has been used or used recently?

MR. MCCABE: Of course. That's not a factor in our decision to initiate an investigation.

MR. SCHIFF: It would be the Justice Department's decision whether to seek to prosecute someone under a statute that hadn't been used before?

MR. MCCABE: Of course.

MR. SCHIFF: But if you have credible evidence that someone is violating a current U.S. law, it is not something to be ignored?

MR. MCCABE: That's right.

MR. SCHIFF: And to your understanding, was the Logan Act designed to legislate effectively that you only have one government at a time, and that private parties were not to undermine the existing government, if you know?

MR. MCCABE: Yeah, I don't know. I'm not an expert on the Logan Act, so I shouldn't opine.

MR. SCHIFF: Would you agree there's a distinction between a friend or a loved one, and a courtroom somewhere in the country vouching for a defendant before sentencing as being a good guy, and the President of the United States in a private meeting with the head of the FBI asking him to let a case go?

MR. MCCABE: That seems different to me.

MR. SCHIFF: And the fact that the President has the power of pardon doesn't change that, does it?

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MR. MCCABE: No, it does not.

MR. SCHIFF: The fact that Nixon had the power to pardon the burglars of the Watergate Hotel wouldn't make him any more – wouldn't make it any more appropriate for him to have a conversation with the then FBI Director about letting the burglars go?

MR. MCCABE: I don't want to speculate on historical matters, but I can tell you that it's – the fact of the President's pardon power didn't really impact how we perceived the conversation between the President and the Director.

MR. SCHIFF: Now, I do agree with my colleague, frankly, my colleague, that I don't think it would be particularly appropriate for the President to be intervening with the Department of Justice or the FBI when it comes to an investigation that involves his own campaign, but there is nonetheless an explicit policy against the President of the United States directly communicating with the head of the FBI over a pending criminal matter. Is there not?

MR. MCCABE: Yes, there is.

MR. SCHIFF: And by engaging in that conversation about Mike Flynn, the President was violating that policy?

MR. MCCABE: That would be my understanding of the policy. That's right.

MR. SCHIFF: We have the added fact in this circumstance that the President, after Director Comey testified, essentially said that he was lying about his interactions with the President on the subject of Mike Flynn. Did he not?

MR. MCCABE: I'm generally familiar with those comments, yes.

MR. SCHIFF: So the President disputes what the Director testified to and what the Director related to you contemporaneous with those meetings?

MR. MCCABE: Apparently.

This testimony supplies critical context for President's ensuing tirade against McCabe, and public comments about former FBI General Counsel James Baker.

Only three days after McCabe's testimony before the Committee, for which then-FBI General Counsel James Baker was present and during which the Majority indicated that they might also

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call him in as a witness, the President tweeted: “Wow, ‘FBI lawyer James Baker reassigned,’ according to @FoxNews”.²⁰³ Trump turned his sights on McCabe later the same afternoon. “FBI Deputy Director Andrew McCabe is racing the clock to retire with full benefits. 90 days to go?!!!”²⁰⁴

This second tweet was followed quickly by a third: “How can FBI Deputy Director Andrew McCabe, the man in charge, along with leakin’ James Comey, of the Phony Hillary Clinton investigation (including her 33,000 illegally deleted emails) be given \$700,000 for wife’s campaign by Clinton Puppets during investigation?”²⁰⁵ A fourth fusillade, the following day, appeared to paraphrase reporting from Fox News. “@FoxNews ‘FBI’s Andrew McCabe, ‘in addition to his wife getting all of this money from M (Clinton Puppet), he was using, allegedly, his FBI Official Email Account to promote her campaign. You obviously cannot do this. These were the people who were investigating Hillary Clinton.’”²⁰⁶

Keeping up campaign to undermine McCabe, the President reveled in McCabe’s March 16, 2018 firing by the Attorney General, calling the termination a “great day for the hard working men and women of the FBI [and for] Democracy.”²⁰⁷

The President added: “Sanctimonious James Comey was his boss and made McCabe look like a choirboy. He knew all about the lies and corruption going on at the highest levels of the FBI!”²⁰⁸

Responding to press reports that McCabe, like Comey, was so disturbed by the President’s comments to him during his tenure at the FBI that McCabe made detailed memos of their conversations, the President tweeted that he never saw McCabe taking notes during their few meetings. This tweet also speculated that McCabe only wrote his memos later “to help his own agenda. Same with lying James Comey. Can we call them Fake Memos?”²⁰⁹

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VI. TRANSCRIPTS

Witness interviews are an essential element of any investigation and they have served an important role in our work on the Russia investigation. In their rush to shut down the investigation, however, the Majority scheduled witnesses without regard to timing and sequence, and without obtaining related document productions prior to interviews. Most Majority Members did not attend the interviews, nor were they conducted with the rigor befitting the historic nature of this inquiry. At certain points, moreover, Majority Members inserted themselves into the proceedings as apparent advocates for witnesses close to the President.

During Jared Kushner's July 25, 2017 interview, Representative Trey Gowdy helpfully reminded the witness that "it is between you and your counsel how many questions" he might be willing to answer.²¹⁰ A review of the already-released transcripts of Carter Page and Erik Prince also exemplify the overall lack of preparation and disinterest of the Majority during the interviews.

At several points throughout the investigation, the Majority pledged to release the transcripts at its conclusion. Representative Conaway affirmed the Majority's position as recently on March 5, 2018, a week before the Majority announced that it would shut down its investigation.²¹¹

The Minority publishes them here as a separate chapter of the Minority Views, both in the interest of transparency and so that the American people may judge for themselves whether the Majority's report properly characterizes witness testimony. The public should also see for themselves the full measure of the Majority's handling of this most important national security investigation.

Unclassified Hearings and Interviews

Transcript 1: Full Committee Open Hearing on Russian Active Measures Investigation with FBI Director James Comey and NSA Director Mike Rogers, March 20, 2017, pp. 1-222.

Transcript 2: Full Committee Open Hearing with former CIA Director John Brennan, May 23, 2017, pp. 1-94.

Transcript 3: HPSCI, Executive Session Interview of Director of National Intelligence Dan Coats, June 22, 2017, pp. 1-32.

Transcript 4: HPSCI, Executive Session Interview of Evelyn Farkas, June 26, 2017, pp. 1-72.

Transcript 5: HPSCI, Executive Session Interview of John Podesta, June 27, 2017, pp. 1-56.

Transcript 6: HPSCI, Executive Session Interview of Michael Caputo, July 14, 2017, pp. 1-110.

Transcript 7: HPSCI, Executive Session Interview of Jared Kushner, July 25, 2017, pp. 1-128.

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Transcript 8: HPSCI, Executive Session Interview of JD Gordon, July 26, 2017, pp. 1-136.

Transcript 9: HPSCI, Executive Session Interview of Andrew Brown, August 30, 2017, pp. 1-57.

Transcript 10: HPSCI, Executive Session Interview of Yared Tamene, August 30, 2017, pp. 1-53.

Transcript 11: HPSCI, Executive Session Interview of Roger Stone, September 26, 2017, pp. 1-121.

Transcript 12: HPSCI, Executive Session Interview of Boris Epshteyn, September 28, 2017, pp. 1-97.

Transcript 13: HPSCI, Executive Session Interview of Matt Tait, October 6, 2017, pp. 1-81.

Transcript 14: HPSCI, Executive Session Interview of Jonathon Safron (via telephone), October 12, 2017, pp. 1-27.

Transcript 15: HPSCI, Executive Session Interview of Peter Fritsch, October 18, 2017, pp. 1-16.

Transcript 16: HPSCI, Executive Session Interview of Thomas Catan, October 18, 2017, pp. 1-13.

Transcript 17: HPSCI, Executive Session Interview of Brad Parscale, October 24, 2017, pp. 1-145.

Transcript 18: HPSCI, Executive Session Interview of Michael Cohen, October 24, 2017, pp. 1-186.

Transcript 19: HPSCI, Executive Session Interview of Carter Page (Redacted for Release), November 2, 2017, pp. 1- 243.

Transcript 20: HPSCI, Executive Session Interview of Irakly Kaveladze, November 2, 2017, pp. 1-119.

Transcript 21: HPSCI, Executive Session Interview of Keith Schiller, November 7, 2017, pp. 1-165.

Transcript 22: HPSCI, Executive Session Interview of Glenn Simpson, November 8, 2017, pp. 1-19.

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Transcript 23: HPSCI, Executive Session Interview of Rinat Akhmetshin, November 13, 2017, pp. 1-166.

Transcript 24: HPSCI, Executive Session Interview of Glenn Simpson, November 14, 2017, pp. 1-165.

Transcript 25: HPSCI, Executive Session Interview of Anatoli Samochornov, November 28, 2017, pp. 1-77.

Transcript 26: HPSCI, Executive Session Interview of Erik Prince (Redacted for Release), November 30, 2017, pp. 1-105.

Transcript 27: HPSCI, Executive Session Interview of Jeff Sessions, November 30, 2017, pp. 1-120.

Transcript 28: HPSCI, Executive Session Interview of John Podesta, December 4, 2017, pp. 1-61.

Transcript 29: HPSCI, Executive Session Interview of Diane Denman, December 5, 2017, pp. 1-72.

Transcript 30: HPSCI, Executive Session Interview of Shawn Henry, December 5, 2017, pp. 1-80.

Transcript 31: HPSCI, Executive Session Interview of Donald Trump Jr., December 6, 2017, pp. 1-238.

Transcript 32: HPSCI, Executive Session Interview of Walid Phares, December 8, 2017, pp. 1-114.

Transcript 33: HPSCI, Executive Session Interview of Michael Goldfarb, December 12, 2017, pp. 1-48.

Transcript 34: HPSCI, Executive Session Interview of Sam Clovis, December 12, 2017, pp. 1-147.

Transcript 35: HPSCI, Executive Session Interview of Marc Elias, December 13, 2017, pp. 1-103.

Transcript 36: HPSCI, Interview of Alexander Nix (via video-teleconference), December 14, 2017, pp. 1-98.

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Transcript 37: HPSCI, Executive Session Interview of Debbie Wasserman-Schultz, December 18, 2017, pp. 1-56.

Transcript 38: HPSCI, Executive Session Interview of Michael Sussman, December 18, 2017, pp. 1-93.

Transcript 39: HPSCI, Executive Session Interview of Rob Goldstone, December 18, 2017, pp. 1-175.

Transcript 40: HPSCI, Executive Session Interview of David Kramer, December 19, 2017, pp. 1-101.

Transcript 41: HPSCI, Executive Session Interview of Felix Sater, December 20, 2017, pp. 1-142.

Transcript 42: HPSCI, Executive Session Interview of Dana Rohrabacher, December 21, 2017, pp. 1-186.

Transcript 43: HPSCI, Executive Session Interview of Jake Sullivan, December 21, 2017, pp. 1-71.

Transcript 44: HPSCI, Executive Session Interview of Rhona Graff, December 22, 2017, pp. 1-143.

Transcript 45: HPSCI, Executive Session Interview of David Kramer, January 10, 2018, pp. 1-24.

Transcript 46: HPSCI, Executive Session Interview of Steve Bannon, January 16, 2018, pp. 1-261.

Transcript 47: HPSCI, Executive Session Interview of Rick Dearborn, January 17, 2018, pp. 1-150.

Transcript 48: HPSCI, Executive Session Interview of Corey Lewandowski, January 17, 2018, pp. 1-175.

Transcript 49: HPSCI, Executive Session Interview of Steve Bannon, February 15, 2018, pp. 1-57.

Transcript 50: HPSCI, Executive Session Interview of Hope Hicks, February 27, 2018, pp. 1-208.

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Transcript 51: HPSCI, Executive Session Interview of Corey Lewandowski, March 8, 2018, pp. 1-112.

Classified Hearings and Interviews

Transcript 1: Full Committee Closed Hearing on FBI Counterintelligence Investigations with FBI Director James Comey, March 2, 2017, pp. 1-121.

Transcript 2: Full Committee Closed Hearing on Russia Investigation with FBI Director Comey and NSA Director Mike Rogers, May 4, 2017, pp. 1-82.

Transcript 3: Full Committee Closed Hearing with former CIA Director John Brennan, May 23, 2017, pp. 1-53.

Transcript 4: HPSCI, Executive Session Interview of James Clapper, July 17, 2017, pp. 1-106.

Transcript 5: HPSCI, Executive Session Interview of John Carlin, July 27, 2017, pp. 1-72.

Transcript 6: HPSCI, Executive Session Interview of Susan Rice, September 8, 2017, pp. 1-110.

Transcript 7: HPSCI, Executive Session Interview of Samantha Power, October 13, 2017, pp. 1-115.

Transcript 8: HPSCI, Executive Session Interview of Loretta Lynch, October 20, 2017, pp. 1-97.

Transcript 9: HPSCI, Executive Session Interview of Ben Rhodes, October 25, 2017, pp. 1-75.

Transcript 10: HPSCI, Executive Session Interview of Mary McCord, November 1, 2017, pp. 1-81.

Transcript 11: HPSCI, Executive Session Interview of Sally Yates, November 3, 2017, pp. 1-96.

Transcript 12: HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 1-215.

Transcript 13: HPSCI, Executive Session Interview of Special Agent Michael Gaeta, December 20, 2017, pp. 1-113.

Transcript 14: HPSCI, Committee Business Meeting to consider "Adoption of the Committee's Investigative Report into Russian Active Measures During the 2016 Presidential Election," March 22, 2018, pp. 1-89.

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ENDNOTES

¹ House Permanent Select Committee on Intelligence (HPSCI), Scope of Investigation, March 1, 2017.

² Press Release, "Intelligence Committee Chairman, Ranking Member Establish Parameters for Russia Investigation," March 1, 2017. [<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=767>]

³ Press Release, "Intelligence Committee Chairman, Ranking Member Establish Parameters for Russia Investigation," March 1, 2017. [<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=767>]

⁴ Statement on Russia Investigation, Chairman Devin Nunes, March 12, 2018. [<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=873>]

⁵ For instance, see: Kyle Cheney, "Republicans fear they botched Russia report rollout," *Politico*, March 15, 2018 [<https://www.politico.com/story/2018/03/15/house-intelligence-republicans-russia-probe-465805>]; Nicholas Fandos, "Republican Leading House's Russia Inquiry Softens a Key Finding," *New York Times*, March 13, 2018 [<https://www.nytimes.com/2018/03/13/us/politics/house-intelligence-trump-russia-conaway.html>].

⁶ President Donald Trump, Twitter, March 12, 2018: "THE HOUSE INTELLIGENCE COMMITTEE HAS, AFTER A 14 MONTH LONG IN-DEPTH INVESTIGATION, FOUND NO EVIDENCE OF COLLUSION OR COORDINATION BETWEEN THE TRUMP CAMPAIGN AND RUSSIA TO INFLUENCE THE 2016 PRESIDENTIAL ELECTION." [<https://twitter.com/realdonaldtrump/status/973360355790479361>]

President Donald Trump, Twitter, March 17, 2018: "As the House Intelligence Committee has concluded, there was no collusion between Russia and the Trump Campaign. As many are now finding out, however, there was tremendous leaking, lying and corruption at the highest levels of the FBI, Justice & State. #DrainTheSwamp" [<https://twitter.com/realdonaldtrump/status/975057131136274432>]

⁷ President Donald Trump, Twitter, March 23, 2018. [<https://twitter.com/realDonaldTrump/status/97712462285066240>]

⁸ Sputnik, "US Has Not Found Evidence of Trump Campaign's Collusion with Russia," March 22, 2018 [<https://sputniknews.com/us/20180322106280332-us-house-committee-russi-probe/>]; RT, "'No collusion': House Intel Committee votes to end Russia probe," March 22, 2018. [<https://www.rt.com/usa/422050-house-intel-russia-probe/>]

⁹ Interview with Chairman Devin Nunes, "Hannity," Fox News, March 19, 2018. [<http://www.foxnews.com/transcript/2018/03/19/devin-nunes-on-mccabe-firing-upcoming-ig-report.html>]; Interview with Representative Peter King, "Rep. King on widening probe into the Trump dossier," Fox News, March 12, 2018. [<http://video.foxnews.com/v/5749792245001/?#sp=show-clips>]

¹⁰ Chairman Devin Nunes, "Nunes Statement on Russia Investigation," April 6, 2017. [<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=775>]

¹¹ HPSCI Minority, "Status of the Russia Investigation," March 13, 2017. Attached as Appendix A.

¹² Channel 4 (United Kingdom), "Data, Democracy, and Dirty Tricks – Part three: The Trump campaign," March 20, 2018. [<https://www.channel4.com/news/data-democracy-and-dirty-tricks-cambridge-analytica-uncovered-investigation-expose>] Speaking to an undercover reporter, Cambridge Analytica CEO Alexander Nix describes his December 14, 2017 testimony before the Committee, which occurred via video-teleconference:

"Nix: 'I went to speak to them and the Republicans asked three questions, five minutes – minutes done. Democrats asked 2 hours of questions.'"

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Undercover Reporter: *"And you had to answer everything?"*

Nix: *"No it's voluntary but I did because I'm trying to help them. We have no secrets. They're politicians, they're not technical. They don't understand how it works. They don't understand because the candidate never, is never involved. He's told what to do by the campaign team."*

¹³ HPSCI, Executive Session Interview of Steve Bannon, February 15, 2018, pp. 29-30. Relevant exchange with Representative Eric Swalwell:

MR. SWALWELL: *I'm just asking if a communication existed post your time at the White House with Chairman Nunes.*

[Discussion off the record.]

MR. BANNON: *Yes.*

MR. SWALWELL: *Okay. What was the nature of the communication? What was discussed?*

[Discussion off the record.]

MR. BANNON: *Yeah, I cannot answer anything about my – related to my time at the White House.*

MR. SWALWELL: *No. I'm asking, post your leaving the White House, any communication you had with non-White House-employee Devin Nunes, what was discussed?*

MR. BANNON: *I can only answer questions not related to my time at the White House.*

MR. SWALWELL: *How many times did you speak with Chairman Nunes once leaving the White House? And I'm talking about in person, over phone, by email, by any text message communication.*

[Discussion off the record.]

MR. BANNON: *I don't know.*

MR. SWALWELL: *More than once?*

MR. BANNON: *Probably.*

MR. SWALWELL: *Okay. Fewer than 10 times?*

MR. BANNON: *I don't – don't remember.*

MR. SWALWELL: *Every involve the Russia investigation?*

[Discussion off the record.]

MR. BANNON: *That would involve my time at the White House, and I'm not authorized to answer the question.*

¹⁴ HPSCI Minority, "Correcting the Record – The Russia Investigations," January 29, 2018. Released to the public in unclassified form on February 24, 2018. Attached at Appendix A.

¹⁵ Intelligence Community Assessment: *Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution*, January 6, 2017.

UNCLASSIFIED

¹⁶ Intelligence Community Assessment, “Assessing Russian Activities and Intentions in Recent US Elections,” January 6, 2017, p. ii. [https://www.dni.gov/files/documents/ICA_2017_01.pdf].

¹⁷ HPSCI Majority Russia Report, March 21, 2018 version, p. 46–47. Compare with HPSCI Majority Russia Report, March 13, 2018 version, p. 40–41.

¹⁸ Senate Intelligence Committee Chairman and Vice Chairman press conference, October 4, 2017. According to Chairman Richard Burr: “There is consensus among members and staff that we trust the conclusions of the ICA.”

¹⁹ *U.S. v. Internet Research Agency LLC* (1:18-cr-00032-DLF, District of Columbia), p. 4.

²⁰ HPSCI Majority Russia Report, March 21, 2018 version, p. 32.

²¹ *U.S. v. Internet Research Agency, et al* (1:18-cr-32, District of Columbia), p. 4. The Special Counsel also finds, for instance, that “From at least April 2016 through November 2016, Defendants and their co-conspirators, while concealing their Russian identities and ORGANIZATION affiliation through false personas, began to produce, purchase, and post advertisements on U.S. social media and other online sites expressly advocating for the election of then-candidate Trump or expressly opposing Clinton. Defendants and their co-conspirators did not report their expenditures to the Federal Election Commission, or register as foreign agents with the U.S. Department of Justice” (p. 19).

²² Twitter, Inc., “Update on Results of Retrospective Review of Russian-Related Election Activity,” United States Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, January 19, 2018. [<https://www.judiciary.senate.gov/imo/media/doc/Edgett%20Appendix%20to%20Responses.pdf>]

²³ Twitter, Inc., “Update on Results of Retrospective Review of Russian-Related Election Activity,” United States Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, January 19, 2018. [<https://www.judiciary.senate.gov/imo/media/doc/Edgett%20Appendix%20to%20Responses.pdf>]

²⁴ HPSCI Minority Website, “Instagram Exhibit” [<https://democrats-intelligence.house.gov/uploadedfiles/6052269196035.pdf>]; associated metadata [https://democrats-intelligence.house.gov/uploadedfiles/6052269196035_metadata.pdf]

²⁵ HPSCI Minority Website, Facebook Exhibit [https://democrats-intelligence.house.gov/uploadedfiles/police_anti_blm_ad_metadata.pdf]

²⁶ HPSCI Minority Website, Facebook Exhibit, “United Muslims of America.” [https://democrats-intelligence.house.gov/uploadedfiles/uma_banner__6039056709663.pdf]

²⁷ HPSCI Minority Website, Facebook Exhibit, “Save American Muslims.” [https://democrats-intelligence.house.gov/uploadedfiles/uma_paid_event_ad.pdf]

²⁸ Tumblr, “We’re taking steps to protect against future interference in our political conversation by state-sponsored propaganda campaigns,” March 23, 2018. [<https://staff.tumblr.com/post/172170432865/were-taking-steps-to-protect-against-future>]

²⁹ Tumblr, “Public record of usernames linked to state-sponsored disinformation campaigns,” March 23, 2018. [<https://tumblr.zendesk.com/hc/en-us/articles/360002280214>]

³⁰ HPSCI Majority Russia Report, March 21, 2018 version, p. 32.

³¹ The New York Times, “How Trump Consultants Exploited the Facebook Data of Millions,” March 17, 2018. [<https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>]

³² House Permanent Select Committee on Intelligence, Interview of Alexander Nix, December 14, 2017, p. 59.

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³³ House Permanent Select Committee on Intelligence, Interview of Alexander Nix, December 14, 2017, p. 67.

³⁴ The New York Times, "How Trump Consultants Exploited the Facebook Data of Millions," March 17, 2018. [<https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>]

³⁵ *United States v. George Papadopoulos*, Statement of the Offense, p. 8.

³⁶ *United States v. George Papadopoulos*, Statement of the Offense, p. 9.

³⁷ *United States v. George Papadopoulos*, Statement of the Offense, p. 9.

³⁸ CNN.com, November 10, 2017, full transcript: <https://www.cnn.com/2017/11/09/politics/papadopoulos-meetings-coffee-boy/index.html>

³⁹ House Permanent Select Committee on Intelligence, Interview of Walid Phares, December 8, 2017, p. 79.

⁴⁰ House Permanent Select Committee on Intelligence, Interview of Walid Phares, December 8, 2017, p. 79.

⁴¹ HPSCI Majority Russia Report, March 21, 2018 version, p. 72.

⁴² HPSCI Majority Russia Report, March 21, 2018 version, p. 72.

⁴³ FBI Director James Comey press conference on Clinton investigation, July 5, 2016. See transcript: https://www.washingtonpost.com/news/post-nation/wp/2016/07/05/fbi-director-comeys-full-remarks-on-clinton-email-probe/?utm_term=.20e40587ec5c

⁴⁴ HPSCI, Attorney General Jeff Session Document Production. Email from Paul Erickson to Rick Dearborn, May 10, 2016.

⁴⁵ *Id.*

⁴⁶ HPSCI, Rick Dearborn Document Production. [Bates# RD000009 to 16]

⁴⁷ HPSCI, Rick Dearborn Document Production. [Bates# RD000009 to 16]

⁴⁸ HPSCI Majority Russia Report, March 21, 2018 version, p. 83.

⁴⁹ HPSCI, Rick Dearborn Document Production. Email from Paul Erickson to Rick Dearborn, Subject: Kremlin Connection, May 10, 2016 [Bates# RD 000078].

⁵⁰ Josh Meyer, "FEC probes whether NRA got illegal Russian donations," Politico, March 16, 2018. [<https://www.politico.com/story/2018/03/16/nra-russia-election-donations-fec-investigation-468661>]

⁵¹ Text Messages from Emin Agalarov to Donald Trump Jr., November 10, 2016, Donald Trump Jr. production, DJTFP00866; Phone Records of Donald Trump Jr., Billing Cycle June 1, 2016 through June 30, 2016, Donald Trump Jr. production, DJTJR00851-855all records, goldstone testimony.

⁵² HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, p. 9.

⁵³ HPSCI, Rob Goldstone Document Production. Email from Rob Goldstone to Rhona Graff, "Subject: Please pass on mine and Emin's best wishes and congratulations to Mr. Trump – wonderful news," June 16, 2015/

⁵⁴ See, e.g., Email from Katherine Murphy to [redacted], Subject: From the office of Donald J. Trump, March 18, 2016, Donald Trump Jr. production, DJTJR00407 to 409 ("As per Mr. Trump's request, please see the attached note for Mr. Agalarov." The attachment is the congratulatory letter that Mr. Agalarov sent to Mr. Trump on the eve of

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Super Tuesday with a handwritten note from Mr. Trump, "*Araz you have done such a great job – you are an amazing man with a great family – keep in touch and say hello to Emin.*")

⁵⁵ HPSCI, Donald Trump Jr. Document Production. Email from Rob Goldstone to Donald Trump Jr., "Subject: Emin, July 24, 2015," [Bates# DJTJR00893].

⁵⁶ HPSCI, Donald Trump Jr. Document Production. "Email from Rob Goldstone to Rhona Graff, Subject: Congratulatory letter to Mr. Trump from Araz Agalarov," February 29, 2016. [Bates# DJTJR00442 to 43]

⁵⁷ HPSCI, Donald Trump Jr. Document Production. Text Message from Emin Agalarov to Donald Trump Jr., November 10, 2016 [Bates# DJTFP00866].

⁵⁸ HPSCI, Donald Trump Jr. Document Production. Email from Rob Goldstone to Donald Trump Jr., Subject: Russia – Clinton – private and confidential, June 3, 2016 [Bates# DJTJR00487].

⁵⁹ House Permanent Select Committee on Intelligence, Interview of Donald Trump Jr., December 6, 2017, pp.58-59.

⁶⁰ HPSCI, Donald Trump Jr. Document Production. Email from Donald Trump Jr. to Rob Goldstone, Subject: Russia – Clinton – private and confidential, June 3, 2016 [Bates# DJTJR00487].

⁶¹ HPSCI, Donald Trump Jr. Document Production. Email from Donald Trump Jr. to Rob Goldstone, Subject: Russia – Clinton – private and confidential, June 6, 2016 [Bates # DJTJR00487].

⁶² HPSCI, Donald Trump Jr. Document Production. Phone Records of Donald Trump Jr., Billing Cycle June 1, 2016 through June 30, 2016 [Bates #DJTJR00851-855].

⁶³ HPSCI, Donald Trump Jr. Production, Email from Donald Trump Jr. to Rob Goldstone, Subject: Russia – Clinton – private and confidential, June 6, 2016. [Bates #DJTJR00486]

⁶⁴ HPSCI, Donald Trump Jr. Production. Email from Donald Trump Jr. to Rob Goldstone, Subject: Russia – Clinton – private and confidential, June 6, 2016. [Bates #DJTJR00486]

⁶⁵ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, pp.28-29.

⁶⁶ HPSCI, Donald Trump Jr. Production. Phone Records of Donald Trump Jr., Billing Cycle June 1, 2016 through June 30, 2016 [Bates # DJTJR00851-855].

⁶⁷ HPSCI, Executive Session Interview with Corey Lewandowski, January 17, 2018, pp. 161-162.

⁶⁸ HPSCI, Donald Trump Jr. Production. Email from Donald Trump Jr. to Paul Manafort and Jared Kushner, Subject: Russia – Clinton – private and confidential, June 8, 2016, Donald Trump Jr. production [Bates# DJTJR00485].

⁶⁹ HPSCI, Donald Trump Jr. Production. Email from Donald Trump Jr. to Rob Goldstone, Subject: Russia – Clinton – private and confidential, June 6, 2016 [Bates# DJTJR00486].

⁷⁰ Philip Bump, "What happened and when: The timeline leading up to Donald Trump Jr.'s fateful meeting," *The Washington Post*, July 11, 2017. [https://www.washingtonpost.com/news/politics/wp/2017/07/11/what-happened-and-when-the-timeline-leading-up-to-donald-trump-jr-s-fateful-meeting/?utm_term=.d27ea5db41ec]

⁷¹ Donald Trump, Twitter, June 9, 2016. [<https://twitter.com/realDonaldTrump/status/741007091947556864>]

⁷² In testimony before the Committee, Congressman Rohrabacher acknowledged that he met Veselnitskaya and Akhmetshin on previous occasions, but that in April 2016, he was traveling as part of a Congressional delegation and encountered them by chance at the hotel lobby of the Ritz Carlton in St. Petersburg. He acknowledged that they

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were probably spies and probably knew the Congressman would be there. HPSCI Executive Session Interview with Dana Rohrabacher, December 21, 2017, p.167.

⁷³ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, p. 73.

⁷⁴ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, pp. 59-60.

⁷⁵ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, p. 56.

⁷⁶ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, p. 59.

⁷⁷ HPSCI, Executive Session Interview with Ike Kaveladze, November 2, 2017, p.95.

⁷⁸ HPSCI, Executive Session Interview with Donald Trump Jr., December 6, 2017, p. 59-60.

⁷⁹ HPSCI, Executive Session Interview with Ike Kaveladze, November 2, 2017, p.98.

⁸⁰ Email from Rob Goldstone to Rhona Graff, Subject: Birthday gift for Mr. Trump, June 10, 2016, Rob Goldstone production, RG0000082.

⁸¹ Email from Meredith McIver to Jessica Macchia, Subject: Emin gift.doc, June 17, 2016, Donald Trump Jr. production, DJTJR00404-05.

⁸² Email from Rob Goldstone to Emin Agalarov and Ike Kaveladze, Subject: Breaking News, June 14, 2016, Ike Kaveladze production, HIC-KAV-00001 to 00002

⁸³ HPSCI Majority Russia Report, March 21, 2018 version, p. 81.

⁸⁴ HPSCI, Executive Session Interview with Ike Kaveladze, November 2, 2017, p. 89.

⁸⁵ HPSCI Majority Russia Report, March 21, 2018 version, p. 81.

⁸⁶ HPSCI Majority Russia Report, March 21, 2018 version, p. 82.

⁸⁷ S. 284 – Global Magnitsky Human Rights Accountability Act, 114th Congress.
[<https://www.congress.gov/bill/114th-congress/senate-bill/284/text>]

⁸⁸ HPSCI, Donald Trump Jr. Production. Email from Rob Goldstone to Rhona Graff, Subject: For Mr. Trump, November 28, 2016. [Bates# DJTJR00245 to 246].

⁸⁹ HPSCI, Donald Trump Jr. Production. Text Messages from Emin Agalarov to Donald Trump Jr., November 10, 2016 [Bates# DJTFP00867].

⁹⁰ HPSCI Executive Session Interview of Donald Trump Jr., December 6, 2017, p. 94.

⁹¹ HPSCI Executive Session Interview of Donald Trump Jr., December 6, 2017, p. 97.

⁹² Washington Post, "Russian government hackers penetrated DNC, stole opposition research on Trump," June 14, 2016. [https://www.washingtonpost.com/world/national-security/russian-government-hackers-penetrated-dnc-stole-opposition-research-on-trump/2016/06/14/cf006cb4-316e-11e6-8ff77b6c1998b7a0_story.html?utm_term=.e2cff209578a]

⁹³ Business Insider, DNC hacker "Guccifer 2.0" was reportedly confirmed as a Russian agent after forgetting to conceal his identity online," March 22, 2018. [<http://www.businessinsider.com/dnc-hacker-guccifer-confirmed-as-russian-agent-after-forgetting-to-conceal-identity-2018-3#1>]

UNCLASSIFIED

UNCLASSIFIED

⁹⁴ President Donald Trump, Twitter, July 25, 2016.

⁹⁵ Ashley Parker and David E. Sanger, "Donald Trump Calls on Russia to Find Hillary Clinton's Missing Emails," *New York Times*, July 27, 2016. [<https://www.nytimes.com/2016/07/28/us/politics/donald-trump-russia-clinton-emails.html>]

⁹⁶ President Donald Trump, Twitter, July 27, 2016.
[<https://twitter.com/realdonaldtrump/status/758236300554174465>]

⁹⁷ President Donald Trump, Twitter, September 26, 2016.

⁹⁸ Email from Donald Trump Jr. to Kellyanne Conway, Steve Bannon, Jared Kushner, David Bossie, and Brad Parscale, Subject: WikiLeaks, September 21, 2016, Donald Trump Jr. production DJTFP00023909.

⁹⁹ HPSCI Executive Session Interview of Donald Trump Jr., December 6, 2017, p.131.

¹⁰⁰ Twitter Direct Message from WikiLeaks to Donald Trump Jr., October 3, 2016, Donald Trump Jr. production, DJTJR01265.

¹⁰¹ Twitter Direct Message from Donald Trump Jr. to WikiLeaks, October 3, 2016, Donald Trump Jr. production, DJTJR01266.

¹⁰² See Twitter handle @RogerJStoneJr.

¹⁰³ Roger Stone, "Can the 2016 election be rigged?" The Hill, August 16, 2016. [<http://thehill.com/blogs/pundits-blog/presidential-campaign/291534-can-the-2016-election-be-rigged-you-bet>]

¹⁰⁴ See Twitter handle @RogerJStoneJr.

¹⁰⁵ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, pp.41-41.

¹⁰⁶ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, pp.41-43.

¹⁰⁷ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, pp.100-101.

¹⁰⁸ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, p. 102.

¹⁰⁹ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, p.28.

¹¹⁰ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, 120-121.

¹¹¹ HPSCI Executive Session Interview of Roger Stone, September 26, 2017, 10-11.

¹¹² HPSCI Executive Session Interview of John Podesta, June 27, 2017, p.8.

¹¹³ HPSCI Executive Session Interview of John Podesta, June 27, 2017, p. 17-18.

¹¹⁴ HPSCI, Matt Tait Document Production [Bates# TAIT000012-14].

¹¹⁵ Matt Tait, "The Time I Got Recruited to Collude with the Russians," *Lawfare Blog*, June 30, 2017.
[<https://lawfareblog.com/time-i-got-recruited-collude-russians>]

¹¹⁶ Shane Harris, "GOP Activist Who Sought Clinton Emails Cited Trump Campaign Officials," *The Wall Street Journal*, July 1, 2017.

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UNCLASSIFIED

¹¹⁷ HPSCI Majority Russia Report, March 19 version, p. 73.

¹¹⁸ HPSCI Majority Russia Report, March 19 version, p. 73.

¹¹⁹ HPSCI Majority Russia Report, March 19 version, p. 75.

¹²⁰ Washington Post, “Roger Stone claimed contact with WikiLeaks founder, Julian Assange in 2016, according to two associates,” March 13, 2018. [https://www.washingtonpost.com/politics/roger-stone-claimed-contact-with-wikileaks-founder-julian-assange-in-2016-according-to-two-associates/2018/03/13/a263f842-2604-11e8-b79d-f3d931db7f68_story.html?utm_term=.16c6fc270330]

¹²¹ HPSCI, Executive Session Interview of Carter Page, November 2, 2018. The Committee released the transcript publicly pursuant to an arrangement between the Majority and Page. It can also be found in Chapter VI (Transcripts).

¹²² HPSCI Minority, *Correcting the Record – The Russia Investigations*, January 29, 2018, pp. 3-4. Attached at Appendix F.

¹²³ Trump Campaign Document Production, Email from Carter Page to Tera Dahl and JD Gordon, July 8, 2016 [Bates #DJTFP00004021].

¹²⁴ Trump Campaign Document Production, Email Attachment from Carter Page to Tera Dahl, JD Gordon, and Walid Phares, July 8, 2016 [Bates #DJTFP00004024].

¹²⁵ HPSCI Majority Russia Report, March 21, 2018 version, p. 76.

¹²⁶ HPSCI Majority Russia Report, March 21, 2018 version, p. 76.

¹²⁷ HPSCI Majority Russia Report, March 21, 2018 version, p. 77.

¹²⁸ HPSCI Minority, *Correcting the Record – The Russia Investigations*, January 29, 2018, pp. 1-2. See Appendix F.

¹²⁹ FBI Statement on HPSCI Memo, January 31, 2018, <https://www.fbi.gov/news/pressrel/press-releases/fbi-statement-on-hpsci-memo>.

¹³⁰ HPSCI Minority, *Correcting the Record – The Russia Investigations*, January 29, 2018, p. 4.

¹³¹ Elen Nakashima, Adam Entous, and Greg Miller, “Russian ambassador told Moscow that Kushner wanted secret communications channel with Kremlin,” *The Washington Post*, May 26, 2017. [https://www.washingtonpost.com/world/national-security/russian-ambassador-told-moscow-that-kushner-wanted-secret-communications-channel-with-kremlin/2017/05/26/520a14b4-422d-11e7-9869-bac8b446820a_story.html]

¹³² Jared Kushner, “Statement of Jared C. Kushner to Congressional Committees,” July 24, 2017. Produced by Jared Kushner to HPSCI. [Also available at: <https://www.cnn.com/2017/07/24/politics/jared-kushner-statement-russia-2016-election/index.html>]

¹³³ Peter Hobson, “How Putin’s Bank Became Russia’s \$20 Billion Problem,” *The Moscow Times*, March 3, 2016. [<https://themoscowtimes.com/articles/how-putins-bank-became-russias-20-billion-problem-52049>]

¹³⁴ Matthew Rosenberg, Mark Mazzetti, and Maggie Haberman, “Investigation Turns to Kushner’s Motives in Meeting With a Putin Ally,” *New York Times*, May 29, 2017. [<https://www.nytimes.com/2017/05/29/us/politics/jared-kushner-russia-investigation.html>]

UNCLASSIFIED

¹³⁵ Jared Kushner, “Statement of Jared C. Kushner to Congressional Committees,” July 24, 2017. Produced by Jared Kushner to HPSCI. [Also available at: <https://www.cnn.com/2017/07/24/politics/jared-kushner-statement-russia-2016-election/index.html>]

¹³⁶ HPSCI, Executive Session Interview of Jared Kushner, July 25, 2017, p. 30.

¹³⁷ Jo Becker, Matthew Rosenberg, and Maggie Haberman, “Senate Committee to Question Jared Kushner Over Meetings With Russians,” *New York Times*, March 27, 2017. [<https://www.nytimes.com/2017/03/27/us/politics/senate-jared-kushner-russia.html>]

¹³⁸ David Filipov, Amy Brittain, Rosalind S. Helderman, and Tom Hamburger, “Explanations for Kushner’s meeting with head of Kremlin-linked bank don’t match up,” *The Washington Post*, June 1, 2017. [https://www.washingtonpost.com/politics/explanations-for-kushners-meeting-with-head-of-kremlin-linked-bank-dont-match-up/2017/06/01/dd1bdbb0-460a-11e7-bcde-624ad94170ab_story.html]

¹³⁹ HPSCI, Executive Session Interview of Susan Rice, September 8, 2017.

¹⁴⁰ Sari Horwitz and Devlin Barrett, “Mueller gathers evidence that 2017 Seychelles meeting was effort to establish back channel to Kremlin,” *The Washington Post*, March 7, 2018. [https://www.washingtonpost.com/world/national-security/mueller-gathers-evidence-that-2016-seychelles-meeting-was-effort-to-establish-back-channel-to-kremlin/2018/03/07/b6a5fb8c-224b-11e8-94da-ebf9d112159c_story.html]

¹⁴¹ HPSCI, Executive Session Interview of Erik Prince (Redacted), November 30, 2017, pp. 14-15.

¹⁴² HPSCI, Executive Session Interview of Erik Prince (Redacted), November 30, 2017, p. 29.

¹⁴³ HPSCI Majority Russia Report, March 21, 2018 version, p. 86.

¹⁴⁴ HPSCI Majority Russia Report, March 21, 2018 version, p. 86.

¹⁴⁵ HPSCI Majority Russia Report, March 21, 2018 version, p. 87.

¹⁴⁶ Mark Mazzetti, David D. Kirkpatrick, and Maggie Haberman, “Mueller’s Focus on Adviser to Emirates Suggests Broader Investigation,” *New York Times*, March 3, 2018. [<https://www.nytimes.com/2018/03/03/us/politics/george-nader-mueller-investigation-united-arab-emirates.html>]

¹⁴⁷ HPSCI, Business Meeting on “Adoption of the Committee’s Investigative Report into Russian Active Measures During the 2016 Presidential Election,” March 22, 2018. See Chapter VI for transcript.

¹⁴⁸ *U.S. v. Michael T. Flynn* (1:17-cr-232, District of Columbia), December 1, 2017.

¹⁴⁹ Greg Miller, Adam Entous, and Ellen Nakashima, “National security adviser Flynn discussed sanctions with Russian ambassador, despite denials, officials say,” February 9, 2017. [https://www.washingtonpost.com/world/national-security/national-security-adviser-flynn-discussed-sanctions-with-russian-ambassador-despite-denials-officials-say/2017/02/09/f85b29d6-ee11-11e6-b4ff-ac2cf509efe5_story.html]

¹⁵⁰ David Ignatius, “Why did Obama dawdle on Russia’s hacking?,” *The Washington Post*, January 12, 2017. [https://www.washingtonpost.com/opinions/why-did-obama-dawdle-on-russias-hacking/2017/01/12/75f878a0-d90c-11e6-9a36-1d296534b31e_story.html?utm_term=.227acd88e819]

¹⁵¹ Sally Quillian Yates, “Statement for the Record,” Senate Judiciary Subcommittee on Crime and Terrorism, May 8, 2017. [<https://www.judiciary.senate.gov/imo/media/doc/05-08-17%20Yates%20Testimony.pdf>]

¹⁵² James B. Comey, “Statement for the Record,” Senate Select Committee on Intelligence, June 8, 2017. [<https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf>]

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¹⁵³ President Donald Trump, Twitter, December 2, 2017.
[<https://twitter.com/realdonaldtrump/status/937007006526959618>]

¹⁵⁴ Jeff Grocott, "Trump Lays Bet on New Moscow Skyline" *The Moscow Times*, November 12, 1996.
[<http://old.themoscowtimes.com/news/article/tmt/316249.html>]

¹⁵⁵ The New York Department of Financial Services fined Deutsche Bank \$425 million on January 30, 2017. "DFS Fines Deutsche Bank \$425 million for Russian Mirror-Trading Scheme," New York Department of Financial Services, January 30, 2017. [<https://www.dfs.ny.gov/about/press/pr1701301.htm>]. UK regulators fined Deutsche Bank approximately \$204 million. United Kingdom Financial Conduct Authority, "FCA fines Deutsche Bank £163 million for serious anti-money laundering controls failings," January 31, 2017. [<https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure>]

¹⁵⁶ Keri Geiger, Greg Farrell, and Sarah Mulholland, "Trump May Have a \$300 Million Conflict of Interest With Deutsche Bank," Bloomberg News, December 22, 2016. [<https://www.bloomberg.com/news/articles/2016-12-22/deutsche-bank-s-reworking-a-big-trump-loan-as-inauguration-nears>]

¹⁵⁷ Donald J. Trump, "Executive Branch personnel Public Financial Disclosure Report," May 16, 2016.
[<https://www.documentcloud.org/documents/2838696-Trump-2016-Financial-Disclosure.html>]

¹⁵⁸ HPSCI, Executive Session Interview of Felix Sater, December 20, 2017, pp. 21-23 (see Chapter VI for transcript).

¹⁵⁹ Damien Sharkov, "Did Ivanka Trump Take Putin's Seat in Moscow?", *Newsweek*, August 30, 2017.
[<http://www.newsweek.com/ivanka-trump-did-not-take-putins-private-seat-says-kremlin-657023>]

¹⁶⁰ Mike McIntire, "Donald Trump Settled a Real Estate Lawsuit, and a Criminal Case Was Closed," *New York Times*, April 5, 2016. [<https://www.nytimes.com/2016/04/06/us/politics/donald-trump-soho-settlement.html>]

¹⁶¹ Hazel Heyer, "Executive Talk: Donald Trump Jr. bullish on Russia and few emerging markets," *eTurboNews*, September 15, 2008. [<https://www.eturbonews.com/9788/executive-talk-donald-trump-jr-bullish-russia-and-few-emerging-ma>]

¹⁶² Glenn Garvin, "Donald Trump and the mansion that no one wanted. Then came a Russian fertilizer king," *Miami Herald*, February 27, 2017. Updated July 21, 2017.
[<http://www.miamiherald.com/news/business/article135187364.html>]

¹⁶³ Thomas Frank, "Secret Money: How Trump Made Millions Selling Condos To Unknown Buyers," *BuzzFeed News*, January 12, 2018. [https://www.buzzfeed.com/thomasfrank/secret-money-how-trump-made-millions-selling-condos-to?utm_term=.kxlbRe2vM#.rk4YRnPDy]

¹⁶⁴ Thomas Frank, "Secret Money: How Trump Made Millions Selling Condos To Unknown Buyers," *BuzzFeed News*, January 12, 2018. [https://www.buzzfeed.com/thomasfrank/secret-money-how-trump-made-millions-selling-condos-to?utm_term=.kxlbRe2vM#.rk4YRnPDy] Craig Unger, "Trump's Russian Laundromat," *The New Republic*, July 13, 2017. [<https://newrepublic.com/article/143586/trumps-russian-laundromat-trump-tower-luxury-high-rises-dirty-money-international-crime-syndicate>]

¹⁶⁵ HPSCI, Felix Sater Document Production, Email from Felix Sater to Michael Cohen, "Andrey L. Kostin – CEO VTB Bank," October 12, 2015. [Bates #FSHR00001]

¹⁶⁶ HPSCI, Michael Cohen Document Production, Email from Felix Sater to Michael Cohen, November 3, 2015. [Bates #MDC-H-000451]

¹⁶⁷ HPSCI Majority Russia Report, March 21, 2018 version 95 Finding #26.

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¹⁶⁸ *U.S. v. Richard W. Gates III* (1:17-cr-201, District of Columbia); *U.S. v. Paul J. Manafort, Jr.* (1:17-cr-201, District of Columbia).

¹⁶⁹ HPSCI Majority Russia Report, March 21, 2018 version, p. 53.

¹⁷⁰ *U.S. v. Paul J. Manafort, Jr.* (1:17-cr-201, District of Columbia)

¹⁷¹ *U.S. v. Paul J. Manafort, Jr., and Richard W. Gates III* (1:18-cr-83, Eastern District of Virginia).

¹⁷² *United States of America v. Paul J. Manafort, Jr.* (Crim. No. 17-201-1(ABJ)), Document 73, Filed on December 4, 2017 in the U.S. District Court for the District of Columbia.

¹⁷³ Kenneth P. Vogel, "Manafort Associate Has Russian Intelligence Ties, Court Document Says," *New York Times*, December 4, 2018. [<https://www.nytimes.com/2017/12/04/us/politics/manafort-russia-special-counsel-investigation.html>]

¹⁷⁴ HPSCI Document Production, Email from Paul Manafort to Rick Gates, forwarding email exchange between Paul Manafort and Konstantin Kilimnik, April 11, 2016.

¹⁷⁵ HPSCI, Rick Gates Document Production. Received August 18, 2017.

¹⁷⁶ HPSCI, Executive Session Interview with Attorney General Jeffrey Beauregard Sessions III, November 30, 2017, pp. 75, 102.

¹⁷⁷ Michael Isikoff and David Corn, "What Happened in Moscow: The Inside Story of How Trump's Obsession With Putin Began," *Mother Jones*, March 8, 2018. [<https://www.motherjones.com/politics/2018/03/russian-connection-what-happened-moscow-inside-story-trump-obsession-putin-david-corn-michael-isikoff/>]

¹⁷⁸ HPSCI Majority Report, March 22 version, p. 119.

¹⁷⁹ HPSCI Majority Report, March 22 version, p. 128.

¹⁸⁰ World White Threats Hearing, Senate Select Committee on Intelligence, February 13, 2018. [<https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-hearing-1>]

¹⁸¹ National Security Agency Director Admiral Rogers, Testimony before the Armed Services Committee, February 27, 2018, pp. 19-20. [https://www.armed-services.senate.gov/imo/media/doc/18-17_02-27-18.pdf]

¹⁸² National Security Agency Director Admiral Rogers, Testimony before the Armed Services Committee, February 27, 2018, pp. 91-92. [https://www.armed-services.senate.gov/imo/media/doc/18-17_02-27-18.pdf]

¹⁸³ HPSCI Majority Report, p. 99 ("Chapter 5 - Intelligence Community Assessment Leaks. Key Question #4: What possible leaks of classified information took place related to the Intelligence Community's assessment of these matters?")

¹⁸⁴ HPSCI Majority Russia Report, March 21, 2018 version, p.108.

¹⁸⁵ HPSCI Majority Russia Report, March 21, 2018 version, p. 107 (internal citation and quotations omitted).

¹⁸⁶ HPSCI, Executive Session Interview of James Clapper, July 17, 2017, p. 34-35.

¹⁸⁷ HPSCI, Executive Session Interview of James Clapper, July 17, 2017, pp. 85-86.

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¹⁸⁸ James Comey, Hearing before the Select Committee on Intelligence of the United States Senate, June 8, 2017. [Transcript: <https://www.intelligence.senate.gov/hearings/open-hearing-former-fbi-director-james-comey#>]

¹⁸⁹ See, e.g., President Donald Trump, Twitter, June 9, 2017 [<https://twitter.com/realdonaldtrump/status/873120139222306817>] (“Despite so many false statements and lies, total and complete vindication...and WOW, Comey is a leaker!”); June 11, 2017 [<https://twitter.com/realdonaldtrump/status/873879934040780801>] (“I believe the James Comey leaks will be far more prevalent than anyone ever thought possible. Totally illegal? Very ‘cowardly!’”); July 10, 2017 [<https://twitter.com/realdonaldtrump/status/884361623514656769>] (“James Comey leaked CLASSIFIED INFORMATION to the media. That is so illegal!”); October 18, 2017 [<https://twitter.com/realdonaldtrump/status/920604520572424193>] (“As it has turned out, James Comey lied and leaked and totally protected Hillary Clinton. He was the best thing that ever happened to her!”); December 3, 2017 [<https://twitter.com/realdonaldtrump/status/937279001684598784>] (“I never asked Comey to stop investigating Flynn. Just more Fake News covering another Comey lie!”); March 18, 2018 [<https://twitter.com/realdonaldtrump/status/975341676297445377>] (“Wow, watch Comey lie under oath to Senator G when asked ‘have you ever been an anonymous source...or known someone else to be an anonymous source...?’” He said strongly “never, no.” He lied as shown clearly on @foxandfriends.”)

¹⁹⁰ President Donald Trump, Twitter, May 12, 2017 [<https://twitter.com/realdonaldtrump/status/863007411132649473>] (“James Comey better hope that there are no ‘tapes’ of our conversations before he starts leaking to the press!”)

¹⁹¹ President Donald Trump, Twitter, December 3, 2017 [<https://twitter.com/realdonaldtrump/status/937279001684598784>]

¹⁹² President Donald Trump, Twitter, July 25, 2017 [<https://twitter.com/realdonaldtrump/status/889792764363276288>]

¹⁹³ President Donald Trump, Twitter, July 26, 2017 [<https://twitter.com/realdonaldtrump/status/890207082926022656>] and [<https://twitter.com/realdonaldtrump/status/890208319566229504>]

¹⁹⁴ See, e.g., HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, p. 58-59; and at pp. 88-89 (McCabe recalling his discussion, with Comey, of a March 30 phone call with the President, and further recalling, with respect to “one of the phone calls[,] [that] the Director’s chief of staff, Jim Rybicki was in the room while the Director was on the phone call.”).

MR. SCHIFF: ...Did you also have a meeting or discussion on the phone with Director Comey after the March 30th meeting [between Comey and the President] where he discussed what took place during the meeting?

MR. MCCABE: Yes, sir.

MR. SCHIFF: Was that a phone conversation as well?

MR. MCCABE: The best of my recollection is we probably discussed it in person. I think Director Comey was in his office for that phone call.

MR. SCHIFF: Were you present during the call?

MR. MCCABE: No, sir.

MR. SCHIFF: Do you know whether other agents were in the room with him and could at least listen to his half of the conversation?

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MR. MCCABE: I know that for one of the phone calls the Director's chief of staff, Jim Rybicki was in the room while the Director was on the phone call. I'm not sure if it was that call. I know there was one other phone call. I'm confused as to which one that happened.

¹⁹⁵ James B. Comey, Statement for the Record, Senate Select Committee on Intelligence, June 8, 2017. [<https://www.intelligence.senate.gov/sites/default/files/documents/os-jcomey-060817.pdf>]

¹⁹⁶ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 51-55.

¹⁹⁷ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 57-61.

¹⁹⁸ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 89-91 (emphasis added).

¹⁹⁹ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 91-93

²⁰⁰ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 145-46.

²⁰¹ HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 146-151.

²⁰² HPSCI, Executive Session Interview of Andrew McCabe, December 19, 2017, pp. 153-156.

²⁰³ President Donald Trump, Twitter, December 23, 2017 [<https://twitter.com/realdonaldtrump/status/944667102312566784>]

²⁰⁴ President Donald Trump, Twitter, December 23, 2017 [<https://twitter.com/realdonaldtrump/status/944666448185692166>]

²⁰⁵ President Donald Trump, Twitter, December 23, 2017 [<https://twitter.com/realdonaldtrump/status/944665687292817415>]

²⁰⁶ President Donald Trump, Twitter, December 24, 2017 [<https://twitter.com/realdonaldtrump/status/944906847970119680>]

²⁰⁷ President Donald Trump, Twitter, March 18, 2018 [<https://twitter.com/realdonaldtrump/status/974859881827258369>]

²⁰⁸ President Donald Trump, Twitter, March 18, 2018 [<https://twitter.com/realdonaldtrump/status/974859881827258369>]

²⁰⁹ President Donald Trump, Twitter, March 18, 2018 [<https://twitter.com/realdonaldtrump/status/975346628113596417>]

²¹⁰ HPSCI, Executive Session Interview with Jared Kushner, July 26, 2017, p.101.

²¹¹ When asked by press whether he still planned to release the transcripts at the end of the investigation, Conaway replied: "Absolutely." Billy House, "House Russia Probe Dissolves Into a Fight Over Transcripts," *Bloomberg*, March 14, 2018. [<https://www.bloomberg.com/news/articles/2018-03-14/house-russia-probe-dissolves-into-fight-over-public-transcripts>]

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THE EMOLUMENTS CLAUSE: ITS TEXT, MEANING, AND APPLICATION TO DONALD J. TRUMP

DECEMBER 16, 2016

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Introduction

Foreign interference in the American political system was among the gravest dangers feared by the Founders of our nation and the Framers of our Constitution. The United States was a new government, and one that was vulnerable to manipulation by the great and wealthy world powers (which then, as now, included Russia). One common tactic that foreign sovereigns, and their agents, used to influence our officials was to give them gifts, money, and other things of value. In response to this practice, and the self-evident threat it represents, the Framers included in the Constitution the Emoluments Clause of Article I, Section 9. It prohibits any “Person holding any Office of Profit or Trust under [the United States]” from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” Only explicit congressional consent validates such exchanges.

While much has changed since 1789, certain premises of politics and human nature have held steady. One of those truths is that private financial interests can subtly sway even the most virtuous leaders. As careful students of history, the Framers were painfully aware that entanglements between American officials and foreign powers could pose a creeping, insidious risk to the Republic. The Emoluments Clause was forged of their hard-won wisdom. It is no relic of a bygone era, but rather an expression of insight into the nature of the human condition and the prerequisites of self-governance.

Now in 2016, when there is overwhelming evidence that a foreign power has indeed meddled in our political system, adherence to the strict prohibition on foreign government presents and emoluments “of any kind whatever” is even more important for our national security and independence.

Never in American history has a president-elect presented more conflict of interest questions and foreign entanglements than Donald Trump. Given the vast and global scope of Trump’s business interests, many of which remain shrouded in secrecy, we cannot predict the full gamut of legal and constitutional challenges that lie ahead. But one violation, of constitutional magnitude, will run from the instant that Mr. Trump swears he will “faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”¹ While holding office, Mr. Trump will receive—by virtue of his continued interest in the Trump Organization and his stake in hundreds of other entities—a steady stream of monetary and other benefits from foreign powers and their agents.

Applied to Mr. Trump’s diverse dealings, the text and purpose of the Emoluments Clause speak as one: this cannot be allowed.

¹ U.S. Constitution, Article II, § 1, cl. 8.

“The President Can’t Have a Conflict of Interest”

It is widely accepted that Mr. Trump’s presidency will present a variety of conflicts issues, many of them arising from his far-flung domestic and global business activities. Some will involve Mr. Trump personally, while others will involve his administration. Consider the following examples, drawn from the domestic sphere:

- Over ten cases challenging Trump labor practices are pending before the National Labor Relations Board—which has two vacancies, both to be filled by Trump.²
- The Internal Revenue Service is auditing Trump, who will soon pick its new chief.³
- The Trump International Hotel in Washington, DC is located in the Old Post Office and leased from the General Services Administration (GSA); once Trump takes office, he will be both landlord and tenant (an obvious conflict), and also will be in violation of the lease, which bars elected officials from sharing in any benefit.⁴
- Trump owes several hundred million dollars to banks, but is now responsible for selecting the next Treasury Secretary and may influence interest rate policy.⁵

Indeed, apart from these concrete instances, the possibility of skewed incentives will haunt literally *every* interaction between the federal government and any Trump-associated business. And given the sheer size of Mr. Trump’s empire, not to mention its track record of controversial conduct, that dynamic will play out in innumerable contexts.

At times, Mr. Trump has seemed unconcerned by this issue. For example, in a recent interview, he brushed all conflicts concerns aside, stating that “I can be president of the United States and run my business 100 percent, sign checks on my business.”⁶ Mr. Trump added, “The law is totally on my side, meaning, the president can’t have a conflict of interest.”⁷ These claims are fully consistent with Trump’s other statements treating presidential conflicts as matters ungoverned by law or ethical requirements.

To be sure, there are good reasons why the President must be trusted to carry on the vast majority of his dealings without fear of civil or criminal liability arising from actual or perceived conflicts of interest. Almost everything the President does will tend to advantage some and disadvantage others, and it would be entirely unworkable to regulate the President’s every move by reference to benefits that might accrue to selected individuals or groups. Moreover, by virtue of election through the democratic process and subjection to

² See Daniel Wiessner & Robert Iafolla, *The Trump Presidency Has Its First Big Conflict-Of-Interest Issue*, Reuters (Nov. 17, 2016).

³ See Katy O’Donnell & Bernie Becker, *Trump Gets to Pick His Own Auditor*, Politico (Nov. 23, 2016).

⁴ See Steven L. Schooner & Daniel I. Gordon, *GSA’s Trump Hotel Lease Debacle*, Government Executive (Nov. 28, 2016).

⁵ Eric Lipton & Susanne Craig, *Donald Trump’s Far-Flung Holdings Raise Potential for Conflicts of Interest*, N.Y. Times (Nov. 14, 2016).

⁶ The Editors, *Donald Trump’s New York Times Interview: Full Transcript*, N.Y. Times (Nov. 23, 2016).

⁷ *Ibid.*

the continuing checks and balances of our democratic system, presidents are entitled to a presumption of good faith and public interestedness in most of their official conduct.

But that principle has limits—several of which are embodied in federal statutes that address nepotism, bribery, financial disclosures, acting as the agent of a foreign power, and receipt of gifts.⁸ One such limit, however, was deemed so fundamental to our republican form of government that the Framers wrote it into our basic charter.

The Text and Original Meaning of the Emoluments Clause

Article I, Section 9 of the Constitution provides as follows: “No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” Generally referred to as the Emoluments Clause, this provision cannot be understood apart from the historical experiences and political principles that led the Framers to support it.

In 1651, the Dutch adopted a rule prohibiting their foreign ministers from accepting “any presents, directly or indirectly, in any manner or way whatever.”⁹ This rule marked a sharp departure from European diplomatic customs, in which gift-giving played a major role. Impressed by that example, Americans included a similar provision in the Articles of Confederation: “Nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.”¹⁰

It soon became clear that imposing this requirement on American ministers was far easier than persuading foreign sovereigns to respect it. The King of France, in particular, took great pride in bestowing valuable tokens of affection, such as jeweled snuff boxes, on favored diplomats. Torn between American law and European protocol, several American emissaries to the court of King Louis XVI were forced into tortured, no-win, and intensely public contortions. Most famously, King Louis bestowed on Benjamin Franklin a snuff box bearing a royal portrait surrounded by 408 diamonds “of a beautiful water”—inciting American anxiety that Franklin, a notorious Francophile, might be corrupted, and prompting Franklin to ask Congress for approval to keep the box (which was granted).¹¹

At the Constitutional Convention, the anti-emolument provision of the Articles of Confederation was initially excluded. However, it was restored without noted dissent at the request of Charles Pinkney, who “urged the necessity of preserving foreign Ministers &

⁸ See generally Jack Maskell, *Conflict of Interest and “Ethics” Provisions That May Apply to the President*, Congressional Research Service (Nov. 22, 2016).

⁹ The leading accounts of the history of the Emoluments Clause, upon which we rely in this section are Zephyr Teachout, *Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United* (2014), Zephyr Teachout, *The Anti-Corruption Principle*, 94 Cornell L. Rev. 341 (2009), and Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress—And a Plan to Stop It* (2011).

¹⁰ Article 6, § 1.

¹¹ See Teachout, *Corruption in America*, at 1-5.

other officers of the U.S. independent of external influence.”¹² Perhaps as a reflection of Benjamin Franklin’s awkward experience, and consistent with Dutch practice, language was added allowing for the receipt of gifts if explicitly approved by Congress.

Historical evidence suggests that the Framers did not view the Emoluments Clause as exclusively, or even mainly, relevant to diplomats. Rather, at least some of them saw it as a broader anti-corruption measure.¹³ For example, speaking at the Virginia Ratifying Convention, Edmund Jennings Randolph described the Clause as applying to the President, and as affording grounds for impeachment in the event of a violation:

There is another provision against the danger mentioned by the honorable member, of the president receiving emoluments from foreign powers. If discovered he may be impeached. If he be not impeachable he may be displaced at the end of the four years . . . I consider, therefore, that he is restrained from receiving any present or emoluments whatever. It is impossible to guard better against corruption.¹⁴

Randolph took an expansive view of the Clause, generalizing from the experience of American diplomats to far-reaching purposes:

This restriction is provided to prevent corruption . . . An accident which actually happened, operated in producing the restriction. A box was presented to our ambassador by the king of our allies. It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.¹⁵

Thus, while the immediate basis for the Emoluments Clause was a rejection of European gift-giving habits pertaining to diplomacy, the Clause also demarcated and enforced a sweeping American rejection of European corruption and foreign influence.¹⁶

In this respect, the Clause responded to an underlying colonial indictment of the English political system. Even as they celebrated the wisdom and invoked the teachings of England’s unwritten constitution, colonists decried the King’s success at subverting limits on his own power. As Professor Gordon Wood has observed, “Throughout the eighteenth century the Crown had slyly avoided the blunt and clumsy instrument of prerogative, and instead had resorted to influencing the electoral process and the representatives in Parliament

¹² 2 Farrand, *The Records of the Federal Convention of 1787*, at 389.

¹³ See President Reagan’s Ability to Receive Retirement Benefits from the State of California, 5 Op. O.L.C. 187, 188 (1981) (discussing the background of the ratification of the Clause).

¹⁴ David Robertson, *Debates and other Proceedings of the Convention of Virginia* 345 (2d ed. 1805) (1788).

¹⁵ 3 Farrand, *The Records of the Federal Convention of 1787*, at 327.

¹⁶ See Teachout, *Corruption in America*, at 1-80.

in order to gain its treacherous ends.”¹⁷ Having spent years scrupulously dissecting the King’s use of gifts, offices, and other inducements to manipulate Parliament, early Americans were obsessed with the many species of corruption and figuring out how best to combat them.¹⁸ American observations of European politics—including its corrupt culture of gift-giving and back-scratching—only further accentuated their fear that foreign interests, deploying gifts and titles, would seek to cripple the new republic.¹⁹ In the 1790s, this was no hypothetical concern: foreign meddling could doom a young nation.

For that reason, as Professor Zephyr Teachout has explained, “Several provisions of the Constitution were designed assuming that foreign powers would actively try to gain influence.”²⁰ More than any other constitutional provision, the Emoluments Clause reflects the Framers’ determined effort to ensure that no federal officeholder in the United States ever could be influenced by gifts of any kind from a foreign government. Indeed, the Clause was seen as so important that the Eleventh Congress considered, as a proposed Thirteenth Amendment, a provision stating that a person would lose his or her citizenship by accepting an office or emolument from a foreign power.²¹ The proposed amendment was, in a modified form, accepted by both Houses, and subsequently obtained the approval of all but one of the requisite number of States.²² The leading explanation for why this proposed amendment failed is that it was seen as unnecessary, given existing protections.

Implicit in the Emoluments Clause is a distinctive theory about the nature of political corruption and how to thwart it. To quote Professor Teachout, “Corruption, in the American tradition, does not just include blatant bribes and theft from the public till, but encompasses many situations where politicians and public institutions serve private interests at the public’s expense. This idea of corruption jealously guards the public morality of the interactions between representatives of government and private parties, foreign parties, or other politicians.”²³ In other words, rather than worry only about *quid pro quo* bribery, the Framers recognized the subtle, varied, and even unthinking ways in which a federal officeholder’s judgment could be clouded by private concerns and improper dependencies. Their anxiety encompassed the gift-giving habits of corrupt European diplomats, but also reached even the most virtuous domestic officials.²⁴ And given the impossibility of effectively addressing this kind of corruption through bribery laws, or other statutes that criminalize particular transactions by reference to improper intent, the Framers decided

¹⁷ Gordon Wood, *The Creation of the American Republic, 1776-1787*, at 33 (1969).

¹⁸ See Teachout, *Corruption in America*, at 37-40 (discussing scholarship by Gordon Wood, Bernard Bailyn, and J.G.A. Pocock).

¹⁹ Lessig, *Republic, Lost*, 18-19.

²⁰ Zephyr Teachout, *Trump’s Foreign Business Practices May Violate the Constitution*, Room for Debate, N.Y. Times (Nov. 17, 2016).

²¹ *Afroyim v. Rusk*, 387 U.S. 253, 259 n.13 (1967), citing *The Constitution of the United States of America*, S. Doc. No. 39, 88th Cong., 1st Sess., at 77-78 (1964).

²² See *Afroyim v. Rusk*, 387 U.S. 278 (1967) (Harlan, J., dissenting).

²³ Teachout, *Corruption in America*, at 2.

²⁴ See Lessig, *Republic Lost*, 19.

instead to write a broad prophylactic rule into Article I.²⁵ The Emoluments Clause thus operates categorically, governing transactions even when they would not necessarily lead to corruption, and establishing a clear baseline of unacceptable conduct.²⁶

This understanding is supported by the Framers' grant of authority to Congress to validate exchanges covered by the Emoluments Clause. When Congress acts, it brings transparency and accountability to transactions that might otherwise remain buried, forcing federal officeholders to examine their judgments and opening the entire arrangement to probing scrutiny. Private and secretive transfers of wealth from foreign to federal officials are thereby reconfigured into regulated transactions and matters of vital public inquiry. Moreover, Congress itself must accept political responsibility for unleashing foreign money, with all its corrupting and corrosive influence, into the halls of federal power.²⁷

Ultimately, the theory of the Emoluments Clause—grounded in English history and the Framers' experience—is that a federal officeholder who receives something of value from a foreign power can be imperceptibly induced to compromise what the Constitution insists be his exclusive loyalty: the best interest of the United States of America.²⁸ And rather than guard against such corruption by punishing it after-the-fact, the Framers concluded that the proper solution is to write a strict rule into the Constitution itself, thereby ensuring that shifting political imperatives and incentives never undo this vital safeguard of freedom.

The Proper Interpretation of the Emoluments Clause

This background, and centuries of experience and interpretation, helps to answer a number of important questions about the Emoluments Clause.

1. *The Emoluments Clause Applies to the President*

This is an easy question. As the Department of Justice Office of Legal Counsel (OLC) concluded when asked if the Emoluments Clause applied to President Obama's receipt of the Nobel Peace Prize, "The President surely 'hold[s] an[] Office of Profit or Trust.'"²⁹ That position, most recently reaffirmed by OLC in 2009, is consistent with

²⁵ The United States Supreme Court has recently addressed the difficulties of defining and applying bribery in the context of federal statutory law. See *McDonnell v. United States*, 579 U.S. ____ (2016).

²⁶ See Teachout, *Corruption in America*, at 4.

²⁷ See Zephyr Teachout, *Gifts, Offices, and Corruption*, 107 Nw. U. L. Rev. Colloquy 30, 36 (2012).

²⁸ See Applicability of Emoluments Clause to Employment of Government Employees by Foreign Public Universities, 18 Op. O.L.C. 13, 18 (1994) ("Those who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty. That judgment might be biased, and that loyalty divided, if they received financial benefits from a foreign government.").

²⁹ David J. Barron, Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize, 33 Op. O.L.C. 1, 4 (2009).

established OLC precedent specifically addressing the applicability of the Emoluments Clause to the President, constituting the considered view of the Executive Branch.³⁰

Moreover, this is the only conclusion consistent with the text of the Constitution, which repeatedly refers to the President as holding an “Office.” For example, Article II, Section 1 provides that the President “shall hold his *office* during the term of four years.” It further provides that no person except a “natural born citizen . . . shall be eligible to the *office* of President,” and addresses what occurs in the event of “the removal of the President from *office*.” In addition, the Presidential Oath Clause, and the Twelfth, Twenty-Second, and Twenty-Fifth Amendments, all refer to the President as occupying an “Office.” Reading the Constitution as a whole, it is hard to imagine why its references to “any Office of Profit or Trust” in the Emoluments Clause would *not* refer to the President, who is repeatedly described elsewhere in the Constitution as holding an “Office,” which, giving the terms their plain meaning, is unquestionably one of Profit or Trust or both.³¹

Nor can there be any cavil that the Office of the President is “under the United States.” This phrase is used repeatedly in the Constitution to separate *federal* from *state* officeholders, and the President is plainly a *federal* officeholder. Indeed, bizarre consequences would follow if the President were *not* viewed as holding an office “under the United States,” since that same phrase appears five other times in the Constitution:

- Article I, Section 7 provides that any official who has been impeached and removed from office is disqualified from holding any “Office of honor, Trust or Profit under the United States.” If the President did not hold an office “under the United States,” a disgraced former official would be forbidden from every federal office in the land, but could be President.
- Article I, Section 6 provides that “no Person holding any Office under the United States, shall be a Member of either” House of Congress. If the President did not hold an office “under the United States,” the President could also hold a seat in Congress, which has never happened.
- Article II, Section 1, governing the Electoral College, provides that “no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.” It is hard to see why the Framers would ban Representatives, Senators, and every federal official *other* than the President from sitting in the Electoral College. (If anything, one might think the President *especially* should not be an Elector.)
- Article VI, Section 3 provides that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” If

³⁰ See, e.g., Norbert A. Schlei, *Memorandum for the Honorable McGeorge Bundy, Special Assistant to the President, Re: Proposal that the President Accept Honorary Irish Citizenship* (1963). While a number of other OLC opinions appear to have taken a narrower view of the Emoluments Clause, to our knowledge the only public OLC opinions directly addressing the application of the Emoluments Clause to the President conclude or assume that the Clause does apply.

³¹ See Saikrishna Prakash, *Why the Incompatibility Clause Applies to the Office of the President*, 4 Duke J. Const. L. & Pub. Pol’y Sidebar 143 (2009).

the President did not hold an office “under the United States,” then he or she could constitutionally be subject to a religious test.

- Article XIV, Section 3 provides that, barring waiver from Congress, no person who swore an oath to support the Constitution, but then betrayed it during the Civil War, “shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State.” Again, it is quite impossible to see why the Constitution would forbid ex-Confederates from holding every office in the federal government *except for the Presidency*.

Reading the Constitution as a whole, it would require extraordinary legal and linguistic gymnastics to explain how the President is excluded from the Emoluments Clause.³² But even if the Constitution’s text and structure left any doubt, every other interpretive tool supports the conclusion that the Emoluments Clause applies to the President.

First, while we have precious little evidence of the Framers’ expectations, we do know that Edmund Randolph described this Clause at the Virginia Ratifying Convention as “another provision against the danger mentioned by the honorable member, of *the president* receiving emoluments from foreign powers.” Indeed, Randolph expressly stated that the President “may be impeached” for violating the Emoluments Clause. Given the importance of the question, one might have expected other attendees at the Virginia Ratifying Convention—including many leading lights of the Framing generation—to have corrected Randolph if his position were understood to be erroneous.

Second, centuries of Executive Branch interpretation and practice reveal a largely consistent understanding on the part of presidents that this Clause does apply—and a history of legislative agreement with that position, as manifested in action by Congress to approve or disapprove questionable transactions between presidents and foreign powers.³³ Thus, when Simon Bolivar presented President Andrew Jackson with a gold medal, Jackson asked Congress whether he could keep it—and Congress said no.³⁴ Similarly, Presidents John

³² It also has been suggested by one scholar that the Emoluments Clause did not cover elected, as opposed to appointed, federal office holders. See Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A Reply to Professor Zephyr Teachout*, 107 Nw. U. L. Rev. C. 180 (2013). But this idiosyncratic suggestion is at best supported by ambiguous founding-era historical materials, rests upon a strained and counterintuitive textual analysis, and is flatly inconsistent with the recognized purpose of the Clause and the overwhelming thrust of modern (and historical) Executive Branch practice. See, e.g., Zephyr Teachout, *Gifts, Offices, and Corruption*, 107 Nw. U. L. Rev. C. 30 (2012); Zephyr Teachout, *Constitutional Purpose and the Anti-Corruption Principle*, 108 Nw. U. L. Rev. C. 200 (2013). Ultimately, only the most myopic and strained focus on the least plausible version of originalism to the exclusion of every other interpretive tool, coupled with a series of highly doubtful conclusions from the historical record, would support the conclusion that the President is not subject to the strictures of the Emoluments Clause. That approach must be rejected.

³³ There are two possible counter-instances from the 1790s, see Tillman, *The Original Public Meaning of the Foreign Emoluments Clause*, at 186-190, though those examples are ambiguous and cannot bear great weight in the ultimate constitutional analysis (of which original public understanding and early Executive Branch practice is but a single component), see Teachout, *Gifts*, at 41-42.

³⁴ See Message From The President Of The United States To The Two Houses Of Congress At The Commencement Of The First Session Of The Twenty-Third Congress 258-59 (Washington, Gales & Seaton

Tyler and Martin Van Buren both turned to Congress for approval when offered gifts by foreign leaders.³⁵ More recently, as the *New York Times* reported on the basis of careful study, “Every president in the past four decades has taken personal holdings he had before being elected and put them in a blind trust in which the assets were controlled by an independent party” or the equivalent.³⁶ Their recognized purpose for doing so has been to avoid an array of conflicts, including with the Emoluments Clause.³⁷ Thus, while there is no Supreme Court precedent (and little political branch discourse) regarding the Clause, that reflects only a norm of ethical conduct by our Nation’s leaders, and the fact that no prior president has come anywhere close to Mr. Trump in the scale of possible violations.³⁸ In any event, considering this Nation’s history and experience, it can be concluded that—as in the separation of powers field—“[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions.”³⁹

Finally, the basic objectives of the Emoluments Clause cut decisively in favor of applying it to the President. Given that the Clause was “particularly directed against every kind of influence by foreign governments upon officers of the United States,”⁴⁰ it is inconceivable that its references to “any Office of Profit or Trust under [the United States]” would *not* encompass the President. If there is any federal officeholder that a foreign power might seek to influence—and the corruption of whom would imperil the Republic—surely it is the President. It would be surreal to conclude that the Framers forbade a local federal tax collector from receiving any payment from the King of France, but allowed the President to hold a title in the French Court and receive a substantial monthly retainer. Familiar with the corruption of King Charles II of England by lavish pensions and promises from King Louis XIV, the Framers manifestly did not see national leaders as immune from foreign influence.⁴¹

These and other factors compellingly support the longstanding and near-unanimous consensus among lawyers and legal scholars that the Emoluments Clause applies in full to the President.

1833) (reproducing Jan. 22, 1834 letter from the Secretary of State to the President explaining the history of the Jackson medal and how it came into the possession of the State Department).

³⁵ Teachout, *Gifts*, at 42.

³⁶ Michael D. Shear & Eric Lipton, *Ethics Office Praises Donald Trump for a Move He Hasn’t Committed To*, N.Y. Times (Nov. 30, 2016). President Obama elected the equivalent, choosing to put his holdings in statutorily conflict-free investments.

³⁷ Lipton & Craig, *Donald Trump’s Far-Flung Holdings*.

³⁸ While it is likely that a careful student of history could discover various minimal, short-lived, or glancing violations of the Emoluments Clause by Presidents or other officeholders, the violations at issue here are orders of magnitude beyond anything that this Nation has previously witnessed in its highest official.

³⁹ *The Pocket Veto Case*, 279 U. S. 655, 689 (1929); accord *McCulloch v. Maryland*, 4 Wheat. 316, 401 (1819) (“[A] doubtful question, one on which human reason may pause, and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted; if not put at rest by the practice of the government, ought to receive a considerable impression from that practice.”).

⁴⁰ 24 Op. Att’y Gen. 116, 117 (1902).

⁴¹ Lessig, *Republic, Lost*, at 18-19.

2. *What Qualifies as an Emolument?*

The next question is, what qualifies as “any present, Emolument, Office, or Title, of any kind whatever”? The word “Emolument” is not self-defining—though the Clause, by referring to “any kind whatever,” instructs that it be given a broad construction. As OLC has concluded, and as the Oxford English Dictionary teaches, the word “emolument” is defined as “profit or gain arising from station, office, or employment: reward, remuneration, salary.”⁴² The word also has an older meaning of “advantage, benefit, comfort.”⁴³ Around the time of Ratification, “emolument” was often used as a catch-all for many species of improper remuneration; thus, when James Madison criticized Alexander Hamilton, he warned that Hamilton sought to conduct government through “the pageantry of rank, the influence of money and emoluments, and the terror of military force.”⁴⁴

The Emoluments Clause is thus doubly broad. First it picks out words that, in the 1790s, were understood to encompass any conferral of a benefit or advantage, whether through money, objects, titles, offices, or economically valuable waivers or relaxations of otherwise applicable requirements. And then, over and above the breadth of its categories, it instructs that the Clause reaches any such transaction “of any kind whatever.”

While the phrasing may strike us as peculiar, everything about the Emoluments Clause militates in favor of giving the broadest possible construction to the payments it encompasses. For that reason, the Clause unquestionably reaches any situation in which a federal officeholder receives money, items of value, or services from a foreign state.

Just as plainly, the Emoluments Clause covers any transaction between a federal officeholder and a foreign state in which the foreign state offers a “sweetheart deal” or any other benefit inconsistent with a purely fair market exchange in an arms-length transaction not specially tailored to benefit the holder of an Office under the United States.

Finally, while there is not yet a firm consensus on this point, the best reading of the Clause covers even ordinary, fair market value transactions that result in any economic profit or benefit to the federal officeholder. To start, the text supports this conclusion; since emoluments are properly defined as including “profit” from any employment, as well as “salary,” it is clear that even remuneration fairly earned in commerce can qualify. That view is bolstered by the Clause’s reference to “offices,” which indicates that the Framers sought to prohibit even reasonable money-for-services arrangements between officeholders and foreign states, which would result in profit to the officeholder. Indeed, it would be absurd to imagine that an otherwise forbidden emolument in the form of a foreign government’s payment to the American President could be cured if the President were to give that foreign government its money’s worth (or more) in services advancing that government’s interests, which might well be contrary to our own. And it must not be forgotten that every recognized

⁴² See President Reagan’s Ability to Receive Retirement Benefits from the State of California, 5 Op. O.L.C. 187, 188 (1981) (discussing the background of the ratification of the Clause).

⁴³ *Ibid.*

⁴⁴ James Madison, A Candid State of Parties, *Nat’l Gazette*, Sept. 22, 1792, *reprinted in* 14 James Madison, *The Papers of James Madison* 370 (Robert A. Rutland et al. eds., 1973).

purpose of the Emoluments Clause would be fully implicated by a federal officeholder whose (entirely legitimate) business interests depend in any respect on profits earned from foreign states. Just imagine if the President, *while in office*, owned a company that made tens of millions of dollars, all as a result of profitable transactions with the Chinese government. Could it be said in that scenario that there is little risk of improper foreign influence? Certainly the Framers, who had seen the King co-opt Parliament through the strategic deployment of financial incentives, would have abhorred a president with loyalties divided by business dealings with foreign kings.

3. *What Qualifies as a “King, Prince, or foreign State”?*

A final question concerns the meaning of “King, Prince, or foreign State.” There is a substantial body of OLC precedent addressing this question, which usefully catalogues the factors relevant to determining whether an actor qualifies as a “foreign State”:

[T]he factors we have considered in conducting such an assessment include whether a foreign government has an active role in the management of the decisionmaking entity; whether a foreign government, as opposed to a private intermediary, makes the ultimate decision regarding the gift or emolument; and whether a foreign government is a substantial source of funding for the entity. No one of these factors has been dispositive. We have looked to them in combination to assess the status of the decisionmaking entity for purposes of the Clause, keeping in mind the underlying purpose that the Clause serves.⁴⁵

As then-Deputy Assistant Attorney General Samuel A. Alito, Jr. explained in 1986, “The answer to the Emoluments Clause question . . . must depend [on] whether the consultancy would raise the kind of concern (*viz.*, the potential for ‘corruption and foreign influence’) that motivated the Framers in enacting the constitutional prohibition.”⁴⁶ That is precisely the kind of commonsense approach that is important to understanding this Clause.

In all circumstances, however, it is settled that the Emoluments Clause reaches not only “foreign State[s],” but also their agents and instrumentalities.⁴⁷ Accordingly, and as is

⁴⁵ Memorandum Opinion for the Assistant General Counsel, Department of Commerce, from Daniel L. Kofofsky, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the Göteborg Award for Sustainable Development, 34 Op. O.L.C. 1, 3 (2010) (citations omitted).

⁴⁶ *Ibid.* (quoting Memorandum for H. Gerald Staub, Office of Chief Counsel, NASA, from Samuel A. Alito, Jr., Deputy Assistant Attorney General, Office of Legal Counsel, Re: *Emoluments Clause Questions raised by NASA Scientist’s Proposed Consulting Arrangement with the University of New South Wales* at 4-5 (May 23, 1986)).

⁴⁷ See Applicability of Emoluments Clause to Employment of Government Employees by Foreign Public Universities, 18 Op. O.L.C. 13, 18 (1994).

most relevant here, OLC has determined that “corporations owned or controlled by a foreign government are presumptively foreign states under the Emoluments Clause.”⁴⁸

4. Conclusion

Careful review of the Emoluments Clause shows that the Clause unquestionably applies to the President of the United States; that it covers an exceptionally broad and diverse range of remunerative relationships (including fair market value transactions that confer profit on a federal officeholder); and that it reaches payments and emoluments from foreign states (including state-owned and state-controlled corporations).

Mr. Trump, As President-Elect, Appears To Be On a Direct Collision Course with the Emoluments Clause

Mr. Trump’s business holdings present significant problems under the Emoluments Clause. It is possible that many transactions between foreign states and the Trump empire would involve no actual impropriety, but it is a virtual certainty that many would create the risk of divided or blurred loyalties that the Clause was enacted to prohibit. And while in some instances the threat might be readily apparent, the majority of potential conflicts would be cloaked in secrecy, buried in technicalities, or impossible to prove definitively. That is true both because Mr. Trump has declined to make many of his business dealings transparent, and because any President often acts covertly and on the basis of extremely complicated motives. Disentangling any potential improper influence resulting from special treatment of Mr. Trump’s business holdings by foreign states would be extremely difficult, at best. The American people would be condemned to uncertainty and innuendo, and our political discourse would be rife with unresolved and unresolvable accusations of corruption. Indeed, that dynamic has already begun and shows no sign of abating.

This is *exactly* what the Emoluments Clause is meant to head off at the pass. Rather than deal with potential impropriety in a case-by-case manner, or with *ad hoc* managerial walls between the President and his private interests, the Constitution forbids the very circumstances that give rise to such concerns in the first place. By imposing clear limitations, the Clause avoids a situation in which the American people must try to read the President’s or a foreign leader’s mind, searching for hints of private favoritism toward foreign powers, or of foreign attempts to seduce the American President into compromising our national interest for his private profit.

These concerns may be exacerbated in Mr. Trump’s case. During his campaign and since his election, he has made numerous statements about his business interests that imply an identity of interest between Mr. Trump himself and Mr. Trump’s companies.⁴⁹ Perhaps

⁴⁸ David J. Barron, *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President’s Receipt of the Nobel Peace Prize*, 33 Op. O.L.C. 1, 7 & n.6 (2009).

⁴⁹ For example, as both the Trump Organization and Trump Transition Websites noted, “In New York City and around the world, the Trump signature is synonymous with the most prestigious of addresses.” See Trump Organization, *Biography*, Donald J. Trump, <http://www.trump.com/biography/>; Great Again, *Meet the President Elect*, <https://greatagain.gov/meet-the-president-elect-a72c9d5067ce#9jtxy55ou>. Mr. Trump also

as a result, some foreign leaders—particularly those from nations where politicians often intermingle politics and personal business—have reached out to Mr. Trump through his business contacts rather than through diplomatic channels, seeking to curry favor with Mr. Trump as both businessman and politician.⁵⁰ As one former federal official has explained, “The working assumption on behalf of all these foreign government officials will be that there is an advantage to doing business with the Trump organization. They will think it will ingratiate themselves with the Trump administration.”⁵¹

The result is that we are moving toward “a world in which [Mr. Trump’s] stature as the U.S. president, the status of his private ventures across the globe and his relationships with foreign business partners and the leaders of their governments could all become intertwined.”⁵² Apart from the concrete complications that this development could create for U.S. foreign policy, it also raises grave concerns under the Emoluments Clause: the risks of improper dealing may be increased if foreign powers come to believe, even mistakenly, that offering benefits to Trump-associated businesses is important to maintaining good will with the President. At the very least, that perception could affect the conduct of foreign nations, resulting in many more situations that present the appearance of impropriety and fuel persistent doubts (at home and abroad) about the integrity of our political system.

These concerns have become more tangible over the past month, partly because Mr. Trump has made a practice of freely mixing the business of the United States of America and his private business interests. Consider just a few examples of that habit:

- While picking his Cabinet, Mr. Trump took a break to meet privately with developers from India doing business with the Trump Organization and, during that meeting, made several remarks about India’s current political leadership that were then released to media in both America and India.⁵³

regularly says “my” when referring to his company or its financials, and takes personal credit when referring to people pleased by their interactions with a Trump enterprise.

⁵⁰ Richard C. Paddock et al., *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. Times (Nov. 26, 2016) (describing worry that “in some countries those connections could compromise American efforts to criticize the corrupt intermingling of state power with vast business enterprises controlled by the political elite”); Rosalind S. Helderan & Tom Hamburger, *Trump’s Presidency, Overseas Business Deals and Relations with Foreign Governments Could All Become Intertwined*, Washington Post (Nov. 25, 2016) (quoting an American foreign affairs expert as saying, “[t]he gray areas Trump has between where his job as president ends and where his business interests begin, that’s normal in that part of the world [Georgia].”).

⁵¹ Paddock et al., *Potential Conflicts* (quoting Michael H. Fuchs, until recently the deputy assistant secretary at the Bureau of East Asian & Pacific Affairs).

⁵² Helderan & Hamburger, *Trump’s Presidency*.

⁵³ Ayesha Venkataraman et al., *Indian Business Partners Hope to Exploit Their Ties to Donald Trump*, N.Y. Times (Nov. 20, 2016); Kailash Babar, *Donald Trump Meets Indian Partners, Hails PM Modi’s Work*, Econ. Times (Nov. 17, 2016, 6:23 AM); Eric Lipton & Ellen Barry, *Donald Trump Meeting Suggests He Is Keeping Up His Business Ties*, N.Y. Times (Nov. 19, 2016).

- It has been reported that Mr. Trump's business partners in India are themselves connected to Indian politicians, resulting in an array of potential conflicts relating to development policy and permitting.⁵⁴
- By the same token, since his election, Mr. Trump has met in his office with developers and other business partners from the Philippines.⁵⁵
- On a recent call with Recep Tayyip Erdoğan, President of Turkey, Mr. Trump went out of his way to mention that he and his daughter (who also participated in the call) both admire Mehmet Ali Yalcindag, Mr. Trump's business associate in the Trump Towers in Istanbul.⁵⁶
- It has been reported that Mr. Trump opposes wind farms because he has decided that they ruin the view from his golf course in Aberdeen, Scotland. Recently, Mr. Trump openly lobbied Nigel Farage—a British political ally of his—to oppose wind farms in the United Kingdom, an issue that does not otherwise appear to be of relevance to American foreign policy.⁵⁷
- Even as Mr. Trump has delegated greater authority to his three children (Ivanka, Eric, and Donald Junior) in running the Trump Organization, he has continued to involve them in exceptionally important federal business.
 - Most troubling, Ivanka has participated in several meetings between Mr. Trump and foreign heads of state, including those from Turkey, Argentina, and Japan. Ivanka's presence at Mr. Trump's meeting with Prime Minister Shinzo Abe of Japan is especially striking, since Ivanka is currently in talks with Sanei International (whose largest shareholder is wholly owned by the Japanese government) to close a major and highly lucrative licensing deal.⁵⁸
 - It has also been reported that Donald Junior, who plays a major role in overseeing new project acquisition and development for the Trump Organization, had a role in interviewing candidates for the position of Secretary of the Department of the Interior, whose policies can have significant consequences for foreign companies.⁵⁹

⁵⁴ Paddock et al., *Potential Conflicts*.

⁵⁵ *Ibid.*

⁵⁶ Kurt Eichenwald, *How Donald Trump's Business Ties Are Already Jeopardizing U.S. Interests*, Newsweek (Dec. 13, 2016); Richard C. Paddock, Eric Lipton, Ellen Barry, Rod Nordland, Danny Hakim & Simon Romero, *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. Times, (Nov. 26, 2016).

⁵⁷ Danny Hakim & Eric Lipton, *With a Meeting, Trump Renewed a British Wind Farm Fight*, N.Y. Times (Nov. 21, 2016).

⁵⁸ Matt Flegenheimer et al., *Business Since Birth: Trump's Children and the Tangle That Awaits*, N.Y. Times (Dec. 4, 2016).

⁵⁹ Mark Hensch, *Trump's Son Involved in Interior Secretary Hunt*, The Hill (Dec. 14, 2016); Tal Kopan, *Trump's sons involved in interviewing, vetting Cabinet candidates*, CNN (Dec. 14, 2016)".

In addition, while serving as President-Elect, Mr. Trump has used that bully pulpit as a platform to attack those who have publicly criticized Trump-owned and Trump-branded businesses. For example, on December 15, 2016, less than 24 hours after Vanity Fair published an article describing Trump Grill in New York City as “the worst restaurant in America,” Mr. Trump attacked Vanity Fair and its editor on Twitter: “Has anyone looked at the really poor numbers of @VanityFair Magazine. Way down, big trouble, dead! Graydon Carter, no talent, will be out.”⁶⁰

For obvious reasons, conduct like this risks creating the appearance, both domestically and abroad, that Mr. Trump does not see a meaningful distinction between his public interests as President-Elect and his private interests as business tycoon. To the contrary, such conduct invites foreign states and their agents to treat the man, his office, and his business interests as one and the same, in both public and private dealings.

And as things already stand, that risk is higher than it has ever been. By way of illustration, consider these examples of all the ways in which Mr. Trump’s global business empire creates the conditions for his ongoing violation of the Emoluments Clause to surface in obviously dubious transactions—transactions casting doubt on the ability and inclination of a President Trump to conduct himself with a singular focus on the Nation’s interests and of foreign leaders dealing with him to treat his motives as public-spirited:

- Mr. Trump has recently completed the Trump International Hotel, a major new project in Washington, D.C. and a new hot spot for foreign diplomats.
 - As a former Mexican ambassador to the United States has candidly remarked, “The temptation and the inclination will certainly be there. Some might think it’s the right way to engage, to be able to tell the next president, ‘Oh, I stayed at your hotel.’”⁶¹
 - Speaking on the Senate floor, Senator Ben Cardin noted, “One diplomat was recorded as saying ‘Why wouldn’t I stay at his hotel blocks from the White House, so I can tell the new president, ‘I love your new hotel!’ Isn’t it rude to come to his city and say, ‘I am staying at your competitor?’”⁶²
 - Indeed, with lots of public fanfare, the Kingdom of Bahrain already has decided to mark the seventeenth anniversary of King Hamad bin Isa Al Khalifa’s accession to the throne by hosting a reception at the Trump International Hotel.⁶³
- Since Mr. Trump’s election, long-delayed Trump projects have suddenly jump-started around the world, including in Argentina and Georgia. This

⁶⁰ Louis Nelson, *Trump: Vanity Fair is “dead”*, Politico (Dec. 15, 2016).

⁶¹ Jonathan O’Connell & Mary Jordan, *For Foreign Diplomats, Trump Hotel is Place to Be*, Washington Post (Nov. 18, 2016).

⁶² Statement of the Honorable Benjamin J. Cardin, *Emoluments Clause Resolution* (Nov. 29, 2016).

⁶³ Nolan D. McCaskill & Madeline Conway, *Bahrain to Host Event at Trump’s D.C. Hotel, Raising Ethical Concerns*, Politico (Nov. 29, 2016).

may be especially noteworthy in light of Mr. Trump's acknowledgment that he has raised business issues on calls with foreign officials.⁶⁴

- Mere weeks before Mr. Trump spoke by phone with the President of Taiwan, dramatically altering American foreign policy, a businesswoman claiming to be associated with Mr. Trump's conglomerate arrived in Taiwan and made inquiries about major new investments in luxury hotels.⁶⁵
- Shortly before the election, President Duterte of the Philippines named Jose E.B. Antonio, a business partner of Mr. Trump and founder of a company behind Trump Tower Manila, as a special envoy to the United States.⁶⁶
- After Mr. Trump spoke of banning Muslim immigrants, President Erdoğan of Turkey demanded that Mr. Trump's name be removed from Trump Towers in Istanbul; but that demand abruptly ceased after Mr. Trump defended President Erdoğan's brutal crackdown on Turkish dissidents.⁶⁷
 - Indeed, while running for President, Mr. Trump openly admitted during a radio interview that "I have a little conflict of interest because I have a major, major building in Istanbul."⁶⁸
- The Industrial and Commercial Bank of China—owned by the People's Republic of China—is the single largest tenant in Trump Tower. Its valuable lease will expire, and thus come up for re-negotiation, during Mr. Trump's presidency.⁶⁹
- Even as debates rage over American/Russian relations and Russian cyber-attacks on U.S. interests and even on the recent presidential election, it has been reported that Russian financiers play a significant (albeit concealed) role in Mr. Trump's organization.⁷⁰
- Mr. Trump's businesses owe hundreds of millions to Deutsche Bank, which is currently negotiating a multi-billion-dollar settlement with the U.S. Department of Justice, a settlement that will now be overseen by an Attorney General and many other appointees selected by and serving at the pleasure of Mr. Trump.⁷¹

⁶⁴ Helderman & Hamburger, *Trump's Presidency*.

⁶⁵ Nicola Smith, *Trump's Taiwan Phone Call Preceded by Hotel Development Inquiry*, The Guardian (Dec. 3, 2016).

⁶⁶ Iris Gonzales, *Trump Business Partner in Philippines Named Special Envoy to US*, The Philippine Star (Nov. 8, 2016).

⁶⁷ Paddock et al., *Potential Conflicts*.

⁶⁸ *Ibid.*

⁶⁹ Lipton & Craig, *Trump's Far-Flung Holdings*; Caleb Melby, Stephanie Baker & Ben Brody, *When Chinese Bank's Trump Lease Ends, Potential Conflict Begins*, Bloomberg (Nov. 28, 2016).

⁷⁰ Darren Samuelsohn, *Trump's Vast Web of Conflicts: A User's Guide*, Politico (Nov. 16, 2016).

⁷¹ *Ibid.*; Jackie Northam, *Trump's Loans From Troubled German Bank Pose Conflict of Interest*, NPR (Dec. 1, 2016); Drew Harwell, *Trump's unusual conflict: Millions in debts to German bank now facing federal fines*, Washington Post (Sept. 30, 2016).

- Federal prosecutors in Brazil are in the middle of a sensitive (and now politically-freighted) criminal investigation into whether two pension funds that invested in the Trump Hotel in Rio de Janeiro were bribed to do so.⁷²
- In Ireland, Mr. Trump wants to build a wall that would protect a coastline near his Trump International Golf Links course. Environmentalists, however, worry about an endangered species: the *vertigo angustior* snail. This fight will go to a national planning board, which may now find itself enmeshed in treacherous international politics relating to Mr. Trump.⁷³

These examples are but the tip of an iceberg of unknowable dimension. They suggest the remarkably wide range of situations in which a foreign power could seek to confer a benefit on Mr. Trump through his private interests. Wholly apart from any actual *quid pro quo* arrangements or demonstrable bribes or payoffs, the Emoluments Clause will be violated whenever a foreign diplomat stays in a Trump hotel or hosts a reception in one; whenever foreign-owned banks offer loans to Mr. Trump's businesses or pay rent for office space in his buildings; whenever projects are jump-started or expedited or licensed or otherwise advantaged because Mr. Trump is associated with them; whenever foreign prosecutors and regulators treat a Trump entity favorably; and whenever the Trump Organization makes a profit on a business transaction with any foreign state or foreign-owned entity.

The bottom line is simple: Mr. Trump stands to benefit personally, in innumerable and largely hidden ways, from decisions made every day by foreign governments and their agents. Especially given Mr. Trump's strong personal attachment to his business, it is easy to imagine situations in which he is affected—whether subtly or overtly—by perceptions of whether foreign nations have dealt fairly with the company that he built and still owns. In those circumstances, feelings of gratitude, affection, frustration, and anger inevitably bleed out in complex and hard-to-discern ways, muddling motives in respects that elude conscious awareness or public accountability. Foreign states, attuned to that basic truth of human psychology, will no doubt tread carefully around Mr. Trump's private interests—seeking to avoid his wrath and induce his favor. The Emoluments Clause was put in place to avoid precisely that blending of public and private interest.

History teaches that leaders with divided interests cannot faithfully serve those who elected them, a lesson the Framers deemed so important that they hardwired safeguards reflecting its truths into our basic charter. Mr. Trump does not stand above the laws of history and human nature, or the requirements of the Constitution. He must not be permitted to violate the Emoluments Clause.

Solutions Thus Far Proposed (and Tweeted) By Trump Are Inadequate

Since Election Day, Mr. Trump has issued a series of statements describing in vague terms how he might address his multifarious conflicts of interest. Many of these statements

⁷² Paddock et al., *Potential Conflicts*.

⁷³ Paddock et al., *Potential Conflicts*.

have taken the form of Tweets, because 140-character missives are apparently the new normal for carrying out governmental and constitutional business.⁷⁴ Although Mr. Trump at one point announced his intention to address the matter of his business conflicts on December 15, 2016, he has since indicated that it will take until January 2017 to reveal his plans.⁷⁵ Accordingly, at this point it is possible only to guess at the outlines of what Mr. Trump has in mind. As far as we can tell, based on his Tweets and statements in interviews, Mr. Trump intends to retain his ownership interest in the Trump Organization, while turning operational control over to his children.⁷⁶ That would be inadequate.⁷⁷

The most fundamental difficulty for this proposal is that the Emoluments Clause is concerned with *ownership*, not *management*. If Mr. Trump retains an ownership interest in the Trump Organization, then his personal bottom line is necessarily affected by *everything* that the business does, whether or not the decisions of that business are directed by, or even known to, Mr. Trump personally. For purposes of the Emoluments Clause, it would be totally irrelevant that someone else may be calling the day-to-day shots, since everyone (including Mr. Trump) would know that the manner in which foreign powers interacted with the Trump Organization invariably affected Mr. Trump's worth. No promise that, after leaving office, he might donate any net increase in his wealth to the United States Treasury—a promise he has of course never made but that some have fantasized—would be practical or enforceable. And even if Mr. Trump were removed from management, many goings-on of the Trump Organization would still be known to him, either because they are public or because of his extensive familial and social ties to that world.

Nor could a supposedly “blind trust” involving control of Mr. Trump's assets by his children (who would run the Trump Organization) suffice. As Senator Cardin has explained:

A true blind trust, including ones established by past Presidents, is an arrangement where the official has no control over, will receive no communications about, and will have no knowledge of the identity of the specific assets held in the trust, and the trust's manager operates independently of the owner. The arrangement described by Mr. Trump and his lawyers is not independent: Mr. Trump is well aware of the specific assets held and he can receive communications about and take actions to affect the value of such assets. And the

⁷⁴ Louis Nelson, *Obama Ethics Office Congratulates Trump in Bizarre Mini-Tweetstorm*, Politico (Nov. 30, 2016).

⁷⁵ Jason Slotkin, *President-Elect Trump Postpones Business Conflicts Announcement*, NPR (Dec. 12, 2016).

⁷⁶ Louis Nelson & Darren Samuelsohn, *Trump's Vow to Leave Business Raises More Questions*, Politico (Nov. 30, 2016). On November 30, 2016, Mr. Trump tweeted, “Hence, legal documents are being crafted which take me completely out of business operations. The Presidency is a far more important task!”

⁷⁷ For the reasons set forth *infra*, and many others, so would be any proposal premised on the Trump Organization not making any new deals while Mr. Trump is President. See Michael D. Shear & Eric Lipton, *Donald Trump Says His Company Will Do 'No New Deals' During His Term*, N.Y. Times (Dec. 12, 2016) (“Even if Mr. Trump and his children stop making new deals, the Trump Organization already has a large basket of investments and branding deals that present apparent conflicts of interest around the world.”).

idea that President-elect Trump's children are or will be truly "independent managers" is not credible.⁷⁸

The ultimate difficulty is that a "blind trust" of this sort does not address the fundamental reasons why the Emoluments Clause was written into the Constitution. Mr. Trump would still know that his interests and those of the Trump Organization are closely intertwined; he would still know what the Trump Organization is doing and how conduct by foreign states and their agents is affecting it (and him); he would still have continuing incentive and opportunity to use the power of the Presidency to influence the Trump Organization and, potentially, the conduct of its officers, directors, regulators, and competitors; and both the American public and international community would know all these facts.

Particularly in light of how the Trump family conducts its business operations, ran the campaign, and has handled the presidential transition, the idea that a dividing line of any kind could be drawn (and maintained) between Mr. Trump and his children is absurd. Indeed, shortly after Election Day, Eric Trump indirectly put his finger on the problem with turning control over to Mr. Trump's children: "We'll be in New York and we'll take care of the business. I think we're going to have a lot of fun doing it. *And we're going to make him very proud.*" (emphasis added).⁷⁹ This remark presumed (and quite reasonably so) that Mr. Trump will pay careful attention to his children and the company that he dedicated his life to nurturing, finding joy in their successes and sadness in their failures. Their allies may find favor in his eyes; their enemies may attract his wrath. In these respects, not only would Mr. Trump remain aware of his own strong financial interest in the Trump Organization, but he would also remain deeply invested in it by virtue of his children—whose reputations, personal well-being, livelihoods, and professional success would all be tied to the business. It is virtually inconceivable that, throughout his tenure, Mr. Trump could avoid discussing with his own children any matters relating to his policies and their business ventures, or that he could avoid noticing and caring about their interactions with foreign nations. As Professor Erik M. Jensen has pointedly observed, "What are called 'blind trusts' are often like the 'blind' beggars in *The Hunchback of Notre Dame*. With the Trump family in charge, I don't see how anyone can even pretend blindness."⁸⁰

Thus, under the text and purpose of the Emoluments Clause, a "blind trust" in which Mr. Trump's children manage his assets and run the business is wholly deficient. Payments made (and benefits conferred) by foreign states and their agents would still qualify as "any present, Emolument, Office, or Title, of any kind whatever." And all of the concerns about blurred loyalties animating the Clause would remain fully implicated. Blindness in this context works only if neither side can reasonably conclude that the seemingly opaque "wall" is actually a one-way mirror that the other side can see through.

In addition, it is our considered judgment that even if Mr. Trump divested himself of all ownership interests, turning both control *and* ownership of the Trump Organization over

⁷⁸ Statement of the Honorable Benjamin J. Cardin, *Emoluments Clause Resolution* (Nov. 29, 2016).

⁷⁹ Lipton & Craig, *Trump's Far-Flung Holdings*.

⁸⁰ Jonathan H. Adler, *The Emoluments Clause—Is Donald Trump Violating Its Letter Or Spirit?*, Wash. Post, Volokh Conspiracy (Nov. 21, 2016) (quoting Erik M. Jensen).

to his children, the Emoluments Clause violation would persist. While there is little authority addressing the question whether the Clause covers payments and emoluments given to an immediate family member of a federal officeholder, the better view is that it does, at least in circumstances remotely like these. The Framers were familiar with the peril that could arise from lavishing benefits on the prince to win gratitude and loyalty from the King. And the underlying purpose of the Clause strongly favors covering immediate family of a federal officeholder, lest formalism and paper walls eviscerate the Framers' design.⁸¹ To be sure, there may well be many circumstances—*e.g.*, divorce, separation, alienation—where this reading of the Clause would become inapposite. But given the extraordinary degree to which Mr. Trump has mingled his own affairs with those of his immediately family, and his business dealings with his personal and political undertakings, Mr. Trump presents a paradigm case for application of the Clause to “any present, Emolument, Office, or Title, of any kind whatever” made to his children in the course of managing the Trump Organization.

Commentators have proposed a dizzying array of possible solutions to Mr. Trump's oncoming Emoluments Clause violation.⁸² But the only true solution is for Mr. Trump and his children to divest themselves of all ownership interests in the Trump business empire. That divestment process must be run by an independent third party, who can then turn the resulting assets over to a true blind trust. Even if, as some experts believe, there is nothing that Mr. Trump could do to avoid the significant tax consequences of divesting, fidelity to the Constitution, and to American foreign policy and national security interests, manifestly overcomes all such loss to Mr. Trump or his immediate family (who will remain extremely wealthy, in all events). Ultimately, having run for President and prevailed in Electoral College votes, Mr. Trump must make sacrifices in exchange for the awesome powers and responsibilities he will now inherit. That is the design of the Constitution, to which Mr. Trump is always subject.

Remedies for Emolument Clause Violations

In the event that Mr. Trump chooses a course of action that places him in continued violation of the Emoluments Clause, there are several possible remedies.

First, given that Mr. Trump would arrive in office as a walking, talking violation of the Emoluments Clause of the Constitution, the Electoral College would be justified in concluding that he is unqualified for the Office of the Presidency. For that reason, among others, individual electors must be considered free to decline to cast votes for Mr. Trump.⁸³

⁸¹ Just imagine if an officeholder's spouse and children received large payments on a regular basis from Russia, constituting a much larger share of the family's income than the officeholder's salary; in that circumstance, divided loyalty appears virtually inevitable.

⁸² See, *e.g.*, Darren Samuelsohn & Isaac Arnsdorf, *How Trump Can Keep His Company*, Politico (Nov. 30, 2016); Stephen Bainbridge, *Dealing with Trump's Conflicts of Interest*, ProfessorBainbridge.com (Nov. 30, 2016); Editorial, *The Trump Family Political Business*, Wall St. J. (Nov. 17, 2016).

⁸³ We are aware of the debate over so-called “faithless electors,” a term that in our view is a misnomer and fails to account for the role of the Electoral College in our constitutional system. We do not address that debate here, other than to note that strong arguments have been made for the proposition that electors are free to vote their conscience without fear of legal sanctions. See, *e.g.*, David Pozen, *Why G.O.P. Electoral College members Can Vote Against Trump*, N.Y. Times (Dec. 15, 2016).

Second, if Mr. Trump enters office in what would obviously constitute a knowing and indeed intentional violation of the Emoluments Clause and then declines to cure that violation during his tenure, Congress would be well within its rights to impeach him for engaging in “high crimes and misdemeanors.” This would not require any evidence of provable bribes or other specific malfeasance, since the whole aim and theory of the Emoluments Clause is that the President (among others) is not lawfully permitted to order his private dealings with foreign powers such that they are vulnerable to systemic, invidious, undetectable corruption. So long as Mr. Trump persists in doing so, Congress would have a plainly valid basis under the Constitution for concluding he cannot serve in office—both as a matter of first principles and given evidence that at least one prominent leader in the ratification process saw violations of this Clause as grounds for impeachment.

Third, Congress—invoking its powers and responsibilities under the Necessary & Proper Clause, the “Consent of Congress” language in the Emoluments Clause, and various Article I provisions relating to commerce, foreign affairs, and national security—might pass legislation imposing restrictions on continued presidential involvement in or ownership of businesses and assets that may receive foreign payments or emoluments. Indeed, on December 15, 2016, five Democratic Senators unveiled a bill that would require Mr. Trump to divest assets that risk of a conflict of interest—and to place the proceeds in a truly blind trust (among other ethics measures).⁸⁴ Such legislation is plainly constitutional, and represents a proper and praiseworthy exercise of Congress’s oversight function.

At a future point, and to the extent consistent with Article III standing limits (described below), Congress might also create a private cause of action explicitly allowing injured parties, including business competitors of Trump-associated entities, to file Emoluments Clause suits against the President in his personal capacity for declaratory and injunctive relief (e.g., disgorgement of the constitutionally problematic assets).

Finally, private parties could file suit against Mr. Trump, relying on decisions — written by Supreme Court Justices from across the ideological spectrum—standing for the basic proposition that even someone who might gain nothing concrete from winning a judgment that ends an allegedly unlawful benefit to a competitor has Article III standing simply because such a judgment would end the injury of being put at an improper comparative disadvantage vis-à-vis the recipient of that benefit.⁸⁵

⁸⁴ Elana Schor, *Senate Dems Seek Divestment Blind Trust for Trump’s Assets*, Politico (Dec. 15, 2016).

⁸⁵ See, e.g., *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (Thomas, J.) (“When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing.”); *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dep’t of Bus. Regulation of Florida*, 496 U.S. 18 (1990) (Brennan, J.). The political question doctrine would pose no barrier to judicial consideration of private suits alleging violations of the Emoluments Clause. To be sure, no court would sit in judgment on Congress’s decision whether or not (and how) to impeach the President for violating the Emoluments Clause. See *Nixon v. United States*, 506 U.S. 224 (1993). But the legal question whether the President is subject to, and has complied with, the Emoluments Clause is most certainly amenable to manageable judicial standards, and there is no indication that this issue is committed by the Constitution

Conclusion

The Emoluments Clause, until recently not much discussed because its constraints have been taken for granted, constitutes a clear barrier to the intermingling of business and governmental interests that Donald J. Trump proposes to build into his conduct of the Presidency. That is a conclusion without partisan or ideological inflection; it would apply with equal force to any person or party occupying this position of public trust.

It is plain that a President Trump would be subject to removal from office for the intentional abuse of power that this manifestly unconstitutional intermingling of private and public concerns would entail. When this guillotine might fall is a matter of political more than legal calculation, and is thus beyond the scope of our analysis. Likewise, just how the ongoing prospect of such an ignominious end to a Trump presidency would embolden his political adversaries at home and abroad, and undermine his legitimacy in the eyes of the American public and global community, is impossible to predict. So too, we cannot anticipate how the omnipresent prospect of such a disgraceful end would distort the dynamics of a President Trump's ability to serve the domestic and national security interests of the nation. But that this looming constitutional shadow over his time in office would grievously disserve the people of the United States is beyond doubt.

exclusively to the political branches. See *Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1427 (2012). While Congress is authorized to *grant* consent to otherwise forbidden transactions, it does not follow that, when Congress *withholds* consent and the President nonetheless accepts foreign payments and emoluments, the Judiciary is forbidden from hearing the issue. That is the teaching of, among other precedents, centuries of decisions striking down state actions that Congress could have, but did not, authorize under the Commerce Clause.

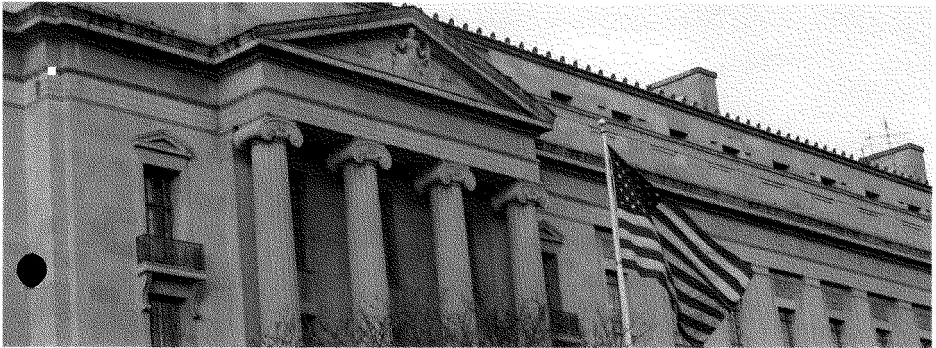
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Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**A Review of Various Actions by the
Federal Bureau of Investigation and
Department of Justice in Advance of the
2016 Election**

Oversight and Review Division 18-04

June 2018



Executive Summary

A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election

Background

In response to requests from Congress, various organizations, and members of the public, the Department of Justice (Department) Office of the Inspector General (OIG) undertook this review of various actions by the Federal Bureau of Investigation (FBI) and the Department in connection with the investigation into former Secretary of State Hillary Clinton's use of a private email server. Our review included examining:

- Allegations that Department or FBI policies or procedures were not followed in connection with, or in actions leading up to or related to, then FBI Director James Comey's public announcement on July 5, 2016, and Comey's letters to Congress on October 28 and November 6, 2016;
- Allegations that certain investigative decisions were based on improper considerations;
- Allegations that then FBI Deputy Director Andrew McCabe should have been recused from participating in certain investigative matters;
- Allegations that the Department's then Assistant Attorney General for Legislative Affairs, Peter Kadzik, improperly disclosed non-public information and/or should have been recused from participating in certain matters;
- Allegations that Department and FBI employees improperly disclosed non-public information during the course of the investigation; and
- Allegations that decisions regarding the timing of the FBI's release of certain Freedom of Information Act (FOIA) documents on October 30 and November 1, 2016, and the use of a Twitter account to publicize this release, were influenced by improper considerations.

During the course of the review, the OIG discovered text messages and instant messages between some FBI employees on the investigative team, conducted using FBI mobile devices and computers, that expressed statements of hostility toward then candidate Donald Trump and statements of support for then candidate Clinton. We also identified messages that expressed opinions that were critical of the conduct and quality of the investigation. We included in our review an assessment of these messages and actions by the FBI employees.

OIG Methodology

The OIG reviewed significantly more than 1.2 million documents during the review and interviewed more than 100 witnesses, several on more than one occasion. These included former Director Comey, former Attorney General (AG) Loretta Lynch, former Deputy Attorney General (DAG) Sally Yates, FBI agents and supervisors and Department attorneys and supervisors who conducted the investigation, former and current members of the FBI's senior executive leadership, and former President Bill Clinton.

Conduct of the Midyear Investigation

The FBI and Department referred to the investigation as "Midyear Exam" or "Midyear." The Midyear investigation was opened by the FBI in July 2015 based on a referral from the Office of the Intelligence Community Inspector General (IC IG). The investigation was staffed by prosecutors from the Department's National Security Division (NSD) and the U.S. Attorney's Office for the Eastern District of Virginia (EDVA), and agents and analysts selected primarily from the FBI's Washington Field Office to work at FBI Headquarters.

The Midyear investigation focused on whether Clinton intended to transmit classified information on unclassified systems, knew that information included in unmarked emails was classified, or later became aware that information was classified and failed to report it. The Midyear team employed an investigative strategy that included three primary lines of inquiry: collection and examination of emails that traversed Clinton's servers and other relevant evidence, interviews of relevant witnesses, and analysis of whether classified information was compromised by hostile cyber intrusions.

As described in Chapter Five of our report, we selected for examination particular investigative decisions that were the subject of public or internal controversy. These included the following:

- The preference for consent over compulsory process to obtain evidence;
- Decisions not to obtain or seek to review certain evidence, such as the personal devices used by former Secretary Clinton's senior aides;
- The use of voluntary witness interviews;



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- Decisions to enter into "letter use" or "Queen for a Day" immunity agreements with three witnesses;
- The use of consent agreements and "act of production" immunity to obtain the laptops used by Clinton's attorneys (Cheryl Mills and Heather Samuelson) to "cull" her personal and work-related emails; and
- The handling of Clinton's interview on July 2, 2016.

With regard to these investigative decisions, we found, as detailed in Chapter Five, that the Midyear team:

- Sought to obtain evidence whenever possible through consent but also used compulsory process, including grand jury subpoenas, search warrants, and 2703(d) orders (court orders for non-content email information) to obtain various evidence. We found that the prosecutors provided justifications for the preference for consent that were supported by Department and FBI policy and practice;
- Conducted voluntary witness interviews to obtain testimony, including from Clinton and her senior aides, and did not require any witnesses to testify before the grand jury. We found that one of the reasons for not using the grand jury for testimony involved concerns about exposing grand jurors to classified information;
- Did not seek to obtain every device, including those of Clinton's senior aides, or the contents of every email account through which a classified email may have traversed. We found that the reasons for not doing so were based on limitations the Midyear team imposed on the investigation's scope, the desire to complete the investigation well before the election, and the belief that the foregone evidence was likely of limited value. We further found that those reasons were, in part, in tension with Comey's response in October 2016 to the discovery of Clinton emails on the laptop of Anthony Weiner, the husband of Clinton's former Deputy Chief of Staff and personal assistant, Huma Abedin;
- Considered but did not seek permission from the Department to review certain highly classified materials that may have included information potentially relevant to the Midyear investigation. The classified appendix to this report describes in more detail the highly classified information, its potential relevance to the Midyear investigation, the FBI's reasons for not seeking access to it, and our analysis;
- Granted letter use immunity and/or "Queen for a Day" immunity to three witnesses in exchange for their testimony after considering, as provided for in Department policy, the value of the witness's testimony, the witness's relative culpability, and the possibility of a successful prosecution;
- Used consent agreements and "act of production" immunity to obtain the culling laptops used by Mills and Samuelson, in part to avoid the uncertainty and delays of a potential motion to quash any subpoenas or search warrants. We found that these decisions were occurring at a time when Comey and the Midyear team had already concluded that there was likely no prosecutable case and believed it was unlikely the culling laptops would change the outcome of the investigation;
- Asked Clinton what appeared to be appropriate questions and made use of documents to challenge Clinton's testimony and assess her credibility during her interview. We found that, by the date of her interview, the Midyear team and Comey had concluded that the evidence did not support criminal charges (absent a confession or false statement by Clinton during the interview), and that the interview had little effect on the outcome of the investigation; and
- Allowed Mills and Samuelson to attend the Clinton interview as Clinton's counsel, even though they also were fact witnesses, because the Midyear team determined that the only way to exclude them was to subpoena Clinton to testify before the grand jury, an option that we found was not seriously considered. We found no persuasive evidence that Mills's or Samuelson's presence influenced Clinton's interview. Nevertheless, we found the decision to allow them to attend the interview was inconsistent with typical investigative strategy.

For each of these decisions, we analyzed whether there was evidence of improper considerations, including bias, and also whether the justifications offered for the decision were a pretext for improper, but unstated, considerations.

The question we considered was not whether a particular investigative decision was the ideal choice or one that could have been handled more effectively, but



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whether the circumstances surrounding the decision indicated that it was based on considerations other than the merits of the investigation. If a choice made by the investigative team was among two or more reasonable alternatives, we did not find that it was improper even if we believed that an alternative decision would have been more effective.

Thus, a determination by the OIG that a decision was not unreasonable does not mean that the OIG has endorsed the decision or concluded that the decision was the most effective among the options considered. We took this approach because our role as an OIG is not to second-guess valid discretionary judgments made during the course of an investigation, and this approach is consistent with the OIG's handling of such questions in past reviews.

In undertaking our analysis, our task was made significantly more difficult because of text and instant messages exchanged on FBI devices and systems by five FBI employees involved in the Midyear investigation. These messages reflected political opinions in support of former Secretary Clinton and against her then political opponent, Donald Trump. Some of these text messages and instant messages mixed political commentary with discussions about the Midyear investigation, and raised concerns that political bias may have impacted investigative decisions.

In particular, we were concerned about text messages exchanged by FBI Deputy Assistant Director Peter Strzok and Lisa Page, Special Counsel to the Deputy Director, that potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. As we describe in Chapter Twelve of our report, most of the text messages raising such questions pertained to the Russia investigation, which was not a part of this review. Nonetheless, the suggestion in certain Russia-related text messages in August 2016 that Strzok might be willing to take official action to impact presidential candidate Trump's electoral prospects caused us to question the earlier Midyear investigative decisions in which Strzok was involved, and whether he took specific actions in the Midyear investigation based on his political views. As we describe Chapter Five of our report, we found that Strzok was not the sole decisionmaker for any of the specific Midyear investigative decisions we examined in that chapter. We further found evidence that in some instances Strzok and Page advocated for more aggressive investigative measures in the Midyear investigation,

such as the use of grand jury subpoenas and search warrants to obtain evidence.

There were clearly tensions and disagreements in a number of important areas between Midyear agents and prosecutors. However, we did not find documentary or testimonial evidence that improper considerations, including political bias, directly affected the specific investigative decisions we reviewed in Chapter Five, or that the justifications offered for these decisions were pretextual.

Nonetheless, these messages cast a cloud over the FBI's handling of the Midyear investigation and the investigation's credibility. But our review did not find evidence to connect the political views expressed in these messages to the specific investigative decisions that we reviewed; rather, consistent with the analytic approach described above, we found that these specific decisions were the result of discretionary judgments made during the course of an investigation by the Midyear agents and prosecutors and that these judgment calls were not unreasonable. The broader impact of these text and instant messages, including on such matters as the public perception of the FBI and the Midyear investigation, are discussed in Chapter Twelve of our report.

Comey's Public Statement on July 5

"Endgame" Discussions

As we describe in Chapter Six of the report, by the Spring of 2016, Comey and the Midyear team had determined that, absent an unexpected development, evidence to support a criminal prosecution of Clinton was lacking. Midyear team members told us that they based this assessment on a lack of evidence showing intent to place classified information on the server, or knowledge that the information was classified. We describe the factors that the Department took into account in its decision to decline prosecution in Chapter Seven of our report and below.

Comey told the OIG that as he began to realize the investigation was likely to result in a declination, he began to think of ways to credibly announce its closing. Comey engaged then DAG Yates in discussions in April 2016 about the "endgame" for the Midyear investigation. Comey said that he encouraged Yates to consider the most transparent options for announcing a declination. Yates told the OIG that, as a result of her



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discussions with Comey, she thought the Department and FBI would jointly announce any declination.

Comey said he also told Yates that the closer they got to the political conventions, the more likely he would be to insist that a special counsel be appointed, because he did not believe the Department could credibly announce the closing of the investigation once Clinton was the Democratic Party nominee. However, we did not find evidence that Comey ever seriously considered requesting a special counsel; instead, he used the reference to a special counsel as an effort to induce the Department to move more quickly to obtain the Mills and Samuelson culling laptops and to complete the investigation.

Although Comey engaged with the Department in these "endgame" discussions, he told us that he was concerned that involvement by then AG Loretta Lynch in a declination announcement would result in "corrosive doubt" about whether the decision was objective and impartial because Lynch was appointed by a President from the same political party as Clinton. Comey cited other factors to us that he said caused him to be concerned by early May 2016 that Lynch could not credibly participate in announcing a declination:

- An alleged instruction from Lynch at a meeting in September 2015 to call the Midyear investigation a "matter" in statements to the media and Congress, which we describe in Chapter Four of our report;
- Statements made by then President Barack Obama about the Midyear investigation, which also are discussed in Chapter Four; and
- Concerns that certain classified information mentioning Lynch would leak, which we describe in Chapter Six and in the classified appendix.

As we discuss below and in Chapter Six of our report, the meeting between Lynch and former President Clinton on June 27, 2016 also played a role in Comey's decision to deliver a unilateral statement.

Comey did not raise any of these concerns with Lynch or Yates. Rather, unbeknownst to them, Comey began considering the possibility of an FBI-only public statement in late April and early May 2016. Comey told the OIG that a separate public statement was warranted by the "500-year flood" in which the FBI found itself, and that he weighed the need to preserve the credibility and integrity of the Department and the

FBI, and the need to protect "a sense of justice more broadly in the country—that things are fair not fixed, and they're done independently."

Comey's Draft Statement

Comey's initial draft statement, which he shared with FBI senior leadership on May 2, criticized Clinton's handling of classified information as "grossly negligent," but concluded that "no reasonable prosecutor" would bring a case based on the facts developed in the Midyear investigation. Over the course of the next 2 months, Comey's draft statement underwent various language changes, including the following:

- The description of Clinton's handling of classified information was changed from "grossly negligent" to "extremely careless;"
- A statement that the sheer volume of information classified as Secret supported an inference of gross negligence was removed and replaced with a statement that the classified information they discovered was "especially concerning because all of these emails were housed on servers not supported by full-time staff;"
- A statement that the FBI assessed that it was "reasonably likely" that hostile actors gained access to Clinton's private email server was changed to "possible." The statement also acknowledged that the FBI investigation and its forensic analysis did not find evidence that Clinton's email server systems were compromised; and
- A paragraph summarizing the factors that led the FBI to assess that it was possible that hostile actors accessed Clinton's server was added, and at one point referenced Clinton's use of her private email for an exchange with then President Obama while in the territory of a foreign adversary. This reference later was changed to "another senior government official," and ultimately was omitted.

Each version of the statement criticized Clinton's handling of classified information. Comey told us that he included criticism of former Secretary Clinton's uncharged conduct because "unusual transparency...was necessary for an unprecedented situation," and that such transparency "was the best chance we had of having the American people have confidence that the justice system works[.]"



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Other witnesses told the OIG that Comey included this criticism to avoid creating the appearance that the FBI was "letting [Clinton] off the hook," as well as to "messag[e]" the decision to the FBI workforce to emphasize that employees would be disciplined for similar conduct and to distinguish the Clinton investigation from the cases of other public figures who had been prosecuted for mishandling violations.

The Tarmac Meeting and Impact on Comey's Statement

On June 27, 2016, Lynch met with former President Clinton on Lynch's plane, which was parked on the tarmac at a Phoenix airport. This meeting was unplanned, and Lynch's staff told the OIG they received no notice that former President Clinton planned to board Lynch's plane. Both Lynch and former President Clinton told the OIG that they did not discuss the Midyear investigation or any other Department investigation during their conversation. Chapter Six of our report describes their testimony about the substance of their discussion.

Lynch told the OIG that she became increasingly concerned as the meeting "went on and on," and stated "that it was just too long a conversation to have had." Following this meeting, Lynch obtained an ethics opinion from the Departmental Ethics Office that she was not required to recuse herself from the Midyear investigation, and she decided not to voluntarily recuse herself either. In making this decision, Lynch told the OIG that stepping aside would create a misimpression that she and former President Clinton had discussed inappropriate topics, or that her role in the Midyear investigation somehow was greater than it was.

On July 1, during an interview with a reporter, Lynch stated that she was not recusing from the Midyear investigation, but that she "fully expect[ed]" to accept the recommendation of the career agents and prosecutors who conducted the investigation, "as is the common process." Then, in a follow up question, Lynch said "I'll be briefed on [the findings] and I will be accepting their recommendations." Lynch's statements created considerable public confusion about the status of her continuing involvement in the Midyear investigation.

Although we found no evidence that Lynch and former President Clinton discussed the Midyear investigation or engaged in other inappropriate discussion during their tarmac meeting, we also found that Lynch's failure to recognize the appearance problem created by former President Clinton's visit and to take action to cut the

visit short was an error in judgment. We further concluded that her efforts to respond to the meeting by explaining what her role would be in the investigation going forward created public confusion and did not adequately address the situation.

Comey told the OIG that he was "90 percent there, like highly likely" to make a separate public statement prior to the tarmac meeting, but that the tarmac meeting "tipped the scales" toward making his mind up to go forward with his own public statement.

Comey's Decision Not to Tell Department Leadership

Comey acknowledged that he made a conscious decision not to tell Department leadership about his plans to make a separate statement because he was concerned that they would instruct him not to do it. He also acknowledged that he made this decision when he first conceived of the idea to do the statement, even as he continued to engage the Department in discussions about the "endgame" for the investigation.

Comey admitted that he concealed his intentions from the Department until the morning of his press conference on July 5, and instructed his staff to do the same, to make it impracticable for Department leadership to prevent him from delivering his statement. We found that it was extraordinary and insubordinate for Comey to do so, and we found none of his reasons to be a persuasive basis for deviating from well-established Department policies in a way intentionally designed to avoid supervision by Department leadership over his actions.

On the morning of July 5, 2016, Comey contacted Lynch and Yates about his plans to make a public statement, but did so only after the FBI had notified the press—in fact, the Department first learned about Comey's press conference from a media inquiry, rather than from the FBI. When Comey did call Lynch that morning, he told her that he was not going to inform her about the substance of his planned press statement.

While Lynch asked Comey what the subject matter of the statement was going to be (Comey told her in response it would be about the Midyear investigation), she did not ask him to tell her what he intended to say about the Midyear investigation. We found that Lynch, having decided not to recuse herself, retained authority over both the final prosecution decision and the Department's management of the Midyear investigation. As such, we believe she should have instructed Comey



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to tell her what he intended to say beforehand, and should have discussed it with Comey.

Comey's public statement announced that the FBI had completed its Midyear investigation, criticized Clinton and her senior aides as "extremely careless" in their handling of classified information, stated that the FBI was recommending that the Department decline prosecution of Clinton, and asserted that "no reasonable prosecutor" would prosecute Clinton based on the facts developed by the FBI during its investigation. We determined that Comey's decision to make this statement was the result of his belief that only he had the ability to credibly and authoritatively convey the rationale for the decision to not seek charges against Clinton, and that he needed to hold the press conference to protect the FBI and the Department from the extraordinary harm that he believed would have resulted had he failed to do so. While we found no evidence that Comey's statement was the result of bias or an effort to influence the election, we did not find his justifications for issuing the statement to be reasonable or persuasive.

We concluded that Comey's unilateral announcement was inconsistent with Department policy and violated long-standing Department practice and protocol by, among other things, criticizing Clinton's uncharged conduct. We also found that Comey usurped the authority of the Attorney General, and inadequately and incompletely described the legal position of Department prosecutors.

The Department's Declination Decision on July 6

Following Comey's public statement on July 5, the Midyear prosecutors finalized their recommendation that the Department decline prosecution of Clinton, her senior aides, and the senders of emails determined to contain classified information. On July 6, the Midyear prosecutors briefed Lynch, Yates, Comey, other members of Department and FBI leadership, and FBI Midyear team members about the basis for the declination recommendation. Lynch subsequently issued a short public statement that she met with the career prosecutors and agents who conducted the investigation and "received and accepted their unanimous recommendation" that the investigation be closed without charges.

We found that the prosecutors considered five federal statutes:

- 18 U.S.C. §§ 793(d) and (e) (willful mishandling of documents or information relating to the national defense);
- 18 U.S.C. § 793(f) (removal, loss, theft, abstraction, or destruction of documents or information relating to the national defense through gross negligence, or failure to report such removal, loss, theft, abstraction, or destruction);
- 18 U.S.C. § 1924 (unauthorized removal and retention of classified documents or material by government employees); and
- 18 U.S.C. § 2071 (concealment, removal, or mutilation of government records).

As described in Chapter Seven of our report, the prosecutors concluded that the evidence did not support prosecution under any of these statutes for various reasons, including that former Secretary Clinton and her senior aides lacked the intent to communicate classified information on unclassified systems. Critical to their conclusion was that the emails in question lacked proper classification markings, that the senders often refrained from using specific classified facts or terms in emails and worded emails carefully in an attempt to "talk around" classified information, that the emails were sent to other government officials in furtherance of their official duties, and that former Secretary Clinton relied on the judgment of State Department employees to properly handle classified information, among other facts.

We further found that the statute that required the most complex analysis by the prosecutors was Section 793(f)(1), the "gross negligence" provision that has been the focus of much of the criticism of the declination decision. As we describe in Chapters Two and Seven of our report, the prosecutors analyzed the legislative history of Section 793(f)(1), relevant case law, and the Department's prior interpretation of the statute. They concluded that Section 793(f)(1) likely required a state of mind that was "so gross as to almost suggest deliberate intention," criminally reckless, or "something that falls just short of being willful," as well as evidence that the individuals who sent emails containing classified information "knowingly" included or transferred such information onto unclassified systems.

The Midyear team concluded that such proof was lacking. We found that this interpretation of Section 793(f)(1) was consistent with the Department's historical approach in prior cases under different leadership, including in the 2008 decision not to



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prosecute former Attorney General Alberto Gonzales for mishandling classified documents.

We analyzed the Department's declination decision according to the same analytical standard that we applied to other decisions made during the investigation. We did not substitute the OIG's judgment for the judgments made by the Department, but rather sought to determine whether the decision was based on improper considerations, including political bias. We found no evidence that the conclusions by the prosecutors were affected by bias or other improper considerations; rather, we determined that they were based on the prosecutors' assessment of the facts, the law, and past Department practice.

We therefore concluded that these were legal and policy judgments involving core prosecutorial discretion that were for the Department to make.

Discovery in September 2016 of Emails on the Weiner Laptop

Discovery of Emails by the FBI's New York Field Office

In September 2016, the FBI's New York Field Office (NYO) and the U.S. Attorney's Office for the Southern District of New York (SDNY) began investigating former Congressman Anthony Weiner for his online relationship with a minor. A federal search warrant was obtained on September 26, 2016, for Weiner's iPhone, iPad, and laptop computer. The FBI obtained these devices the same day. The search warrant authorized the government to search for evidence relating to the following crimes: transmitting obscene material to a minor, sexual exploitation of children, and activities related to child pornography.

The Weiner case agent told the OIG that he began processing Weiner's devices on September 26, and that he noticed "within hours" that there were "over 300,000 emails on the laptop." He said that either that evening or the next morning, he saw at least one BlackBerry PIN message between Clinton and Abedin, as well as emails between them. He said that he recalled seeing emails associated with "about seven domains," such as yahoo.com, state.gov, clintonfoundation.org, clintonemail.com, and hillaryclinton.com. The case agent immediately notified his NYO chain of command, and the information was ultimately briefed to NYO Assistant Director in Charge (ADIC) William Sweeney on September 28.

Reporting of Emails to FBI Headquarters

As we describe in Chapter Nine of our report, Sweeney took the following steps to notify FBI Headquarters about the discovery of Midyear-related emails on the Weiner laptop:

- On September 28, during a secure video teleconference (SVTC), Sweeney reported that Weiner investigation agents had discovered 141,000 emails on Weiner's laptop that were potentially relevant to the Midyear investigation. The OIG determined that this SVTC was led by then Deputy Director Andrew McCabe, and that approximately 39 senior FBI executives likely would have participated. Comey was not present for the SVTC.
- Sweeney said he spoke again with McCabe on the evening of September 28. Sweeney said that during this call he informed McCabe that NYO personnel had continued processing the laptop and that they had now identified 347,000 emails on the laptop.
- Sweeney said he also called two FBI Executive Assistant Directors (EAD) on September 28 and informed them that the Weiner case team had discovered emails relevant to the Midyear investigation. One of the EADs told the OIG that he then called McCabe, and that McCabe told the EAD that he was aware of the emails. The EAD told us that "[T]here was no doubt in my mind when we finished that conversation that [McCabe] understood the, the gravity of what the find was."
- Sweeney said he also spoke to FBI Assistant Director E.W. "Bill" Priestap on September 28 and 29, 2016. Emails indicate that during their conversation on September 29, they discussed the limited scope of the Weiner search warrant (*i.e.*, the need to obtain additional legal process to review any Midyear-related email on the Weiner laptop).

Initial Response of FBI Headquarters

McCabe told the OIG that he considered the information provided by Sweeney to be "a big deal" and said he instructed Priestap to send a team to New York to review the emails on the Weiner laptop. McCabe told the OIG that he recalled talking to Comey about the issue "right around the time [McCabe] found out about it." McCabe described it as a "fly-by," where the Weiner



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laptop was "like one in a list of things that we discussed."

Comey said that he recalled first learning about the additional emails on the Weiner laptop at some point in early October 2016, although he said it was possible this could have occurred in late September 2016. Comey told the OIG that this information "didn't index" with him, which he attributed to the way the information was presented to him and the fact that, "I don't know that I knew that [Weiner] was married to Huma Abedin at the time."

Text messages of FBI Deputy Assistant Director Peter Strzok indicated that he, McCabe, and Priestap discussed the Weiner laptop on September 28. Strzok said that he had initially planned to send a team to New York to review the emails, but a conference call with NYO was scheduled instead. The conference call took place on September 29, and five members of the FBI Midyear team participated. Notes from the conference call indicate the participants discussed the presence of a large volume of emails (350,000) on the Weiner laptop and specific domain names, including clintonemail.com and state.gov. The Midyear SSA said that NYO also mentioned seeing BlackBerry domain emails on the Weiner laptop.

Additional discussions took place on October 3 and 4, 2016. However, after October 4, we found no evidence that anyone associated with the Midyear investigation, including the entire leadership team at FBI Headquarters, took any action on the Weiner laptop issue until the week of October 24, and then did so only after the Weiner case agent expressed concerns to SDNY, prompting SDNY to contact the Office of the Deputy Attorney General (ODAG) on October 21 to raise concerns about the lack of action.

Reengagement of FBI Headquarters

On Friday, October 21, SDNY Deputy U.S. Attorney Joon Kim contacted ODAG and was put in touch with DAAG George Toscas, the most senior career Department official involved in the Midyear investigation. Thereafter, at Toscas's request, one of the Midyear prosecutors called Strzok. This was the first conversation that the FBI had with Midyear prosecutors about the Weiner laptop.

Toscas said he asked McCabe about the Weiner laptop Monday, October 24, after a routine meeting between FBI and Department leadership. McCabe told us that this interaction with Toscas caused him to follow

up with the FBI Midyear team about the Weiner laptop and to call McCord about the issue.

On October 26, NYO, SDNY, and Midyear team members participated in a conference call. The FBI Midyear team told the OIG that they learned important new information on this call, specifically: (1) that there was a large volume of emails on the Weiner laptop, particularly the potential for a large number of @clintonemail.com emails; and (2) that the presence of BlackBerry data indicated that emails from Clinton's first three months as Secretary of State could be present on the laptop. However, as we describe above and in Chapter Nine of our report, these basic facts were known to the FBI by September 29, 2016.

The FBI Midyear team briefed McCabe about the information from the conference call on the evening of October 26, 2016. McCabe told us that he felt the situation was "absolutely urgent" and proposed that the FBI Midyear team meet with Comey the following day.

On October 27 at 5:20 a.m., McCabe emailed Comey stating that the Midyear team "has come across some additional actions they believe they need to take," and recommending that they meet that day to discuss the implications "if you have any space on your calendar." Comey stated that he did not know what this email was about when he received it and did not initially recall that he had been previously notified about the Weiner laptop.

We found that, by no later than September 29, FBI executives and the FBI Midyear team had learned virtually every fact that was cited by the FBI in late October as justification for obtaining the search warrant for the Weiner laptop, including that the laptop contained:

- Over 340,000 emails, some of which were from domains associated with Clinton, including state.gov, clintonfoundation.org, clintonemail.com, and hillaryclinton.com;
- Numerous emails between Clinton and Abedin;
- An unknown number of BlackBerry communications on the laptop, including one or more messages between Clinton and Abedin, indicating the possibility that the laptop contained communications from the early months of Clinton's tenure; and
- Emails dated beginning in 2007 and covering the entire period of Clinton's tenure as Secretary of State.



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As we describe in Chapter Nine of our report, the explanations we were given for the FBI's failure to take immediate action on the Weiner laptop fell into four general categories:

- The FBI Midyear team was waiting for additional information about the contents of the laptop from NYO, which was not provided until late October;
- The FBI Midyear team could not review the emails without additional legal authority, such as consent or a new search warrant;
- The FBI Midyear team and senior FBI officials did not believe that the information on the laptop was likely to be significant; and
- Key members of the FBI Midyear team had been reassigned to the investigation of Russian interference in the U.S. election, which was a higher priority.

We found these explanations to be unpersuasive justifications for not acting sooner, given the FBI leadership's conclusion about the importance of the information and that the FBI Midyear team had sufficient information to take action in early October and knew at that time that it would need a new search warrant to review any Clinton-Abedin emails. Moreover, given the FBI's extensive resources, the fact that Strzok and several other FBI members of the Midyear team had been assigned to the Russia investigation, which was extremely active during this September and October time period, was not an excuse for failing to take any action during this time period on the Weiner laptop.

The FBI's failure to act in late September or early October is even less justifiable when contrasted with the attention and resources that FBI management and some members of the Midyear team dedicated to other activities in connection with the Midyear investigation during the same period. As detailed in Chapter Eight, these activities included:

- The preparation of Comey's speech at the FBI's SAC Conference on October 12, a speech designed to help equip SACs to "bat down" misinformation about the July 5 declination decision;
- The preparation and distribution of detailed talking points to FBI SACs in mid-October in order, again, "to equip people who are going to be talking about it anyway with the actual facts

and [the FBI's] actual perspective on [the declination]"; and

- A briefing for retired FBI agents conducted on October 21 to describe the investigative decisions made during Midyear so as to arm former employees with facts so that they, too, might counter "falsehoods and exaggerations."

In assessing the decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop, we were particularly concerned about text messages sent by Strzok and Page that potentially indicated or created the appearance that investigative decisions they made were impacted by bias or improper considerations. Most of the text messages raising such questions pertained to the Russia investigation, and the implication in some of these text messages, particularly Strzok's August 8 text message ("we'll stop" candidate Trump from being elected), was that Strzok might be willing to take official action to impact a presidential candidate's electoral prospects. Under these circumstances, we did not have confidence that Strzok's decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop was free from bias.

We searched for evidence that the Weiner laptop was deliberately placed on the back-burner by others in the FBI to protect Clinton, but found no evidence in emails, text messages, instant messages, or documents that suggested an improper purpose. We also took note of the fact that numerous other FBI executives—including the approximately 39 who participated in the September 28 SVTC—were briefed on the potential existence of Midyear-related emails on the Weiner laptop. We also noted that the Russia investigation was under the supervision of Priestap—for whom we found no evidence of bias and who himself was aware of the Weiner laptop issue by September 29. However, we also did not identify a consistent or persuasive explanation for the FBI's failure to act for almost a month after learning of potential Midyear-related emails on the Weiner laptop.

The FBI's inaction had potentially far-reaching consequences. Comey told the OIG that, had he known about the laptop in the beginning of October and thought the email review could have been completed before the election, it may have affected his decision to notify Congress. Comey told the OIG, "I don't know [if] it would have put us in a different place, but I would have wanted to have the opportunity."



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Comey's Decision to Notify Congress on October 28

Following the briefing from the FBI Midyear team on October 27, 2016, Comey authorized the Midyear team to seek a search warrant, telling the OIG that "the volume of emails" and the presence of BlackBerry emails on the Weiner laptop were "two highly significant facts." As we describe in Chapter Thirteen of our report, McCabe joined this meeting by phone but was asked not to participate, and subsequently recused himself from the Midyear investigation on November 1, 2016.

The issue of notifying Congress of the Weiner laptop development was first raised at the October 27 briefing and, over the course of the next 24 hours, numerous additional discussions occurred within the FBI. As we describe in Chapter Ten of our report, the factors considered during those discussions included:

- Comey's belief that failure to disclose the existence of the emails would be an act of concealment;
- The belief that Comey had an obligation to update Congress because the discovery was potentially significant and made his prior testimony that the investigation was closed no longer true;
- An implicit assumption that Clinton would be elected President;
- Fear that the information would leak if the FBI failed to disclose it;
- Concern that failing to disclose would result in accusations that the FBI had "engineered a cover up" to help Clinton get elected;
- Concerns about protecting the reputation of the FBI;
- Concerns about the perceived illegitimacy of a Clinton presidency that would follow from a failure to disclose the discovery of the emails if they proved to be significant;
- Concerns about the electoral impact of any announcement; and
- The belief that the email review could not be completed before the election.

As a result of these discussions on October 27, Comey decided to notify Congress about the discovery of Midyear-related emails on the Weiner laptop. Comey

told us that, although he "believe[d] very strongly that our rule should be, we don't comment on pending investigations" and that it was a "very important norm" for the Department to avoid taking actions that could impact an imminent election, he felt he had an obligation to update Congress because the email discovery was potentially very significant and it made his prior testimony no longer true.

We found no evidence that Comey's decision to send the October 28 letter was influenced by political preferences. Instead, we found that his decision was the result of several interrelated factors that were connected to his concern that failing to send the letter would harm the FBI and his ability to lead it, and his view that candidate Clinton was going to win the presidency and that she would be perceived to be an illegitimate president if the public first learned of the information after the election. Although Comey told us that he "didn't make this decision because [he] thought it would leak otherwise," several FBI officials told us that the concern about leaks played a role in the decision.

Much like with his July 5 announcement, we found that in making this decision, Comey engaged in ad hoc decisionmaking based on his personal views even if it meant rejecting longstanding Department policy or practice. We found unpersuasive Comey's explanation as to why transparency was more important than Department policy and practice with regard to the reactivated Midyear investigation while, by contrast, Department policy and practice were more important to follow with regard to the Clinton Foundation and Russia investigations.

Comey's description of his choice as being between "two doors," one labeled "speak" and one labeled "conceal," was a false dichotomy. The two doors were actually labeled "follow policy/practice" and "depart from policy/practice." Although we acknowledge that Comey faced a difficult situation with unattractive choices, in proceeding as he did, we concluded that Comey made a serious error of judgment.

Department and FBI Leadership Discussions

On October 27, Comey instructed his Chief of Staff, James Rybicki, to reach out to the Department about his plan to notify Congress. As we describe in Chapter Ten of our report, Comey told the OIG that he decided to ask Rybicki to inform the Department rather than to contact Lynch or Yates directly because he did not "want to jam them and I wanted to offer them the



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opportunity to think about and decide whether they wanted to be engaged on it.” Rybicki and Axelrod spoke on the afternoon of October 27 and had “a series of phone calls” the rest of the day. Rybicki told Axelrod that Comey believed he had an obligation to notify Congress about the laptop in order to correct a misimpression that the Midyear investigation was closed.

Lynch, Yates, Axelrod, and their staffs had several discussions that same day as to whether Lynch or Yates should call Comey directly, but said they ultimately decided to have Axelrod communicate “the strong view that neither the DAG nor [AG] felt this letter should go out.” Yates told us they were concerned that direct contact with Comey would be perceived as “strong-arming” him, and that based on her experience with Comey, he was likely to “push back hard” against input from Lynch or her, especially if accepting their input meant that he had to go back to his staff and explain that he was reversing his decision. She said that she viewed Rybicki as the person they needed to convince if they wanted to change Comey’s mind. Accordingly, Axelrod informed Rybicki on October 27 of the Department’s strong opposition to Comey’s plan to send a letter.

Rybicki reported to Comey that the Department “recommend[ed] against” the Congressional notification and thought it was “a bad idea.” Although Comey told us that he would not have sent the letter if Lynch or Yates had told him not to do so, he said he viewed their response as only a recommendation and interpreted their lack of direct engagement as saying “basically...it’s up to you.... I honestly thought they were taking kind of a cowardly way out.” The following day, October 28, Comey sent a letter to Congress stating, in part, that “the FBI has learned of the existence of emails that appear to be pertinent to the [Midyear] investigation.”

Comey, Lynch, and Yates faced difficult choices in late October 2016. However, we found it extraordinary that Comey assessed that it was best that the FBI Director not speak directly with the Attorney General and Deputy Attorney General about how best to navigate this most important decision and mitigate the resulting harms, and that Comey’s decision resulted in the Attorney General and Deputy Attorney General concluding that it would be counterproductive to speak directly with the FBI Director. We believe that open and candid communication among leaders in the Department and its components is essential for the effective functioning of the Department.

Text and Instant Messages, Use of Personal Email, and Alleged Improper Disclosures of Non-Public Information

Text Messages and Instant Messages

As we describe in Chapter Twelve, during our review we identified text messages and instant messages sent on FBI mobile devices or computer systems by five FBI employees who were assigned to the Midyear investigation. These included:

- Text messages exchanged between Strzok and Page;
- Instant messages exchanged between Agent 1, who was one of the four Midyear case agents, and Agent 5, who was a member of the filter team; and
- Instant messages sent by FBI Attorney 2, who was assigned to the Midyear investigation.

The text messages and instant messages sent by these employees included statements of hostility toward then candidate Trump and statements of support for candidate Clinton, and several appeared to mix political opinions with discussions about the Midyear investigation.

We found that the conduct of these five FBI employees brought discredit to themselves, sowed doubt about the FBI’s handling of the Midyear investigation, and impacted the reputation of the FBI. Although our review did not find documentary or testimonial evidence directly connecting the political views these employees expressed in their text messages and instant messages to the specific investigative decisions we reviewed in Chapter Five, the conduct by these employees cast a cloud over the FBI Midyear investigation and sowed doubt the FBI’s work on, and its handling of, the Midyear investigation. Moreover, the damage caused by their actions extends far beyond the scope of the Midyear investigation and goes to the heart of the FBI’s reputation for neutral factfinding and political independence.

We were deeply troubled by text messages exchanged between Strzok and Page that potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. Most of the text messages raising such questions pertained to the Russia investigation, which was not a part of this review. Nonetheless, when one senior FBI official, Strzok, who was helping to lead the Russia



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investigation at the time, conveys in a text message to another senior FBI official, Page, "No. No he won't. We'll stop it" in response to her question "[Trump's] not ever going to become president, right? Right?!", it is not only indicative of a biased state of mind but, even more seriously, implies a willingness to take official action to impact the presidential candidate's electoral prospects. This is antithetical to the core values of the FBI and the Department of Justice.

We do not question that the FBI employees who sent these messages are entitled to their own political views. However, we believe using FBI devices to send the messages discussed in Chapter Twelve—particularly the messages that intermix work-related discussions with political commentary—potentially implicate provisions in the FBI's Offense Code and Penalty Guidelines. At a minimum, we found that the employees' use of FBI systems and devices to send the identified messages demonstrated extremely poor judgment and a gross lack of professionalism. We therefore refer this information to the FBI for its handling and consideration of whether the messages sent by the five employees listed above violated the FBI's Offense Code of Conduct.

Use of Personal Email

As we also describe in Chapter Twelve, we learned during the course of our review that Comey, Strzok, and Page used their personal email accounts to conduct FBI business.

We identified numerous instances in which Comey used a personal email account to conduct unclassified FBI business. We found that, given the absence of exigent circumstances and the frequency with which the use of personal email occurred, Comey's use of a personal email account for unclassified FBI business to be inconsistent with Department policy.

We found that Strzok used his personal email accounts for official government business on several occasions, including forwarding an email from his FBI account to his personal email account about the proposed search warrant the Midyear team was seeking on the Weiner laptop. This email included a draft of the search warrant affidavit, which contained information from the Weiner investigation that appears to have been under seal at the time in the Southern District of New York and information obtained pursuant to a grand jury subpoena issued in the Eastern District of Virginia in the Midyear investigation. We refer to the FBI the issue of whether Strzok's use of personal email accounts violated FBI and Department policies.

Finally, when questioned, Page also told us she used personal email for work-related matters at times. She stated that she and Strzok sometimes used these forums for work-related discussions due to the technical limitations of FBI-issued phones. Page left the FBI on May 4, 2018.

Improper Disclosure of Non-Public Information

As we also describe in Chapter Twelve, among the issues we reviewed were allegations that Department and FBI employees improperly disclosed non-public information regarding the Midyear investigation. Although FBI policy strictly limits the employees who are authorized to speak to the media, we found that this policy appeared to be widely ignored during the period we reviewed.

We identified numerous FBI employees, at all levels of the organization and with no official reason to be in contact with the media, who were nevertheless in frequent contact with reporters. Attached to this report as Attachments E and F are two link charts that reflect the volume of communications that we identified between FBI employees and media representatives in April/May and October 2016. We have profound concerns about the volume and extent of unauthorized media contacts by FBI personnel that we have uncovered during our review.

In addition, we identified instances where FBI employees improperly received benefits from reporters, including tickets to sporting events, golfing outings, drinks and meals, and admittance to nonpublic social events. We will separately report on those investigations as they are concluded, consistent with the Inspector General Act, other applicable federal statutes, and OIG policy.

The harm caused by leaks, fear of potential leaks, and a culture of unauthorized media contacts is illustrated in Chapters Ten and Eleven of our report, where we detail the fact that these issues influenced FBI officials who were advising Comey on consequential investigative decisions in October 2016. The FBI updated its media policy in November 2017, restating its strict guidelines concerning media contacts, and identifying who is required to obtain authority before engaging members of the media, and when and where to report media contact. We do not believe the problem is with the FBI's policy, which we found to be clear and unambiguous. Rather, we concluded that these leaks highlight the need to change what appears to be a cultural attitude among many in the organization.



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Recusal Issues

Former Deputy Director Andrew McCabe: As we describe in Chapter Thirteen, in 2015, McCabe's spouse, Dr. Jill McCabe, ran for a Virginia State Senate seat. During the campaign, Dr. McCabe's campaign committee received substantial monetary and in-kind contributions, totaling \$675,288 or approximately 40 percent of the total contributions raised by Dr. McCabe for her state senate campaign, from then Governor McAuliffe's Political Action Committee (PAC) and from the Virginia Democratic Party. In addition, on June 26, 2015, Hillary Clinton was the featured speaker at a fundraiser in Virginia hosted by the Virginia Democratic Party and attended by Governor McAuliffe.

At the time his wife sought to run for state senate, McCabe was the Assistant Director in Charge of the FBI's Washington Field Office (WFO) and sought ethics advice from FBI ethics officials and attorneys. We found that FBI ethics officials and attorneys did not fully appreciate the potential significant implications to McCabe and the FBI from campaign donations to Dr. McCabe's campaign. The FBI did not implement any review of campaign donations to assess potential conflicts or appearance issues that could arise from the donations. On this issue, we believe McCabe did what he was supposed to do by notifying those responsible in the FBI for ethics issues and seeking their guidance.

After McCabe became FBI Deputy Director in February 2016, McCabe had an active role in the supervision of the Midyear investigation, and oversight of the Clinton Foundation investigation, until he recused himself from these investigations on November 1, 2016. McCabe voluntarily recused himself on November 1, at Comey's urging, as the result of an October 23 article in the Wall Street Journal identifying the substantial donations from McAuliffe's PAC and the Virginia Democratic Party to Dr. McCabe.

With respect to these investigations, we agreed with the FBI's chief ethics official that McCabe was not at any time required to recuse under the relevant authorities. However, voluntary recusal is always permissible with the approval of a supervisor or ethics official, which is what McCabe did on November 1. Had the FBI put in place a system for reviewing campaign donations to Dr. McCabe, which were public under Virginia law, the sizable donations from McAuliffe's PAC and the Virginia Democratic Party may have triggered prior

consideration of the very appearance concerns raised in the October 23 WSJ article. Finally, we also found that McCabe did not fully comply with this recusal in a few

instances related to the Clinton Foundation investigation.

Former Assistant Attorney General Peter Kozlowski:

In Chapter Fourteen, we found that Kozlowski demonstrated poor judgment by failing to recuse himself from Clinton-related matters under federal ethics regulations prior to November 2, 2016. Kozlowski did not recognize the appearance of a conflict that he created when he initiated an effort to obtain employment for his son with the Clinton campaign while participating in Department discussions and communications about Clinton-related matters.

Kozlowski also created an appearance of a conflict when he sent the Chairman of the Clinton Campaign and a longtime friend, John Podesta, the "Heads up" email that included the schedule for the release of former Secretary Clinton's emails proposed to the court in a FOIA litigation without knowing whether the information had yet been filed and made public. His willingness to do so raised a reasonable question about his ability to act impartially on Clinton-related matters in connection with his official duties.

Additionally, although Department leadership determined that Kozlowski should be recused from Clinton-related matters upon learning of his "Heads up" email to Podesta, we found that Kozlowski failed to strictly adhere to this recusal. Lastly, because the government information in the "Heads up" email had in fact been released publicly, we did not find that Kozlowski released non-public information or misused his official position.

FBI Records Vault Twitter Announcements

As we describe in Chapter Fifteen, on November 1, 2016, in response to multiple FOIA requests, the FBI Records Management Division (RMD) posted records to the FBI Records Vault, a page on the FBI's public website, concerning the "William J. Clinton Foundation." The @FBIRecordsVault Twitter account announced this posting later the same day. We concluded that these requests were processed according to RMD's internal procedures like other similarly-sized requests, and found no evidence that the FOIA response was expedited or delayed in order to impact the 2016 presidential election. We also found no evidence that improper political considerations influenced the FBI's use of the Twitter account to publicize the release.



Executive Summary

A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election

Recommendations

Our report makes nine recommendations to the Department and the FBI to assist them in addressing the issues that we identified in this review:

- We recommend that the Department and the FBI consider developing guidance that identifies the risks associated with and alternatives to permitting a witness to attend a voluntary interview of another witness (including in the witness's capacity as counsel).
- We recommend that the Department consider making explicit that, except in situations where the law requires or permits disclosure, an investigating agency cannot publicly announce its recommended charging decision prior to consulting with the Attorney General, Deputy Attorney General, U.S. Attorney, or his or her designee, and cannot proceed without the approval of one of these officials.
- We recommend that the Department and the FBI consider adopting a policy addressing the appropriateness of Department employees discussing the conduct of uncharged individuals in public statements.
- We recommend that the Department consider providing guidance to agents and prosecutors concerning the taking of overt investigative steps, indictments, public announcements, or other actions that could impact an election.
- We recommend that the Office of the Deputy Attorney General take steps to improve the retention and monitoring of text messages Department-wide.
- We recommend that the FBI add a warning banner to all of the FBI's mobile phones and devices in order to further notify users that they have no reasonable expectation of privacy.
- We recommend that the FBI consider (a) assessing whether it has provided adequate training to employees about the proper use of text messages and instant messages, including any related discovery obligations, and (b) providing additional guidance about the allowable uses of FBI devices for any non-governmental purpose, including guidance about the use of FBI devices for political conversations.
- We recommend that the FBI consider whether (a) it is appropriately educating employees about both its media contact policy and the Department's ethics rules pertaining to the acceptance of gifts, and (b) its disciplinary provisions and penalties are sufficient to deter such improper conduct.
- We recommend that Department ethics officials include the review of campaign donations for possible conflict issues when Department employees or their spouses run for public office.

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CHAPTER ONE: INTRODUCTION

I. Background

The Department of Justice (Department) Office of the Inspector General (OIG) undertook this review of various actions by the Federal Bureau of Investigation (FBI) and Department in connection with the investigation into the use of a private email server by former Secretary of State Hillary Clinton. Clinton served as Secretary of State from January 21, 2009, until February 1, 2013, and during that time used private email servers hosting the @clintonemail.com domain to conduct official Department of State (State Department) business.

In 2014, in response to a request from the State Department to Clinton for "copies of any Federal records in [her] possession, such as emails sent or received on a personal email account while serving as Secretary of State," Clinton produced to the State Department 30,490 emails from her private server that her attorneys determined were work-related. Clinton and her attorneys did not produce to the State Department approximately 31,830 emails because, they stated, they were personal in nature, and these emails subsequently were deleted from the laptop computers that the attorneys used to review them.

In 2015, at the State Department's request, the Office of the Inspector General of the Intelligence Community (IC IG) reviewed emails from Clinton's private email server that she had produced to the State Department and identified a potential compromise of classified information. The IC IG subsequently referred this information to the FBI.

The FBI opened an investigation, known as "Midyear Exam" (MYE or Midyear), into the storage and transmission of classified information on Clinton's unclassified private servers in July 2015. Over the course of the next year, FBI agents and analysts and Department prosecutors conducted the investigation. Their activities included obtaining and analyzing servers and devices used by Clinton, contents of private email accounts for certain senior aides, and computers and email accounts used to back up, process, or transfer Clinton's emails. The investigative team interviewed numerous witnesses, including current and former State Department employees.

On June 27, 2016, while the Midyear investigation was nearing completion, then Attorney General (AG) Loretta Lynch and former President Bill Clinton had an unscheduled meeting while their planes were parked on the tarmac at Phoenix's Sky Harbor Airport. Former President Clinton boarded Lynch's plane, and Lynch, Lynch's husband, and the former President met for approximately 20 to 30 minutes. Following the meeting, Lynch publicly denied having any conversation about the Midyear investigation or any other substantive matter pending before the Department. Nevertheless, the meeting created significant controversy. On July 1, 2016, Lynch publicly announced that she would accept the recommendation of the

Midyear investigative and prosecutorial team regarding whether to charge former Secretary Clinton.

The following day, Saturday, July 2, 2016, the FBI and Department prosecutors interviewed former Secretary Clinton at the FBI's Headquarters building. Then, on July 5, 2016, without coordinating with the Department and with very brief notice to it, then FBI Director James Comey publicly delivered a statement that criticized Clinton, characterized her and her senior aides as "extremely careless" in their handling of classified information, and asserted that it was possible hostile actors gained access to Clinton's personal email account. Comey concluded, however, that the investigation should be closed because "no reasonable prosecutor" would prosecute Clinton or others, citing the strength of the evidence and the lack of precedent for bringing a case on these facts. The following day, July 6, 2016, Lynch was briefed by the prosecutors and formally accepted their recommendation to decline prosecution.

On October 28, 2016, 11 days before the presidential election, Comey sent a letter to Congress announcing the discovery of emails that "appear[ed] to be pertinent" to the Midyear investigation. Comey's letter was referring to the FBI's discovery of a large quantity of emails during the search of a laptop computer obtained in an unrelated investigation of Anthony Weiner, the husband of Clinton's former Deputy Chief of Staff and personal assistant, Huma Abedin.

The FBI obtained a search warrant to review the emails 2 days later, on October 30, 2016. Over the next 6 days, the FBI processed and reviewed a large volume of emails. On November 6, 2016, 2 days before the election, Comey sent a second letter to Congress stating that the review of the emails on the laptop had not changed the FBI's earlier conclusions with respect to Clinton.

The OIG initiated this review on January 12, 2017, in response to requests from numerous Chairmen and Ranking Members of Congressional oversight committees, various organizations, and members of the public to investigate various decisions made in the Midyear investigation. The OIG announced that it would review the following issues:

- Allegations that Department or FBI policies or procedures were not followed in connection with, or in actions leading up to or related to, Comey's public announcement on July 5, 2016, and Comey's letters to Congress on October 28 and November 6, 2016, and that certain underlying investigative decisions were based on improper considerations;
- Allegations that then FBI Deputy Director Andrew McCabe should have been recused from participating in certain investigative matters;
- Allegations that then Assistant Attorney General for the Department's Office of Legislative Affairs, Peter Kadzik, improperly disclosed non-public information to the Clinton campaign and/or should have been recused from participating in certain matters;

- Allegations that Department and FBI employees improperly disclosed non-public information; and
- Allegations that decisions regarding the timing of the FBI's release of certain Freedom of Information Act (FOIA) documents on October 30 and November 1, 2016, and the use of a Twitter account to publicize the same, were influenced by improper considerations.

The OIG announcement added that "if circumstances warrant, the OIG will consider including other issues that may arise during the course of the review." One such issue that the OIG added to the scope of this review arose from the discovery of text messages and instant messages between some FBI employees on the investigative team, conducted using FBI mobile devices and computers, that expressed statements of hostility toward then candidate Donald Trump and statements of support for then candidate Clinton, as well as comments about the handling of the Midyear investigation. We addressed whether these communications evidencing a potential bias affected investigative decisions in the Midyear investigation.

This review is separate from the review the OIG announced on March 28, 2018, concerning the Department's and FBI's compliance with legal requirements, and with applicable Department and FBI policies and procedures, in applications filed with the U.S. Foreign Intelligence Surveillance Court (FISC) relating to a certain U.S. person. We will issue a separate report relating to those issues when our investigative work is complete at a future date.

II. Methodology

During the course of this investigation, the OIG interviewed more than 100 witnesses, several on more than one occasion. These included former Director Comey, former AG Lynch, former Deputy Attorney General (DAG) Sally Yates, members of the former AG's and DAG's staffs, FBI agents and supervisors and Department attorneys and supervisors who conducted the Midyear investigation, personnel from the FBI's New York Field Office (NYO) and the U.S. Attorney's Office for the Southern District of New York (SDNY) involved in the Anthony Weiner investigation, former and current members of the FBI's senior executive leadership, and former President Clinton.

All of the former Department and FBI officials we contacted to request interviews related to the Midyear investigation agreed to be interviewed. However, two witnesses with whom we requested interviews in connection with our review of whether Peter Kadzik, the former Assistant Attorney General for the Department's Office of Legislative Affairs (OLA), should have been recused from certain matters declined our request for an interview or were unable to schedule an interview.

We also reviewed significantly more than 1.2 million documents. Among these were FBI documents from the Midyear investigation, including electronic communications (EC) and interview reports (FD-302s), agent notes from witness interviews, draft and final versions of the letterhead memorandum (LHM)

summarizing the Midyear investigation, drafts of Comey's public statement and letters to Congress, and contemporaneous notes from agents and supervisors involved in meetings about the statement and letters to Congress. We also obtained documents from prosecutors and supervisors in the Department's National Security Division (NSD) and the U.S. Attorney's Office for the Eastern District of Virginia (EDVA), as well as the Office of the Deputy Attorney General (ODAG) and the Office of the Attorney General (OAG). Importantly, among these documents were contemporaneous notes from the prosecutors and supervisors involved in the investigation.

In connection with our efforts to investigate the circumstances surrounding the FBI's discovery of Midyear-related emails on Anthony Weiner's laptop computer and Comey's notification to Congress on October 28, 2016, we obtained documents from NYO and SDNY personnel. These documents included forensic logs from processing of the Weiner laptop by NYO Computer Analysis and Recovery Team (CART) personnel, NYO and SDNY communications about the discovery of the emails, and other documents.

We obtained communications between and among agents, prosecutors, supervisors, and FBI and Department officials to understand what happened during the investigation and identify the contemporaneous factors considered in making investigative decisions. In addition to a large volume of emails, we obtained and reviewed well in excess of 100,000 text messages and instant messages to or from FBI personnel who worked on the investigation.

Our review also included the examination of highly classified information. We were given broad access to relevant materials by the Department and the FBI, including the sensitive compartmented information (SCI) discussed in the classified appendix to this report and emails and instant messages from both the FBI's Top Secret SCINet system and Secret FBINet system. Several of the State Department emails between Secretary Clinton and her staff from the underlying Midyear investigation included information relevant to a tightly-held Special Access Program (SAP), and we did not seek or obtain the required read-ins for that program. Based on our review of emails containing redacted SAP and the FBI's explanation of the program, we determined that this information was not needed for us to make the findings in this report.

Finally, and as discussed in more detail below, our review included information obtained in the Midyear investigation and the Anthony Weiner child exploitation investigation pursuant to grand jury subpoenas and sealed search warrants. At the Inspector General's request, the Department sought court orders authorizing the release of sealed information that does not otherwise affect individual privacy interests so that we can include relevant information in this report. This information is included in the report where appropriate.

III. Analytical Construct

As noted above, the OIG undertook this review to determine, among other things, whether “certain investigative decisions [taken in connection with the Midyear investigation] were based on improper considerations,” including political bias or concerns for personal gain. In conducting this portion of our review, it was necessary to select particular investigative decisions for focused attention. It would not have been possible to recreate and analyze every decision made in a year-long complex investigation. We therefore identified particular case decisions or other incidents which were the subject of controversy. These included the use of consent agreements and voluntary interviews to obtain evidence; grants of immunity to witnesses; and the decision to allow Cheryl Mills and Heather Samuelson, two of former Secretary Clinton’s attorneys, to attend her interview.

During our investigation, we looked for direct evidence of improper considerations, such as contemporaneous statements in emails, memoranda, or other documents explicitly linking political or other improper considerations to specific investigative decisions. We likewise questioned witnesses about whether they had direct evidence of improper considerations affecting decisionmaking. As noted above, we reviewed significantly more than 1.2 million emails, text messages, and internal documents relating to the investigation, and interviewed more than 100 witnesses who were involved in the matter.

We also analyzed the justifications offered for the investigative decisions we selected for focused review (including contemporaneous justifications and those offered after the fact) to determine whether they were a pretext for improper, but unstated, considerations. We conducted this assessment with appreciation for the fact that Department and FBI officials were required to make numerous decisions involving complex matters daily, under the unusual pressures and challenges present in the Midyear investigation.

In the January 12, 2017 memorandum announcing this review, we stated, “Our review will not substitute the OIG’s judgment for the judgments made by the FBI or the Department regarding the substantive merits of investigative or prosecutive decisions.” Consistent with this statement, we do not criticize particular decisions or infer that they were influenced by improper considerations merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was perfect or ideal or one that we believed could have been handled more effectively, but whether the circumstances surrounding the decision indicated that it was based on considerations other than the merits of the investigation. If the explanations that we were given for a particular decision were consistent with a rational investigative strategy and not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of evidence to the contrary. We took this approach because our role as an OIG is not to second-guess valid discretionary judgments made during the course of an investigation, and this approach is consistent with the OIG’s handling of such questions in past reviews.

We applied this same standard as we reviewed and considered the Department's declination decision, the letterhead memorandum (LHM) summarizing the investigation, and contemporaneous emails and notes reflecting analysis and discussion of legal research conducted by the prosecutors.

IV. Structure of the Report

This report is divided into sixteen chapters. Following this introduction, Chapter Two summarizes the relevant Department policies governing the release of information to the public and to Congress and the conduct of criminal investigations, as well as the relevant statutes regarding the mishandling of classified information that provided the legal framework for the Midyear investigation.

In Chapter Three, we provide an overview of the Midyear investigation, including decisions about staffing and investigative strategy. In Chapter Four, we discuss the decision to publicly acknowledge the Midyear investigation and former President Obama's statements about the Midyear investigation. In Chapter Five, we discuss the conduct of the investigation, focusing on the significant investigative decisions that were subject to criticism by Congress and the public after the fact. In Chapters Six and Seven, we describe the events leading to former Director Comey's July 5 statement and the Department's decision to decline prosecution of former Secretary Clinton. Chapters Eight through Eleven provide a chronology of events between the FBI's discovery of Clinton-related emails on the Weiner laptop in late September 2016 and Comey's letter to Congress on October 28, 2016, and describe the FBI's analysis of those emails and letter to Congress on November 6, 2016.

Chapter Twelve describes the text messages and instant messages expressing political views we obtained between certain FBI employees involved in the Midyear investigation and provides the employees' explanations for those messages. It also briefly discusses the use of personal email by several FBI employees, and provides an update on the status of the OIG's leak investigations.

Chapters Thirteen and Fourteen address allegations that then Deputy Director Andrew McCabe and then Assistant Attorney General Peter Kadzik should have been recused from participating in certain matters, or violated the terms of their recusals.

Chapter Fifteen addresses allegations that the timing of the FBI's release of FOIA documents and its use of Twitter to publicize the release were influenced by improper considerations or were otherwise improper.

Chapter Sixteen includes our conclusions and recommendations.

We also include a non-public classified appendix, which discusses highly classified information relevant to the Midyear investigation (Appendix One), and a non-public Law Enforcement Sensitive (LES) appendix containing the complete, unmodified version of Chapter Thirteen (Appendix Two).

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We are providing copies of our unclassified report and the classified appendix to Congress, and are publicly releasing our report without these appendices. We also are providing copies of our unclassified report to the Office of Special Counsel (OSC) for its consideration.

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CHAPTER TWO: APPLICABLE LAWS AND DEPARTMENT POLICIES

In this chapter, we describe the applicable laws, regulations, policies, and practices that govern the conduct of the Midyear investigation and are relevant to the analysis in the report. We identify specific Department and FBI policies related to investigative steps taken during the Midyear investigation, overt investigative activities in advance of an election, and the disclosure of information to the media and to Congress. We also describe the Department regulations governing the appointment of a special counsel.

Finally, we summarize the criminal statutes relevant to the Midyear investigation. These statutes provide the legal framework for our discussion of the investigative strategy and the FBI's and Department's assessment of the evidence in subsequent chapters.

I. Policies and Laws Governing Criminal Investigations

Under federal law, investigators and prosecutors are given substantial authority and discretion in conducting criminal investigations. To navigate challenges and issues that they may face during these investigations, and to assist them in exercising their authority and discretion appropriately, the Department maintains the United States Attorneys Manual (USAM) as a "comprehensive...quick and ready reference for...attorneys responsible for the prosecution of violations of federal law." USAM 1-1.2000, 1-1.1000. In reviewing investigative decisions made during the Midyear investigation, we identified several provisions of the USAM of potential relevance.

The principles guiding the exercise of decisions related to federal prosecutorial discretion and those relevant to criminal prosecutions can be found within USAM Title 9-27.000, the Principles of Federal Prosecution. There the Department lays out guidance for federal prosecutors with the intent of "ensuring the fair and effective exercise of prosecutorial discretion and responsibility by attorneys for the government, and promoting confidence on the part of the public and individual defendants that important prosecutorial decisions will be made rationally and objectively on the merits of the facts and circumstances of each case." USAM 9-27.001. USAM Section 9-27.220 specifies grounds for commencing or declining prosecution, stating that an attorney for the government should commence or recommend federal prosecution if he or she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless the prosecution would serve no substantial federal interest, the person is subject to effective prosecution in another jurisdiction, or there exists an adequate non-criminal alternative to prosecution. This section also states, "[B]oth as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the attorney for the government believes that the admissible evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact."

A. Grand Jury Subpoenas

A federal grand jury is a group of sixteen to twenty-three eligible citizens, empaneled by a federal court that considers evidence in order to decide if there has been a violation of federal law. Fed. R. Crim. P. 6(a)(1). It is the responsibility of federal prosecutors "to advise the grand jury on the law and to present evidence for its consideration." USAM 9-11.010.

Grand jury subpoenas are one tool frequently used by federal prosecutors to collect evidence to present to a grand jury. USAM 9-11.120, Fed. R. Crim. P. 17. There are two types of grand jury subpoenas: (1) a grand jury subpoena *ad testificandum* which compels an individual to testify before the grand jury; and (2) a grand jury subpoena *duces tecum* which compels an individual or entity, such as a business, to produce documents, records, tangible objects, or other physical evidence to the grand jury. G.J. Manual § 5.2; Fed. R. Crim. P. 17.¹

Federal prosecutors have "considerable latitude in issuing [grand jury] subpoenas." G.J. Manual § 5.4 (*quoting Doe v. DiGenova*, 779 F.2d 74, 80 (D.C. Cir. 1985)). Nonetheless, "the powers of the grand jury are not unlimited." G.J. Manual § 5.1 (*quoting Branzburg v. Hayes*, 408 U.S. 665, 688 (1972)). A court may quash a grand jury subpoena, upon motion, "if compliance would be unreasonable or oppressive." Fed. R. Crim. P. 17. In addition, a grand jury subpoena cannot override the invocation of a valid "constitutional, common-law, or statutory privilege" and cannot be used when "a federal statute requires the use of a search warrant or other court order." G.J. Manual § 5.1 (*quoting Branzburg*, 408 U.S. at 688) and §§ 5.6, 5.26. These limitations are discussed, insofar as they are relevant to this review, in subparts I.B., I.C., and 1.E. of this chapter.

There are also policy limitations governing the use of grand jury subpoenas. For example, the USAM provides guidelines for issuing grand jury subpoenas to attorneys regarding their representation of clients.² USAM 9-13.410. These guidelines are discussed in subpart I.B. of this chapter. In addition, the USAM generally advises prosecutors to consider alternatives to grand jury subpoenas, such as obtaining testimony and other evidence by consent, in light of the requirement that the government maintain the secrecy of any testimony or evidence accessed through the grand jury. USAM 9-11.254(1).

B. Search Warrants and 2703(d) Orders

The Fourth Amendment protects individuals from unlawful searches and seizures of their property. Generally, the government must obtain a search warrant

¹ *Federal Grand Jury Practice*, Office of Legal Education (October 2008), available at <https://dojnet.doj.gov/usao/eousa/ole/usabook/gjma/index.htm>.

² The USAM also provides guidelines for the use of grand jury subpoenas to obtain testimony from targets or subjects of an investigation. "Target" means a "person as to whom the prosecutor or the grand jury has substantial evidence linking him or her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant," while "subject" means a "person whose conduct is within the scope of the grand jury's investigation." USAM 9-11.151.

before searching a person's property in which the person retains a reasonable expectation of privacy. *United States v. Ross*, 456 U.S. 798, 822-23 (1982). Courts have held that individuals retain a reasonable expectation of privacy in data held within electronic storage devices, such as computers and cellular telephones. *E.g.*, *Riley v. California*, 134 S. Ct. 2473, 2485 (2014); *Trulock v. Freeh*, 275 F.3d 391, 403 (4th Cir. 2001). To obtain a search warrant pursuant to Federal Rule of Criminal Procedure 41 (Rule 41 search warrant), the government must make a showing of facts under oath demonstrating probable cause to believe that the property to be searched contains evidence of a crime. Thus, while the government may issue a grand jury subpoena to obtain an electronic device, such as a computer or cellular telephone, the government generally will only be able to search the electronic device if it can demonstrate probable cause to believe the device contains evidence of a crime.

In addition, as discussed above, a grand jury subpoena cannot be used when "a federal statute requires the use of a search warrant or other court order." The Stored Communications Act provides that the government must obtain a search warrant in order to require a "provider of electronic communication service" to produce the contents of a subscriber's electronic communication that have been in electronic storage for 180 days or less. See 18 U.S.C. § 2703(a). For the content of electronic communications that have been in electronic storage for more than 180 days, the government must usually either obtain a search warrant or provide prior notice to the subscriber or customer and obtain a court order or subpoena.³ See 18 U.S.C. § 2703(b). Thus, except for specific circumstances, in order to obtain the contents of an individual's email communications that are older than 180 days from a communications service provider such as Yahoo! or Google (Gmail) without notifying the subscriber in advance, the government must first obtain a Rule 41 search warrant upon a showing of probable cause that the stored emails in possession of the provider contain evidence of a crime.

Independent of whether the government can make the requisite probable cause showing to warrant a Rule 41 search warrant, the government may be able to obtain a court order pursuant to 18 U.S.C. § 2703(d) (2703(d) order). A 2703(d) order requires a communications service provider to produce information related to an individual's email account other than the content of the individual's emails, such as subscriber information and email header information. A court will issue a 2703(d) order if the government "offers specific and articulable facts showing that there are reasonable grounds to believe that...the records or other information sought, are relevant and material to an ongoing criminal investigation." 18 U.S.C. § 2703(d).

³ Under 18 U.S.C. § 2703(b)(1)(b)(ii), the court may permit delays in noticing a subscriber/customer for up to 90 days to avoid the adverse results listed at 18 U.S.C. § 2705. Those adverse results include: (A) endangering the life or physical safety of an individual; (B) flight from prosecution; (C) destruction of or tampering with evidence; (D) intimidation of potential witnesses; or (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

C. Evidence Collection Related to Attorney-Client Relationships

The USAM contains guidelines for the use of subpoenas and search warrants to obtain information from attorneys related to their representation of clients.

When a subpoena issued to an attorney may relate to information concerning the attorney's representation of a client, the USAM mandates additional process. USAM 9-13.410. As a preliminary matter, all reasonable attempts must be made to obtain the information from alternative sources (specifically including by consent) before issuing the subpoena to the attorney, unless such efforts would compromise the investigation. The Department thereafter exercises "close control" over the issuance of such a subpoena. Before seeking such a subpoena, it "must first be authorized by the Assistant Attorney General or a DAAG [Deputy Assistant Attorney General] for the Criminal Division" except in unusual circumstances. Before the Department official can authorize the subpoena, several principles must be examined regarding the submitted draft subpoena, including:

- All reasonable attempts to obtain the information from alternative sources shall have proved unsuccessful;
- The information sought is reasonably needed for the successful completion of the investigation;
- In a criminal investigation, there must be reasonable grounds to believe that a crime has been or is being committed, and that the information sought is reasonably needed for the successful completion of the investigation or prosecution; and
- The need for the information must outweigh the potential adverse effects upon the attorney-client relationship.

USAM 9-13.410.C.

The intent behind this additional process is to strike a "balance between an individual's right to the effective assistance of counsel and the public's interest in the fair administration of justice and effective law enforcement." USAM 9-13.410.B.

The Department similarly exercises "close control" when law enforcement seeks the issuance of a search warrant for "the premises of an attorney who is a subject of an investigation, and who also is or may be engaged in the practice of law on behalf of clients." USAM 9-13.420. Such a search has the potential to "effect...legitimate attorney-client relationships" or uncover material "protected by a legitimate claim of privilege[.]" *Id.* Therefore, prosecutors "are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney actively engaged in the practice of law." USAM 9-13.420.A. Unless it would compromise an investigation, the USAM advises that consideration be given to obtaining needed information from other sources or through the use of consent or a subpoena, rather than issuing such a search warrant. USAM 9-13.420.A. Consultation with the Criminal Division and approval

from an Assistant Attorney General or U.S. Attorney are required as well. USAM 9-13.420.B-C.

The use of process to recover materials from "disinterested third parties," including disinterested third party attorneys, requires consideration of additional guidance under 28 C.F.R. § 59.1 and USAM 9-19.220. Pursuant to 28 C.F.R. § 59.1(b), "It is the responsibility of federal officers and employees to...protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive." Similarly, USAM 9-19.220 provides, "As with other disinterested third parties, a search warrant should normally not be used to obtain...confidential materials" from a disinterested third party attorney.

D. Use of Classified Evidence Before A Grand Jury

The classification of information and evidence can be another significant challenge for a federal prosecutor advising a grand jury. See USAM 9-90.230. Because jurors lack security clearances, the disclosure of such information "may only be done with the approval of the agency responsible for classifying the information[.]" USAM 9-90.230. Though the Department offers measures to "increase the likelihood" a classifying agency will approve the use of such information, the Department encourages prosecutors to consider several alternatives to seeking such disclosures. *Id.* A significant number of limitations and high-level Department approvals make seeking approval from the classifying agency complex, and inevitably such approval takes additional time. See USAM 9-90.200, 210.

E. Immunity Agreements

When a witness invokes their Fifth Amendment right against self-incrimination, the government must either forgo the witness's incriminating testimony or offer the witness protection from prosecution resulting from such testimony, a protection known as "use immunity." 28 C.F.R. § 0.175(a), Crim. Resource Manual 716. The term "use immunity" encompasses several degrees of legal protections for a witness: transactional immunity, formal use immunity, letter immunity, and "Queen for a Day" agreements. Crim. Resource Manual 719.

1. Transactional Immunity

Transactional immunity offers the highest level of legal protection to a compelled witness, protecting the witness from actual prosecution for the offense(s) involved in the Grand Jury proceeding. Crim. Resource Manual 717. For decades prior to 1972, the Supreme Court only recognized transactional immunity as the government vehicle to compel testimony from a witness invoking their Fifth Amendment rights. See *Kastigar v. United States*, 406 U.S. 441, 449-52 (1972).

2. Formal Use Immunity

In 1970, Congress created a framework for the Department to grant formal “use immunity” for a witness offering testimony in a federal criminal investigation. 18 U.S.C. § 6002; Crim. Resource Manual 716. Unlike transactional immunity, use immunity only protects the witness against the government’s use of the immunized testimony in a subsequent prosecution of the witness, except for perjury or giving a false statement. Crim. Resource Manual 717. However, the Supreme Court subsequently found that the statutory framework creating formal use immunity also prohibits the government from using immunized testimony to discover new evidence that is then used to prosecute the witness. *Kastigar*, 406 U.S. at 453. This additional protection is known as “derivative use immunity.” Crim. Resource Manual 718. Thus, the government retains the ability to prosecute a witness given formal use immunity, but only with evidence obtained independently of the witness’s immunized testimony. Crim. Resource Manual 717-18. In order to do so, the government must overcome a “heavy, albeit not insurmountable burden, by a preponderance of the evidence” to demonstrate wholly independent discovery of such evidence. *United States v. Allen*, 864 F.3d 63, 92 (2d Cir. 2017) (citing *Kastigar*, 406 U.S. at 460).

To obtain formal, court-ordered use immunity, a U.S. Attorney, after obtaining the approval of the Attorney General or her designee and the Criminal Division, seeks a court order to compel testimony of a witness appearing before the grand jury. 18 U.S.C. § 6003(b); USAM 9-23.130. Such compelled testimony should be sought when the witness’s testimony, in the judgment of the U.S. Attorney, is necessary for the public interest and the witness is likely to invoke (or has invoked) their Fifth Amendment privilege against self-incrimination.⁴ *Id.* The decision to grant immunity by a designated Department division ultimately requires final approval from the Department’s Criminal Division. Crim. Resource Manual 720. Once the U.S. Attorney receives Department approval, he or she submits a motion to the judge overseeing the grand jury requesting the order to compel testimony from the witness. *Id.* at 723.

3. Letter Immunity and “Queen for a Day” Agreements

In contrast with transactional and formal use immunity, a witness receiving either letter immunity or a “Queen for a Day” agreement is provided legal protections by the prosecutor pursuant to an agreement in exchange for the witness’s agreement to provide testimony. Crim. Resource Manual 719. The legal

⁴ The USAM offers a non-exhaustive list of factors that should be weighed in judging the public interest: (1) the importance of the investigation or prosecution to effective enforcement of the criminal laws; (2) the value of the person’s testimony or information to the investigation or prosecution; (3) the likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance; (4) the person’s relative culpability in connection with the offense or offenses being investigated or prosecuted, and his or her criminal history; (5) the possibility of successfully prosecuting the person prior to compelling his or her testimony; and (6) the likelihood of adverse collateral consequences to the person if he or she testifies under a compulsion order. USAM 9-23.210.

protections the witness receives for voluntary testimony result from the type of agreement the witness makes with the prosecutor. *Id.*

Letter immunity describes an agreement between the prosecuting office and the witness that results in a letter from the prosecuting office to the witness authorizing the grant of legal protections.⁵ *Id.* While the provisions of the agreement can vary, as a general matter letter immunity, like formal immunity, only protects the witness against the government's use of the immunized testimony in a subsequent prosecution of the witness, except for perjury or giving a false statement. Crim. Resource Manual 717; see *United States v. Pelletier*, 898 F.2d 297, 301 (2d Cir. 1990). Depending on the provisions of the agreement, the government may retain the ability to prosecute the witness with evidence obtained independently of the witness's immunized testimony, but as with formal use immunity, the government bears a considerable burden in such a prosecution. Crim. Resource Manual 717-18; see also *Pelletier*, 88 F.2d at 303.

In a "Queen for a Day" agreement, often referred to as a "proffer" agreement, a witness "proffers" or informs prosecutors of what the witness would state under oath if called to testify and, in exchange, the federal prosecutor agrees to limited legal protection for the witness conditioned on the witness's truthful testimony. Crim. Resource Manual 719. In a standard "Queen for a Day" agreement, the government agrees not to use any statements made by the witness pursuant to the proffer agreement against the witness in its case-in-chief in any subsequent prosecution of the witness, or in connection with the sentencing of the witness if the witness is subsequently prosecuted and convicted. However, unlike with formal use immunity or letter use immunity, the government typically may use leads obtained from the witness's statements to develop evidence against the witness and may use the witness's statements to cross-examine the witness in any future prosecution of the witness. *United States v. Stein*, 440 F. Supp. 2d 315, 322 (S.D.N.Y. 2006); see also Richard B. Zabel and James J. Benjamin, Jr., "Queen for a Day" or "Courtesan for a Day": *The Sixth Amendment Limits to Proffer Agreements*, 15 No. 9 White-Collar Crime Rep. 1 (2001).

4. Act of Production Immunity

Act of production or "Doe" immunity describes a distinct type of immunity applying to a witness's production of records, instead of witness testimony. USAM 9-23.250; *United States v. Doe*, 465 U.S. 605 (1984). The production of records by a witness in response to a grand jury subpoena potentially implicates the right against self-incrimination if the fact that the witness produced the records could be used against the witness in a future prosecution as an admission of the existence and possession of the records. USAM 9-23.250. The Department uses the same procedure to grant act of production immunity as it does for formal use immunity, producing a formal letter authorizing the U.S. Attorney to make a motion for a judicial order to compel the production of specifically enumerated records in

⁵ The reach of the legal protections offered in such a letter may vary, with some instances of letter immunity being restricted to the jurisdiction of a particular U.S. Attorney and others applying in multiple districts or extending nationwide, typically with the agreement of the other prosecutors.

exchange for not using the witness' act of production against the witness in a subsequent prosecution of the witness. *Id.*; Crim. Resource Manual 722. Alternatively, the prosecutor can enter into a letter agreement with the individuals. In either situation, the act of production immunity does not provide any protection for the witness from a future prosecution.

II. Department Policies and Practices Governing Investigative Activities in Advance of an Election

Department policies require all Department officials to "enforce the laws...in a neutral and impartial manner" and to remain "particularly sensitive to safeguarding the Department's reputation for fairness, neutrality, and nonpartisanship."⁶ Various policies also address investigative activities timed to affect an election and require that prosecutors and agents consult with the Criminal Division's Public Integrity Section (PIN) before taking overt investigative steps in advance of a primary or general election. No Department policy contains a specific prohibition on overt investigative steps within a particular period before an election. Nevertheless, various witnesses testified that the Department has a longstanding unwritten practice to avoid overt law enforcement and prosecutorial activities close to an election, typically within 60 or 90 days of Election Day. We discuss relevant Department policies and practices below.

A. Election Year Sensitivities Policy

In 2008, 2012, and 2016, the then Attorney General issued a memorandum "to remind [all Department employees] of the Department's existing policies with respect to political activities."⁷ These memoranda are substantially similar. Each memorandum contains two sections, one addressing the investigation and prosecution of election crimes and the other describing restrictions imposed on Department employees by the Hatch Act.⁸ In its election crimes section, the 2016 memorandum requires consultation with PIN at "various stages of all criminal matters that focus on violations of federal and state campaign-finance laws, federal patronage laws and corruption of the election process."⁹ However, the memorandum also states the following:

Simply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal

⁶ See Loretta Lynch, Attorney General, U.S. Department of Justice, Memorandum for all Department Employees, Election Year Sensitivities, April 11, 2016, 1.

⁷ Lynch, Memorandum for Department Employees, 1; Eric Holder, Attorney General, U.S. Department of Justice, Memorandum for all Department Employees, Election Year Sensitivities, March 9, 2012, 1; Michael Mukasey, Attorney General, U.S. Department of Justice, Memorandum for all Department Employees, Election Year Sensitivities, March 5, 2008, 1.

⁸ The Hatch Act prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility, or using federal property, including using the Internet at work for political activities. See 5 U.S.C. §§ 7321-7326 (2017).

⁹ Lynch, Memorandum for Department Employees, 1.

charges. Law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. Such a purpose is inconsistent with the Department's mission and with the Principles of Federal Prosecution.

Likewise, the 2016 memorandum recommends that all Department employees consult with PIN whenever an employee is "faced with a question regarding the timing of charges or overt investigative steps near the time of a primary or general election," without regard to the type or category of crime at issue.¹⁰ Ray Hulsner, the former Section Chief of PIN who currently is a DAAG in the Criminal Division, told us that this policy does not impose a "mandatory consult" with PIN, but rather encourages prosecutors to call if they have questions about investigative steps or criminal charges before an election.

B. The Unwritten 60-Day Rule

After the FBI released its October 28, 2016 letter to Congress informing them that the FBI had learned of the existence of additional emails and planned to take investigative steps to review them, contemporaneous emails between Department personnel highlighted editorials authored by former Department officials discussing a longstanding Department practice of delaying overt investigative steps or disclosures that could impact an election. These former officials cited the so-called "60-Day Rule," under which prosecutors avoid public disclosure of investigative steps related to electoral matters or the return of indictments against a candidate for office within 60 days of a primary or general election.¹¹

The 60-Day Rule is not written or described in any Department policy or regulation. Nevertheless, high-ranking Department and FBI officials acknowledged the existence of a general practice that informs Department decisions. Former Director Comey characterized the practice during his OIG testimony as "a very important norm which is...we avoid taking any action in the run up to an election, if we can avoid it." Preet Bharara, the former U.S. Attorney for the Southern District of New York, told us that the Department's most explicit policy is about crimes that affect the integrity of an election, such as voter fraud, but that there is generalized, unwritten guidance that prosecutors do not indict political candidates or use overt investigative methods in the weeks before an election.

¹⁰ During late 2016, Department personnel also considered guidance in *The Federal Prosecution of Election Offenses* prohibiting overt investigative steps before an election. U.S. Department of Justice, *The Federal Prosecution of Election Offenses*, 7th edition (May 2007). However, this publication explicitly applies to election crimes, not to criminal investigations that involve candidates in an election. See *id.* at 91-93.

¹¹ See Eric Holder, *James Comey Is A Good Man, But He Made A Serious Mistake*, WASH. POST, Oct. 30, 2016; Jamie Gorelick and Larry Thompson, *James Comey is Damaging Our Democracy*, WASH. POST, Oct. 29, 2016; Jane Chong, *Pre-Election Disclosures: How Does, and Should, DOJ Analyze Edge Cases*, LAWFARE BLOG (Nov. 8, 2016), <https://www.lawfareblog.com/pre-election-disclosures-how-does-and-should-doj-analyze-edge-cases> (accessed May 8, 2018).

Several Department officials described a general principle of avoiding interference in elections rather than a specific time period before an election during which overt investigative steps are prohibited. Former AG Lynch told the OIG, "[I]n general, the practice has been not to take actions that might have an impact on an election, even if it's not an election case or something like that." Former DAG Yates stated, "I look at it sort of differently than 60 days. To me if it were 90 days off, and you think it has a significant chance of impacting an election, unless there's a reason you need to take that action now you don't do it." Former Principal Associate Deputy Attorney General Matt Axelrod stated, "...DOJ has policies and procedures on...how you're supposed to handle this. And remember...those policies and procedures apply to...every election at whatever level.... They apply, you know, months before.... [P]eople sometimes have a misimpression there's a magic 60-day rule or 90-day rule. There isn't. But...the closer you get to the election the more fraught it is."

Hulser told the OIG that there was "a sense, there still is, that there is a rule out there, that there is some specific place where it says 60 days or 90 days back from a primary or general [election], that you can't indict or do specific investigative steps." He said that there is not any such specific rule, and there never has been, but that there is a general admonition that politics should play no role in investigative decisions, and that taking investigative steps to impact an election is inconsistent with the Department's mission and violates the principles of federal prosecution.

Hulser said that while working on the Election Year Sensitivities memorandum, they considered codifying the substance of the 60-Day Rule, but that they rejected that approach as unworkable, and instead included the general admonition described above. Citing PIN guidance, Hulser told OIG that a prosecutor should look to the needs of the case and significant investigative steps should be taken "when the case is ready, not earlier or later."¹²

III. Public Allegations of Wrongdoing Against Uncharged Individuals and Disclosure of Information in a Criminal Investigation

The USAM instructs prosecutors that "[i]n all public filings and proceedings, federal prosecutors should remain sensitive to the privacy and reputation interests of uncharged third-parties" and that there is ordinarily no legitimate governmental interest in the public allegation of wrongdoing by an uncharged party. USAM 9-27.760. Accordingly, even where prosecutors have concluded that an uncharged individual committed a crime, Department policies generally prohibit the naming of unindicted individuals (as well as co-conspirators) because their privacy and reputational interests merit significant consideration and protection. See USAM 9-11.130, 9-16.500, 9-27.760.

¹² Hulser produced an excerpt of a publication, written by a former Deputy Chief of PIN, discussing the issues involved in choosing the timing for charging a public corruption case. U.S. Department of Justice, *Prosecution of Public Corruption Cases* (February 1988), 214-15.

Department regulations governing interactions with the media recognize that “[t]he availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice.” 28 C.F.R. § 50.2(a)(1). Addressing this concern, the FBI issued a Media Relations Policy Guide for FBI personnel. The FBI Media Relations Policy Guide recognizes that the regulations found at 28 C.F.R. § 50.2 lay out specific and controlling guidelines addressing the release of information to the media from Department authorities as well as from subordinate law enforcement components, including the FBI. *Id.*; see also 28 C.F.R. § 0.1. The FBI Media Relations Policy Guide also recognizes that the USAM offers further specific guidance consistent with federal regulations in its Media Policy section “governing the release of information...by all components (FBI...and DOJ divisions) and personnel of the Department of Justice.” USAM 1-7.001. The Department’s policy and regulations forbid the confirmation or denial and any discussion of active investigations, except in limited, specified circumstances. USAM 1-7.530. Taken together, these documents offer an understanding of Department operations related to the media, particularly publicity around FBI investigations.

A. FBI Media Relations Policy

In October 2015, the FBI issued the version of its *Media Relations at FBI Headquarters (HQ) and in Field Offices Policy Guide* (“FBI Media Policy Guide”) pertinent to this review.¹³ The FBI Media Policy Guide recognizes that the FBI Office of Public Affairs (FBI OPA) “works to enhance the public’s trust and confidence in the FBI by releasing and promoting information about the FBI’s responsibilities, operations, accomplishments, policies, and values.” The FBI Media Policy Guide confirms that FBI OPA “operations are governed by DOJ-OPA’s instructions, located at Title 28 Code of Federal Regulations (C.F.R.) § 50.2, and by the *United States Attorneys’ Manual* [USAM], Title 1-7.000, ‘Media Relations.’” As such, where the guidance in the FBI Media Policy Guide conflicts with the USAM or 28 C.F.R. § 50.2, the USAM and Code of Federal Regulations control FBI media practices.

In its provisions governing disclosure of information to the media from FBI Headquarters in Washington, the FBI Media Policy Guide states “the [FBI] Director, [FBI] deputy director (DD), associate deputy director (ADD), [Assistant Director] for [FBI] OPA, and [FBI] OPA personnel designated by the [OPA Assistant Director] are authorized to speak to the media.” However “[a]ll releases of information by...any FBI personnel...authorized to speak to the media must conform with all applicable laws and regulations, as well as policies issued by DOJ,” which includes specific reference to the USAM, among other Department legal authorities. The FBI Media Policy Guide itself constrains authorized disclosures, explaining “[d]isclosures

¹³ The October 2015 FBI Media Policy Guide is available online in the FBI records vault. See FBI Office of Public Affairs, *Media Relations at FBIHQ and in Field Offices Policy Guide*, October 13, 2015, <https://go.usa.gov/xQNXQ> (accessed May 7, 2018). On November 14, 2017, the FBI released a significantly revised guidance for media relations entitled *Public Affairs Policy Guide: Media Relations, External Communications, and Personal Use of Social Media*.

must not prejudice an adjudicative proceeding and....must not address an ongoing investigation" except in specified circumstances.¹⁴ The FBI Media Policy Guide offers limited justifications to release information regarding an ongoing investigation, specifying the need "to assure the public that an investigation is in progress[,...]to protect the public interest, welfare, or safety,...[or] to solicit information from the public that might be relevant to an investigation." Any such release requires "prior approval of FBIHQ entities...[and] the careful supervision of OPA."

The FBI Media Policy Guide specifies that when releasing information to the media via a press conference, FBI OPA personnel "must request approval...in advance from DOJ-OPA for any case or investigation that may result in an indictment." Further, FBI personnel "must coordinate with DOJ OPA on any materials, quotes, or information to be released in the press conference."

B. 28 C.F.R. § 50.2

In all criminal matters, federal regulations bar Department personnel from "furnish[ing] any statement or information...if such a statement or information may reasonably be expected to influence the outcome of...a future trial." 28 C.F.R. § 50.2(b)(2). The regulation also provides that "where information relating to the circumstances of...an investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public." 28 C.F.R. § 50.2(b)(3).

The regulations permit, subject to limitations, some facts to be released publicly, including a defendant's name, age, and similar background information, the substance of the charges at issue, specified details regarding an investigation, and the circumstances surrounding an arrest. See 28 C.F.R. § 50.2(b)(3). But while permitting this limited release, the regulation specifies that the Department personnel making the public "disclosures should include only incontrovertible, factual matters, and should not include subjective observations." *Id.* These strict limitations "shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise." 28 C.F.R. § 50.2(b)(1). A Department official explained to the OIG that "otherwise" included criminal actions ended when the Department declines to prosecute.

The regulations do provide for exceptions, acknowledging situations in which the regulations "limit the release of information which would not be prejudicial under the particular circumstances." 28 C.F.R. § 50.2(b)(9). When a Department official believes that "in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so." *Id.*

¹⁴ When FBI officials make a public comment, the FBI Office of General Counsel "must advise FBI OPA on the potential impact of public comment on...proposed and pending litigation."

C. USAM Media Relations Guidance

The Attorney General's central role to information disclosures to the media is also recognized in the USAM's Media Relations policy.¹⁵ See USAM 1-7.210. The USAM makes clear that "[f]inal responsibility for all matters involving the news media and the [Department] is vested in the Director of the Office of Public Affairs (OPA)" and, without exception, the "Attorney General is to be kept fully informed of appropriate matters at all times." USAM 1-7.210.

The USAM's Media Relations section offers several provisions governing how information disclosure to the media may permissibly take place. Overall, the USAM 1-701(E) requires "any public communication by any...investigative agency about pending matters or investigations that may result in a case, or about pending cases or final dispositions, must be approved by the appropriate Assistant Attorney General, the United States Attorney, or other designate responsible for the case." Reinforcing a general principle of non-disclosure, the USAM declares "[a]t no time shall any component or personnel of the Department of Justice furnish any statement or information that he or she knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding." USAM 1-7.500.

In keeping with that principle, USAM 1-7.530 instructs Department personnel that, except in unusual circumstances, they "shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document." Those unusual circumstances where comment may be appropriate included "matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare[.]" USAM 1-7.530. But in any such circumstances, "the involved investigative agency will consult and obtain approval from the...Department Division handling the matter prior to disseminating any information to the media." *Id.*

USAM 1-7.401 addresses specifically press conferences, emphasizing a preference for written press releases as the "usual method to release public information...by investigative agencies." While permissible, press conferences "should be held only for the most significant and newsworthy actions, or if a particularly important deterrent or law enforcement purpose would be served. Prudence and caution should be exercised in the conduct of any press conference[.]" USAM 1-7.401. Repeatedly the USAM states that before holding a

¹⁵ The Department significantly revised the USAM Media Relations provisions in November 2017, retitling them under "Confidentiality and Media Contacts Policy." This report primarily addresses the USAM Media Relations provisions in effect at the time of the events within the scope of this review. We consider the revised USAM provisions related to the media in Chapter Six of this report.

press conference “prior coordination with OPA is required” for information “of national significance.” USAM 1-7.330(B), 1-7.401(B).

IV. Release of Information to Congress

The provision of information from the Department and the FBI to Congress is governed by Department policy guidance, the USAM, and FBI rules.¹⁶

A. USAM Congressional Relations Guidance

Under the USAM Title 1-8.000, and consistent with 28 C.F.R. § 0.27, communications between Congress and the Department are the responsibility of the Assistant Attorney General, Office of Legislative Affairs (OLA).¹⁷ As written, the USAM 1-8.000 generally addresses personnel within the staff of the various United States Attorneys’ Offices. However, USAM 1-8.000 explicitly applies to Department components and several provisions of the USAM guidance regarding the Department’s congressional relations bind all Department personnel.¹⁸

One such provision is USAM 1-8.030 requiring coordination of a Department response when Congress seeks information that is not public. USAM 1-8.030 states “[a]ll Congressional requests for information (other than public information), meetings of any type, or assistance must immediately be referred to the...OLA[.]” The USAM lists the following examples of congressional requests requiring referral to OLA: “requests for non-public documents or information; discussion of or requests for briefings on cases;...[and] suggestions or comments on case disposition or other treatment[.]” USAM 1-8.030. These standards apply “in both open and closed cases” and the USAM highlights a specific bar on “provid[ing] information on (1) pending investigations;...(3) matters that involve grand jury, tax, or other restricted information; (4) matters that would reveal...sensitive investigative techniques, deliberative processes, the reasoning behind the exercise

¹⁶ We note that the policies and rules described herein do not restrict lawful whistleblowing, protections for which were recognized by Attorney General Sessions in a recent memorandum reiterating the Department’s “commit[ment] to protecting the rights of whistleblowers (*i.e.*, those employees or applicants who have made a lawfully protected disclosure to Congress).” Jefferson B. Sessions, Attorney General, U.S. Department of Justice, Memorandum for All Heads of Department Components, Communications with Congress, May 2, 2018, 2.

¹⁷ According to the Code of Federal Regulations, “[t]he following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs: (a) Maintaining liaison between the Department and the Congress.” 28 C.F.R. § 0.27.

¹⁸ While the AAG of OLA “is responsible for communications between Congress and the Department under the authority of the Attorney General” per the USAM, that authority does not override statutory reporting requirements to Congress, such as those required for the OIG found at 5 U.S.C. App. 4(a)(5).

of prosecutorial discretion, or the identity of individuals who may have been investigated but not indicted.”¹⁹ *Id.*

B. FBI Guidance on Information Sharing with Congress

The FBI’s status as the primary investigative agency of the federal government makes its sharing of information with Congress of special concern. Relevant guidance is provided in *The Attorney General’s Guidelines for Domestic FBI Operations* (“AGG-Dom”) and the FBI’s Domestic Investigations and Operations Guide (“DIOG”). The AGG-Dom directs that the FBI may “disseminate information obtained or produced” through its domestic investigations “to congressional committees as authorized by the Department of Justice Office of Legislative Affairs.”²⁰ AGG-Dom § VI.B.1(c). This direction is reinforced in the DIOG’s section on the retention and sharing of information, which states “that the FBI may disseminate information obtained or produced through activities under the AGG-Dom...[t]o Congress or to congressional committees in coordination with the FBI Office of Congressional Affairs (OCA) and the DOJ Office of Legislative Affairs.” DIOG § 14.3.1(D). Notably, both the AGG-DOM and DIOG anticipate circumstances requiring departure from their rules. DIOG §§ 2.6-2.7. The DIOG spells out how such departures may occur, usually involving high-level FBI approval, coordination with the FBI Office of General Counsel, and notice and/or approval at the highest levels of the Department of Justice. *Id.*

C. Current Department Policy on Communication of Investigative Information to Congress

While the USAM, AGG-Dom, and DIOG lay out the consistent institutional relationships in the Department and its components for Congressional information flow, the Department also uses policy memoranda and other communications to provide guidance on how communication should be handled with Congress in sensitive, investigation-related circumstances. Among these are two memoranda governing Department communications with Congress and a letter addressing the principles of Department communications with Congress on ongoing investigations.

¹⁹ On its face, this portion of USAM 1-8.030 addresses U.S. Attorney’s Offices specifically. But the provision thereafter offers broader guidance that “[a]ll requests for these types of information should be referred to OLA[.]” USAM 1-8.030. Moreover, a Department official with long-term experience in OLA explained that he viewed the entirety of the USAM guidance on Congressional Relations as helping to understand “the playing field on which we operate in terms of a sensitivity of congressional contacts.”

²⁰ The FBI is required to coordinate with OLA before sending formal communications to Congress regarding substantive matters that impact the Department. According to a Department official with long-term experience in OLA, the FBI can sometimes speak to Congress more informally by email or phone about certain types of matters like procedural matters, without first obtaining OLA approval.

1. Policy Memoranda on Department Communications with Congress

On May 11, 2009, then Attorney General Holder issued a policy memorandum for all Department components (including the FBI) entitled *Communications with Congress and the White House* ("May 2009 Memo"). In addressing pending criminal investigations and cases, the May 2009 Memo explained that the heads of investigative agencies, tasked with the primary duty of initiating and supervising cases, "must be insulated from influences that should not affect decisions in particular criminal...cases." The May 2009 Memo continues that for communications with Congress, consistent with "policies, laws, regulations, or professional ethical obligations...and consistent with the need to avoid publicity that may undermine a particular investigation," congressional inquiries related to pending criminal investigations and cases "should be directed to the Attorney General or [DAG]."²¹

On August 17, 2009, then Attorney General Holder issued an updated memo ("August 2009 Memo") entitled *Communications with Congress*. The August 2009 Memo clarified that all inquiries from congressional officials should be directed to DOJ OLA. The August 2009 Memo also spelled out that "all communications between the Department and Congress...should be managed by OLA to ensure that relevant Department interests and other Executive Branch interests are protected." "[C]omponents should not communicate with members, committees, or congressional staff without advance coordination with OLA." The August 2009 Memo concluded with direction for component heads to contact DOJ OLA for any questions on the policy.²²

2. The Linder Letter

In a January 2000 letter from the Department's AAG for OLA to then Congressman John Linder ("Linder letter"), the Department described in detail the principles that guide OLA and the Department in their decision to disclose or withhold information from Congress. The letter remains a reference guide for OLA.

The Linder letter lays out "governing principles" to foster "improved communications and sensitivity between the Executive and Legislative Branches regarding our respective institutional needs and interests." After discussing the general tension between the interests of the two branches, the Linder letter

²¹ The May 2009 Memo exempts congressional hearing communications and communications internal to an investigation from this requirement. The August 2009 Memo does not include any exemption for congressional hearing communications.

²² On January 29 and May 2, 2018, Attorney General Sessions released memoranda also entitled *Communications with Congress* that reiterated and expanded direction to Department and component personnel regarding coordination with OLA "[c]onsistent with past policy and practice[.]" Among other changes, the May 2018 memorandum states "communications between the Department and Congress...will be managed or coordinated by [OLA] to ensure that relevant Department and Executive Branch interests are fully protected." In addition, the May 2018 memorandum states that "OLA will review prior to transmittal all Department written communications to Congress, including letters...and any other materials intended for submission or presentation on Capitol Hill."

examines the “inherent threat to the integrity of the Department’s law enforcement and litigation functions” that comes from congressional inquiries during pending investigations. The letter noted that this concern was “especially significant with respect to ongoing law enforcement investigations.” It then described the Department’s longstanding policy, “dating back to the beginning of the 20th Century,” to decline to provide congressional committees with access to open law enforcement files. One risk, according to the letter, is the possible public perception that such congressional inquiries amount to pressure resulting in “undue political and Congressional influence over law enforcement and litigation decisions.” Another risk is the “severe[] damage” to the reputations of those mentioned in disclosure of information on open matters, “even though the case might ultimately not warrant prosecution or other legal action.”

Finally, even when an investigation results in a declination, the Linder letter explains that the disclosure of information contained in such a declination memorandum “would implicate significant individual privacy interests as well.” Such information “often contain[s] unflattering personal information as well as assessments of witness credibility and legal positions. The disclosure of the contents of these documents could be devastating to the individuals they discuss.”

V. Special Counsel Regulations

Since the 1999 lapse of the Independent Counsel Reauthorization Act, Department regulations govern the process of appointing a special counsel. 28 U.S.C. §§ 591-599, 64 Fed. Reg. 37,038 (1999). According to 28 C.F.R. § 600.1, the Attorney General (or Acting Attorney General) may appoint a special counsel for the criminal investigation of a person or matter when it would be in the public interest and there exists a Department conflict of interest or other extraordinary circumstance.

The regulations provide that the Attorney General need not appoint a special counsel immediately when a possible conflict emerges. Instead, the Attorney General may authorize further investigation or mitigation efforts, such as recusal. See 28 C.F.R. § 600.2. The special counsel must come from outside the government.²³ See 28 C.F.R. § 600.3. The Attorney General sets the criminal jurisdiction of the special counsel through a “specific factual statement of the matter to be investigated,” though the Attorney General may authorize the

²³ In 2003, then Deputy Attorney General James Comey, who was the Acting Attorney General after the recusal of then Attorney General John Ashcroft, appointed a U.S. Attorney as special counsel in a letter citing 28 U.S.C. §§ 509, 510, 515, which describe the delegation authority of the Attorney General’s office. See *United States v. Scooter Libby*, 429 F.Supp. 27, 40 (D.D.C. 2006). This method of appointing a special counsel did not rely on Department regulations, eliminating restrictions on who may be appointed special counsel and removing guidance setting the Attorney General’s supervisory role over the office. See 28 C.F.R. §§ 600.2, 600.7.

additional areas of investigation.²⁴ 28 C.F.R. §§ 600.3-600.4. Day to day, the special counsel is not subject to Department supervision, but the Attorney General maintains the ability to review and overrule special counsel decisions in certain circumstances. 28 C.F.R. § 600.7.

VI. Criminal Statutes Relevant to the Midyear Investigation

Four statutes governing the handling and retention of classified information are relevant to the Midyear investigation: 18 U.S.C. §§ 793(d), 793(e), 793(f), and 1924.²⁵ Section 793(f)(1), which prohibits the grossly negligent removal of “national defense information,” became a central focus of the investigation and of subsequent prosecutive decisions. In addition to the mishandling and retention statutes, prosecutors also considered whether former Secretary Clinton or others violated 18 U.S.C. § 2071, a criminal statute prohibiting the willful concealment, removal, or destruction of federal records, in connection with the deletion of emails. We discuss the Department’s analysis of these statutes in Chapter Seven.

A. Mishandling and Retention of Classified Information

1. 18 U.S.C. §§ 793(d) and (e)

Sections 793(d) and (e) are felony statutes that apply to the willful mishandling and retention of classified information. Section 793(d) governs the mishandling of classified documents or information by individuals who are authorized to possess it — that is, who have the appropriate security clearance and require access to the specific classified information to perform or assist in a lawful and authorized governmental function (“need to know”).²⁶ Section 793(d) provides:

Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the

²⁴ A special counsel’s jurisdiction also covers “federal crimes committed in the course of, and with the intent to interfere with, the Special Counsel’s investigation, such as perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.” 28 C.F.R. § 600.4.

²⁵ Under the USAM, the Department’s National Security Division (NSD) must expressly approve any prosecution involving these statutory provisions. See USAM 9-90.020.

²⁶ See Exec. Order 13526 §§ 4.1(a)(1)-(3), 6.1(dd) (Dec. 29, 2009); see also *United States v. Truong Dinh Hung*, 629 F.2d 908, 919 n.10 (4th Cir. 1980).

same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it...[is subject to a criminal fine or imprisonment].

Thus, to prove a violation of Section 793(d), the government must establish the following:

- The individual lawfully had possession of documents or "information relating to the national defense;"
- If information, he or she had reason to believe that the information could be used to the injury of the United States or to the advantage of a foreign nation; and
- The individual willfully communicated, delivered, or transmitted the document or information to a person not entitled to receive it, or willfully retained the document or information and failed to deliver it to the officer or employee of the United States entitled to receive it.

Section 793(e) addresses the possession and transmission of classified information by persons who are not authorized to possess it, either because they lacked the requisite security clearance and need to know, or because they exceeded the scope of their authorization by removing classified materials from a secure facility.²⁷ Apart from this distinction, Sections 793(d) and 793(e) are substantially identical.

Information Relating to the National Defense

Both 793(d) and 793(e) apply to individuals who possess documents or "information relating to the national defense." This term is not defined in the statute. Courts have not limited this phrase to any specific subject matter, but the Fourth Circuit has held that the government must establish first that the information is "closely held by the government," and second, that its "disclosure would be potentially damaging to the United States or useful to an enemy of the United States." *United States v. Rosen*, 445 F. Supp. 2d 602, 618, 620-21 (E.D. Va. 2006) (*Rosen I*) (citing *Gorin v. United States*, 312 U.S. 19 (1941)); *United States v. Morison*, 844 F.2d 1057, 1073 (4th Cir. 1988); *United States v. Truong*, 629 F.2d 908, 918-19 (4th Cir. 1980); *United States v. Heine*, 151 F.2d 813, 817 (2d Cir. 1945).

The classification level of information may be "highly probative of whether the information at issue is 'information relating to the national defense' and whether the person to whom they disclosed the information was 'entitled to receive'

²⁷ See, e.g., *United States v. Hitselberger*, 991 F. Supp. 2d 101, 104 (D.D.C. 2013) (Navy linguist who printed and removed Secret documents indicted under 793(e)); *United States v. Chattin*, 33 M.J. 802, 803 (1991) (Navy seaman who stuffed classified document down his pants and walked out of a secure facility charged under 793(e)).

[it].”²⁸ However, classification level does not conclusively establish that a document or information is “information relating to the national defense.” In *United States v. Rosen*, 599 F. Supp. 2d 690, 694-95 (E.D. Va. 2009) (*Rosen II*), the court stated that the term “information relating to the national defense” is not synonymous with classified information. While the classification level of information may serve as evidence that the government intended that it be closely held, the defendant can rebut the conclusion by showing that the government in fact failed to hold it closely. The court also stated that the classification level could not be introduced to show that unauthorized disclosure of the information might potentially damage the United States or aid an enemy of the United States.²⁹

Willfulness

Sections 793(d) and (e) both require that the prohibited act be done “willfully.” Courts have interpreted “willfully” to mean an act done “intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law.”³⁰

In *Rosen I*, the court held that to prove that the defendants “willfully” committed the conduct prohibited under Sections 793(d) and (e), the government is required to prove beyond a reasonable doubt:

[T]hat the defendants knew the information was NDI [information relating to the national defense], i.e., that the information was closely held by the United States and that disclosure of this information might potentially harm the United States, and that the persons to whom the defendants communicated the information were not entitled under the classification regulations to receive the information. Further the government must prove beyond a reasonable doubt that the defendants communicated the information they had received from their government sources with “a bad purpose either to disobey or to disregard the law.” It follows, therefore, that if the defendants, or

²⁸ *Rosen I*, 445 F. Supp. 2d at 623; see also *Hitselberger*, 991 F. Supp. 2d at 106 (document marked “Secret” was “information relating to the national defense” because the classification level indicated that it would cause serious damage to the security of the United States if lost, and defendant’s training placed him on notice that the government considers information in classified documents important to national security); *United States v. Kiriakou*, 2012 WL 3263854, at *6 (E.D. Va. 2012) (unreported decision) (rejecting defendant’s argument that 793(d) is unconstitutionally vague because courts have relied on the classified status of information to determine whether it is closely held by the government and harmful to the United States); *United States v. Kim*, 808 F. Supp. 2d 44, 53 (D.D.C. 2011) (“Defendant’s vagueness challenge is particularly unpersuasive in light of the fact that he is charged with disclosing the contents of an intelligence report...which was marked TOP SECRET/SENSITIVE COMPARTMENTED INFORMATION....”).

²⁹ Several weeks before trial was scheduled to begin, prosecutors moved to dismiss the indictment based on the “unexpectedly higher evidentiary threshold” required to prevail at trial. See Motion to Dismiss, *United States v. Rosen*, Crim. No. 1:05CR225 (E.D. Va. filed May 1, 2009).

³⁰ *Bryan v. United States*, 524 U.S. 184, 190 (1998) (cited in *Hitselberger*, 991 F. Supp. 2d at 107-08); see also *Morison*, 844 F.2d at 1071; *United States v. Truong*, 629 F.2d 908, 918-19 (4th Cir. 1980).

either of them, were truly unaware that the information they are alleged to have received and disclosed was classified, or if they were truly ignorant of the classification scheme governing who is entitled to receive the information, they cannot be held to have violated the statute.³¹

Additional Burden of Proof for Disclosures of Intangible Information

Courts have held that Sections 793(d) and (e) contain a “heightened” or “additional” *mens rea* requirement where the transmission of intangible information (as contrasted with the retention or transmission of classified documents) is involved.³² In addition to showing that an individual acted willfully, the government must prove beyond a reasonable doubt that he or she possessed “reason to believe that the information could be used to the injury of the United States or to the advantage of a foreign nation.”³³

Vagueness Challenges

The term “information relating to the national defense” in Sections 793(d) and (e) repeatedly has been challenged as unconstitutionally vague. Courts have rejected such challenges because the statute requires the government to prove that an individual “willfully” committed the prohibited conduct, a requirement that “eliminat[es] any genuine risk of holding a person ‘criminally responsible for conduct which he could not reasonably understand to be proscribed.’”³⁴

2. 18 U.S.C. § 793(f)

Section 793(f)(1), known as the gross negligence provision, became a central focus in the controversy over the decision not to recommend prosecution of former Secretary Clinton or her senior aides, and former Director Comey’s public statement on July 5, 2016. Below we discuss the statutory requirements under Section 793(f), the Midyear prosecutors’ interpretation of Section 793(f)(1), and previous cases in which prosecution was declined under the gross negligence provision.

a. Statutory Requirements

Section 793(f) provides as follows:

³¹ *Rosen I*, 445 F. Supp. 2d at 625 (internal citation omitted).

³² See *Hitselberger*, 991 F. Supp. 2d at 105; *Drake*, 818 F. Supp. 2d 909, 916-17 (D. Md.); see also *United States v. Leung*, No. 03-CR-434 (C.D. Cal. Jul. 14, 2003).

³³ See *Rosen I*, 445 F. Supp. 2d at 643; see also Memorandum Opinion, *United States v. Sterling*, No. 1:10-CR-00485-LHB (filed Jun. 28, 2011) (government asserted that it must prove that the defendant acted willfully and had reason to believe the information would harm the United States where he is alleged to have disclosed classified information).

³⁴ *Id.* at 625; *Morison*, 844 F.2d at 1073; *Truong*, 629 F.2d at 918-19 (4th Cir. 1980); see also *Gorin v. United States*, 312 U.S. 19 (1941) (holding that information “connected with” or “relating to” the national defense used in the predecessor to a related Espionage Act statute was not unconstitutionally vague because the statute included a scienter requirement).

Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer...[is subject to a criminal fine or imprisonment].

Section 793(f)(1) addresses the removal, delivery, loss, theft, abstraction, or destruction of any document or "information relating to the national defense" through gross negligence, while Section 793(f)(2) penalizes the failure to report the removal, loss, theft, abstraction, or destruction of any document or "information relating to the national defense," if an individual has knowledge that it has been removed from its proper place of custody.

Section 793(f), like sections 793(d) and (e), requires that the information in question be "information relating to the national defense." In *United States v. Dedeyan*, 584 F.2d 36, 39 (4th Cir. 1978), the Fourth Circuit upheld jury instructions in a Section 793(f)(2) case that required the government to prove that "disclosure of information in the document would be potentially damaging to the national defense, or that information in the document disclosed might be useful to an enemy of the United States."

b. Prosecutors' Interpretation of the "Gross Negligence" Provision in Section 793(f)(1)

Section 793(f)(1) does not define what constitutes "gross negligence," nor have any federal court decisions interpreted this specific provision of the statute. However, the prosecutors analyzed the legislative history of Section 793(f)(1) and identified statements made during the 1917 congressional debate indicating that the state of mind required for a violation of Section 793(f)(1) is "so gross as to almost suggest deliberate intention," criminally reckless, or "something that falls just a little short of being willful." The prosecutors cited a statement by Congressman Andrew Volstead during the 1917 debate about the predecessor to Section 793(f)(1):

I want to call attention to the fact that the information that is covered by this section may be, and probably would be, of the very highest importance to the Government.... It is not an unusual provision at all. It occurs in a great many criminal statutes. Men are convicted for gross negligence, but it has to be so gross as almost to suggest deliberate intention before a jury will convict. For instance, a person is killed by a man running an automobile recklessly on a crowded street. He may, and under the laws of most States would be, adjudged guilty

of manslaughter, and can be sent to State prison.... We have, as I have already stated, a number of statutes of that kind. This provision is not revolutionary. It is the ordinary practice to apply such statutes to cases where lack of care occasions the death or serious injury of persons. This section should be, and probably would be, applied only in those cases where something of real consequence ought to be guarded with extreme care and caution.³⁵

Given the absence of a definition of "gross negligence" in Section 793(f), the prosecutors researched state manslaughter statutes in effect at the time of the 1917 congressional debate, and determined that gross negligence was interpreted in that context to require wantonness or recklessness that was equivalent to criminal intent. However, the prosecutors also identified contemporaneous state court decisions interpreting other criminal statutes using "gross negligence" to require proof that ranged from something more than civil negligence to willful, intentional conduct.

The Midyear prosecutors did not find any court cases addressing the state of mind required for a violation of Section 793(f)(1). However, the prosecutors analyzed *United States v. Dedeyan*, 584 F.2d 36, 39 (4th Cir. 1978), a Fourth Circuit decision interpreting Section 793(f)(2). This case involved a civilian employee who completed a military vulnerability analysis and marked it "Secret," then took a copy of it home to proofread. While at home, his cousin secretly photographed part of the analysis with a camera provided by the Soviet Union. When the defendant later learned that his cousin had taken these photos, he accepted \$1,000 as a "payment for remaining silent" rather than reporting that the information had been compromised. Upholding the statute against a challenge that it was unconstitutionally vague, the court held that Section 793(f)(2) requires the government to prove that the defendant knew that the document had been illegally abstracted, and that this knowledge requirement was sufficient to save the statute from vagueness.

In addition, the Midyear prosecutors reviewed previous prosecutions under Section 793(f)(1) in federal or military courts and concluded that these cases involved either a defendant who knowingly removed classified information from a secure facility, or inadvertently removed classified information from a secure facility and, upon learning of its removal, failed to report its "loss, theft, abstraction, or destruction."³⁶ The prosecutors concluded that based on case law and the

³⁵ 65 Cong. Rec. H1762-63 (daily ed. May 3, 1917).

³⁶ See Indictment, *United States v. Smith*, No. 03-CR-429 (C.D. Cal filed Feb. 24, 2004); see also *United States v. Courpalais*, No. ACM 35571, 2005 WL 486145 (A.F. Ct. Crim. App. Feb. 10, 2005) (defendant removed four classified photographs and took them home); *United States v. Roller*, 37 M.J. 1093 (1993) (defendant inadvertently placed two classified documents in his gym bag and took them home, and left the documents in his garage when he later discovered them); *United States v. Chattin*, 33 M.J. 802 (1991) (defendant stuffed classified documents down his pants and took them home); *United States v. Gaffney*, 17 M.J. 565 (1983) (defendant was supposed to destroy classified material but instead took it home and put it in a neighborhood dumpster); *United States v. Gonzalez*, 12 M.J. 747 (1981) (defendant intermingled two classified messages with personal mail he was

Department's prior interpretation of the statute, charging a violation of Section 793(f) likely required evidence that the individuals who sent emails containing classified information "knowingly" included the classified information or transferred classified information onto unclassified systems (Section 793(f)(1)), or learned that classified information had been transferred to unclassified systems and failed to report it (Section 793(f)(2)). Thus, the Midyear prosecutors interpreted the "gross negligence" provision of Section 793(f)(1) to require proof that an individual acted with knowledge that the information in question was classified.³⁷

As noted above, sections 793(d) and (e) have survived constitutional vagueness challenges because of the existence of a scienter requirement in the form of the requirement to prove "willfulness." Such a challenge has not yet been raised in a Section 793(f)(1) "gross negligence" case. The Midyear prosecutors stated:

[T]he government would likely face a colorable constitutional challenge to the statute if it prosecuted an individual for committing gross negligence who was both unaware he had removed classified information at the time of the removal and never became aware he had done so.... Moreover, in bringing a vagueness challenge, defense counsel would also likely point to the significant disagreement as to the meaning of "gross negligence."

c. Previous Section 793(f)(1) Declinations

The Midyear prosecutors also reviewed at least two previous investigations where prosecution was declined under the gross negligence provision in Section 793(f)(1). The Midyear prosecutors told us that these declinations informed their understanding of the Department's historical approach to Section 793(f)(1). We discuss these previous declinations below.

Gonzales Declination Decision

One of these previous cases involved an OIG investigation into the mishandling of documents containing highly classified, compartmented information about a National Security Agency (NSA) surveillance program by former White House Counsel and Attorney General Alberto Gonzales. In 2004, while Gonzales

carrying to a friend in Alaska, then put the message in a desk drawer in the friend's room and forgot them); *cf. United States v. Oxfort*, 44 M.J. 337 (1996) (defendant removed classified messages from a Sensitive Compartmented Information Facility (SCIF) in Japan with the intention of passing them along to individuals who were not entitled to receive them; although the opinion states the defendant was charged under 793(e), prosecutors found documents referencing charges filed under Section 793(f)(1) based on the same facts); *United States v. McGuinness*, 33 M.J. 781 (1991) (defendant took home numerous classified items from previous assignments and was charged under Section 793(e), but a Section 793(f)(1) conviction was set aside for statute of limitation reasons).

³⁷ Proof of such knowledge would also be necessary to establish a violation of Sections 793(d) or (e), which required proof of "willfulness." Accordingly, as detailed below and in subsequent chapters, the investigative team focused significant attention on determining whether Clinton, her senior aides, and senders of emails that contained classified information had actual knowledge of the classified status of the information.

was the White House Counsel, he took handwritten notes memorializing a meeting about the legality of the NSA program. The notes included operational details about the program, including its compartmented codeword. Although Gonzales did not mark the notes as classified, he said that he used two envelopes to double-wrap the notes and may have written an abbreviation for the codeword on the inner envelope. On the outer envelope, Gonzales said that he wrote "AG – EYES ONLY – TOP SECRET." He stored these notes in a safe in the West Wing of the White House and said that he took them with him when he became the Attorney General in February 2005. Gonzales said that he did not recall where he stored the notes after removing them from the White House, but that he may have taken them home. Gonzales also stored the notes and several other documents containing TS//SCI classification markings in a safe in the Attorney General's office that was not approved to hold such materials.

The OIG referred investigative findings to NSD for a prosecutive decision. According to information reviewed by the OIG, on August 19, 2008, NSD analyzed Gonzales' handling of the notes under the gross negligence provision in section 793(f)(1). NSD concluded that prosecutors likely could show that the documents were removed from their proper place of custody, but that the question was whether that removal constituted "gross negligence." After discussing the legislative history of Section 793(f)(1), NSD stated that the government likely would have to prove that Gonzales' conduct was "criminally reckless" to establish that he acted with gross negligence under Section 793(f)(1). NSD concluded that Gonzales' inability to recall precisely where he stored the notes detracted from prosecutors' ability to "show a state of mind approaching 'deliberate intention' to remove classified documents from a secure location."

AUSA Declination Decision

The Midyear prosecutors also reviewed another 2008 case in which prosecution was declined under Section 793(f)(1). This case involved an AUSA who sent numerous boxes of documents to his personal residence in the United States following an overseas tour as a legal attaché. According to the prosecutors' analysis, the boxes contained a large number of documents that were classified at the Secret and Confidential levels. Many of these documents were organized haphazardly or were improperly marked. The AUSA testified that he did not purposely ship classified documents to his house, but acknowledged that it was highly likely that the documents he shipped included some classified materials.

Interpreting section 793(f)(1), NSD stated that prosecutors likely would be required to prove that the AUSA's conduct was "criminally reckless." NSD identified factors suggesting that the AUSA's conduct did not rise to the level of gross negligence, including that he testified that he did not purposely ship classified documents to his house, and thus he did not deliberately intend to remove the classified documents from a secure location. In addition, the documents were not separated into classified and unclassified categories, and they did not contain proper classification markings in that the first few pages of certain documents were not marked but later pages in the same document contained classification

markings. Based on these and other factors, NSD concluded that prosecution was not warranted.

3. 18 U.S.C. § 1924

Section 1924 is a misdemeanor statute that prohibits the “knowing” removal of documents or materials containing classified information without authority and with the “intent to retain” such documents or materials at an unauthorized location. To establish a violation of this statute, the government must show that an individual knowingly removed classified materials without authority and intended to store these materials at an unauthorized location. To remove “without authority” means that the classified materials were removed from the controlling agency’s premises without permission.³⁸ Although no reported cases interpret this provision, the Midyear prosecutors concluded that Section 1924 requires the government to show beyond a reasonable doubt that the defendant had knowledge that the location where he or she intended to store classified material was an “unauthorized” or “unlawful” place to retain it, citing the legislative history, the Petraeus case we describe below, and other previous prosecutions under this provision.

High profile cases considered by the Midyear prosecutors and by FBI leadership involving plea agreements under Section 1924 include former Central Intelligence Agency (CIA) Director David Petraeus, former National Security Advisor Samuel “Sandy” Berger, and former CIA Director John Deutch. In each of these cases, the defendants knew the information at issue was classified or took actions reflecting knowledge that their handling or storage of it was improper.

Petraeus, a retired U.S. Army General, served as the Commander of the International Security Assistance Force in Afghanistan from July 2010 to July 2011, and as the Director of the CIA from September 2011 to November 2012. While in Afghanistan, Petraeus kept notes in black notebooks that included information about the identities of covert officers, war strategy, intelligence capabilities and mechanisms, diplomatic discussions, quotes and deliberative discussions from high-level National Security Council meetings, and discussions with the President. Petraeus retained these notebooks when he returned from Afghanistan and later shared them with his biographer, Paula Broadwell, admitting to her in a recorded conversation that the notebooks were “highly classified” and contained “code word stuff.” He also stored them in an unlocked desk drawer in his home office. During a subsequent investigation into his mishandling and retention of classified information, Petraeus falsely told the FBI that he never provided or facilitated the provision of classified information to Broadwell. In March 2015, Petraeus pled guilty to one count under 18 U.S.C. § 1924, and was sentenced to 2 years of probation, a \$25 special assessment, and a \$100,000 fine.³⁹

³⁸ See Exec. Order 13526, § 4.1(d).

³⁹ See Plea Agreement and Factual Basis, *United States v. Petraeus*, Crim. No. 3:15-CR-47 (W.D.N.C. filed Mar. 3, 2015); Information, *Petraeus*, 2015 WL 1884065 (W.D.N.C. filed Mar. 3, 2015) (charging Petraeus with knowingly removing classified documents “without authority and with the

Sandy Berger, the National Security Advisor under former President Bill Clinton, visited the National Archives and Records Administration to review documents for production to the 9/11 Commission. During his visits, Berger concealed and removed documents by folding the documents in his clothes, walking out of the National Archives building, and placing them under a nearby construction trailer for later retrieval.⁴⁰ Berger removed a total of five copies of classified documents, stored them in his office, and later destroyed three of them by cutting them into small pieces and discarding them. All of these documents were marked classified. Berger also created and removed handwritten notes of classified material that he had reviewed, and was aware that he removed these notes from the National Archives without authorization. Berger pled guilty to a criminal information charging one count of 18 U.S.C. § 1924.⁴¹ He was sentenced to 2 years of probation, a \$56,905.52 fine, a \$25 special assessment, and 100 hours of community service, and was precluded from accessing classified information for 5 years.

Former CIA Director John Deutch was investigated for using unclassified, Internet-connected computer systems to create and process classified documents and storing classified memory cards in his personal residence. During an investigation by the CIA Inspector General (CIA IG), investigators recovered files from a computer at Deutch's residence that were labeled as unclassified but contained words indicating that the information was "Secret" or "Top Secret Codeword," or was otherwise highly sensitive. For example, recovered documents included reports on covert operations, communications intelligence, memoranda to then President Bill Clinton, and classified CIA budget information. The CIA IG report states that Deutch told investigators that he "fell into the habit" of using the unclassified system "in an inappropriate fashion," and admitted that he had intentionally created highly sensitive documents on unclassified computers. In addition, witnesses testified that Deutch was considered to be an "expert" or "fairly advanced" computer user. Following a criminal investigation, Deutch agreed to plead guilty to one count under 18 U.S.C. § 1924, but was pardoned by President Clinton on January 19, 2001, before the plea was consummated.

Examples of conduct prosecuted under Section 1924 include a former government employee who stored boxes of marked classified documents in his personal residence; a contractor who downloaded classified information from a secure network to a thumb drive, transferred the information to an unclassified computer, and shared it with others; and a government employee who concealed and removed highly classified documents from a Sensitive Compartmented

intent to retain such documents and materials at unauthorized locations, aware that these locations were unauthorized for the storage and retention of such classified documents").

⁴⁰ See National Archives, *Notable Thefts from the National Archives*, at <https://www.archives.gov/research/recover/notable-thefts.html> (accessed Mar. 1, 2018).

⁴¹ See Factual Basis for Plea, *United States v. Berger*, Crim. No. 1:05-MJ-00175-DAR (D.D.C. filed Apr. 1, 2005).

Information Facility (SCIF) where he worked and stored the documents in his vehicle and house.

B. 18 U.S.C. § 2071(a)

Section 2071(a) is a felony statute criminalizing the concealment, removal, or mutilation of government records filed in any public office. To establish a violation of this provision, the government must prove the following beyond a reasonable doubt:

- An individual concealed, removed, or destroyed a record, or attempted to do so, or took and carried away a record with the intent to do so;
- The record was filed or deposited in a public office of the United States; and
- The individual acted willfully and unlawfully.

The purpose of this statute is to prohibit conduct that deprives the government of the use of its documents, such as by removing and altering or destroying them.⁴² The Midyear prosecutors concluded that every prosecution under Section 2071 has involved the removal or destruction of documents that had already been filed or deposited in a public office of the United States (*i.e.*, physical removal of a document). In addition, to fulfill the requirement that the individual acted “willfully and unlawfully,” Section 2071 requires the government to show that he or she acted intentionally, with knowledge that he or she was breaching the statute.⁴³

⁴² See *United States v. Hitzelberger*, 991 F. Supp. 2d 108, 124 (D.D.C. 2014) (See *United States v. Rosner*, 352 F.Supp. 915, 919-20 (S.D.N.Y. 1972); *United States v. North*, 716 F.Supp. 644, 647 (D.D.C. 1989).

⁴³ See *United States v. Moylan*, 417 F.2d 1002, 1004 (4th Cir. 1969).

CHAPTER THREE: OVERVIEW OF THE MIDYEAR INVESTIGATION

In this chapter, we provide an overview of the Midyear investigation. More specifically, we describe the referral and opening of the investigation, the staffing of the investigation by the Department and the FBI, and the investigative strategy.

I. Referral and Opening of the Investigation

A. Background

1. Clinton's Use of Private Email Servers

Hillary Clinton served as Secretary of State from January 21, 2009, until February 1, 2013. During that time, she used private email servers hosting the @clintonemail.com domain to conduct official State Department business.⁴⁴ According to FBI documents, former Secretary Clinton and her husband, former President Bill Clinton, had a private email server in their house in Chappaqua, N.Y., beginning in approximately 2008 (before Clinton's tenure as Secretary of State) for use by former President Clinton's staff. Former Secretary Clinton told the FBI that, in or around January 2009, she "directed aides...to create the clintonemail.com account," and that this was done "as a matter of convenience."

According to the FBI letterhead memorandum (LHM) summarizing the Midyear investigation, Clinton used her clintonemail.com account and personal mobile devices linked to that account for both personal and official business throughout her tenure as Secretary of State. The LHM states that Clinton "decided to use a personal device to avoid carrying multiple devices." Clinton never personally used an official State Department email account or State Department-issued handheld device during her tenure, although there were official State Department email accounts from which emails were sent on her behalf.

2. Production of Emails from the Private Email Servers to the State Department and Subsequent Deletion of Emails by Clinton's Staff

On September 11 and 12, 2012, terrorists attacked the U.S. Temporary Mission Facility and a Central Intelligence Agency (CIA) Annex in Benghazi, Libya, killing four Americans.⁴⁵ On May 8, 2014, the U.S. House Select Committee on Benghazi (House Benghazi Committee) was established to investigate the Benghazi attack and, thereafter, sought documents from the State Department as part of its

⁴⁴ As described in Chapter Five, the FBI discovered three servers that for different periods stored work-related emails sent or received by Clinton during her tenure as Secretary of State.

⁴⁵ See U.S. Senate Select Committee on Intelligence, *Review of the Terrorist Attacks on U.S. Facilities in Benghazi, Libya, September 11-12, 2012*, 113th Cong, 2d sess., 2014, S. Rept. 113-134, <https://www.intelligence.senate.gov/sites/default/files/publications/113134.pdf> (accessed May 7, 2018).

investigation. In the summer of 2014, State Department officials contacted Cheryl Mills, who had served as former Secretary Clinton's Chief of Staff and Counselor, concerning the State Department's inability to locate Clinton's and other former Secretaries' emails to respond to Congressional requests. Mills later told the FBI that she suggested that the State Department officials search State Department systems for Clinton's clintonemail.com email address. In addition, Mills told the FBI that State Department officials requested that she produce former Secretary Clinton's emails and advised her that it was Clinton's or Mills's "obligation to filter out personal emails from what was provided to State."

Former Secretary Clinton asked Mills and Clinton's personal attorney, David Kendall, to oversee the process of providing her emails to the State Department. In late summer 2014, Mills contacted Paul Combetta, an employee of the company that administered Clinton's private server at the time, and requested that he transfer copies of Clinton's emails onto Mills's laptop and a laptop belonging to Heather Samuelson, a lawyer who had served in the State Department as Secretary Clinton's White House Liaison. Mills, Samuelson, and Kendall then developed a methodology for Samuelson to "cull" former Secretary Clinton's work-related emails from her personal emails, to produce her work-related emails to the State Department.

In October and November 2014, the State Department sent letters to four former Secretaries of State, including Clinton, requesting that they "make available copies of any Federal records in their possession, such as emails sent or received on a personal email account while serving as Secretary of State."⁴⁶ In December 2014, former Secretary Clinton produced to the State Department "from her personal email account approximately 55,000 hard-copy pages, representing approximately 30,000 emails that she believed related to official business."⁴⁷ After receiving these documents, the State Department, in addition to responding to the House Benghazi Committee's document request, reviewed Clinton's emails for potential public release in response to Freedom of Information Act (FOIA) requests.

As described in Chapter Five, Mills, Samuelson, and Combetta told the FBI that in late 2014 or early 2015 Mills and Samuelson asked Combetta to remove former Secretary Clinton's emails from their laptops. Combetta then used the commercial software "BleachBit" to permanently remove or wipe former Secretary Clinton's emails from Mills's and Samuelson's laptops.⁴⁸ Mills told the FBI that at some point between November 2014 and January 2015, Clinton decided she no longer wished to retain on her server emails that were older than 60 days and Mills

⁴⁶ See U.S. Department of State Office of the Inspector General (State IG), *Office of the Secretary: Evaluation of Email Records Management and Cybersecurity Requirements*, ESP-16-03 (May 2016), <https://oig.state.gov/system/files/esp-16-03.pdf> (accessed May 7, 2018), 3.

⁴⁷ See State IG, *Office of the Secretary*, 4.

⁴⁸ According to documents we reviewed, BleachBit is a "freely available software that advertises the ability to 'shred' files. 'Shredding' is designed to prevent recovery of a file by overwriting the content."

instructed Combetta to change Clinton's email retention policy accordingly. Combetta, however, failed to do so until late March 2015.

On March 3, 2015, the House Benghazi Committee sent preservation orders requiring former Secretary Clinton to preserve emails on her servers.⁴⁹ As described in more detail in Chapter Five, Combetta told the FBI that later in March 2015 he realized that he had neglected to make the change to former Secretary Clinton's email retention policy earlier that year, had an "oh shit" moment, and, without consulting Mills, used BleachBit to permanently remove Clinton's emails from her server. These included emails that had been transferred from a prior server. According to FBI documents, former Secretary Clinton's attorneys advised Combetta about the congressional preservation order before he made the deletions. As a result of Combetta's actions, 31,830 emails that former Secretary Clinton's attorneys had deemed personal in nature were deleted from three locations on which they had previously been stored—Mills's and Samuelson's laptops and the Clinton server.

B. State Department Inspector General and IC IG Review of Clinton's Emails and Subsequent 811 Referral

On March 12, 2015, three Members of Congress requested that the State Department Inspector General (State IG) conduct a review regarding State Department employees' use of personal email for official purposes. The Members of Congress requested that the State IG coordinate with the Office of the Intelligence Community Inspector General (IC IG) to determine whether classified information was transmitted or received by State Department employees over personal systems. Following this request, the IC IG reviewed 296 of the 30,490 emails that former Secretary Clinton's attorneys had provided to the State Department and determined that at least two of these emails contained classified information. The 296 emails, including the two determined to contain classified information, had already been publicly released by State Department FOIA officials.

In a June 24, 2015 letter, Kendall told the State IG and the IC IG that a copy of the 30,490 emails provided by former Secretary Clinton to the State Department was stored on a thumb drive in his law office and that her personal server was in the custody of the company "Platte River Networks" ("PRN"). Based on this information, the IC IG concluded that "the thumb drive and personal server contain classified information and are not currently in the Government's possession."

On July 6, 2015, the IC IG made a referral to the FBI pursuant to Section 811(c) of the Intelligence Authorization Act of Fiscal Year 1995 (811 referral). This provision requires Executive Branch departments and agencies to advise the FBI "immediately of any information, regardless of its origin, which indicates that

⁴⁹ See U.S. House of Representatives, Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, *Final Report of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi*, 114th Cong., 2d sess., 2016, H. Rept. 114-848, <https://www.congress.gov/congressional-report/114th-congress/house-report/848/1> (accessed May 7, 2018).

classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power,” and is typically used to refer to the FBI a loss or unauthorized disclosure of classified information. The IC IG referred the matter to the FBI “for any action you deem appropriate.”

C. FBI’s Decision to Open a Criminal Investigation

On July 10, 2015, the FBI Counterintelligence Division opened a criminal investigation in response to the 811 referral from the IC IG. Although only a small percentage of 811 referrals result in criminal investigations, witnesses told the OIG that a criminal investigation was necessary to determine the extent of classified information on former Secretary Clinton’s private server, who was responsible for introducing the information into an unclassified system, and why it was placed there. The FBI gave the investigation the code name “Midyear Exam,” choosing it from a list of randomly generated names.

The FBI predicated the opening of the investigation on the possible compromise of highly sensitive classified secure compartmented information (SCI). One of the Midyear case agents told us that the Midyear investigative team was focused at the outset on the “potential unauthorized storage of classified information on an unauthorized system and then where it might have gotten [sic] from there.” A Department prosecutor assigned to the investigation similarly described the scope of the investigation as “related to the email systems used by Secretary Clinton, and whether on her private email server there are individuals who improperly retained or transmitted classified information.”

The FBI designated the Midyear investigation as a Sensitive Investigative Matter (SIM). According to the DIOG, a SIM includes “an investigative matter involving the activities of a domestic public official or domestic political candidate (involving corruption or a threat to the national security)” as well as “any other matter which, in the judgment of the official authorizing an Assessment, should be brought to the attention of FBI [Headquarters] and other DOJ officials.” FBI witnesses told us that the SIM designation is typically given to investigations involving sensitive categories of persons such as attorneys, judges, clergy, journalists, and politicians, and that that SIM investigations are overseen more closely by FBI management and the FBI Office of General Counsel than other investigations.

The Midyear investigation was opened with an “Unknown Subject(s) (UNSUB),” and at no time during the investigation was any individual identified by the FBI as a subject or target of the investigation, including former Secretary Clinton. FBI witnesses told us that the “UNSUB” designation is common and means that the FBI has not identified a specific target or subject at the outset of an investigation. According to FBI witnesses, this allowed the FBI to expand the focus of the investigation based on the evidence without being “locked into a particular subject.” With respect to the Midyear investigation, witnesses told the OIG that the FBI did not identify anyone as a subject or target during the investigation because it was unclear how the classified material had been introduced to the server and who was responsible for improperly placing it there.

Despite the UNSUB designation, witnesses told us that a primary focus of the Midyear investigation was on former Secretary Clinton's intent in setting up and using her private email server. An FBI OGC attorney assigned to the Midyear team (FBI Attorney 1) told the OIG, "We certainly started looking more closely at the Secretary because they were her emails." Randall Coleman, the former Assistant Director of the Counterintelligence Division, stated, "I don't know [why] that was the case, why it was UNSUB. I'm really shocked that it would have stayed that way because certainly the investigation started really kind of getting more focused."

In his OIG interview, Comey described former Secretary Clinton as the subject of the Midyear investigation and stated that he was unaware that the investigation had an UNSUB designation. Similarly, in his book, Comey referred to former Secretary Clinton as the subject of the Midyear investigation, stating that one question the investigation sought to answer was what Clinton was thinking "when she mishandled that classified information."⁵⁰

D. Initial Briefing for the Department

On July 23, 2015, Coleman and then Deputy Director Mark as' met with Deputy Attorney General (DAG) Sally Yates and Principal Associate Deputy Attorney General (PADAG) Matt Axelrod to brief them on the opening of the Midyear investigation. According to Coleman, he and Giuliano told Yates and Axelrod why the Midyear investigation was opened and laid out their vision of how the investigation would be conducted, including that the FBI planned to run the investigation out of headquarters.

Yates recalled being briefed by Giuliano and Coleman at the beginning of the Midyear investigation, but said that she did not recall having concerns about the information they presented at the meeting or remembering anything significant about it. Axelrod told the OIG that Giuliano and Coleman showed them a copy of the 811 referral that the FBI had received, and either showed them or told them about some of the emails that had been identified as potentially classified. Axelrod stated:

That, my recollection is that the way they explained it was that review of the certain emails contained on the personal server that Secretary Clinton had been using showed that some of those emails contained classified information. And so that, and that they, one of the things that was sort of standard practice when there was classified information on non-classified systems was that a review needed to be done to sort of contain the, I think the word they use in the [intelligence] community is a spill.... The spill of classified information out into sort of [a] non-classified arena. And so that they needed to, this was a referral so that the Bureau could help contain the spill and identify if there was classified information on non-classified systems so that that classified information could be contained and either, you

⁵⁰ JAMES COMEY, *A HIGHER LOYALTY: TRUTH, LIES, AND LEADERSHIP* at 162 (Amy Einhorn, ed., 1st ed. 2018).

know, destroyed or returned to proper information handling mechanisms.

Asked whether he considered the Midyear investigation to be criminal as of the date of this initial briefing, Axelrod replied, "Not in my view." According to Axelrod, "it was some time...before I, at least I understood that it had morphed into a criminal investigation."

The prosecutors and career Department staff assigned to the Midyear investigation told us that they considered it a criminal investigation from early on. Deputy Assistant Attorney General (DAAG) George Toscas, who was the most senior career Department official involved in the daily supervision of the investigation, told us that he approached it as a criminal investigation from the beginning of NSD's involvement. Prosecutors 1 and 2, both of whom were assigned to the investigation by late July 2015, understood that it was a criminal investigation from very early in the investigation. Prosecutor 1 told us, "I mean, pretty quickly this seemed like a, a criminal investigation.... [I]t looked, looked and it smelled like a criminal investigation to me."

II. Staffing the Midyear Investigation

A. FBI Staffing

The Midyear investigation was conducted by the FBI's Counterintelligence Division. For the first few weeks, the investigation was staffed by FBI Headquarters personnel and temporary duty assignment (TDY) FBI agents. Thereafter, FBI management decided to run the investigation as a "special" out of FBI Headquarters. This meant that the investigation was staffed by counterintelligence agents and analysts from the FBI Washington Field Office (WFO) who were temporarily located to headquarters and received support from headquarters personnel. FBI management selected WFO personnel based on WFO's geographic proximity to headquarters and its experience conducting sensitive counterintelligence investigations. FBI witnesses told us that previous sensitive investigations also had been run as "specials," and that this allowed FBI senior executives to exercise tighter control over the investigation.

There were approximately 15 agents, analysts, computer specialists, and forensic accountants assigned on a full-time basis to the Midyear team, as well as other FBI staff who provided periodic support. Four WFO agents served as the Midyear case agents and reported to a WFO Supervisory Special Agent ("SSA"). Several FBI witnesses described the SSA as an experienced and aggressive agent, and the SSA told us that he selected the "four strongest agents" from his WFO squad to be on the Midyear team.

The SSA reported to Peter Strzok, who was then an Assistant Special Agent in Charge (ASAC) at WFO.⁵¹ Comey and Coleman told us that Strzok was selected to lead the Midyear investigative team because he was one of the most experienced and highly-regarded counterintelligence investigators within the FBI.

There were also several analysts on the Midyear team. Some analysts assigned to Midyear were on the review team, which reviewed and analyzed former Secretary Clinton's emails. These analysts reported to a Supervisory Intelligence Analyst, who in turn reported to the Lead Analyst. FBI witnesses, including Coleman, told us that the Lead Analyst was highly regarded within the FBI and very experienced in counterintelligence investigations. Other analysts were on the investigative team, which assisted the agents with interview preparation and performed other investigative tasks. These analysts reported to the SSA and Strzok, in addition to reporting directly to the Lead Analyst. Several analysts were on both the review and investigative teams.

Until approximately the end of 2015, the Lead Analyst and Strzok both reported to a Section Chief in the Counterintelligence Division, who in turn reported to Coleman for purposes of the Midyear investigation.⁵² The remainder of the reporting chain was as follows: Coleman to John Giacalone, who was Executive Assistant Director (EAD) of the National Security Branch; Giacalone to DD Giuliano; and DD Giuliano to Director Comey.

During the course of the investigation, some FBI officials involved with the Midyear investigation retired or changed positions. In late 2015, Coleman became the EAD of the FBI Criminal, Cyber, Response, and Services Branch and was no longer involved in the Midyear investigation. At the same time, E.W. ("Bill") Priestap replaced Coleman as AD of the Counterintelligence Division. EAD Giacalone and DD Giuliano retired from the FBI in early 2016 and were replaced by Michael Steinbach and Andrew McCabe, respectively.

In addition, Lisa Page, who was Special Counsel to McCabe, became involved in the Midyear investigation after McCabe became the Deputy Director in February 2016. Page told the OIG that part of her function was to serve as a liaison between the Midyear team and McCabe. Page acknowledged that her role upset senior FBI officials, but told the OIG that McCabe relied on her to ensure that he had the information he needed to make decisions, without it being filtered through multiple layers of management. Several witnesses told the OIG that Page circumvented the official chain of command, and that Strzok communicated important Midyear case information to her, and thus to McCabe, without Priestap's or Steinbach's knowledge. McCabe said that he was aware of complaints about Page, and that he valued her ability to "spot issues" and bring them to his attention when others did not do so.

⁵¹ Strzok was promoted to a Section Chief in the Counterintelligence Division in February 2016, and to Deputy Assistant Director (DAD) in the fall of 2016.

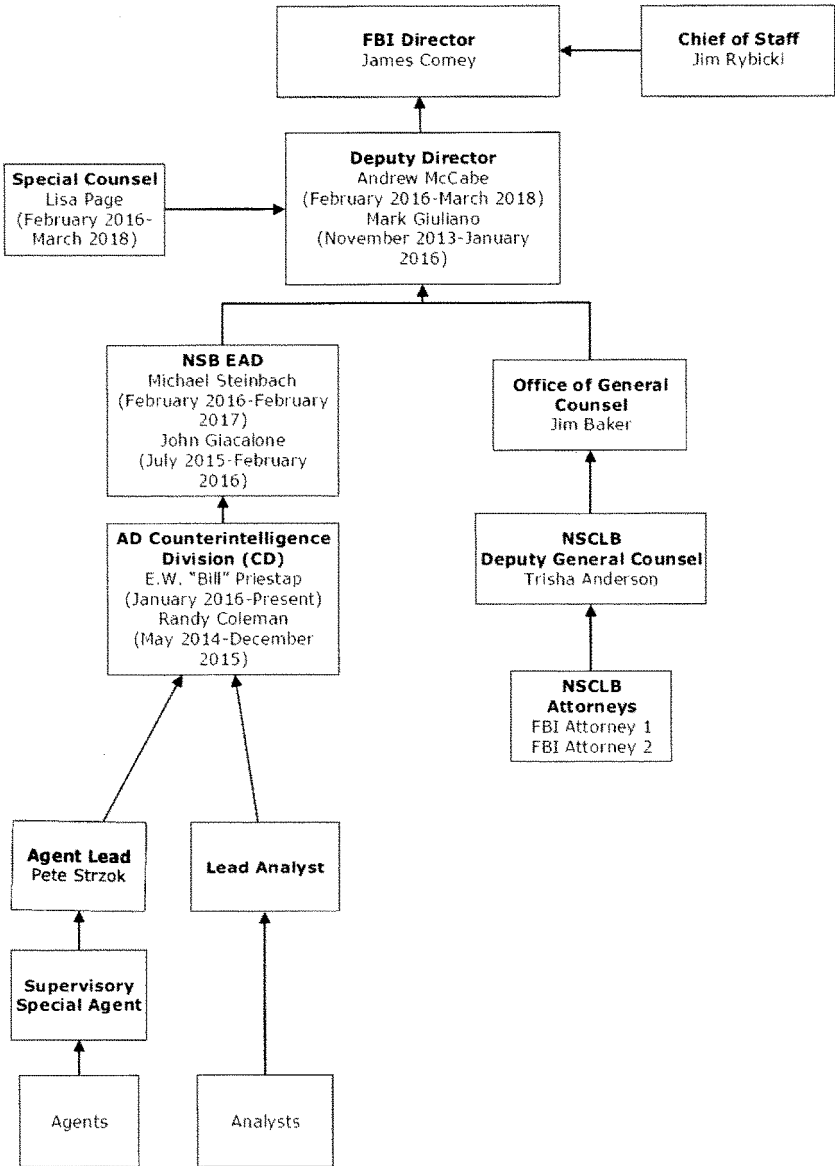
⁵² A Deputy Assistant Director in the Counterintelligence Division was between the Section Chief and Coleman in the reporting chain but had limited involvement in the Midyear investigation.

The FBI Office of General Counsel (OGC) assigned FBI Attorney 1, who was a supervisory attorney in the National Security and Cyber Law Branch (NSCLB), to provide legal support to the Midyear team. A second, more junior attorney (FBI Attorney 2) also was assigned to the Midyear team. FBI Attorney 1 reported to Deputy General Counsel Trisha Anderson, who in turn reported to then General Counsel James Baker.⁵³

Figure 3.1 describes the FBI chain of command for the Midyear investigation. This figure does not include intervening supervisors who had limited involvement in the investigation.

⁵³ Anderson now is the Principal Deputy General Counsel.

Figure 3.1: FBI Chain of Command for the Midyear Investigation



B. Department Staffing

Within the Department, the Midyear investigation was primarily handled by the Counterintelligence and Export Control Section (CES) of the National Security Division (NSD), with support from two prosecutors in the United States Attorney's Office for the Eastern District of Virginia (EDVA). All of the prosecutors assigned to the Midyear team had significant experience handling national security investigations or white collar criminal cases.

The lead prosecutor (Prosecutor 1) was a supervisory attorney in CES. Prosecutor 1 told us that he selected the "best" nonsupervisory line attorney within CES (Prosecutor 2) to handle the Midyear investigation with him. The two CES prosecutors reported directly to the Chief of CES, David Laufman, who in turn reported to DAAG George Toscas. Toscas was the highest level career Department employee involved in the Midyear investigation, and the prosecutors and supervisors below him who were involved in the Midyear investigation were also career employees. As described in more detail below, Department officials above Toscas, including then Assistant Attorney General (AAG) John Carlin, Axelrod, Yates, and Lynch, received briefings about the Midyear investigation but were not involved in its day-to-day management.

In August 2015, EDVA was brought into the Midyear investigation. EDVA assigned two supervisory attorneys to work with the CES prosecutors: Prosecutor 3 and Prosecutor 4. The role of the EDVA prosecutors initially was to facilitate the issuance of legal process, including grand jury subpoenas, search warrants, and 2703(d) orders. However, the NSD prosecutors told the OIG that ultimately they consulted and worked closely with the EDVA prosecutors on many issues and decisions throughout the course of the Midyear investigation. Prosecutor 3 similarly told us that as the investigation progressed, he and Prosecutor 4 were considered "equal partners" with the NSD prosecutors.

EDVA senior leadership, including then U.S. Attorney Dana Boente, received briefings on the Midyear investigation from the EDVA prosecutors and were informed of significant developments, but they were not involved in investigative decisions. Axelrod told the OIG that he recalled that he spoke to Boente early in the Midyear investigation and "let[] them know that this was NSD's investigation." Axelrod stated:

[S]ometimes when you have a U.S. Attorney's office and a Main Justice component, you know, things have to go up two chains and...that's cumbersome.... [I]n...an investigation like this we figured it was easier just to have everything centralized in NSD. There's a reason why NSD has the ticket on, you know, all these matters, right? They're the subject matter experts[.]

Axelrod explained that NSD has primary responsibility for counterterrorism and counterintelligence cases not only because it has subject matter expertise in those areas, but also because those cases are nationwide. He stated that there are certain areas of law where it is important to ensure nationwide consistency in how

the law is applied, because if "one district does something really different than another district it can have very bad...ramifications or consequences." As noted previously, the USAM requires NSD to expressly approve in advance charges involving certain national security statutes, including those that were considered in this investigation.

Prosecutor 2 stated that NSD's typical role varies from case to case, and depends on the resources and experience of the specific U.S. Attorney's Office. This prosecutor told the OIG that NSD typically "drives" counterintelligence cases, but that its role "runs the gamut" from taking the lead on cases to playing a supporting role. Prosecutor 2 stated that EDVA has been more willing to allow NSD attorneys to play an active role in charged cases and is "very open to [NSD's] partnership and support."

Prosecutor 3 similarly told the OIG that EDVA's supporting role in the Midyear investigation was unusual, but he attributed this to logistics. This prosecutor stated, "[Prosecutors 1 and 2] were right across the street from FBI Headquarters.... [I]t was pretty work intensive, more so for them because they would have to go over there at the drop of a hat for meetings. You know, we were always kept in the loop of what was going on. But [the] FBI kept a pretty tight hold of the classified documents." Prosecutor 3 also said that running the case out of NSD, supervised by Toscas, allowed the Department to keep "one central location of control by a career person over the investigation."

Several witnesses told us that the FBI was frustrated at the perceived slow pace of bringing a U.S. Attorney's Office into the Midyear investigation. However, Toscas told us that it is not unusual for a U.S. Attorney's Office not to be involved in the beginning of an investigation, and that it took some time to determine the proper venue and select the most appropriate U.S. Attorney's Office. Prosecutor 1 told us that although the U.S. Attorney's Office for the District of Columbia also was considered, EDVA was selected in part based on the good historical working relationship between NSD and EDVA.

Boente told the OIG that he expressed concerns that EDVA was not the appropriate district given that former Secretary Clinton lived in New York. He said that they potentially could establish venue through an email server or victim agency server located in EDVA, but that it would be unusual to select venue to prosecute a high-profile public figure on that basis. Boente said that while no one explained why the Department chose EDVA, he assumed that it was because "we move quicker and do things a lot quicker than some districts can."

III. Role of Senior FBI and Department Leadership in the Investigation

A. FBI Leadership

The Midyear investigation was closely supervised by FBI leadership from the outset. Comey told the OIG that he received frequent briefings on the Midyear investigation:

And then once it got underway, either in July or maybe in August [2015], I told them I wanted to be briefed on it on a much more frequent basis than I would normally on a case because I was keen to make sure that they had the resources they need and that there was no—that I could both support them if they needed additional things and protect them in the event anybody outside of the investigative team tried to monkey with them in any way or exert any pressure on them or anything like that. Because I could see immediately how significant the matter was.... So I think they got into a rhythm of briefing me maybe every couple of weeks.

Comey said that briefings took place roughly every two to three weeks at the beginning of the investigation, and occurred on a weekly basis as the investigation progressed.

Comey said that the Midyear briefings typically were attended by a core team of senior officials:

- The Deputy Director (Giuliano, then McCabe);
- Comey's Chief of Staff, James Rybicki;
- FBI OGC personnel including Baker, Anderson, and FBI Attorney 1;
- The EAD of the National Security Branch (Giacalone, then Steinbach);
- The AD of the Counterintelligence Division (Coleman, then Priestap);
- Deputy Director McCabe's counsel, Lisa Page (beginning in February 2016); and
- Strzok and the Lead Analyst.

Other FBI officials periodically attended these briefings, including then Associate Deputy Director (ADD) David Bowdich after his appointment in April 2016, but witnesses told us that briefings were carefully controlled and limited to a select group of senior FBI managers.

Comey said that the Midyear team typically produced a biweekly or weekly written summary of their progress in the investigation, and that briefings generally focused on what the team had completed and what needed to be done. Comey stated, "[T]he way it tended to break down is [the Lead Analyst] would talk about exploitation of media and sorting through emails and things. And Pete [Strzok] would focus on investigative steps, interviews, things like that." Comey told the OIG:

[I]t would typically be here in the [Director's] conference room at the table and they would give me a progress report on where they were and I would typically ask the questions that were rooted in my interest in it to begin with which is— do you have the resources you need? Any problems that I can help you with? I just felt the need to stay close to it[.]

As described in more detail in Chapter Six, the same officials were involved in discussions about whether to do a public statement announcing the closing of the Midyear investigation. Comey characterized these discussions as “great family conversations,” stating that he was a great believer in oppositional argument and encouraged people to bring up different points of view.

In addition to the Midyear-specific meetings, Comey and the Deputy Director (first Giuliano, then McCabe) had daily morning and late afternoon meetings about significant developments or issues that were impacting the FBI. The Midyear investigation was sometimes discussed immediately following these meetings in “sidebar” meetings involving a smaller group of participants due to the sensitivity of the investigation.⁵⁴

As the result of these frequent briefings, Comey and McCabe knew about and were involved in significant investigative decisions. McCabe stated:

[Comey] relied on me for kind of my advice and recommendation on those decisions. But he was very involved in the decisions on Midyear.... Not decisions like what time is the interview with John Jones going to take place tomorrow, but...we think we should serve a subpoena on so-and-so for these records, and the Department of Justice is saying no, we want to try to work it out with a letter. And so...as that conflict was brewing, he would learn about it and weigh in on it and not necessarily decide it. But he was up-to-speed on all of the kind of significant things that were happening in the case.

McCabe told the OIG that although Strzok and Priestap made the day-to-day investigative decisions, he and Comey were informed about any problems that arose during the investigation, as well as any significant information that the team discovered.

As described in more detail in Chapter Five, our review found examples where Comey or McCabe approved or directed specific investigation decisions. These included directing the Midyear agents to deliver a preamble at the first interview of Cheryl Mills about the need to answer questions about the process used to cull former Secretary Clinton’s personal and work-related emails, without informing the prosecutors; authorizing Baker to contact Beth Wilkinson, counsel to Mills and Samuelson, again without telling the prosecutors; approving the consent and immunity agreements used to obtain the Mills and Samuelson laptops; and not prohibiting Mills and Samuelson from attending the interview of former Secretary Clinton as her counsel.

⁵⁴ Other senior FBI officials involved in the Midyear investigation received additional briefings as needed. The Deputy Director, EAD, and AD met on a daily basis regarding significant matters affecting the Counterintelligence Division, and these meetings at times included significant developments in the Midyear investigation. McCabe said he was briefed when issues arose. In addition, the Lead Analyst and Strzok briefed Giacalone on the Midyear investigation on a weekly basis.

B. Department Leadership

Unlike the FBI's senior leadership, senior Department officials played a more limited role in the Midyear investigation. Although Lynch, Yates, Axelrod, and Carlin described making a conscious decision to allow the career staff to handle the Midyear investigation with minimal involvement by political appointees, they also told us that their involvement was consistent with their normal role in criminal investigations.

Lynch

Lynch told the OIG that she received limited briefings on the Midyear investigation. She explained that the Midyear investigation was not discussed at her morning meetings or staff meetings because it was a sensitive matter and involved potentially classified information. Lynch said that she had a monthly meeting with NSD, and that although the Midyear investigation was too sensitive to discuss during that meeting, afterward the meeting would "skinny down" to discuss sensitive cases among a smaller group of people that included Yates, Axelrod, Carlin, Toscas, and sometimes members of her staff. She said that the cases discussed among this smaller group included not only the Midyear investigation, but also other sensitive counterterrorism and classified cases.

Lynch said that she understood that there were political sensitivities inherent in the Midyear investigation, and she wanted to protect the Midyear team from perceived pressure from Department leadership. She stated:

Because we knew that it was going to be scrutinized, we wanted to make sure that not only was the team supported, but they also were insulated from a lot of people talking about it and just discussing it in general throughout the office.... And so, my view was that unless you need me for something, you know, I don't want to be on top of the team for this. They, they should work as they always work. They should know that [they have] whatever they need to have, whatever resources they need to get. But the Front Office is not, you know, breathing down their neck on this.

Asked whether there was ever a conscious decision by the political appointees to step back and allow the career employees to handle the investigation, Lynch replied:

Certainly it was my view, and I can't recall having discussions about that. But that was how I viewed the setup, was that we wanted to make sure that this was always handled by the career people, and that essentially even though they would need input, and certainly toward the end of anything you'd have to make certain decisions. But not to have, at least certainly from...the fifth floor level where I was, not to have that kind of input early on. Although I typically wouldn't have had input...in the inner workings of an investigation.

Lynch said that Toscas was the most senior career Department official involved in making decisions about the Midyear investigation, and that she had faith and confidence in his ability to handle the case.

Lynch explained that she was not involved in the day-to-day investigative decisions about how to staff the investigation, what witnesses to interview, or any of the other "things that [she] used to do as a line [Assistant U.S. Attorney (AUSA)]." Nor did she intervene in conflicts between the prosecutors and agents. She told the OIG that this was not unique to the Midyear investigation but rather represented her standard practice, stating:

[M]y view is that...whoever is, is leading the team needs to deal with that initially because they've got to keep working with each other. And based on my experience as an AUSA, if you can resolve it at that level first, you will have a team that is, is, is more solid and can work together more easily. If not, then I think the, the next level supervisor has got to be involved in that.... [M]y view is that the chain of command is set up is there for that reason.

But I wouldn't, if someone said to me the agents want to interview this person, and the prosecutors don't, my first question before I got involved would be to say what do the supervisors think? Because if, if I as AG, or even as U.S. Attorney immediately step in and make that decision, then what I've done is I may have solved a problem, but I've cut the knees off of every supervisor in between me and them. And, and that creates bigger problems down the road.

Lynch said her view was that problems or conflicts should not be elevated to the Attorney General unless the parties had exhausted all other remedies.

Yates and Axelrod

Yates told the OIG that although Department leadership understood the significance of the Midyear investigation, they agreed that it should be handled like any other case. She said that the role of Department leadership in the Midyear investigation represented their normal approach to criminal investigations, stating:

[L]ook, we got the sensitivity of this matter obviously even from the beginning. And I remember we wanted to make certain that NSD had all the resources that they needed, that they were on top of it. That we stayed briefed on what was going on but from the very beginning it was important to us for this to be handled like any other case would be handled. That we wanted to make sure that the line prosecutors and lawyers who were doing this didn't feel like they had the leadership office breathing down their neck because that's going to put a layer of pressure on them that is not appropriate we felt like here. So it was important to us for NSD to be handling the day to day aspects of this. But at the same time we wanted to make sure that they were getting what they needed. And that we were staying apprised of significant developments in it....

Not only doing it the right way but making sure that we did this, that it had the appearance of doing it the right way too. And public confidence was going to be important. We knew that from the very beginning. And that we wanted to make sure that we had a process in place that was going to be the right process. And that would be for NSD to handle the day to day aspects of it. And so we had [that] conversation. You know, the DAG's office is really sort of more the operational one between the two leadership offices. And so I certainly had conversations with the AG about how we set this up and we're running it. But again, there was no real dispute with anybody about this. This seemed like the natural and right way to do things....

Asked whether her role in the Midyear investigation differed at all from her usual process, Yates replied:

Every other case is not on the radar screen of...[the] DAG, obviously. But this was a significant matter for the Department that was one of those small handful of cases that how you do it can be defining for the Department of Justice.... And we were very aware of that from the very beginning. So when I say we were handling it like any other case what I mean is that we wanted to ensure that the factors that went into a decision about how we should proceed in that matter and how, the kind of latitude that the line people were handling had to do it in that matter, that that should be done like any other case. Nobody should get any special treatment. Nobody should be treated more harshly...because of who they were. That's what I mean it should be like any other case. But we weren't stupid. I mean, we recognized that the profile and import of this matter was such that we needed to make sure that things were done correctly.

Yates explained that the DAG typically gets involved in an investigation from a decisionmaking standpoint if there is disagreement between one of the Department's litigating components and another government agency, or between a Department component and a U.S. Attorney's Office, or if there is "real uncertainty" about whether to take a potential investigative step. She stated, "Normally the DAG's office is not running an investigation and we weren't running this one."

Yates told the OIG that she received more frequent updates on the Midyear investigation than she did on other cases, attributing this to the profile and time sensitivity of the investigation. Yates told the OIG that it was hard to generalize how frequently she received updates, but that she had regular meetings with NSD every other week. Although the Midyear investigation was not discussed with the larger group present during these meetings, afterward they would "skinny down" to a smaller group to discuss sensitive matters, including the Midyear investigation. This smaller group included Carlin, Toscas, and Mary McCord, who was at the time the Principal DAAG in NSD. Yates said that she also participated in Lynch's regular meetings with NSD, which would similarly "skinny down" at the end.

The NSD and EDVA prosecutors told the OIG that they were concerned at various points during the Midyear investigation that there was a disparity between the involvement of Department and FBI leadership in discussions about investigative steps. For example, while McCabe (the second in command at the FBI) attended meetings at which the Midyear agents and prosecutors debated whether and how to obtain the Mills and Samuelson laptops, the highest ranking official representing the Department's position at those meetings was Toscas. Asked whether she was informed of these concerns, Yates told the OIG that she was not. She said that she was not aware that McCabe attended meetings with the Midyear prosecutors, nor did she know that Comey was closely involved in the investigation. Yates stated that she spoke to McCabe regularly about various issues, and that she thought he was "relaxed enough" with her to tell her that she needed to be at any meetings. Yates said that any disparity resulted from the unusually high level of involvement by FBI leadership, not a decreased role by Department leadership.

Axelrod similarly told the OIG that at the outset of the Midyear investigation, senior Department officials "made efforts to...set up a structure that would maintain the integrity of this matter." He explained that they were aware that no matter how the investigation turned out, there was likely to be criticism at the end. As a result, he said that they considered it "extra important to make sure things were...done...by the book, following procedures. Making sure that when people criticize[d] whatever the outcome was that we'd be able to say no, this was done straight down the middle on the facts and on the law."

Axelrod said that he met with Toscas at the outset of the investigation and explained that Toscas would be the primary supervisor over the investigation. Axelrod stated:

[W]e were going to have sort of a lighter touch from the leadership offices than we might on a sort of high profile case. In other words, we were there for him for whatever he needed. But we weren't going to be sort of checking in day to day or week to week for updates or briefings. When...something significant happened...that we needed to know about he would let us know....

And I, when I say a lighter touch I don't mean that folks weren't engaged or paying attention. I, not at all. I just mean we wanted to give them the space they needed to do whatever they thought necessary in the investigation. So that at the end...I just wanted to make sure that any allegation that there was some sort of political interference with this investigation wouldn't hold water.

Axelrod told the OIG that the difference between the role of Department leadership in the Midyear investigation and the typical high-profile investigation was "just a matter of degree." He said that he and Yates relied on Toscas to bring issues to their attention at "skinny down" sessions following the biweekly meetings with NSD, but that "it wasn't us saying okay, and what's the latest on the email investigation?"

Carlin

Carlin told the OIG that NSD's standard practice is for cases to be handled by the career staff, supervised by a DAAG. He said that at the beginning of the Midyear investigation, he held a meeting with McCord, Toscas, and the NSD prosecutors in which he emphasized the need to "go more by the book" and to follow the normal procedure. Carlin said that he wanted one person in the NSD Front Office to be in charge of the Midyear investigation, and that he chose Toscas based on his historical expertise with investigations involving "espionage, the straight-up a spy [cases], and the leak mishandling type portfolio."

Carlin said that he preferred having one person who was clearly accountable and in charge. He stated:

I tend to like that as former career person...I knew what it felt like when you're in one of those spots. So, in general, I prefer that type of structure. In this case, I knew, as well, at the end of the day, whatever decision was made in the case, it was going to be a high-profile controversial decision. And so...you might need to explain later what process do we follow at the Department. And so, I wanted to make that clear, internally and to our partners, that this was the process we were following...at the National Security Division.

And just, seeing some other cases in my career that were, they were high profile. They were handled in a way than was different than the norm. More people got involved in trying to make the day-to-day decisions. I didn't think that that redounded to the benefit of the case. Not just for appearance purposes, but...it also just created confusion and frustration among the relevant teams. And kind of, inconsistencies in how they were staffed, sometimes, when someone had a great idea later, and came in over the top, and changed the way they were approaching the case. So, right from the beginning, I wanted to, to set it up, and structure...it that way. I felt pretty strongly about it.

Carlin said that he discussed this with Lynch and Yates and made it clear to them that the team had the authority to make investigative and prosecutorial decisions. Carlin said that he told Lynch and Yates that "like other sensitive matters, we would periodically update them." According to Carlin, Lynch and Yates knew that this was how Carlin was handling the investigation and supported this structure. Carlin said that he also explicitly communicated this to the FBI, explaining it to both Giacalone and McCabe.

IV. Investigative Strategy

The Midyear team sought to determine whether any individuals were criminally liable under the laws prohibiting the mishandling of classified information, which are summarized in Chapter Two. To do so, the team employed an investigative strategy that included three primary lines of inquiry: collection and

examination of the emails that traversed former Secretary Clinton's servers and other relevant evidence, interviews of relevant witnesses, and analysis of whether classified information was compromised by hostile cyber intrusions.⁵⁵

A. Collection and Examination of Emails that Traversed Clinton's Servers and Other Relevant Evidence

The Midyear team sought to collect and review any emails that traversed Clinton's servers during her tenure as Secretary of State, as well as other evidence that would be helpful to understand classified information contained in those emails. This included a review of the 30,490 work-related emails and attachments to those emails that former Secretary Clinton's attorneys had produced to the State Department.

The team also attempted to recover or reconstruct the remaining 31,830 emails that Clinton's attorneys determined were personal and did not produce to the State Department. As described above and in Chapter Five, before the Midyear investigation began, these emails had been deleted and "wiped" from former Secretary Clinton's then current server. The Midyear team also believed that some work-related emails could have been deleted from Clinton's servers before her attorneys reviewed them for production to the State Department.

The Midyear investigators sought to recover and review deleted emails by obtaining and forensically analyzing, among other things, Clinton's servers and related equipment; other devices used by Clinton, such as Blackberries and cellular telephones; laptops and other devices that had been used to backup Clinton's emails from the server; and the laptops used by Clinton's attorneys to cull her personal emails from her work-related emails. The team also obtained email content or other information from the official government or private email accounts of certain individuals who communicated with Clinton by email, originated the classified email chains that were ultimately forwarded to Clinton, or transferred Clinton's emails to other locations.

As described in Chapter Five, the Midyear team did not seek to obtain every device or the contents of every email account that it had reason to believe a classified email traversed. Rather, the team focused the investigation on obtaining Clinton's servers and devices. Witnesses stated that, due to what they perceived to be systemic problems with handling classified information at the State Department, to expand the investigation beyond former Secretary Clinton's server systems and devices would have prolonged the investigation for years. They further stated that the State Department was the more appropriate agency to remediate classified spills by its own employees.

Analysts examined both the original 30,490 emails produced by former Secretary Clinton to the State Department and the emails recovered through other

⁵⁵ This section does not contain an exhaustive list of investigative efforts in the Midyear investigation, but rather is intended to be an overview of the Midyear team's investigative strategy. We discuss the specific investigative steps used during the Midyear investigation in Chapter Five.

means to identify potentially classified information. Once the analysts identified information that they suspected to be classified, the team sought formal classification review from government agencies with equities in the information. The analysts also examined the emails for evidence of criminal intent. For example, they searched for:

- Classification markings to assess whether participants in classified email chains were on notice that the information contained in them was classified;
- Statements by former Secretary Clinton or others indicating whether Clinton used private servers for the purpose of evading laws regarding the proper handling of federal records or classified information;
- Statements by former Secretary Clinton or others indicating whether they knew that emails contained information that was classified—even if they were not clearly marked—when they sent or received them on unauthorized systems;
- Evidence as to whether former Secretary Clinton or others forwarded classified information to persons without proper clearances or without the need to know about it; and
- Documentation showing whether originators of classified emails had received classified information in properly marked documents before transferring the information to unclassified systems without markings.

B. Witness Interviews

The Midyear team told us that witness interviews covered several areas of investigative interest. First, the team interviewed individuals involved with setting up and administering former Secretary Clinton's servers to understand her intent in using private servers and to assess what measures they used to protect the servers from intrusion. These witnesses also helped FBI analysts understand the server structures to inform subsequent analyses. Additionally, they helped FBI investigators identify additional sources of evidence, such as devices containing backups of Clinton's emails.

Second, the Midyear team interviewed individuals who introduced, transmitted, or received information on unauthorized systems, including the originators of classified information, Clinton's aides who forwarded the originators' emails to her, and Clinton herself. The originators included State Department employees and employees of other government agencies. The team interviewed these witnesses to, among other things, assess: (1) whether they believed the information contained in the emails was classified; (2) how or from where they originally received the classified information (and whether based on those circumstances they should have known that the information contained in the emails was classified); and (3) why they sent the information on unclassified systems.

Third, the Midyear team interviewed individuals with knowledge of how and why 31,830 of former Secretary Clinton's emails were deleted from her servers and

other locations. The team sought to assess whether Clinton or her attorneys deleted or directed the deletion of emails for an improper purpose, such as to avoid FOIA or Federal Records Act (FRA) requirements.

Fourth, the Midyear team interviewed State Department employees with knowledge of the State Department's policies and practices regarding federal records retention. The team sought to determine whether Clinton's use of a private server was sanctioned by the State Department, as well as what measures the State Department put in place to protect Clinton's private server from intrusion.

C. Intrusion Analysis

The FBI also conducted intrusion analyses to determine whether any classified information had been compromised by domestic hostile actors or foreign adversaries. Agents and analysts specializing in forensics examined the servers, devices, and other evidence to assess whether unauthorized actors had attempted to log into, scan, or otherwise gain access to the email accounts on the servers and, if so, whether their efforts had been successful. They also examined various FBI datasets to assess whether emails containing classified information had been compromised.

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CHAPTER FOUR: DECISION TO PUBLICLY ACKNOWLEDGE THE MIDYEAR INVESTIGATION AND REACTION TO WHITE HOUSE STATEMENTS ABOUT THE INVESTIGATION

In this chapter, we address the decision of the FBI and the Department to publicly acknowledge an investigation following the public referral from IC IG, including the allegation that former Lynch instructed former Director Comey to refer to the Midyear investigation as a "matter." We also discuss public statements by former President Barack Obama about the Midyear investigation, which raised concerns about White House influence on the investigation.

As we describe in Chapter Six, Comey cited the events set forth in this chapter as two of the factors that influenced his decision to deliver a public statement announcing the closing of the Midyear investigation on July 5, 2016, without coordinating with the Department.

I. Public Acknowledgement of the Investigation

A. Statements about the Investigation in Department and FBI Letters to Congress in August and September 2015

Following the public referral to the FBI from the IC IG in July 2015, the Department and the FBI received questions from the media and Congress asking whether they had opened a criminal investigation of former Secretary Clinton. According to emails exchanged in late August 2015, there was a significant disagreement between ODAG and FBI officials regarding whether to acknowledge that a criminal investigation had been opened. FBI officials, according to the emails, wanted to acknowledge "open[ing] an investigation into the matter," while ODAG officials approved language "neither confirm[ing] nor deny[ing] the existence of any ongoing investigation," based on longstanding Department policy. FBI and Department letters sent to Congress on August 27 and September 22, 2015, and a letter sent by the FBI General Counsel to the State Department on September 22, 2015, used the "neither confirm nor deny" language.

Contemporaneous emails show that former Director Comey disagreed with this approach. In an August 27, 2015 email to Deputy Director (DD) Giuliano, Chief of Staff James Rybicki, and FBI Office of Public Affairs (OPA) Assistant Director (AD) Mike Kortan, he stated, "I'm thinking it a bit silly to say we 'can't confirm or deny an investigation' when there are public statements by former [S]ecretary Clinton and others about the production of materials to us. I would rather be in a place where we say we 'don't comment on our investigations.'" Rybicki told the OIG that Comey thought that the Department and FBI needed to say more about the investigation because the IC IG referral was made publicly, and refusing to acknowledge an investigation would "stretch...any credibility the Department has."

B. September 28, 2015 Meeting between Attorney General Lynch and Director Comey

In late September and early October 2015, Comey and Lynch each had upcoming media and congressional appearances. Anticipating that they would be asked whether the Department and FBI had opened an investigation into former Secretary Clinton, Comey asked to meet with Lynch to coordinate what they would say. Comey told the OIG that it was the first time the two of them would be asked questions about the investigation publicly, and he wanted to discuss how they should talk about it given that there had been news coverage of the referral and “a lot of public discussion about that the FBI is already looking [into] this.”

The meeting was held on September 28, 2015, and lasted approximately 15 minutes. Participants in the meeting included Lynch, Axelrod, and Toscas from the Department, and Comey, Rybicki, and then DD Giuliano from the FBI.

1. Comey’s Account of the Meeting

Comey told the OIG that during this meeting AG Lynch agreed they needed to confirm the existence of the investigation, but she said not to use the word “investigation,” and instead to call it a “matter.” Comey said that Lynch seemed slightly irritated at him when she said this, and that he took it as a direction. Comey stated:

And I remember saying, “Well, what should I call it?” And she said, “Call it a matter.” And I said, “Why would I do that?” And she said, “I just want you to do that and so I would very much appreciate it if you would not refer to it as an investigation.” And the reason that gave me pause is, it was during a period of time which lasted, where I knew from the open source that the Clinton campaign was keen not to use the word investigation.... [A]nd so that one concerned me and I remember getting a lump in my stomach and deciding at that moment should I fight on this or not.

Comey told the OIG that he decided not to fight this instruction from the AG, but that it “made [his] spider sense tingle” and caused him to “worry...that she’s carrying water for the [Clinton] campaign[.]” As described in Chapter Six, Comey told the OIG and testified before Congress that this instruction from Lynch was one of the factors that influenced his unilateral decision to make a public statement on July 5, 2016, without coordinating with the Department.⁵⁶ However, Comey also said to us that he had no other reason to question Lynch’s motives at that time, stating, “[I]n fact my experience with her has always been very good and independent, and she always struck me as an independent-minded person[.]”

⁵⁶ See U.S. Senate, Select Committee on Intelligence, *Open Hearing with Former FBI Director James Comey*, 115th Cong., 1st sess., June 8, 2017, <https://www.intelligence.senate.gov/hearings/open-hearing-former-fbi-director-james-comey#> (accessed May 8, 2018).

Comey stated that one of the reasons he remembered this meeting so well was that Toscas made a comment after the meeting about the "Federal Bureau of Matters," indicating to Comey that Toscas "had the same reaction I did to it." He said that Toscas did not say explicitly that he shared Comey's concerns about the meeting, but was "signaling" agreement to him through "body language and humor."

Rybicki and Giuliano did not specifically recall the discussion that took place at the meeting, other than that AG Lynch told Comey to refer to the investigation as a "matter." Giuliano stated, "I don't remember that specific [meeting]. I do remember the topic. And I do remember thinking that (A) it's ridiculous, and (B) quite honestly, I didn't care what they called it.... It wasn't going to change what we did." He recalled discussions with the Midyear team after the meeting with Lynch, telling the OIG that "a lot of people got wrapped around the axle" about the issue and "thought that that was kind of getting into the politics of the investigation." He also stated that Comey was "definitely troubled by it."

However, Rybicki said that he did not recall Comey being troubled by the meeting or expressing concern that the instruction from Lynch was an effort to coordinate with the Clinton campaign. Rybicki also said that he personally did not come away from the meeting with the view that Lynch was biased. Rybicki did recall Toscas joking about the "Federal Bureau of Matters."

2. Lynch's Recollection of the Meeting

Lynch told the OIG that Comey expressed concern during the meeting about how to comply with the Department's longstanding policy of neither confirming nor denying ongoing criminal investigations in the face of direct questions about the number of agents assigned to the case and the resources dedicated to it, because answering those questions implicitly would acknowledge that there was an open investigation. Lynch said that providing testimony about the allocation of resources or the way that the Department works a case is a normal practice, but that in her view, they were not ready to publicly confirm an investigation.

Lynch stated that her discussion with Comey was framed in terms of how they could testify about the resources dedicated to the investigation without breaking Department policy. Lynch said that Comey was seeking guidance on how to handle those issues, particularly given that the referral was public, and that detailed information about the investigation had been discussed in the press.

Lynch said that she was aware of numerous letters from Members of Congress requesting information about the investigation, and that her meeting with Comey took place around the same time as a telephone call she had with Senator Charles Grassley, who wanted to discuss the Department's handling of Bryan Pagliano, a State Department employee who set up one of Clinton's servers, in

order to inform Congress's decision as to whether to grant him immunity to compel his testimony before Congress.⁵⁷ Lynch told the OIG:

Senator Grassley was asking me literally will I confirm that there is a criminal investigation of Secretary Clinton, who are the other targets, who are the subjects, has a grand jury been impaneled, has this young man [Pagliano] been given immunity, would I give him a copy of the immunity order, and all the things that, that Oversight typically asks for.

So I knew, and I certainly had the view, that we had to be clear and open with Oversight. You know, whether it's me or the Director. But consistent with our law enforcement obligations, there are some doors that we do not open. And I did not think that we were ready to open that door on the Hill at that time.

Lynch said that her concerns about opening the door to detailed questions about the investigation informed her view that the Department should not confirm that there was an investigation. She said that she recalled stating at the meeting with Comey, "[T]hey don't need us to tell them that there is an investigation. They need us to confirm that there is an investigation. And there is a difference." She explained:

And once we confirm it publicly, either by saying yes there is an investigation, or by talking about it in a way that confirms it, the next series of questions is going to be is it criminal. And it's all going to be about is the Secretary a subject or a target. And there were others involved as well. There are other people beyond her who may or may not be named, but, you know, you start having these discussions. When will it be over? What are you finding? All those things that in fact Grassley did ask.

The OIG asked Lynch if she instructed or told Comey, "I want you to call it a matter." Lynch said that she did not and would not have, because that was not how she spoke to people. She told the OIG that she remembered saying the following at the meeting:

Well I, I do remember saying, you know, we typically say we have enough resources to handle the matter.... I don't know if I used other words like the case, you know, the inquiry, or something like that. But I do remember saying that, and I think I may have been saying that because, again, I was always careful not to talk about an investigation.

⁵⁷ Based on notes and Department emails, the OIG determined that Lynch's call with Senator Grassley was scheduled for later that same day, September 28, 2015. According to talking points prepared for this call, Lynch intended to tell Senator Grassley that the Department could neither confirm nor deny the existence of any ongoing investigation or persons or entities under investigation, consistent with longstanding Department policy. The talking points stated, "This policy, which has been applied across Administrations, is designed to protect the integrity of our investigations and to avoid any appearance of political influence."

I was getting questioned about the referral...and is it going to lead to an investigation and, you know, we have it, we acknowledge it, we're going to handle it. And that's all I can say kind of thing.

And so I know that in addition to saying...yes, everyone knows there's an investigation. They don't need us to tell them that. They need us to confirm it, and we don't do that. And here's why we don't do that. I remember making those statements. And I remember saying but of course you've got to...respond. And one way to respond is just to say...you've got what you need to handle the matter.

Lynch said that she thought that there had been agreement at the meeting about what to say. Her takeaway was that they were going to take steps not to confirm that there was an official investigation open and would be careful not to do so in how they discussed it. Lynch stated, "[I]t wasn't a long meeting. It was that, it wasn't contentious. Nobody seemed upset. So it was more of a discussion." She said that she did not recall Comey or anyone else expressing disagreement, or Comey asking, "Why on earth would I do that?"

Lynch said that the decision to avoid confirming an investigation was not made with any political motive in mind, and that she did not coordinate messaging with the Clinton campaign. Lynch told the OIG that she was surprised to learn from Comey's later congressional testimony that he interpreted the discussion at this meeting as evidence of potential political bias. She stated:

I was surprised. I was disappointed, somewhat angry. And mostly surprised that he had never raised it either at the time or later, that if it was a concern—I was surprised that if he thought that it was a problem, he was okay also handling things in that way. I just had never viewed him as someone who was reluctant to raise issues or concerns, given that I had known him for, for some time [.]

Lynch recalled Toscas making a joke about the "Federal Bureau of Matters" to one of the agents who was sitting beside him, and people laughing. She said that she took this as a joke, as good-natured "ribbing" or "teasing," and that the laughter told her that others in attendance also took it as a joke.

Axelrod told us that the discussion about whether to acknowledge an "investigation" was just one small part of that meeting. He said that Lynch suggested using the term "matter" as a way of "thread[ing] the needle" to avoid violating Department policy while also not appearing evasive. According to Axelrod, no one from the FBI raised objections during the meeting, and the tone of the discussion was collegial. He said that he thought that Comey and Lynch had reached a "mutual agreement that using the term 'matter' was the best way to thread the needle." Axelrod told the OIG that he was surprised to hear Comey's later congressional testimony that he (Comey) felt uncomfortable with the discussion, which Axelrod said was not consistent with his recollection of Comey's reaction in the room, and did not "square with...[his] recollection of the facts."

3. Toscas's Notes and Recollection of the Meeting

Toscas took detailed notes at the September 28 meeting, which he provided to the OIG. Toscas said that his notes were unusually lengthy for such a brief meeting because AAG Carlin was out of town and he was asked to attend in Carlin's place, and he wanted to be able to tell Carlin what happened.

Referencing his notes, Toscas testified to the OIG at length about what took place during the meeting. According to Toscas, Comey told Lynch that he planned to acknowledge at a House Permanent Select Committee on Intelligence (HPSCI) roundtable that the FBI had received the referral from the IC IG and that it was being properly staffed and receiving all necessary resources. Comey stated that he planned to say that the FBI does not comment on its investigations per longstanding policy, but that all of its investigations are done professionally and timely. Toscas said that Comey assured Lynch that he would not say that they had opened an investigation, but that this would be implicit in what he said, and there would be news reports afterwards saying that there was an investigation.

According to Toscas, Lynch replied that she preferred "to discuss it in terms of a matter.... [T]his is the way I do it and then it avoids this issue because we should neither confirm nor deny." Toscas said that he interpreted Lynch's statement as expressing her preference rather than telling Comey what he should do. Toscas stated he did not recall Lynch instructing Comey to call it a matter, and he thought he would have remembered that if it had occurred. He also said that he did not interpret Lynch's comment as her "trying to shade [the investigation] into something it wasn't for some particular reason." However, he acknowledged that he was not the FBI Director, and that Comey may have had a different perspective.

Toscas said that after Lynch's comment, Axelrod stated that they needed to coordinate what to say with a letter sent by the FBI General Counsel to the State Department the previous week and attached to a public filing in FOIA litigation, in which the FBI took "great pains to not call this an investigation, so as not to confirm the existence of an investigation." According to Toscas, the Department and the FBI had used the same language in other letters to Congress, and Lynch had a call scheduled later that day with Senator Charles Grassley in which she planned to tell him that it would be premature to acknowledge or share information about any investigation.

Toscas said that Axelrod's statement led to a back and forth between Comey and Axelrod, during which Comey proposed modifying the letters to Congress to acknowledge that the FBI had opened an investigation. Toscas said that he was not sure if Comey was "toying with [Axelrod] at that point because I don't think we would ever reissue letters that...clearly state normal positions." Toscas said that Comey then asked Axelrod directly, "Why not use the word, you know we're trying to treat it like any other case and would we do that ordinarily?" In response, Axelrod again mentioned the need to be consistent with the letters that were sent the previous week.

Toscas told the OIG that he mentioned at the meeting that the Department opens only a small fraction of the referrals it receives from the intelligence community as criminal investigations, and that the Department may not want to publicly acknowledge an investigation into former Secretary Clinton because it could serve as precedent for other referrals. Toscas said he also made clear to the group that Midyear was a criminal investigation, and that the prosecutors had referred to it as an investigation in letters to counsel and in search warrant applications.

Toscas said that Comey concluded the meeting by agreeing to call it a matter, stating, "OK, I think that will work." This statement also appeared in Toscas's contemporaneous notes. Toscas told the OIG that there was no indication at the time that Comey was concerned about the meeting or that the meeting had led him to question Lynch's impartiality.

Asked whether he made a comment to Comey about the "Federal Bureau of Matters," Toscas said that he did not specifically recall doing so but may have. He said that, if he did, he intended it as a joke rather than as a criticism of Lynch. He told the OIG:

I don't know if I ribbed [Comey] walking out. You know he's a friend of mine.... In any event, maybe I said that, maybe I didn't. It wouldn't faze me if I did, because it was in line with what I was saying to them [about "investigation" being part of the FBI's name]. But it makes it appear as though I was sort of knocking the AG [Lynch] in the way they reported it, which is obviously why some goofball felt that they should talk about that to the newspapers....⁵⁸

C. October 1, 2015 Comey Meeting with Media

In a "pen and pad" with reporters on October 1, 2015, Comey used the term "matter" in response to questions about whether the FBI had opened an investigation. According to a transcript of the appearance, Comey told reporters that he recently had a closed session with HPSCI and would say publicly what he told the committee: that the FBI had received a referral involving former Secretary Clinton's use of a private email account and the possible exposure of classified information through that account, but that he was limited in what he could say because the FBI does not talk about its ongoing work. Comey stated, "I am following this very closely and I get briefed on it regularly.... I am confident that we have the resources and the personnel assigned to the matter, as we do all our work, so we're able to do it as we do all our work in a professional, prompt and independent way." Asked about the timeline for completing any investigation, Comey stated, "Again, I'm not going to talk about this particular matter.... Part of doing our work well is we don't talk about it while we do it."

⁵⁸ See Matt Apuzzo et al., *In Trying to Avoid Politics, Comey Shaped an Election*, N.Y. TIMES, Apr. 23, 2017, at A1 (referencing two sources who reportedly heard Toscas state, "I guess you're the Federal Bureau of Matters now.").

Following Comey's appearance, various news articles reported that Comey had acknowledged the existence of an investigation into former Secretary Clinton's use of a private email server.⁵⁹ Comey received an email containing news clips summarizing several of these articles and forwarded it to Rybicki, stating, "Will leave it to you to tell DOJ that I never used the word investigation." Rybicki replied, "Already covered. I read back your statement to them and told them this is exactly the type of confusion we were concerned about as we were crafting."

II. Reaction to White House Statements about the Midyear Investigation

On Sunday, October 11, 2015, an interview of then President Barack Obama was aired on the CBS show 60 Minutes. During this interview, Obama characterized former Secretary Clinton's use of a private email server as a "mistake," but stated that it did not "pose[] a national security problem" and was "not a situation in which America's national security was endangered." Obama also stated that the issue had been "ginned up" because of the presidential race. Two days later, on October 13, 2015, Obama's Press Secretary, Josh Earnest, was asked whether Obama's comments "should be read as an attempt to steer the direction of the FBI investigation." Earnest replied that Obama made his comments based on public information, and they were not intended to influence an independent investigation.

Former President Obama's comments caused concern among FBI officials about the potential impact on the investigation. Former EAD John Giacalone told the OIG, "[W]e open up criminal investigations. And you have the President of the United States saying this is just a mistake.... That's a problem, right?" Former AD Randy Coleman expressed the same concern, stating, "[The FBI had] a group of guys in here, professionals, that are conducting an investigation. And the...President of the United States just came out and said there's no there there." Coleman said that he would have expected someone in FBI or Department leadership to contact one of Obama's national security officials, and "tell [him or her], hey knock it off." Michael Steinbach, the former EAD for the National Security Branch, told the OIG that the comments generated "controversy" within the FBI. Steinbach stated, "[Y]ou're prejudging the results of an investigation before they really even have been started.... That's...hugely problematic for us."

Department prosecutors also were concerned. Responding to an email from Laufman about Obama's 60 Minutes interview, Toscas stated, "Saw this. And as [one of the prosecutors] and I discussed last week, of course it had no—and will never have any—effect whatsoever on our work and our independent judgment." Prosecutor 4 told the OIG that Obama's statement was the genesis of the FBI's suspicions that the Department's leadership was politically biased. This prosecutor stated, "I know that the FBI considered those [statements] inappropriate. And that it...[generated] a suspicion that there was a political bias...going on from the Executive Branch."

⁵⁹ See, e.g., Pete Williams, *FBI Director Acknowledges Agency Looking Into Clinton Emails*, NBC News, Oct. 1, 2015, <http://nbcnews.to/1LmHuMM> (accessed Jan. 18, 2018).

Asked about former President Obama's statements, Lynch stated, "I never spoke to the President directly about it, because I never spoke to him about any case or investigation. He didn't speak to me about it either." She told the OIG that she did not think the President should have made the comment on 60 Minutes. She stated, "I don't know where it came from. And I don't know, I don't know why he would have thought that either, to be honest with you. Because, to me, anyone looking at this case would have seen a national security component to it. So I don't, I truly do not know where he got that from."

Former President Obama's Press Secretary, Josh Earnest, made additional comments about the Midyear investigation during a press conference in early 2016. On January 29, 2016, in response to a question about whether the White House thought that former Secretary Clinton would be indicted, Earnest stated:

That will be a decision that is made by the Department of Justice and prosecutors over there. What I know that some officials over there have said is that she is not a target of the investigation. So that does not seem to be the direction that it's trending, but I'm certainly not going to weigh in on a decision or in that process in any way. That is a decision to be made solely by independent prosecutors. But, again, based on what we know from the Department of Justice, it does not seem to be headed in that direction.

After this press conference, Melanie Newman, the Director of the Department's Office of Public Affairs (OPA), received a transcript of Earnest's statements about the investigation and forwarded it to Axelrod and three other Department officials. Newman stated in the email to these officials, "I've spoken to the [White House] and asked that they clarify this, to make clear they have no insight into this investigation. And if they don't correct it, I will. I'm waiting to hear back." This email also was forwarded to Lynch.

Asked about this email, Newman said that she spoke to Earnest that day. Newman said that Earnest told her that he had based his comments on what he had read in news stories, not conversations with anyone in the Department. She said that no one in the White House ever reached out to her about the Midyear investigation, nor was she aware of White House staff reaching out to anyone else in the Department, noting, "They were very, very, very careful about engaging with us on that topic." Axelrod similarly told the OIG that Earnest's comments implied that the White House had received a briefing on the Midyear investigation, which he said "never happened."

Lynch's Chief of Staff stated that Department officials were "very upset" about Earnest's statement, because "as far as we knew, no one at Department of Justice had spoken to anyone in the White House about it." The Chief of Staff told the OIG that they were particularly concerned by Earnest's statement that former Secretary Clinton was not a target. The Chief of Staff said that she spoke to officials in the White House Counsel's Office to tell them that the Department did not know where Earnest was getting his information, and to ask them to talk to Earnest. The Chief of Staff did not specifically recall Lynch's reaction to this

statement, but said that she was “[p]robably very upset.... [A]nytime there was ever any suggestion that the White House, or that DOJ had improperly done something in an investigation, or discussed something of...a political nature, she would not be happy about it.”

Prosecutors again were concerned by these comments. On January 29, 2016, Toscas sent the following email to Laufman, seeking to assure the team that the investigation would not be influenced by White House statements:

As discussed, I spoke with ODAG and they are not aware of anybody from DOJ sharing any such information or assessment with the White House, as the below statements appear to suggest. I want to reiterate what I’ve told you and the team throughout our work on this investigation—the explicit direction we received from the AG and DAG on multiple occasions is that they have total confidence in the team of prosecutors who are working on this case and they have instructed us to proceed with this matter as we would any other, without interference of any kind, and with the independence we have in all of our cases. They have never wavered from that and have never said or done anything to send or suggest a contrary message. With respect to the below statements that erroneously imply that the Department has shared information about, or an assessment of, this matter with the White House, we should not and will not allow such irresponsible statements to have any effect at all on our work. We will continue to thoroughly and professionally investigate this matter as we would any other—and, as always—and as you, John [Carlin], and I have said repeatedly—we will follow the facts wherever they lead. Thanks.

Toscas emailed Laufman a second time, stating, “Please feel free to share this with the whole team (if you haven’t already).” During his interview with the OIG, Toscas described Earnest’s statements as “goofy” and “ridiculous,” expressing frustration that he had to address comments by the White House when preparing Lynch to testify before Congress because of the perception of political bias that they created.

Asked about Earnest’s statements, prosecutors told the OIG that the only interactions they had with the White House concerning the investigation were with the White House Counsel’s Office to obtain a classification review of documents in a Special Access Program (SAP) controlled by the White House and to interview a National Security Council staffer. Prosecutor 1 told the OIG that he was not aware of contacts between Department leadership and the White House Counsel’s Office or White House staff. Notes taken by Laufman indicate that on January 30, 2016, one of the prosecutors reached out to their point of contact in the White House Counsel’s Office and asked about Earnest’s comments. According to these notes, this prosecutor was told that the content of the discussions between the White House Counsel’s Office and the Midyear team about the classification review and the interview of the staffer was limited to a small group of people in the White House Counsel’s Office, and that nothing that the prosecutors had discussed with the White House Counsel’s Office would be known to Earnest.

Lynch testified before the Senate Judiciary Committee on March 9, 2016. Asked about the investigation, Lynch stated that she had never discussed the investigation with former President Obama or anyone in the White House. Lynch stated, “[I]t’s my hope that when it comes to ongoing investigations that we all would stay silent. And I can assure you that neither I nor anyone from the Department has briefed to Mr. Earnest or anyone at the White House about this matter or other law enforcement matters.... I’m simply not aware of the source of his information.”⁶⁰

Lynch told the OIG that she recalled that Newman spoke with the White House Communications Office after Earnest’s comments and was clear that they were inappropriate and needed to be corrected. Asked whether she perceived these comments as an effort to direct where the investigation was going or felt influenced by them, she said that she did not. Lynch said that she also had a discussion with the White House Counsel after she testified, and that during this discussion he acknowledged that the comments should not have happened.

However, former President Obama again made public comments about the Midyear investigation in an interview with FOX News Sunday on April 10, 2016. Obama stated that while former Secretary Clinton had been “careless” in managing her emails while she was Secretary of State, she would never intentionally do anything to endanger the security of the United States with her emails. He also stated that he would not interfere in the FBI’s investigation into her private email server. Obama stated, “I guarantee that there is no political influence in any investigation conducted by the Justice Department, or the F.B.I.—not just in this case, but in any case.”⁶¹

⁶⁰ U.S. Senate, Committee on the Judiciary, *Oversight of the U.S. Department of Justice*, 114th Cong., 2d sess., March 9, 2016, <https://www.judiciary.senate.gov/meetings/oversight-of-the-us-department-of-justice>.

⁶¹ See Transcript, *President Barack Obama on FOX News Sunday*, Apr. 10, 2016, at <http://www.foxnews.com/transcript/2016/04/10/exclusive-president-barack-obama-on-fox-news-sunday.html> (accessed Mar. 22, 2018).

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CHAPTER FIVE: INVESTIGATIVE METHODS USED IN THE INVESTIGATION

The Midyear team used several types of investigative methods and made various strategic decisions during the course of its investigation. Some of these decisions have been the subject of criticism and allegations that they were based on improper considerations.

In this chapter, we describe the following investigative methods and decisions made by the Midyear team: efforts to identify relevant sources of physical evidence; efforts to understand and access Clinton's servers; use of criminal process, including subpoenas, 2703(d) orders, and search warrants to obtain physical evidence; use of consent to obtain physical evidence; efforts to obtain evidence related to Clinton's senior aides; use of voluntary interviews; decisions to grant certain witnesses use immunity; strategies employed to secure voluntary interviews and voluntary production of evidence from Cheryl Mills and Heather Samuelson; and investigative decisions surrounding the voluntary interview of Hillary Clinton. We describe the reasons given for these decisions, disagreements among members of the Midyear team about them, especially between the FBI and the prosecutors, and the impact of these decisions on the investigation's access to relevant information and the completeness of the investigation. We also describe an internal file review of the Midyear investigation conducted by the FBI's Inspection Division (INSD) in September and October 2017 following our discovery of concerning text messages between Strzok and Page.

In addition, we discuss instant messages in which Agent 1 expressed concerns about the quality of the Midyear investigation. We considered these messages as part of our analysis of whether the Midyear team conducted a thorough and impartial investigation.

In the analysis section of this chapter, we assess whether the evidence supports a conclusion that any of the investigative decisions we reviewed were based on improper considerations, consistent with the analytical construct described in Chapter One.

I. FBI's Efforts to Identify and Review Relevant Sources of Evidence

The Midyear team began its investigation by reviewing the 30,490 emails that Clinton had produced to the State Department. They reviewed them to identify emails that appeared to contain classified information and evidence of intent to mishandle classified information.⁶² Witnesses told us that to search for evidence of intent, the analysts looked for, among other things, classification markings on the documents, statements indicating that email participants knew

⁶² The Midyear Supervisory Special Agent told us that the State Department provided these emails to the FBI in paper form. According to the LHM, on August 6, 2015, Clinton's attorneys voluntarily provided the FBI thumb drives containing the same emails.

information was classified, and statements indicating that Clinton decided to use a private server for an improper purpose, such as to avoid FOIA or other laws. One analyst told us that there were at least six analysts consistently involved with reviewing these emails, and, at times, there were as many as fifteen or sixteen analysts doing so. Once the team identified emails that appeared to contain classified information, they sent them to other agencies within the U.S. Intelligence Community ("USIC agencies") with equities in them for formal classification review.

FBI agents and Department prosecutors told us that, thereafter, a large focus of the investigation was locating the remaining 31,830 emails that made up the entire 62,320 emails that Clinton's attorneys had reportedly reviewed before producing her work-related emails to the State Department. Clinton's attorneys did not produce those 31,830 emails to the State Department because, they stated, they were personal in nature; instead, the attorneys instructed Paul Combetta of Platte River Networks ("PRN")—the company that managed Clinton's server—to remove the emails from their own laptops and modify the server's email retention period so that emails older than 60 days would not be retained. In March 2015, Combetta removed the emails from Clinton's server using BleachBit after realizing he had failed to implement the new email retention period several months earlier. The FBI team wanted to review these emails, if possible, to determine whether any were work-related or contained classified information, and to search for evidence of Clinton's intent in using a private server.

FBI agents and analysts, including the Supervisory Special Agent (SSA) assigned to the Midyear investigation, told us that to find the missing 31,830 emails, the team attempted to identify and obtain access to any server or device—"whether it was a BlackBerry, iPad, PC [or] phone"—Clinton used during her tenure, as well as devices used to back up her emails. The FBI also sought email content or header information from the official U.S. government and private email accounts of certain individuals who were known to communicate directly with Clinton by email or who were involved in email chains that ultimately resulted in classified information being forwarded to Clinton. However, as discussed in Section V.C of this chapter, the FBI did not seek to obtain the personal devices of State Department employees, besides Clinton, who sometimes used private email for State Department work and who used those devices to communicate with Clinton while she was Secretary of State.

Based on our review, the FBI sent preservation requests to the State Department for nearly one-thousand official State Department email accounts. One analyst told us that the State Department was unable to supply many of the email records the FBI requested due to, among other things, limitations in the State Department's recordkeeping systems. However, the FBI obtained records from the official State Department email accounts of certain employees, including the three senior aides with whom Clinton had the most email contact. The FBI also made requests of other government agencies, including the CIA, the Defense Intelligence Agency (DIA), the Department of Defense (DOD), and the Executive Office of the President (EOP), to search their official email systems for emails to or from email accounts on the clintonemail.com domain. In addition, as discussed in Sections III

and V below, the Midyear team used compulsory process to obtain email records from certain private email accounts.

The FBI also requested the State-Department-issued computers and handheld devices used by certain employees during their State Department tenure. However, with the exception of a desktop computer used by Bryan Pagliano (a State Department employee who set up Clinton's second server), the State Department told the FBI that it either did not preserve or could not locate those devices.

FBI witnesses told us that both FBI agents and analysts were involved in determining what devices and other evidence to obtain. Based on our review of the evidence, the FBI obtained more than 30 devices; received consent to search Clinton-related communications on most of these devices; and identified numerous work-related emails that were not part of the 30,490 emails produced by Clinton's attorneys to the State Department, many of which they sent to other agencies for classification review. The thirty devices included two of Clinton's servers, each of which consisted of multiple devices; storage devices used alongside Clinton's servers; numerous devices that were used to back up Clinton's emails during her tenure; some of Clinton's handheld devices; Pagliano's State Department desktop computer; several flash drives and laptop computers that contained copies of the 30,490 emails that Clinton's attorneys produced to the State Department; and the two laptops used by Clinton's attorneys to cull her emails for production to the State Department. Once the FBI received consent to review a device, staff from the FBI's Operational Technology Division (OTD) generally imaged the device and prepared the image for a filter team to remove material that was privileged or otherwise not subject to search pursuant to the terms of a consent agreement. OTD then uploaded the emails and other data from the device for FBI analysts to review. OTD also attempted to de-duplicate emails. The analysts reviewed the emails recovered from each device for the same purposes as they reviewed the initial 30,490—to identify both suspected classified information and evidence of intent to mishandle classified information.

The Midyear team also sought and obtained a wide range of other information relevant to the investigation, such as Clinton's cable, telephone, and Internet subscriber and service information; financial information for certain witnesses; business records pertaining to the services provided by the companies that supported Clinton's servers; records related to security services protecting Clinton's servers; and information from mail carriers related to the delivery of a laptop that at one time stored Clinton's archived emails. Prosecutor 1 told us that the team sought records from at least three different companies in an effort to find the BlackBerry emails from the beginning of Clinton's tenure as Secretary of State.⁶³ Analysts told us that they reviewed these materials to search for, among

⁶³ Based on the LHM, the 30,490 emails provided by Clinton's attorneys to the State Department contained no emails sent or received by Clinton during the first two months of her tenure, January 21, 2009, through March 18, 2009, and the FBI investigative team was unable to locate the BlackBerry device she used during that time. Witnesses, including former Director Comey, told us

other things, evidence of mishandling classified information and additional leads for information. For example, one analyst stated that through records obtained from various phone companies, he was able to identify the 13 devices that were associated with two telephone numbers that Clinton used.

According to the LHM, the FBI found and reviewed "approximately 17,448 unique work-related and personal emails from Clinton's tenure" containing her email address that were not part of the original 30,490 that Clinton's lawyers had produced to the State Department. Comey stated in his July 5, 2016, press conference that the FBI found "several thousand" work-related emails that were not part of the 30,490 emails. However, one analyst told us, and documentation we reviewed showed, that the FBI did not conduct its review in such a way that it could calculate the precise amount of work-related emails discovered by the FBI that had not been produced to the State Department. Instead, as described below, they focused on identifying the number of classified emails that both were and were not included in the 30,490.

None of the emails, including those that were found to contain classified information, included a header or footer with classification markings. As we discuss further in Chapter Seven, this absence of clear classification markings played a significant role in the decision by the Midyear prosecutors to recommend to Attorney General Lynch in July 2016 that the investigation should be closed without prosecution. According to the LHM, the FBI, with the assistance of other USIC agencies, identified "81 email chains containing approximately 193 individual emails that were classified from the CONFIDENTIAL to TOP SECRET levels at the time the emails were drafted on UNCLASSIFIED systems and sent to or from Clinton's personal server." In other words, the USIC agencies determined that these 81 email chains, although not marked classified, contained information classified at the time the emails were sent and should have been so marked. Twelve of the 81 classified email chains were not among the 30,490 that Clinton's lawyers had produced to the State Department, and these were all classified at the Secret or Confidential levels. Seven of the 81 email chains contained information associated with a Special Access Program ("SAP"), which witnesses told us is considered particularly sensitive. The emails containing Top Secret and SAP information were included in the 30,490 provided to the State Department.

In June 2016, near the end of the investigation, investigators found three email chains, consisting of eight individual emails, that "contained at least one paragraph marked '(C),' a marking ostensibly indicating the presence of information classified at the CONFIDENTIAL level." According to a June 13, 2016 text message exchange between Strzok and Page, the emails containing the "(C)" portion markings were part of the 30,490 that Clinton's attorneys had provided to the State Department in 2014 but the FBI did not notice them until June 2016 after the IC IG discovered them. By that point in time, as discussed in Chapter Six below, Comey had been drafting his statement announcing the closing of the investigation. Strzok

that they believed these missing emails could contain important evidence regarding Clinton's intent in setting up a private email server.

wrote to Page that "DoJ was Very Concerned about this.... Because they're worried, holy cow, if the fbi missed this, what else was missed?" Strzok further wrote, "No one noticed. And while minor, it cuts against 'I never send or received anything marked classified.'"⁶⁴ According to the prosecutors, Mills, Abedin, and Jake Sullivan were each parties to at least one email in the chains with the (C) markings. However, none of them were ever asked about the emails, because the FBI had not discovered the markings before their interviews and did not seek to reinterview them.⁶⁵

Witnesses told us that although the FBI found work-related emails, including classified emails, that were not part of the 30,490 produced to the State Department by Clinton's lawyers, they were not able to determine whether these emails were part of the original 62,320 reviewed by Clinton's attorneys. This is because some of the emails they found through other sources could have been deleted from Clinton's account or "overwritten in the ordinary course" before Clinton's attorneys reviewed her emails for production to the State Department. Thus, they also were unable to determine how many of the 31,830 deleted emails were never recovered.

The FBI also conducted "intrusion analyses" on each of the devices and other evidence to determine whether any classified information had been compromised. An FBI agent assigned to the Midyear team to conduct intrusion and other forensic analysis ("Forensics Agent") described the team's efforts in this regard as exhaustive. He stated that these efforts included (1) examining the servers and others devices to identify suspicious logins or other activity, and (2) searching numerous datasets to determine whether foreign adversaries or known hostile domestic actors had accessed emails that the Midyear team had confirmed to contain classified information.

Comey stated the following in his July 5, 2016, press conference regarding possible cyber intrusion of Clinton's email servers:

With respect to potential computer intrusion by hostile actors, we did not find direct evidence that Secretary Clinton's personal email domain, in its various configurations since 2009, was successfully hacked. But, given the nature of the system and of the actors potentially involved, we assess that we would be unlikely to see such direct evidence. We do assess that hostile actors gained access to the private commercial email accounts of people with whom Secretary Clinton was in regular contact from her personal account. We also assess that Secretary Clinton's use of a personal email domain was

⁶⁴ Strzok told us that in this text message he was referring to the fact that "Secretary Clinton had always said [she] never received anything marked classified," and that the new discovery of the emails with the (C) markings was inconsistent with that claim. The emails with the (C) markings, Clinton's statements about them during her FBI interview, and the Midyear team's assessment of her credibility are discussed in Section IX.C of this chapter.

⁶⁵ Sullivan was Clinton's Deputy Chief of Staff for Policy from January 2009 to February 2011 and Director of Policy and Planning at the State Department from February 2011 to January 2013.

both known by a large number of people and readily apparent. She also used her personal email extensively while outside the United States, including sending and receiving work-related emails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal email account.

The LHM stated, "FBI investigation and forensic analysis did not find evidence confirming that Clinton's email server systems were compromised by cyber means." However, the LHM also stated that the FBI identified one successful compromise of an account belonging to one of former President Clinton's staffers on a different domain within the same server former Secretary Clinton used during her tenure. The FBI was unable to identify the individual responsible for the compromise, but confirmed that the individual had logged in to the former staffer's account and "browsed email folders and attachments." According to evidence we reviewed, the FBI also confirmed compromises to email accounts belonging to certain individuals who communicated with Clinton by email, such as Jake Sullivan and Sidney Blumenthal.⁶⁶

The LHM stated that the FBI was limited in its intrusion analysis due to the "FBI's inability to recover all server equipment and the lack of complete server data for the relevant time period." According to the LHM, the FBI also identified vulnerabilities in Clinton's server systems and found that there had been numerous unsuccessful attempts by potential malicious actors to exploit those vulnerabilities. Nonetheless, the FBI Forensics Agent told the OIG that, although he did not believe there was "any way of determining...100%" whether Clinton's servers had been compromised, he felt "fairly confident that there wasn't an intrusion." When asked whether a sophisticated foreign adversary was likely to be able to cover its tracks, he stated, "They could. Yeah. But I, I felt as if we coordinated with the right units at headquarters...for those specific adversaries.... And the information that was returned back to me was that there was no indication of a compromise."

II. The Midyear Team's Efforts to Understand and Access Clinton's Servers

Prosecutor 1 told us that it took the Midyear team time to understand the setup and sequence of the various servers Clinton used. This prosecutor stated that an understanding of the server setup was a necessary foundation for the Midyear team's investigation. According to the LHM, the FBI discovered three servers that for different periods stored work-related emails sent or received by Clinton during her tenure as Secretary of State. Collectively, we refer to these three servers as the "Clinton servers."

The first server was set up in 2008 by Justin Cooper, a former aide to former President Clinton, and is referred to in the LHM as the "Apple Server." Based on

⁶⁶ Clinton told the FBI that Blumenthal was a "longtime friend" who "frequently sent information he thought would be useful" to her as Secretary of State.

evidence we reviewed, the Apple Server was primarily set up for former President Clinton's staff, but Secretary Clinton also used it for her work purposes from January 2009 until approximately March 18, 2009, about two months into her tenure. During this time, Clinton primarily used a personally acquired BlackBerry device that was connected to the Apple Server.

The LHM indicates that the second server, referred to in the LHM as the Pagliano Server, was used from March 2009 through June 2013. Cooper told the FBI that "in or around January 2009 the decision was made to move to another server because the Apple Server was antiquated and users were experiencing problems with email delivery on their Blackberry devices." Cooper contacted Bryan Pagliano, an information technology specialist who worked on Hillary Clinton's presidential campaign, to help him set up the Pagliano server. Numerous individuals had email accounts on the Pagliano Server, including former President Clinton, former President Clinton's staff, Huma Abedin—who was Clinton's Deputy Chief of Staff at the State Department—and Clinton herself. Clinton and Abedin were the only State Department employees with accounts on the @clintonemail.com domain on the Pagliano Server.

The third server, which is referred to in the LHM as the "PRN server," was active after Clinton's tenure as Secretary of State ended, from approximately June 2013 through October 2015. The LHM stated that in early 2013, staff for Clinton and former President Clinton discussed transitioning to a new vendor for email services, "due to user limitations and reliability concerns regarding the Pagliano Server." The staff chose the "Denver-based information technology firm Platte River Networks (PRN)" for this purpose. According to the LHM, PRN employee Paul Combetta migrated the email accounts from the Pagliano Server to the PRN server. Following the migration, the Pagliano Server was stored in a data center in New Jersey, although it no longer hosted email services and Microsoft Exchange was uninstalled from it on December 3, 2013.

According to the LHM, the FBI learned through witness interviews that the Apple Server, in use from 2007 to March 2009, was ultimately discarded and, thus, the FBI was never able to access it for review. However, based on evidence we reviewed, the Midyear team obtained access to certain back-up data from the Apple Server held on Cooper's personal laptops through consent agreements with Cooper's attorney. The Midyear team obtained both the Pagliano and PRN servers through consent agreements with David Kendall and Clinton's other attorneys at Williams and Connolly.

The FBI's ability to review emails on both the Pagliano and PRN servers was limited. With respect to the Pagliano Server, most of the emails that remained on the Pagliano server following the transition to the PRN server were in the "unallocated space" due to the removal of Microsoft Exchange in December 2013. FBI analysts told us that emails in the unallocated space were often fragmented and difficult to reconstruct. With respect to the PRN server, the FBI discovered through forensic analysis and witness interviews that Combetta had transferred most of Clinton's archived emails from her tenure as Secretary of State to the PRN server, but subsequently deleted and "wiped" them from the server using "BleachBit."

Based on the LHM, FD-302s, and PRN documents collected by the FBI, the transfer of emails to the PRN server and subsequent wiping of the PRN server occurred as described in the paragraphs below.

At around the time of the transition to the PRN server in the spring of 2013, Clinton's former aide, Monica Hanley, created two archives of Clinton's emails from the Pagliano Server, one on a thumb drive (Archive Thumb Drive) and one on a laptop computer (Archive Laptop).⁶⁷ In early 2014, Hanley mailed the Archive Laptop to Combetta to transfer Clinton's archived emails to the PRN server. She further directed him to "wipe" the Archive Laptop and mail it to Clinton's office assistant at the Clinton Foundation after he completed the transfer. Combetta used a "dummy" email account to transfer Clinton's archived emails into a mailbox entitled "HRC archive" on the PRN server.⁶⁸ Combetta told the FBI that he then, per Hanley's instructions, deleted the emails from the Archive Laptop and mailed the Archive Laptop to Clinton's office assistant, but did not "wipe" the laptop. Email records obtained by the FBI showed that Clinton's office assistant sent emails to Combetta in both March and April 2014 asking when she should expect to receive the "wiped laptop;" however, Clinton's office assistant told the FBI that she did not recall ever receiving it.

An analyst told us and FBI records show that the team sought and obtained records from multiple mail carriers in an effort to locate the Archive Laptop. Based on these records, the FBI was able to confirm that the laptop was delivered to Paul Combetta on February 24, 2014; however, the FBI found no records showing that Combetta mailed the Archive Laptop to Clinton's office assistant as requested. The FBI also attempted to obtain the Archive Thumb Drive from Hanley, but she stated she could not recall what happened to it.

According to the LHM, FD-302s from Combetta's, Mills's, and Samuelson's interviews, and PRN documents collected by the FBI, in the summer of 2014, Combetta uploaded .pst files of Clinton's archived emails to Mills's and Samuelson's laptops to enable them to review Clinton's emails and produce her work-related emails to the State Department. In late 2014 or early 2015, after Clinton produced her work-related emails to the State Department, Mills and Samuelson requested that Combetta remove Clinton's emails from their laptops, and he did so using BleachBit. At around the same time, Mills directed Combetta to change the email retention policy on Clinton's clintonemail.com account to 60 days, because Clinton had decided that she no longer needed access to her personal emails that were older than 60 days. Combetta told the FBI that he mistakenly neglected to make the change at the time and realized his mistake in March 2015. He stated that, despite the intervening issuance of a congressional preservation order on March 3,

⁶⁷ According to Hanley's FD-302, she told the FBI that the archives were created because Clinton "did not want to lose her old emails when she changed her email address." She further told the FBI that PRN advised Clinton to change her email address after Sidney Blumenthal's email account was compromised.

⁶⁸ As discussed in Section III of this chapter, the Midyear team obtained a search warrant for the dummy email account and recovered some of Clinton's work-related emails from that account.

2015, he “had an ‘oh shit’ moment” and wiped the HRC archive mailbox from the PRN server using BleachBit sometime between March 25 and March 31, 2015.

Despite the use of BleachBit, the FBI was able to recover some of Clinton’s archived emails from both the PRN server and the laptops used by Mills and Samuelson to cull Clinton’s emails. The FBI also recovered some of Clinton’s archived emails from a search of the dummy email account that Combetta used to transfer Clinton’s emails from the Archive Laptop to the PRN server and, as discussed in Section I of this chapter, from various other sources.

III. Use of Criminal Process to Obtain Documentary and Digital Evidence

Despite the public perception that the Midyear investigation did not use a grand jury, and instead relied exclusively on consent, we found that agents and prosecutors did use grand jury subpoenas and other compulsory process to gain access to documentary and digital evidence. According to documents we reviewed, at least 56 grand jury subpoenas were issued, five court orders were obtained pursuant to 18 U.S.C. § 2703(d) (2703(d) orders), and three search warrants were granted. The Midyear team also sent numerous preservation letters to various entities, including Internet Service Providers, former Secretary Clinton’s attorneys, and U.S. government agencies. We were told that FBI agents generally worked directly with the EDVA prosecutors to obtain subpoenas and 2703(d) orders, without seeking approval from the CES prosecutors, Laufman, Toscas, or any higher level Department officials. Toscas told us that he was the highest level Department official that approved search warrant affidavits, and that he provided general information about search warrants that were being sought in briefings to Carlin, Yates, and Lynch.

The FBI served 2703(d) orders on commercial email service providers, such as Google (Gmail) and Yahoo!, for information maintained on their servers associated with the private email accounts used by Huma Abedin, Paul Combetta, Cheryl Mills, and two other individuals.⁶⁹ The FBI sought 2703(d) orders for these

⁶⁹ According to documentation we reviewed, the first individual was a senior State Department official who sometimes used a private email account to communicate with Clinton. The FBI sought a 2703(d) order for this individual’s private email account after discovering an email sent from his private email account that the FBI determined was classified at the SECRET//NOFORN level. The abbreviation “NOFORN” means that the information may not be released to foreign governments, foreign nationals, foreign organizations, or non-U.S. citizens without the permission of the originator. According to Strzok’s and the Lead Analyst’s notes from early June 2016, the FBI received the returns from this 2703(d) order and determined that, as of that time, the email containing classified information no longer resided in this individual’s account.

According to the 2703(d) order for the second individual’s account, an email containing information that the FBI determined to be classified at the SECRET//NOFORN level was originated from his private email account and forwarded, after traversing two other private email accounts, to Mills’s private Gmail account. This individual was not a State Department employee and was not a witness in the FBI’s investigation. Rather, the 2703(d) order stated that the FBI believed this individual resided in Japan based on his phone number and address and that “[a] search of relevant databases reveal[ed] no U.S. Government security clearances” for him. According to Strzok’s and the

individuals after discovering from other sources that emails containing classified information were sent from or received by their accounts. FBI witnesses told us that the purposes of obtaining the 2703(d) orders were to determine whether the known classified emails continued to reside in the unauthorized email accounts and whether they were forwarded to other unauthorized locations, thus posing risks to national security. If they confirmed that the known classified emails continued to reside in the email accounts, they would then consider seeking search warrants for email content within the same accounts.

Based on the 2703(d) results, the FBI was able to confirm that classified information continued to reside in just one of these five accounts—the account belonging to Combetta. Thus, on June 20, 2016, the FBI sought a search warrant for this account. According to the search warrant, the FBI initially sought the 2703(d) order for Combetta’s account after observing numerous emails containing metadata for Combetta’s dummy email account in the original 30,490 emails provided to the State Department and determining that many of these emails contained classified information. Combetta told the FBI that he created the dummy email account to transfer Clinton’s archived emails from the Archive Laptop to the PRN Server. Based on the results of the 2703(d) order, the FBI determined that 820 of Clinton’s emails, dated between October 25, 2010, and December 31, 2010, remained in the dummy email account. The Midyear team obtained a search warrant to view the content of these emails and search for other emails relevant to the investigation.

Prosecutor 2 told us that the Midyear team sought compulsory process when evidence could not be obtained through consent or when “the terms of the consent were such that additional process needed to be sought.” For example, on August 28, 2015, the Midyear team obtained a search warrant for the Pagliano Server even though Clinton’s attorneys had voluntarily produced and provided consent for the FBI to search it. According to the search warrant application, upon conducting a preliminary examination of the Pagliano server, the FBI discovered that it contained three domains—two besides the clintonemail.com domain—and email accounts of numerous individuals unrelated to the FBI’s investigation, such as former President Clinton’s staff. The FBI further discovered that Microsoft Exchange had been uninstalled from the Pagliano Server in December 2013. As a result, the three different domains were commingled in the server’s unallocated space and the FBI could not segregate the accounts without “a complete forensic analysis of the Pagliano Server.” Because Clinton’s attorneys were only able to provide consent to

Lead Analyst’s notes from early June 2016, the FBI received the returns from this 2703(d) order and, as of that time, the email containing classified information no longer resided in his account.

The Midyear team did not seek 2703(d) orders for information related to Clinton’s private email accounts. Instead, as described later in this section and in Section IV of this chapter, the team reviewed the contents of Clinton’s emails on the Pagliano and PRN servers through a combination of consent agreements and a search warrant. The team also sought records from three different companies in an effort to track down emails Clinton sent or received on her Blackberry account in early 2009, before she began using the clintonemail.com domain. However, witnesses told us that these companies no longer maintained Clinton’s emails on their servers.

search Clinton's email accounts on the server, the FBI obtained a search warrant to examine the unallocated space.

IV. Use of Consent to Obtain Physical Evidence

A. Debate over the Use of Consent

Based on the evidence we reviewed, although the Midyear team used compulsory process on multiple occasions as described above, the prosecutors sought to obtain digital and documentary evidence by consent whenever possible. Witnesses told us that this caused frustration within the FBI, which preferred obtaining evidence with search warrants or subpoenas. The witnesses generally agreed that this debate is common among prosecutors and agents and was not unique to Midyear. To the extent the disagreement about the use of criminal process was more pronounced in Midyear, witnesses stated that they believed this was due to Midyear being a high-profile investigation. The Lead Analyst explained that "everyone [was] under intense pressure," which enhanced the "magnitude" of this disagreement.

Numerous Department and FBI witnesses told us that the debate over how to obtain evidence was mostly about efficiency—the prosecutors believed they could obtain evidence faster through consent and the FBI believed that criminal process was more efficient. The prosecutors stated that, in their view, consent is more efficient than process when witnesses are cooperative and, as Prosecutor 4 noted, when there is no concern that evidence will be destroyed to obstruct an investigation. Based on the evidence we reviewed, Clinton's attorneys contacted Department prosecutors numerous times to express Clinton's willingness to cooperate by being interviewed and providing evidence voluntarily. Prosecutor 4 told us it was his view that the risk of destruction of evidence, in response to a voluntary production request, is less likely in cases where parties are represented by experienced attorneys, such as "firms like Williams and Connolly" (which represented Clinton), because the attorneys are aware of the risks associated with destroying evidence. Prosecutor 4 stated, "I'm not saying that they're more ethical. I'm just saying they're smarter." The prosecutors stated that seeking evidence through consent also saved time by allowing the government to avoid motions to quash subpoenas based on privilege or lack of probable cause.

A few FBI witnesses told us that they believed the prosecutors in CES were generally more "risk averse" in their handling of cases than prosecutors in other parts of the Department. Prosecutor 1 explained that there are reasons to be especially cautious in the types of cases CES handles, including protecting the sensitive and classified information involved in those cases. This prosecutor told us that CES prosecutors must consider questions such as whether the intelligence community will permit the use of classified information in their cases, whether moving a "case forward" is worth the risk that the "use of information gathered by a human source could...identify sources and methods," and whether "the criminal prosecution of someone [is] more valuable than the continued collection[.]"

Laufman and Prosecutor 4 told us that the use of criminal process tends to increase the risk of leaks and public disclosures. Prosecutor 4 told us that leaks undermine investigations and that “unfair leaks” were an “added” consideration in the Midyear investigation. Laufman told us that the Midyear prosecution team’s goal was to make sure that no stone was left unturned, while also being mindful that leaks “could be used by political actors in furtherance of political agendas.” Agent 3 told us that when he sought process from the prosecutors, they responded that they would try to obtain the evidence by consent because the witnesses “don’t want this to get in the paper.” Comey told us that he believed the prosecutors were more hesitant to use criminal process in the Midyear investigation than normal because they wanted to keep “as low a profile as possible.”

FBI team members told us that they believed they could have obtained evidence faster with process, especially after instances when, they believed, Clinton’s attorneys had not been forthcoming about the existence of potential sources of evidence. For example, after Clinton’s attorneys voluntarily provided the FBI the Pagliano Server pursuant to an August 7, 2015 consent agreement, the FBI discovered through its own investigation that there was a successor server—the PRN server. According to documentation we reviewed, the prosecutors and the FBI were frustrated that Clinton’s attorneys had not been forthcoming about the PRN server, and Prosecutor 1 wrote a letter to Kendall expressing this frustration. The SSA told us that situations like this caused him to question whether consent was the best course. However, Prosecutor 1 stated that resorting to compulsory process for the PRN server would have been complicated, because, among other things, the server was “running tons of people’s email accounts on it that were totally separate from...the former Secretary, including people working in the...former President’s office.” The Midyear team ultimately secured the PRN server through a September 30, 2015 consent agreement with Clinton’s attorneys.

Some witnesses told us that they were concerned about certain devices that the FBI was never able to locate. For example, as described above in Section II of this chapter, the Midyear team was never able to locate the Archive Laptop and Archive Thumb Drive, both of which, according to Hanley and others, contained a complete copy of Clinton’s archived emails. In addition, according to the LHM, the FBI’s investigation identified a total of 13 mobile devices associated with Clinton’s two known telephone numbers “which potentially were used to send emails using Clinton’s clintonemail.com email addresses.” The Midyear team asked Clinton’s attorneys for these devices, but they stated they were “unable to locate” them.⁷⁰ According to the LHM and FD-302s, Cooper and Hanley told the FBI that they wiped or destroyed Clinton’s devices once she transitioned to new devices. One FBI analyst told us that he was “frustrated” by the claim by Clinton’s attorneys that they could not find her 13 devices. However, he stated that he “guess[ed]” the agency did not have probable cause to assert that the missing devices were in

⁷⁰ The attorneys produced two other Blackberry devices that they stated might contain relevant emails, but, according to the LHM, “FBI forensic analysis found no evidence to indicate either of the[se] devices...were connected to one of Clinton’s personal servers or contained emails from her personal accounts during her tenure.” The FBI also obtained three of Clinton’s iPads, one of which contained three emails from her tenure.

Clinton's home such that a search warrant could be issued, given the testimony that her old devices had been destroyed before she transitioned to new devices. He further stated that his frustration was with Clinton and her attorneys, not the prosecutors.

We questioned whether the use of a subpoena or search warrant might have encouraged Clinton, her lawyers, Combetta, or others to search harder for the missing devices, or ensured that they were being honest that they could not find them. Prosecutor 2 told us that the prosecutors believed that Clinton's attorneys were dealing with them "in good faith" and had "no reason to think that they were lying" about their inability to find Clinton's mobile devices. Prosecutor 2 further stated that the team did not believe that Combetta still had the Archive Laptop in his possession, because "there would have been no reason for him to keep it." Similarly, the Lead Analyst told us that he did not know of any evidence to suggest that Clinton's attorneys were being dishonest about the evidence they could not locate, and compulsory process would not have made a difference in situations where Clinton's attorneys represented that they could not find a device.

Agents 1 and 2 told us that there were six laptops that Clinton's attorneys had provided the FBI early in the investigation with consent to store, but not search, and that they would have liked to search these laptops. Agent 2 stated that he believed that these laptops may have been used to review Clinton's emails before Clinton's attorneys produced her work-related emails to the State Department. Agent 1 told us that he believed these laptops were used by Clinton's Williams and Connolly attorneys to do the "QC of the 30,000 emails after they were culled by Mills and Samuelson."

Our review of the relevant FD-302s and other documents revealed the following regarding the six laptops: On August 6, 2015, Katherine Turner, one of Clinton's attorneys, voluntarily produced to the FBI three thumb drives and a laptop computer belonging to Williams and Connolly that contained identical copies of the 30,490 emails Clinton's attorneys had produced to the State Department, and signed a consent form for the FBI to search these devices. In addition, Turner told the two FBI agents that Williams and Connolly had six additional laptops containing identical copies of the 30,490 emails, but that these laptops also contained unrelated privileged information. Turner agreed to voluntarily produce the additional six laptops to the FBI so that the FBI could secure the classified information contained on them, but declined to provide consent to search the laptops because she "wished to ensure that privileged communications on the laptops would remain confidential." According to a FD-302 dated August 17, 2015, Turner told the FBI that one of the six laptops was in the custody of Mills's and Samuelson's attorneys at Paul, Weiss, Rifkind, Wharton, and Garrison, LLP ("Paul Weiss"). On August 21, 2015, FBI Attorney 1 wrote in a letter to Turner and a Paul Weiss attorney:

It is the FBI's understanding that the six laptop computers may contain privileged materials. Therefore, the FBI will maintain the six laptop computers in a secure location separate from other materials that have been provided voluntarily to the FBI in conjunction with this

matter. The FBI will not access any material or information on the six laptops without further consultation with you or obtaining appropriate legal process.

Upon completion of this matter, the FBI will notify all parties and discuss the appropriate disposition of the material in a manner consistent with applicable laws and policies.

Although the Midyear team left open the possibility of obtaining process to search the six laptops, the team ultimately never sought a search warrant. Prosecutor 2 explained that the Midyear team originally believed that the six laptops included the laptops that Mills and Samuelson used to cull Clinton's emails. However, during a proffer session on March 19, 2016, Beth Wilkinson (attorney for Mills and Samuelson) told the prosecutors that the six laptops Clinton's attorneys had produced to the FBI did not include the culling laptops and, in fact, the culling laptops were still in Mills's and Samuelson's possession. Prosecutor 2 told us that, following the proffer, Mills and Samuelson turned the actual culling laptops over to Wilkinson, who agreed to disconnect the laptops from the Internet and place them in a safe in her office, until privilege issues could be resolved. As described in Section VIII.D of this chapter, the Midyear team ultimately received consent to search the culling laptops through an agreement with Wilkinson. Agent 2 told us that, despite his desire to search the content of the six laptops, the FBI might not have had sufficient probable cause to assert that the laptops contained emails that the FBI did not already have in its possession. He further told us that it was "completely logical" that Clinton's attorneys would not consent to the FBI's review of the laptops given that the laptops contained privileged information related to the attorneys' representation of other clients. FBI Attorney 1 told us that she believed, based on the representations of Clinton's counsel, that the six laptops never contained the full 62,320 emails and that they only contained copies of the 30,490 emails that had been produced to the State Department. She stated that, as a result, she did not believe that it was necessary to review the six laptops, especially given the privilege concerns.

There were points in the investigation when the debate about the use of consent versus compulsory process was particularly pronounced. Based on the evidence we reviewed, in or about March 2016, Page asked Strzok, on behalf of McCabe, to create a list of tasks that the Department had either refused to undertake or "asked to let them negotiate with counsel," even if the FBI ultimately agreed with the outcome. Page told us that McCabe suggested the list after she told him that Strzok and FBI Attorney 1 were "increasingly growing concerned about...the little things that are being left on the cutting room floor and...the deference to" the line prosecutors on how best to obtain evidence. On March 24, 2016, Strzok wrote to FBI Attorney 1 and the Lead Analyst describing the proposed list.⁷¹ In the email, Strzok provided a rough list of the items he was considering

⁷¹ In the March 24, 2016 email, Strzok stated that he had asked the SSA to work on the list. Strzok blind-copied Page on this email, who responded to Strzok later that day to explain that McCabe wanted the list to be "done quietly" and Strzok should tell the SSA to "stand down and just say you'll handle it." Page told us that McCabe wanted the list done quietly because it would not be "well-

including and wrote, "Problem is it's been death by a thousand cuts."⁷² Strzok told us that at the time he wrote this email, he was "aggravated by the limitations" that the prosecutors were placing on the FBI's ability to obtain evidence and felt that "if you add up this delta over a bunch of decisions, all of a sudden it becomes substantive." Strzok and Page told us that they did not believe a list was ever finalized.

Despite this debate, the agents, analysts, prosecutors, and supervisors on the Midyear team generally told us that, aside from devices that had been destroyed or that could not be located, they ultimately obtained and reviewed all of the devices necessary to complete the investigation. For example, Strzok stated that once he was able to "step back towards the end of the investigation," he realized that "maybe we gave a little where we didn't need to give, and maybe we actually got lucky here. But is there anything that we ultimately are missing to make kind of an authoritative, accurate conclusion? No." McCabe stated that the team "drew some red lines around things that we absolutely insisted we had to do," such as obtaining the laptops Mills and Samuelson used to cull Clinton's emails, and that those items ultimately were attained. The SSA, who was described to us by several witnesses as an experienced and aggressive agent, stated that he "had a lot of hoops to jump through at times," but "no matter what the obstacles were, we moved through them." Similarly, Anderson told us, "At various points...as the investigation progressed...we were very anxious to...seek aggressively different materials.... [B]ut at the end of the day, I do believe everybody felt that we had obtained everything that we needed to obtain in order to assess criminality."

B. Limits of Consent Agreements

The SSA told us that the terms of the consent agreements were primarily created through negotiations between the two line NSD prosecutors, on one side, and the attorneys for Clinton and other witnesses, on the other. For the most part, the consent agreements were limited such that the FBI was able to search only for emails sent or received by Clinton during her tenure as Secretary of State and for evidence of intrusion. These were generally the same limitations that were included in the subpoenas, search warrants, and 2703(d) orders obtained during the course of the investigation.

received" by the Department. Strzok stated that his understanding was that McCabe wanted to discuss the items in the list with Toscas during a "sidebar," rather than in a "big, official meeting."

⁷² The items in the rough list were:

- 1) getting process .. at the beginning (the fight about opening a case, about assigning a field office and a usao for process)
- 2) a) media (consent vs SWs for all the servers and devices and games opposing counsel played), There is a ton here, from everything we have vs the stuff we didnt get ~ eg, apple server at Chappaqua, computer at Whitehaven, plethora of ipads, lack of blackberries, b) scoping and negotiating of what we've been able to search for
- 3) email accounts (thinking Mills Gmail account)
- 4) interviews (v FGJ compellence) and scoping of interviews. - I think that largely applies to PRN and the big four+Samuelson, right? Anyone else?

An FBI analyst told us that limiting the search time period to Clinton's tenure as Secretary was not controversial. The analyst explained, "[T]he reason it was scoped to the tenure is because...that is of course when she would have had access to the classified information." We questioned both Department and FBI witnesses as to whether emails from after Clinton's tenure could have shed light on whether Clinton instructed her staff to delete emails for an improper purpose. They told us that any relevant emails following Clinton's tenure mostly would consist of communications with her attorneys regarding the sort process, and such communications would be protected by attorney-client privilege.

The consent agreements and search warrants also were limited such that the FBI could not search emails sent or received by other accountholders on Clinton's servers—such as Abedin and former President Clinton and his staff—unless Clinton was also a party to those emails. One analyst told us that he would have liked to be able to look at emails to which Clinton was not a party. For example, he told us that he would have liked to review emails between Abedin and Cooper regarding what Clinton may have said about the server. We questioned the prosecutors as to why the consent agreements were not scoped such that they could search for any work-related or classified emails within Abedin's clintonemail.com account, especially since FBI witnesses told us that Clinton's server, not Clinton herself, was the subject of the investigation. This is addressed in Section V.D of this chapter below.

The consent agreements and search warrants incorporated provisions requiring the use of a filter team to ensure that the Midyear team did not review emails protected by privileges, including attorney-client, medical, and marital privileges. One analyst told us that the filter process was cumbersome and that some interpretations of the privileges were unusual. For example, because former President Clinton did not use email, one of his employees received former President Clinton's emails and then printed them for him. The privilege team considered the emails that Clinton sent to her husband through this employee as privileged, although this may not have been legally required. The Lead Analyst told us that he, too, was often frustrated by the cumbersome filter process. However, he stated that he agreed with the team's "conservative" approach to interpreting what was privileged, because it was important for the FBI to handle its mission and the materials in its possession "responsibly" and to not unnecessarily be looking "into the lives of the Clintons."

There were at least two consent agreements that did not incorporate the use of a filter team, but instead allowed the attorney for the owner of the devices to delete personal information before voluntary production to the FBI. These were the consent agreements that the Department negotiated with Justin Cooper's attorney to obtain Cooper's personal laptops that the team hoped contained, among other things, back-ups from the BlackBerry devices Clinton used during the first two months of her tenure.⁷³ According to the FD-302 from Cooper's September 2, 2015

⁷³ As noted in footnote 64 of this report, the 30,490 emails provided by Clinton's attorneys to the State Department contained no emails sent or received by Clinton during the first two months of

interview, Cooper's attorney told the FBI that Cooper's laptops contained "files related to the upgrade of former Secretary of State Hillary Clinton's Blackberry," as well as emails Cooper exchanged with Clinton. In a letter dated September 10, 2015, Cooper's attorney wrote to Prosecutor 1, "As we discussed and as the government has agreed, before providing Mr. Cooper's computer hardware to the FBI, we will remove and securely delete Mr. Cooper's personal and business files." In a letter dated September 24, 2015, Cooper's attorney wrote to Prosecutor 1 that he was voluntarily providing the FBI Cooper's Mac Book Air laptop computer and further wrote, "[a]s agreed, we have securely deleted from the Mac Book Air Mr. Cooper's personal and business files, and we have overwritten its unallocated space with zeros."

We asked some FBI and Department witnesses why they did not use a filter team instead of allowing Cooper to delete his personal files. FBI witnesses told us that they were not concerned by the limitations in the consent agreements for the Cooper laptops, because Cooper was particularly cooperative and the materials he voluntarily provided to the FBI turned out to be fruitful.⁷⁴ Indeed, according to the FD-302 from Cooper's interview, Cooper's attorney told the FBI about the back-ups on Cooper's laptop without prompting. In addition, FBI Attorney 1 and Agent 1 told us that they considered Cooper's devices to be different from other devices they reviewed, because there was no evidence that Cooper was the sender or recipient of classified information and Cooper was more of an aide to former President Clinton than to former Secretary Clinton. Strzok told us that the team was not certain that it could establish probable cause that there was classified information or other evidence of a crime on the Cooper laptops.

Some FBI witnesses told us, consistent with text message exchanges between Strzok and Page, that the FBI was concerned that the line NSD prosecutors were intimidated by the high-powered attorneys representing Clinton and her senior aides and, as a result, did not negotiate aggressively with them. Strzok told us that Prosecutor 1, who handled most of the negotiations with counsel, is "extraordinarily competent," but he believed more senior government officials should have been involved with deciding "how hard [to] push counsel." Nevertheless, the FBI witnesses generally told us that they were satisfied that the limitations of the consent agreements did not impair the investigation. Agent 2 stated regarding the limitations in consent agreements, "I think generally...we were able to get what we were looking for. It maybe was more complicated, time-consuming, and cumbersome." The Lead Analyst told us that "every single consent arrangement constrained what we did...to some degree." However, he, Strzok, and FBI Attorney 1 all told us that they believed the team might have actually obtained

her tenure, and Midyear officials believed these missing emails could contain important evidence regarding Clinton's intent in setting up a private email server.

⁷⁴ For example, one analyst told us that within the Blackberry back-ups on the Cooper laptop, the FBI team found an email from former Secretary of State Colin Powell to Clinton on January 23, 2009, in which Powell warned Clinton that if it became "public" that she used a Blackberry to "do business," her emails could become "official record[s] and subject to the law." In the email, Powell further warned Clinton, "Be very careful. I got around it all by not saying much and not using systems that captured the data."

more through the consent agreements in some instances than they would have obtained through compulsory process. Strzok explained that for some devices they were not certain that the team could establish sufficient probable cause to convince a judge to issue a search warrant or allow a search that was as broad as what was agreed upon through a consent agreement. He provided as an example the Cooper laptops described above. Similarly, Prosecutor 2 told us that the Midyear team was able to search certain items through consent agreements, despite privilege issues that may have caused a subpoena or search warrant to be quashed.

In addition, based on our review, we determined that Department and FBI members of the Midyear team worked together to determine the scope of the review of the evidence and, in turn, the limitations to be included in consent agreements and search warrants. For example, in a September 23, 2015 email exchange among a WFO Computer Analysis and Recovery Team forensic examiner ("CART Examiner"), Strzok, the Lead Analyst, the four line prosecutors, three FBI OGC attorneys, and two case agents, Prosecutor 2 wrote that she assumed the consent agreement for the PRN server would be scoped such that the FBI would not review the content of any emails in domains other than the clintonemail.com domain. Strzok wrote back with a more expansive approach than that suggested by Prosecutor 2: "I think we would ask to search the other domains for any emails to/from the @clintonemail.com domain in the event those emails were deleted from whichever clintonemail.com account and no longer available there." The final consent agreement followed Strzok's more expansive approach, allowing the FBI to search the entire server, including the unallocated space and domains other than the clintonemail.com domain, for any emails to or from Clinton.

None of the witnesses we interviewed could point to specific examples of anyone involved in the investigation allowing political or other improper considerations to impact the decisions on how best to obtain evidence.

V. Efforts to Obtain Email Content from the Private Accounts of Clinton's Senior Aides

In this section, we address the Midyear team's efforts to obtain email content from the accounts of the three senior aides that had the most email communication with Clinton—Jake Sullivan, Cheryl Mills, and Huma Abedin. Sullivan was Clinton's Deputy Chief of Staff for Policy from January 2009 to February 2011 and Director of Policy and Planning at the State Department from February 2011 to January 2013; Mills served as, among other things, Clinton's Chief of Staff during Clinton's tenure as Secretary; and Abedin served as Clinton's Deputy Chief of Staff during Clinton's tenure. According to the LHM, the FBI discovered through its review of emails from various sources that only 13 individuals had direct email contact with Clinton, and that Sullivan, Abedin, and Mills "accounted for 68 percent of the emails sent directly

to Clinton.”⁷⁵ State Department employees told the FBI that they considered emailing Sullivan, Mills, or Abedin the equivalent of emailing Clinton directly.

In addition to examining emails to or from these senior aides within the original 30,490 emails produced to the State Department, the investigators obtained emails from the State Department for each of their official State classified and unclassified email accounts. Based on a review of these emails and other evidence, the investigators determined that, in addition to their official State email accounts, Sullivan and Mills used personal Gmail accounts and Abedin used a personal Yahoo! account and her clintonemail.com account to conduct government business. Sullivan, Mills, and Abedin told the FBI that they used their private email accounts for official business occasionally, including on occasions when the official State email system was not functioning properly. Sullivan stated that he had the most difficulty using the official State system when he was traveling and on the weekends.

The investigators further determined that all three of these senior aides either sent or received classified information on their private email accounts and forwarded emails containing classified information to Clinton, although none of the emails the FBI discovered contained classification markings. The three aides provided the following explanations to the FBI for their conduct: they did not believe the information contained in their emails was classified; they tried to talk around classified information in situations where there was an urgent need to convey information and they did not have access to classified systems; some of the information they were discussing had already appeared in news reports; and they relied on the originators of the emails to properly mark them. These explanations were consistent with those provided to the FBI by both the originators of the emails containing classified information and Clinton. Based in part on these explanations, the prosecutors determined that no one “within the scope of the investigation,” including the three senior aides, “committed any criminal offenses.”

Nonetheless, the investigators considered obtaining additional information from or about the private email accounts of all three senior aides. Emails sent to or from the private email accounts were potentially relevant to: (1) further reconstructing the full collection of work-related emails and emails containing classified information that were sent to or from Clinton’s servers; (2) finding additional emails containing classified information that were transmitted and stored on unclassified systems other than the Clinton’s servers; (3) finding evidence of knowledge or intent on the part of Clinton, the senior aides, and possibly others regarding the transmission or storage of classified information on unclassified

⁷⁵ FBI analysts and Prosecutor 2 told us that former President Barack Obama was one of the 13 individuals with whom Clinton had direct contact using her clintonemail.com account. Obama, like other high level government officials, used a pseudonym for his username on his official government email account. The analysts told us that they questioned whether Obama’s email address (combined with salutations that revealed that the emails were being exchanged with Obama) or other information contained in the emails were classified and, thus, sent the emails to relevant USIC agencies for classification review. However, they stated that the USIC agencies determined that none of the emails contained classified information.

systems; (4) controlling the spill of classified information in unauthorized locations; and (5) assessing whether there had been a compromise of classified information by hostile actors through intrusion analysis.

The Midyear team obtained 2703(d) orders for noncontent information in Mills's Gmail account and Abedin's Yahoo! account and a search warrant for Sullivan's personal Gmail account. However, the Midyear team did not obtain search warrants to examine the content of emails in Mills's or Abedin's private email accounts and did not seek to obtain any of the senior aides' personal devices.⁷⁶

A. Section 2703(d) Orders for Non-Content Information for Mills's and Abedin's Private Email Accounts

On February 18, 2016, the FBI obtained a 2703(d) order for Abedin's personal Yahoo! account. According to the government's application for the 2703(d) order, the FBI discovered that on October 4, 2009, an email attaching a Word document without classification markings was forwarded from Abedin's unclassified State Department email account to her Yahoo! account. The application stated that the next day, "the text from this Word document, with slight edits and reformatted to State Department letterhead, was sent from a State Department employee on SIPRNet, a classified email system, to Cheryl Mills" with a classification marking of SECRET//NOFORN. As a basis for the 2703(d) order, the application stated that a review of the 2703(d) returns would "help the FBI determine if the aforementioned email, containing a classified Word document, still resides within the Subject Account maintained by Huma Abedin and whether there are other records connecting email accounts associated with the improper transmission and storage of classified information."

Similarly, on May 31, 2016, the FBI sought and obtained a 2703(d) order for Mills's personal Gmail account. According to the government's application for the 2703(d) order, the FBI discovered that Mills sent or received at least 911 work-related emails to or from her Gmail account during the time she was employed at the State Department. The application stated that the FBI identified seven emails containing confirmed classified information and an additional 208 emails containing suspected classified information that had not yet undergone formal classification review. The application provided as an example one email that was determined to be classified at the level of SECRET//NOFORN at the time the email was sent. None of the emails contained classification markings.

We were told by an analyst who focused on handling legal process, and the notes of Strzok and the Lead Analyst from late May and early June 2016 confirmed, that the returns from the 2703(d) orders for Mills's and Abedin's accounts revealed that neither the confirmed classified emails nor any emails to or from Clinton continued to reside in Mills's or Abedin's personal accounts as of the date Google and Yahoo! searched their servers. According to Strzok's and the Lead Analyst's

⁷⁶ The senior aides' personal devices were potential sources of work-related emails or remnants of work-related emails that the senior aides had deleted and were not preserved on the commercial providers' servers.

notes, Abedin's email account contained less than 100 emails from Clinton's tenure as Secretary of State, while Mills's account contained numerous emails from Clinton's tenure as Secretary of State. Prosecutor 2 and one FBI analyst told us that these results provided no basis to conclude that Mills or Abedin had deleted emails to or from Clinton for an improper purpose, because there are various factors that could contribute to the preservation of emails in a personal email account.⁷⁷

B. Decisions Regarding Search Warrants for Private Email Accounts

The Midyear team obtained a search warrant for Sullivan's Gmail account, on September 17, 2015. According to the search warrant, in reviewing the 30,490 emails provided by Clinton's attorneys to the State Department, the FBI found Sullivan's electronic business card, which identified him as an employee of the State Department and listed his private Gmail address. The search warrant stated that the FBI also had identified, among the 30,490 emails produced to the State Department, an unmarked email determined to contain information classified at the TOP SECRET level at the time it was forwarded by another State Department employee to Sullivan's Gmail account. The search warrant further stated that the FBI had identified an additional 496 emails from Sullivan's personal Gmail account that it suspected contained classified information, but had not yet submitted for formal classification review. One analyst told us that unlike the emails found on Clinton's servers, which often were derived from the unallocated space, emails from Sullivan's Gmail account were helpful because they clearly revealed important metadata, such as senders, recipients, and dates.

Given the significant roles of Mills and Abedin, and the usefulness of the material from Sullivan's personal account, we asked why the investigators did not seek search warrants for the private accounts of Mills or Abedin. We learned that the SSA initially drafted a search warrant affidavit for Mills's personal Gmail account, but it was never filed. In an email to FBI Attorney 1 and the Lead Analyst dated March 25, 2016, Strzok listed "email accounts (thinking Mills Gmail account)" as an item that the FBI unsuccessfully sought from the prosecutors. Strzok, the SSA, and Agent 3 told us that Strzok advocated in favor of applying for the search warrant, but that the prosecutors rejected the affidavit in favor of a 2703(d) order, based on insufficient probable cause and privilege concerns. The SSA stated that he disagreed with the prosecutors' position that there was insufficient probable cause for a search warrant, because there was evidence that Mills's Gmail account was used for official business and contained classified information.

Nevertheless, Prosecutor 2 told us that the FBI never made a follow-up request for a search warrant after receiving the 2703(d) returns. As discussed above, according to Strzok's and the Lead Analyst's notes and other evidence, the Midyear team received the 2703(d) returns in late May and early June 2016 and

⁷⁷ According to records we reviewed, the Midyear team also served preservation orders on Google and Yahoo! in relation to Mills's and Abedin's personal email accounts.

learned that neither the classified emails nor any emails to or from Clinton continued to reside in either account. Prosecutors 1 and 2 told us that, based on the facts developed at that point, there was likely no probable cause to seek a search warrant. Strzok stated about the proposed search warrant for Mills's Gmail account, "I remember we did not get it, and my general recollection is, if we thought it was important, and...we could have gotten probable cause, we would have done it. I think we just couldn't establish PC [probable cause]."

Some FBI witnesses told us that there were reasons to promptly seek a search warrant for Sullivan's Gmail account, instead of beginning with a 2703(d) order like they did with the private email accounts belonging to Mills and Abedin. They stated that unlike Sullivan, Mills and Abedin had not, based on the evidence they had reviewed, sent or received TS-SAP emails on their personal accounts, and these were the most sensitive emails discovered during the investigation. One analyst stated that Clinton's email exchanges with Sullivan were more substantive than her email exchanges with both Abedin and Mills. In addition, witnesses told us, consistent with the FD-302s we reviewed, that Sullivan was a more regular user of personal email for conducting State business, in part because he traveled overseas more often than the others.

Prosecutor 2 told us that Sullivan was treated differently from Mills and Abedin, because the information contained in the Top Secret email sent to Sullivan more clearly constituted classified information and NDI ("national defense information") than the information contained in the emails sent or received by Mills and Abedin.⁷⁸ Prosecutor 2 stated, "[T]here was a fundamental difference in the nature of information that we knew was in Jake Sullivan's account, versus the information that was in Abedin's account and Mills's accounts." In addition, Prosecutor 2 told us that the prosecutors would have had to obtain Criminal Division approval to obtain a search warrant for Mills's Gmail account, given that she was an attorney. Prosecutor 2 told us that, while they would have sought the approval if they believed it was "appropriate," this was among the factors they considered in "deciding what process to use."

C. Access to Personal Devices for Clinton's Senior Aides

Another potential means to obtain emails to or from the private accounts of Clinton's senior aides would be to obtain access to their personal devices, such as laptops or cellular telephones, on which copies of such emails might reside. Such access could possibly have been obtained by consent or via search warrant.⁷⁹ As

⁷⁸ As described in Chapter Two, 18 U.S.C. §§ 793(d), 793(e), and 793(f) require the information that is alleged to be mishandled to be "information relating to the national defense." This is also referred to as "national defense information" or NDI, and is not synonymous with classified information.

⁷⁹ As noted previously, while the government could also have issued a subpoena for any laptops or cellular telephones, it would not have been able to search the electronic communications within such a device without a search warrant. *See, e.g., Trulock v. Freeh*, 275 F.3d 391, 403 (4th Cir. 2001).

described in Section VIII.D of this chapter, the Midyear team obtained, through consent agreements with Beth Wilkinson, the laptops that Mills and Samuelson used to cull Clinton's emails for production of her work-related emails to the State Department. However, the investigators did not seek access to the private devices used by Sullivan, Mills, or Abedin during Clinton's tenure at State.⁸⁰

Witnesses told us that the team's focus was on Clinton and obtaining her devices, such as her servers, computers, and hand-held devices. Prosecutor 2 stated, "[T]he scope of the investigation really related to the email systems used by Secretary Clinton, and whether on her private email server there are individuals who improperly retained or transmitted classified information." According to one analyst, there were generally two types of devices that the team sought: devices that Clinton used and devices to which her emails were transferred.

We asked several witnesses why they did not obtain devices used by Sullivan, Mills, and Abedin, both as a means of searching for evidence of the mishandling of classified information by Clinton and her aides and to prevent a further compromise of classified information. Both Strzok and Anderson told us that, at the outset of the investigation, former Deputy Director Giuliano generally advised the team that the purpose of the investigation was not to follow every potential lead of classified information. Strzok stated that Giuliano told the team, "[T]his is not going to become some octopus.... The focus of the investigation [is] the appearance of classified information on [Clinton's] personal emails and that server during the time she was Secretary of State." Strzok further stated that the FBI's "purpose and mission" was not to pursue "spilled [classified] information to the ends of the earth" and that the task of cleaning up classified spills by State Department employees was referred back to the State Department. He told us that the FBI's focus was whether there was a "violation of federal law." Prosecutors 1 and 2 similarly told us that the Department was not conducting a spill investigation, and that the State Department was the better entity for that role. Prosecutor 1 stated, "At a certain point, you have to decide what's your criminal investigation, and what is like a spill investigation.... [W]e could spend like a decade tracking emails...wherever they went." The SSA told us that the Midyear team engaged in several conversations with the State Department regarding the spill of classified information, and the State Department officials expressed concern about the problem and were receptive to resolving it. Generally the witnesses told us that they could not remember anyone within the team arguing that more should have been done to obtain the senior aides' devices.

We specifically questioned why the team did not attempt to obtain any personal devices used by Huma Abedin, given the team's finding that numerous

⁸⁰ FBI Attorney 1 told us that she believed the personal laptop that Mills had used to cull Clinton's emails was the same personal laptop she had used during her tenure at State. As described in Section VIII.D of this chapter, the FBI ultimately obtained Mills's culling laptop and the laptop did contain some emails from Clinton's State Department tenure. We were unable to determine whether this was in fact the personal device Mills used during her tenure at State and, if so, if she also used other personal devices.

work-related and classified email exchanges between Abedin and Clinton that the Midyear team found through various sources were absent from the 30,490 emails produced to the State Department by Clinton's lawyers. Witnesses told us that they believed there was a flaw in the culling process, which resulted in the exclusion of most of Abedin's clintonemail.com emails from the State Department production.⁸¹ We also questioned (1) the failure to obtain Abedin's devices despite that, according to Abedin's FD-302, Abedin told the FBI that she turned both her personal laptop and her personal Blackberry over to her attorneys to be reviewed for production of work-related emails to the State Department; and (2) the inconsistency between the decision not to seek Abedin's devices before the July declination and the decision to obtain a search warrant for email on the laptop belonging to her husband, Anthony Weiner, in October 2016.

In response to the OIG's questions regarding the Midyear team's decision not to obtain the senior aides' devices, Prosecutor 1 told us that he did not remember any "meaningful discussion" before October 2016 about obtaining the senior aides' devices, aside from the laptops used by Mills and Samuelson to cull Clinton's emails for production of her work-related emails to the State Department. The SSA told us that in the beginning of the investigation, the Midyear team wanted to obtain every device that touched the server, but that over time the team realized that this would not be "fruitful." He stated that OTD personnel told the team that "it was not likely that there would be anything on the devices" themselves. Some FBI witnesses told us that they asked the senior aides during their Midyear interviews about any personal devices they used for State Department work, and the Midyear team relied on their responses to determine what devices to obtain. Agent 3 told us that the Midyear team asked Abedin whether she backed up her clintonemail.com emails and she responded that her email was "cloud-based" and she did not "know how to back up her archives." He stated that based on this testimony, the team assessed that finding helpful evidence on Abedin's devices was unlikely.

Both Strzok and Prosecutor 2 told us that the decision not to obtain the senior aides' devices was a joint decision. Prosecutors 1 and 2 and Strzok further told us that the team did not obtain Abedin's personal laptop and Blackberry that she used during her employment at the State Department, even after she told the FBI that she gave those devices to her attorneys, because the State Department provided to the FBI Abedin's work-related emails that her attorneys produced from those devices. Strzok stated that Abedin's attorneys told the Midyear team that they erred on the side of overproducing Abedin's emails to the State Department and that, unlike the sort process for Clinton's emails by Mills and Samuelson, there was no reason to believe Abedin's attorneys' sort process was flawed. Prosecutor 2

⁸¹ According to a report prepared by one analyst, the team had found through various sources 1,716 work-related emails between Clinton's and Abedin's clintonemail.com accounts that had not been produced to the State Department by Clinton's lawyers, and that 90 of these emails contained classified information. The analyst who prepared the report told us that only approximately 32 email exchanges between Abedin and Clinton were included in the production, which was surprising to the FBI given Abedin's prominent role on Clinton's staff. According to the written analysis he prepared, the problem was likely that Clinton's attorneys only considered Clinton's exchanges with Abedin's clintonemail.com account to be work-related if they were also sent to a .gov account or contained a specific work-related key term.

told us, consistent with notes this prosecutor took at a meeting on October 27, 2016, that the only reason the FBI later obtained the Weiner laptop was because "it had ended up in our laps." We describe this issue further in Chapters Nine, Ten, and Eleven.

Several witnesses told us that tracking down Clinton's devices alone was very challenging. They stated that the investigation would have taken years if the team attempted to seek every possible device that might contain Clinton's emails or classified material. For example, Prosecutor 2 stated:

I think the idea was that, that this investigation had to be somewhat focused, otherwise it could spin off into a million different directions. And this investigation could take different forms for years and years and years to come. So, you know, the, the focus of the investigation was, was really the private email system.

Agent 3 told us that the team focused on Clinton's devices because they were the most likely to have the full tranche of missing emails from Clinton's servers, whereas the devices of any one person would only have a "fraction" of them.

Midyear team members further told us that they placed limits on their investigation based on practical considerations, including what they observed to be systemic problems with handling classified information at the State Department. They stated that they discovered persistent practices of State Department employees, including both political and career employees, discussing classified information on both unclassified government email accounts and personal email accounts, and that this culture predated Clinton's tenure as Secretary of State. In addition, FBI Attorney 1 told us that the emails containing classified information that were forwarded to Clinton often originally copied numerous State Department and other government agency employees, some of whom could have forwarded them to other unclassified locations besides the chain that ultimately led to Clinton's server. Witnesses told us that these factors made it impractical for them to search every email account or device that classified emails may have traversed.

D. Review of Abedin's Emails on the Clinton Server

Abedin was the only State Department employee, besides Clinton, with an account on the clintonemail.com domain on Clinton's server. Witnesses told us and documents we reviewed showed that the Midyear team did not review all of Abedin's clintonemail.com emails on the server; rather, they limited their searches to her email exchanges with Clinton. We questioned why this limitation was put in place, given that the purpose of the investigation was to generally assess any mishandling of classified information in relation to Clinton's server.⁸²

⁸² As we discuss in Chapter Eleven, in October 2016, when the Midyear team was drafting the search warrant affidavit for the Weiner laptop, Baker questioned why the team was not seeking to review all of Abedin's emails on Weiner's laptop. He wrote, "I'm still concerned we are viewing the PC too narrowly. There is PC to believe that Huma used her email accounts to mishandle classified

Several witnesses told us that they did not seek to review all of Abedin's emails because her role was administrative in nature. While witnesses told us that Abedin had possibly the most contact with Clinton and sometimes forwarded or printed substantive work-related emails to or for Clinton, she was never an originator of classified materials, she did not typically use classified systems, she did not receive or forward the particularly sensitive information, and she did not comment substantively on classified information that was contained in the emails she forwarded. Prosecutor 1 explained that the team was not "as concerned that [Abedin] was taking stuff off the classified systems and dumping it down." These factors also contributed to the decision not to obtain a search warrant for content from Abedin's Yahoo! account.

However, during a review of the Weiner laptop in October and November 2016, the FBI discovered unmarked classified emails that Abedin had forwarded to Weiner. During an FBI interview on January 6, 2017, Abedin acknowledged that she "occasionally" forwarded work-related emails to her husband for printing.

E. Decision Not to Seek Access to Certain Highly Classified Information

As detailed in the classified appendix to this report, the OIG learned late in our review that the FBI considered seeking access to certain highly classified materials that may have included information potentially relevant to the Midyear investigation, but ultimately did not do so.⁸³ In late May 2016, FBI Attorney 1 drafted a memorandum stating that review of the classified materials was necessary to complete the Midyear investigation and requesting permission to review them.

The FBI never finalized the May 2016 memorandum or received access to these classified materials for purposes of the Midyear investigation.⁸⁴ FBI witnesses told us that this was for various reasons, including that they believed that the classified materials were unlikely to include information from the beginning of former Secretary Clinton's tenure, and thus would not have a material impact on the investigation. However, other FBI witnesses including Strzok, the Lead Analyst, and the SSA told us that reviewing the materials would have been a logical investigative step.

information. I just don't understand why that us [sic] not enough to look at all her emails." Baker told us that he believed the team had probable cause to look at all of Abedin's clintonemail.com and Yahoo! emails, based on the evidence that classified information had traversed both private email accounts.

⁸³ The OIG also has not reviewed the highly classified information.

⁸⁴ As we describe in the classified appendix, the FBI sent a memorandum to the Department on June 1, 2018, requesting permission to review these classified materials for foreign intelligence purposes unrelated to the Midyear investigation.

The classified appendix describes in more detail the highly classified information, its potential relevance to the Midyear investigation, and the FBI's reasons for not seeking access to it.

VI. Voluntary Interviews

According to documents we reviewed, the Midyear team conducted 72 witness interviews. The witnesses included individuals involved with setting up and administering Clinton's private servers, State Department employees, and other individuals with suspected knowledge of Clinton's email servers, the transmission of classified information on the servers, or her intent. Based on our review, we determined that all witnesses were interviewed voluntarily or pursuant to immunity agreements and, consistent with the FBI's normal procedures, none of the witnesses were placed under oath or recorded.⁸⁵ No witnesses testified before the grand jury.

The FBI and Department witnesses we interviewed told us that the Midyear team, including agents, analysts, the SSA, Strzok, the Lead Analyst, and line prosecutors worked together to decide whom to interview and the sequencing of witness interviews, without seeking approval from higher level Department or FBI officials. Agent 1 stated that the initial strategizing on whom to interview generally occurred at the level of the SSA and below. The SSA and most of the case agents told us that they did not recall any significant disputes over whom to interview and that they were never told by higher level managers, including Strzok, or Department employees, including the prosecutors, not to interview particular witnesses that they believed were essential to the investigation. Similarly, the prosecutors told us that their chain of command did not seek to influence the team's decisions on whom to interview. Toscas told us that the prosecutors made him aware of upcoming important interviews and he briefed that information up the chain, but he and higher level Department officials were not involved in deciding whom to interview.

FBI witnesses told us that the agents and analysts worked together to determine what questions to ask to witnesses, and that the analysts prepared packets of documents to use as exhibits. The SSA and the case agents told us that their supervisors were involved in strategy sessions before interviews and in editing and suggesting potential questions, but did not dictate the process and never forbade them from asking particular questions. They also told us that for more significant witnesses, the line prosecutors reviewed their interview outlines and suggested eliminating questions based on privilege, relevance, or a scope that had been agreed upon with the witness's counsel. The SSA stated that the prosecutors' review of the questions did not cause "friction" and that the process was "fairly seamless." The prosecutors told us that higher level Department officials were not involved in deciding what questions to ask witnesses.

⁸⁵ See DIOG § 18.5.6 (recording of noncustodial interviews is optional; no requirement that witnesses be placed under oath during voluntary interviews).

Witnesses told us and the FD-302s indicated that the case agents led the interviews, and prosecutors and supervisors only attended when witnesses were represented by counsel or particularly significant. According to documents we reviewed, Strzok attended the interviews of five key witnesses—Abedin, Mills, Samuelson, Sullivan, and Clinton. He stated that he only attended these interviews because Laufman insisted on attending them, and he believed that as Laufman's counterpart at the FBI he should attend them as well. Laufman told us that he attended the interviews that he believed were "potentially the most consequential," because of the "enormous implications" and "potential consequences" of the Midyear investigation and to ensure that no one involved in the investigation went "off in a direction that wasn't consistent with a purely independent, investigative, impartial approach." He further told us that he wanted to be involved in key interviews in order to make his own assessment of the witnesses' credibility and gain a full picture of the investigation, so that he could make an informed judgment at the end of the investigation as to whether to accept the FBI's and prosecutors' recommendations. Prosecutor 1 told us that the Midyear agents were "very, very diligent and most of them were very good interpersonally," and that the prosecutors only interjected occasionally during interviews.

We were told that the decision to conduct voluntary interviews rather than subpoenaing witnesses before the grand jury was not controversial or unusual. FBI agents and prosecutors told us that their usual practice is to interview witnesses voluntarily and only resort to grand jury if witnesses are uncooperative or not credible. They further told us that the Midyear witnesses were mostly cooperative and credible and that using the grand jury would have been complicated given the sensitive, classified information involved. Prosecutors 1 and 2 and Agent 1 told us that not calling any witnesses before the grand jury was common in mishandling investigations, because doing so would typically require grand jurors to learn about classified information. Before introducing classified information to the grand jury, prosecutors must obtain approval from the USIC agency that was responsible for classifying the information.⁸⁶ Prosecutor 1 explained that although "[y]ou can put classified information in front of the grand jury[,] [y]ou really would like to avoid that because you're basically exposing people that aren't going to be cleared to the information." Agent 1 stated that he had specialized in investigations concerning the loss of classified information since approximately 2008 and during that time he had only been involved in one or two investigations where witnesses were subpoenaed to testify before the grand jury. Agent 4 told us that voluntary interviews are better than the grand jury for "rapport-building" and obtaining information.

Prosecutor 1 told us that the prosecutors were prepared to issue grand jury subpoenas for any witnesses that refused to voluntarily submit to interviews, for situations where they believed witnesses were untruthful, or for situations where witnesses provided statements that would be helpful in a later prosecution and the team wanted to "lock them in." While all witnesses ultimately submitted to voluntary interviews, the team issued a grand jury subpoena for Paul Combetta. As

⁸⁶ See USAM 9-90.230.

discussed in Section VII.B of this chapter, ultimately the Midyear team decided that it was unnecessary to question Combetta before the grand jury.

VII. Use Immunity Agreements

The Department entered into letter use or “Queen for a Day” immunity agreements with three witnesses in the Midyear investigation: Bryan Pagliano, Paul Combetta, and John Bentel. These immunity agreements and the specific reasons for them are described in Sections A through C below. The Department also entered into two act-of-production immunity agreements in relation to the personal laptops used by Cheryl Mills and Heather Samuelson to cull Clinton’s emails. These are discussed in Section VIII.D.3 of this Chapter. The Department did not enter into any transactional immunity agreements.

The prosecutors told us that, in deciding whether to grant use immunity to a witness, they considered whether the witness had criminal “exposure” (i.e., whether there were crimes for which the witness could be prosecuted), the witness’s degree of culpability, the value of the witness’s expected testimony, whether there were other sources of the same information, and whether the grant of immunity would help or hinder the investigation. Numerous Department and FBI witnesses told us that they did not oppose the immunity agreements. Some witnesses stated that there was nothing unusual or troubling about the nature or quantity of immunity agreements used in the Midyear investigation, especially since so many witnesses were represented by counsel. Witnesses also told us that the immunity agreements were approved within the Department through the level of DAAG Toscas, and that higher level Department and FBI officials were not involved in negotiating or approving the immunity agreements. Yates told us that she was briefed about immunity agreements, but, since she was not made aware of any disagreements related to them, she did not consider overruling them. Lynch told us that she generally was not briefed or otherwise involved in immunity issues.⁸⁷

A. Pagliano

As previously noted, Bryan Pagliano was an information technology specialist who worked on Hillary Clinton’s presidential campaign and later set up the Pagliano server, which was the second of the Clinton Servers. The Midyear team entered into two immunity agreements with Pagliano: a “Queen for a Day” use immunity agreement on December 22, 2015, and a letter use immunity agreement on December 28, 2015. Based on our review, the immunity was granted in response to a request by Pagliano’s counsel and resulted in at least two voluntary interviews that helped inform the FBI’s investigation.

Witnesses told us that Pagliano was a critical witness because he set up the server that Clinton used during her tenure. According to Prosecutor 2, Pagliano

⁸⁷ As described in Chapter Four, Lynch told us that she received a memorandum regarding congressional immunity issues for Pagliano, but only because Senator Charles Grassley had requested a phone call with her regarding Pagliano.

was “uniquely positioned” to describe to the FBI the “setup” and “mechanics” of Clinton’s server, as well as to answer questions regarding possible cyber intrusion. On August 10, 2015, Pagliano’s counsel emailed an FBI agent that he was “not prepared to have Mr. Pagliano participate in an interview with the FBI- particularly in the absence of any explanation as to the focus or scope of your prospective questions.” According to an August 27, 2015 email among the prosecutors, Strzok, the Lead Analyst, and the SSA, Pagliano’s attorney had spoken with Prosecutor 1 and was “insistent on immunity for his client even though it was explained to him that Pagliano is a witness and not a target.” Prosecutor 3 wrote to the Midyear team, in response to the request of Pagliano’s lawyer, “We’re probably going to see this a lot with any witness who is facing having to be interviewed or testify on the Hill. We should all sit down and prioritize witnesses to be interviewed and decide who it’s safe to immunize.”

According to documents we reviewed, on or about September 4, 2015, Pagliano’s attorneys told the Senate Judiciary Committee and the Senate Committee on Homeland Security and Governmental Affairs that he would exercise his Fifth Amendment rights in response to any questions by the Committees about his role in setting up Clinton’s private email server. The next day, the Washington Post reported that the Clintons personally paid Pagliano to support Clinton’s private email server while he was employed at the State Department.⁸⁸ According to emails we reviewed, within days of these allegations the Midyear team took steps to obtain financial information related to Pagliano from several sources. In addition, the Midyear prosecutors contacted the Criminal Division’s Public Integrity Section (PIN) to consider whether Pagliano should be prosecuted under 18 U.S.C. § 209 for receiving outside compensation for government work or for improperly failing to report outside income on financial disclosure paperwork. On or about September 9, 2015, Pagliano pleaded his Fifth Amendment right against self-incrimination in response to questions about the set-up of Clinton’s email server before the House Benghazi Committee.

On December 11, 2015, Prosecutor 2 wrote an email to the other line prosecutors notifying them that PIN had declined charges against Pagliano. Then PIN Chief Ray Hulser told us that PIN declined charges because the PIN prosecutors determined that (1) Pagliano’s outside compensation was for work for the Clintons (primarily former President Clinton), not for State Department work;⁸⁹ and (2) Pagliano reported his compensation from the Clintons on federal financial disclosure reports before he was told by the State Department that this was not necessary. Hulser further told us that PIN’s decision to decline charges against Pagliano was

⁸⁸ Rosalind S. Helderman and Carol D. Leonnig, *Clinton’s Personally Paid State Department Staffer to Maintain Server*, WASH. POST, Sept. 5, 2015.

⁸⁹ According to the FD-302 of Pagliano’s subsequent interview pursuant to the immunity agreement, Pagliano told the FBI that at the time he built the Pagliano server he did not know Clinton would be Secretary of State or would have an account on the server. Rather, he told the FBI that he “believed the email server he was building would be used for private email exchange with Bill Clinton aides.”

not influenced by the Midyear team's desire to interview Pagliano and that PIN was never pressured by anyone within the FBI or the Department to decline charges.

Prosecutor 1 told us that around the same time as PIN's declination, the team received a proffer from Pagliano's attorney, through which the team confirmed that Pagliano had important information to provide. Thus, on December 22, 2015, the Department entered into a "Queen for a Day" proffer letter with Pagliano. The "Queen for a Day" letter provided that Pagliano would "answer all questions completely and truthfully, and...provide all information, documents, and records" within his custody or control, related to the substance of his interview. In exchange, the Department agreed that any statements made during his proffer would not be admitted during the government's case-in-chief or at sentencing during any future prosecution of Pagliano. The Department would, though, be able to "make derivative use of, and pursue any leads suggested by" Pagliano; use his statements for appropriate cross examination and rebuttal; and prosecute Pagliano for statements or information that were "false, misleading, or designed to obstruct justice." The prosecutors told us that they wanted to ensure that Pagliano was a credible witness and that his statements would be consistent with his attorney's proffer before offering him the broader letter use immunity.

Two FBI case agents interviewed Pagliano for the proffer on December 22, 2015, in the presence of all four prosecutors, the CART examiner, and Pagliano's attorneys. Among other things, Pagliano described the set-up of the Pagliano server and related equipment, as well as the transition to the PRN server, to help inform later OTD analysis of those devices. In addition, Pagliano told the FBI about a late 2009 or early 2010 conversation with Mills in which he conveyed a concern raised by a State Department Information Technology Specialist that Clinton's use of a private email server could violate federal records retention laws. Pagliano told the FBI that Mills responded that former Secretaries of State, including Colin Powell, had done the same thing. The FBI relied on this testimony in subsequent interviews, including a later interview of Mills.⁹⁰

The prosecutors and Agent 1 told us that they met afterwards and everyone agreed that Pagliano was credible and helpful. Prosecutor 1 told us that "everyone assessed that [Pagliano] was scared but truthful," and that Pagliano might have been even more nervous and less forthcoming had he been required to testify in the grand jury, outside the presence of his attorney. They also agreed that there were some follow-up questions that would need to be asked. Thus, on December 28, 2015, the Department offered Pagliano "use immunity coextensive with that granted under 18 U.S.C. § 6001" in exchange for future truthful court testimony, grand jury testimony, or voluntary interviews related to the Midyear matter, pursuant to a letter use immunity agreement. The letter provided that the government would not use any information directly or indirectly derived from Pagliano's truthful statements or testimony against him in a future prosecution,

⁹⁰ Mills told the FBI that she did not recall the conversation with Pagliano.

"except a prosecution for perjury, giving a false statement, or any other offense that may be prosecuted consistent with 18 U.S.C. § 6001."

According to a FD-302 and contemporaneous agent notes, the Midyear team interviewed Pagliano again on June 21, 2016, and he answered questions to clarify answers provided during the proffer. For example, Pagliano told the FBI that he decided not to "implement Transport Layer Security (TLS) between the Clinton email server and State server," because at the time he "understood the Clinton email server to be a personal email server and did not see a reason for encryption." He also told the FBI about "failed log-in attempt[s]" on the Clinton email server in January 2011, which Pagliano described as a "brute force attack (BFA)" that was not "abnormal." According to the LHM, "[T]he FBI's review of available Internet Information Services (IIS) web logs showed scanning attempts from external IP addressees over the course of Pagliano's administration of the server, though only one appear[ed] to have resulted in a successful compromise of an email account on the server." As described in Section I of this chapter, the one confirmed successful compromise was of an account belonging to one of President Clinton's aides.

Both Department and FBI witnesses told us that no one opposed the decision to grant Pagliano immunity. The SSA told us that the FBI did not consider him a subject or someone they would prosecute in connection with Midyear, the FBI believed his testimony was very important, and providing immunity was an effective way to secure his testimony. Prosecutor 4 told us that the way Pagliano was handled was "standard operating procedure." In addition, witnesses told us that Pagliano pleading the Fifth Amendment and refusing to testify before Congress gave the Department no choice but to offer Pagliano immunity.

B. Combetta

As previously noted, Paul Combetta was the employee of PRN who migrated the email accounts from the Pagliano server to the PRN server in 2013, transferred Clinton's archived emails to the PRN server in 2014, and later wiped emails from the PRN server in March of 2015. The Department entered into a letter use immunity agreement with Combetta on May 3, 2016. Midyear team members told us that Combetta was an important witness for several reasons, including his involvement with the culling process and the deletion of emails and his interactions with several people that worked for Clinton. Several Midyear team members stated that after conducting two voluntary interviews of Combetta, they believed that Combetta had not been forthcoming about, among other things, his role in deleting emails from the PRN server following the issuance of a Congressional preservation order. The witnesses further stated that Combetta's truthful testimony was essential for assessing criminal intent for Clinton and other individuals, because he would be able to tell them whether Clinton's attorneys—Mills, Samuelson, or Kendall—had instructed him to delete emails.

Combetta was first interviewed on September 17, 2015, by two case agents, in the presence of Prosecutor 2 and Combetta's counsel. The interview was voluntary and there was no immunity agreement. According to the FD-302 and contemporaneous agent notes, Combetta provided information regarding the set-up

of the PRN server, the roles of other PRN employees in the management of the PRN server, his role in transferring emails from the Archive Laptop to the PRN server, and his role in creating .pst files of Clinton's archived emails to be transferred to the laptops used by Mills and Samuelson to cull Clinton's emails ("culling laptops"). However, he denied that PRN "deleted or purged" Clinton's emails from the PRN server or from back-ups of the server and stated that Clinton's staff never requested that PRN do so.

On February 18, 2016, the same two agents interviewed Combetta again, this time in the presence of the CART examiner, the Forensics Agent, Prosecutor 2, and Combetta's counsel. Once again, the interview was voluntary and there was no immunity agreement. According to the FD-302 and contemporaneous agent notes, Combetta continued to deny deleting the HRC Archive Mailbox from the server and stated that "he believed the HRC Archive mailbox should still be on the Server in the possession of the FBI," despite documentation showing that the mailbox was no longer on the server as of January 7, 2015. Combetta stated that only he and one other administrator had the ability to delete a mailbox from the server. When the agents showed him documentation indicating that an administrator had manually deleted backup files and used BleachBit on March 31, 2015, he stated that he did not recall deleting backup files, he did not recall anyone asking him to delete backup files, any PRN employee had the ability to delete backup files, he believed he used BleachBit "for the removal of .pst files related to the various exports of Clinton's email" to Mills's and Samuelson's laptops, and he used BleachBit for this purpose "of his own accord based on his normal practices as an engineer." He further stated that he did not recall a March 9, 2015 email in which Mills reminded him of his obligation to preserve emails pursuant to a preservation order. The FD-302 and contemporaneous notes indicate that the agents attempted to ask Combetta about documents related to a conference call with Kendall and Mills on March 25, 2015, just before the deletions and use of BleachBit, but his attorney advised him not to answer based on the Fifth Amendment.

During the February 18, 2016 interview, the agents also showed Combetta an email dated December 11, 2014, in which he wrote to a PRN colleague, "I am stuck on the phone with CESC [Clinton's staff] again.... Its [sic] all part of the Hilary [sic] coverup [sic] operation ☺ I'll have to tell you about it at the party." Combetta told the agents that the reference to the "Hilary [sic] coverup [sic] operation" was "probably due to the recently requested change to a 60 day email retention policy and the comment was a joke."⁹¹ Department and FBI witnesses told us that Combetta's explanation for this email seemed credible to them, given

⁹¹ According to the FD-302, contemporaneous notes, and exhibits, the agents also asked Combetta about a July 24, 2014 email to Pagliano regarding using a "text expression editor." Combetta told the agents that Mills was concerned that Clinton's then current email address would be "disclosed publicly" when her archived emails were provided to the State IG, because "when a user changes his or her email address, Outlook updates the old email address with the new email address." We found that this might explain later media reports that Combetta posted on Reddit on or about July 24, 2014, "I may be facing a very interesting situation where I need to strip out a VIP's (VERY VIP) email address from a bunch of archived email...." See, e.g., Caitlin Dewey, *Hillary Clinton's IT Guy Asked Reddit for Help Altering Emails, A Twitter Sleuth Claims*, WASH. POST, Sept. 20, 2016.

his personality and the way the email was written, and they did not discuss interviewing Combetta's colleague regarding the email.

The SSA told us that he believed Combetta should have been charged with false statements for lying multiple times; however, the SSA also stated that he was ultimately satisfied that Combetta's later immunized testimony was truthful and that he was "fine" with the immunity agreement. Prosecutor 2, Agent 2, and the Forensics Agent indicated that, while they believed that Combetta had not been forthcoming during the first two interviews, they were not certain that they had sufficient evidence to charge him with obstruction or false statements. According to documents we reviewed, the forensic evidence showed that Clinton's emails had been deleted and wiped from the server, but did not definitively link Combetta with those actions. Agent 2 explained that the team "felt pretty strongly that maybe he had deleted information off of Secretary Clinton's server," but that interpreting computer forensics and precisely what they mean can be "kind of messy." Similarly, the Forensics Agent stated that, based on the forensic evidence alone, it was "very difficult" to be certain that Combetta conducted the deletions; however, based on the Midyear team's assessments of the credibility of Combetta and the other administrator, the team was more "focused on" Combetta. Prosecutor 2 told us that using the forensic evidence in combination with witness testimony, the team "probably could have established" that Combetta conducted the deletions; however, Prosecutor 2 stated that there was insufficient evidence, after the first two interviews, to prove that Combetta understood his obligation to preserve Clinton's emails and deliberately violated the Congressional preservation order.

In addition, members of the Midyear team told us, consistent with their contemporaneous emails, that they believed Combetta's failure to be forthcoming during the first two interviews was largely due to a lack of sophistication and poor legal representation, rather than an intent to hide truth. For example, Prosecutor 2 wrote in an email on March 29, 2016, to the other line prosecutors, "It's really hard to tell whether Paul [Combetta] is trying to hide something, or we are simply experiencing the effects of really bad (no) attorney prep and/or an attorney that has counseled him to say 'I don't remember' if he doesn't have a specific recollection of taking a specific action on a specific date." Prosecutor 2 expressed the same sentiments during OIG interviews. Agent 2 stated, "We just felt like we weren't getting the whole story or maybe he was holding back a little." Prosecutor 1 stated, "[W]e didn't assess his exposure to be terribly significant." However, Prosecutor 1 also stated:

There were certainly discussions about whether he had, had [18 U.S.C. §] 1001 exposure [for making false statements].... He was clearly not being forthright with us.... And I think, my, my guess is if we couldn't have gotten him to come in and, and he was messing around with us on the immunity, we probably would have had to charge him. But, I think we were more interested in understanding what had happened.... And the most expedient way to, to do that, I think we assessed, was just to, to immunize him and keep moving.

Both prosecutors and agents also told us that Combetta was not someone the government was interested in prosecuting given his role in the case. Agent 1 told us that the absence of evidence that Combetta knew anything about the content of the emails on Clinton's server minimized the FBI's interest in prosecuting him. Prosecutor 4 stated:

I was concerned that we would end up with obstruction cases against some poor schmuck on the down, that, that had a crappy attorney who didn't really, you know, if I was his attorney, he wouldn't have gone in and been, you know, hiding the ball in the first place. And so at the end of the day, I was like, look, let's immunize him. We've got to get from Point A to Point B. Point B is to make a prosecution decision about Hillary Clinton and her senior staff well before the election if possible. And this guy with his dumb attorney doing some half-assed obstruction did not interest me. So I was totally in favor of giving him immunity.

Prosecutor 2 told us that Combetta's counsel was "concerned" that the Midyear team would "want to charge somebody...to show we had done something" and "go after some low-level person like Combetta to make a point." Prosecutor 2 stated, "that was never our intention" and "it was in our interest to...make him and his counsel feel comfortable enough that they were going to give us the facts that we needed to figure out what happened in this case."

In the March 29, 2016 email exchange, the four line prosecutors weighed two approaches to dealing with Combetta: (1) offering letter use immunity and only issuing a grand jury subpoena if Combetta did not comply or was untruthful during an immunized interview; versus (2) issuing a grand jury subpoena first and withdrawing the subpoena if Combetta was cooperative and truthful during a voluntary, immunized interview the morning before a scheduled grand jury appearance. In support of the second approach, Prosecutor 4 sent an email stating that it was "common for witnesses to play games early in high profile investigations as they try to figure out the lay of the land" and noting that a grand jury subpoena was a "powerful" tool in this situation.

On April 8, 2016, the Department subpoenaed Combetta to appear before the grand jury on May 3, 2016. Along with the subpoena, Prosecutor 3 wrote an email to Combetta's attorney that the FBI intended to "continue its interview of [Combetta] and go over any relevant documents with him" on May 3 and that "[i]n the event he needs to appear before the GJ, that would likely occur" the following morning. The prosecutors and agents explained to us that the plan was to interview Combetta on May 3, and place him in the grand jury on May 4 if they assessed that he was still uncooperative or untruthful.

On the evening of May 2, Prosecutor 3 wrote to the other prosecutors that that they would need to discuss whether to put Combetta in the grand jury on May 4. He further wrote, "Regardless as to how he answers the questions, I could see the FBI advocating that we put him in the GJ." Prosecutor 4 responded, "I would

prefer that we not put him in the GJ without a clear articulable reason for doing so, but we can discuss.” Prosecutor 4 told the OIG:

Generally, I think people overestimate the value of the grand jury to get people that are lying to tell the truth. My experience, I’ve had the best luck with working with defense counsel or having very aggressive interviews with them personally, one-on-one, which I would typically not want to do in the grand jury. You know, if I’m going to beat somebody up to get them to tell the truth, I don’t want 23 grand jurors sitting around while I’m yelling at somebody.

The prosecutors told us that Combetta’s attorney had informed them in advance of the May 3 meeting that Combetta would plead the Fifth Amendment in the grand jury. They further told us they believed they had no real choice but to grant Combetta immunity.⁹² They stated that they did not consider charging Combetta with a crime and then seeking his cooperation against other witnesses, because they did not believe he had significant criminal exposure. In addition, Prosecutor 1 explained that if the Department had dropped or lowered charges against Combetta in exchange for his cooperation, a defense attorney would have used the cooperation agreement to impeach Combetta’s credibility at a subsequent trial.

Accordingly, on May 3, 2016, the Department entered into a standard letter use immunity agreement with Combetta. The terms of this agreement were identical to the terms incorporated into the Pagliano letter use immunity agreement. Specifically, in exchange for Combetta providing truthful information during FBI interviews as well as truthful testimony during any grand jury or court appearances, the Department agreed that it would not use his statement or testimony, or any information derived from it, during a subsequent criminal prosecution, “except for a prosecution for perjury, giving a false statement, or any other offense that may be prosecuted consistent with 18 U.S.C. § 6002.”⁹³ Both the prosecutors and the FBI agents involved with Combetta’s interview told us that the decision to grant Combetta use immunity was not controversial and that everyone agreed that it was the most effective way to obtain the information they needed from him.

During a speech at an FBI conference for Special Agents in Charge in October 2016, Comey indicated that he agreed with the decision to enter into a use immunity agreement with Combetta in order to obtain potentially valuable information concerning any role that Clinton played in the deletion of emails from

⁹² The Midyear team did not first conduct a Queen for a Day proffer with Combetta, as they did with Pagliano. Prosecutors typically enter Queen for a Day immunity agreements before offering letter use immunity, because Queen for a Day agreements allow the government to assess the usefulness and reliability of the witness’s expected testimony before agreeing not to use leads obtained from the testimony to develop evidence against the witness.

⁹³ This language meant that Combetta could be prosecuted for lying during his May 3 immunized interview. However, the government could not use Combetta’s statements on May 3 to prosecute him for lying in the past, including during the previous two Midyear interviews.

her server. Responding to the complaint that the Midyear team "handed out immunity like candy," he stated:

I hope you also notice our subject here was Hillary Clinton. We wanted to see[,] this very aggressive investigative team wanted to see can we make a case on Hillary Clinton. To make that case they worked up from the bottom. The guy who set up her server, the guy who panicked and deleted emails, he is really not our interest. Our interest is trying to figure out did he give us anything against her.

Combetta was interviewed subject to the terms of the immunity agreement on May 3, 2016, by the same two FBI case agents, this time in the presence of the SSA, the CART examiner, all four line prosecutors, and Combetta's attorneys. According to the FD-302 and contemporaneous notes of the two agents and the CART Examiner, Combetta provided the FBI additional detail regarding his removal of emails from the culling laptops, stating that Mills had requested that he "securely delete the .pst files" in November or December 2014 but had not specifically requested that he use "deletion software." He told the FBI that he was the one who recommended the use of "BleachBit" because he had used it for other clients. He also acknowledged removing the HRC Archive mailbox from the PRN server between March 25, 2015, and March 31, 2015, and using BleachBit to "shred" any remaining copies of Clinton's email on the server, despite his awareness of Congress's preservation order and his understanding that the order meant that "he should not disturb Clinton's email data on the PRN server." According to the FD-302 and contemporaneous notes, Combetta told the FBI that he had an "oh shit" moment upon realizing that he had failed to comply with Mills's request in late 2014 or early 2015 to "change the retention policy for Clinton's and Abedin's existing and ongoing mail to 60 days." He further told the FBI that Mills had contacted him on or about March 8, 2015, to assess what was still on the servers, including whether there were any "old back up data or copies of mailboxes hanging out there on old equipment." However, he stated that he did not tell Mills that he subsequently realized the archived emails were still on the PRN server or that he deleted them in late March. In addition, he stated that he "could not recall the content" of the March 25, 2015, call with Kendall and Mills. In sum, Combetta took responsibility for the deletions, without implicating Clinton or her attorneys.

We interviewed seven Midyear team members who attended Combetta's May 3, 2016, interview, all of whom told us that they conferred immediately following Combetta's interview and agreed that Combetta's testimony finally "made sense," that he had been truthful and forthcoming, and that he did not implicate anyone in criminal activity such that there was a need to "lock in" his testimony in the grand jury. Prosecutor 1 told us that Combetta's testimony finally "squared with the forensic evidence," and also corroborated the testimony of other witnesses, including Mills and Samuelson, that they were unaware of the March deletions by Combetta.

C. Bentel

As noted previously, John Bentel worked at the State Department for 39 years, the last four of which he served as Director of the Executive Secretariat Information Resource Management (S/ES-IRM), before he retired in 2012. As detailed below, the investigators had received evidence that Bentel had information relating to the State Department's possible sanctioning of Clinton's use of a private email server.

According to documentation we reviewed, the Department entered into a "Queen for a Day" agreement with Bentel on June 10, 2016. The terms of this agreement were similar to those offered to Pagliano. Prosecutor 2 told us that the team did not subsequently grant Bentel the broader letter use immunity granted to Pagliano and Combetta, nor did his counsel ask for it. The witnesses we interviewed told us that the decision to enter into a Queen for a Day agreement with Bentel was not controversial. Prosecutors 1 and 2 stated that Bentel's attorney sought use immunity because he thought that Bentel was portrayed poorly in the State IG report. They further stated that the team granted Bentel immunity because he was a necessary witness, who did not, to their knowledge, face any criminal "exposure." Prosecutor 2 described the Bentel interview as a "check-the-box type interview." The SSA told us that he did not oppose immunity for Bentel, because the FBI had no intentions of seeking that Bentel be prosecuted.

The agents asked Bentel about allegations by two S/ES-IRM staff members that they had raised concerns about Clinton's use of personal email to him during separate meetings. According to the State IG report, one of the staff members told the State IG that Bentel told the staff member that "the mission of S/ES-IRM is to support the Secretary" and instructed the staff member to "never speak of the Secretary's personal email system again."⁹⁴ According to the FD-302 and agent notes, the agents showed Bentel documents that suggested that he was aware that Clinton had a private email server that she used for official business during their joint tenure. One of the agents explained that the purpose of asking Bentel about his knowledge of the server was to assess whether Clinton's use of the server was sanctioned by the State Department. However, Bentel maintained that he was unaware that Clinton used personal email to conduct official business until it was reported in the news and denied that anyone had raised concerns about it to him.

Both agents who interviewed Bentel told us that he was uncooperative and the interview was unproductive; however, they attributed these problems to nervousness and fear of being found culpable. Agent 3 told us that he did not believe that immunity for Bentel was necessary and that it did not help the investigation because Bentel was not forthcoming during his interview. However, he did not believe that Bentel had any criminal exposure and therefore the immunity agreement did not harm the investigation.

⁹⁴ Department of State Office of Inspector General, Office of the Secretary: Evaluation of Email Records Management and Cybersecurity Requirements (May 2016), Evaluations and Special Projects Report ES-16-03, <https://oig.state.gov/system/files/esp-16-03.pdf> (accessed May 7, 2018).

VIII. Use of Consent and Act of Production Immunity to Obtain Mills and Samuelson Testimony and Laptops

In this section we examine decisions made by the FBI and the Department regarding whether to interview Mills and Samuelson regarding the process they used to cull Clinton's emails in connection with providing emails to the State Department in 2014, as well as whether and how to obtain and review the personal laptops used by Mills and Samuelson for this culling process ("culling laptops"). The investigators told us that access to these laptops was particularly important to ensure the completeness of the investigation. All 62,320 emails pulled from the Clinton servers were stored at one time on these laptops, so access to the laptops offered the possibility of reconstructing a large number of the deleted emails through digital forensics.⁹⁵ Moreover, the deletion of emails by Mills and Samuelson from these laptops had become a matter of great public controversy, including allegations that they had been deleted for improper purposes, increasing the importance of attempting to recover as many of them as possible. Ultimately, both Mills and Samuelson submitted to voluntary interviews regarding the culling process and voluntarily provided the culling laptops to the FBI after receiving "act of production" immunity.

In the subsections below we discuss: privilege claims raised by Mills and Samuelson; the debate between the FBI and the Department; the events that led to the Department securing voluntary interviews of Mills and Samuelson; the steps that were taken to secure and search the culling laptops, including the decision to grant Mills and Samuelson "act of production" immunity and the consent agreements for the culling laptops; the involvement of senior Department and FBI officials; and a discussion of the motivations behind the Mills and Samuelson dispute.

A. Privilege Claims Raised by Mills and Samuelson

As noted previously, in response to a State Department request in 2014, Mills and Samuelson, neither of whom were still employed by the State Department, worked together on behalf of Clinton to produce Clinton's State work-related emails that were on the PRN server by crafting a process to cull what they believed to be Clinton's personal emails from her work-related emails. Samuelson, under Mills's supervision, reviewed the emails that had been placed on the culling laptops and, following completion of this culling process, Clinton produced 30,490 work-related emails to the State Department. Thereafter, Mills and Samuelson asked Combetta to securely delete the .pst files from the culling laptops, which, as described above, he did using BleachBit. Mills and Samuelson then continued to use the culling laptops for work related to their legal representation of other clients.

⁹⁵ By comparison, personal devices used by other persons who might have sent or received emails to or from addresses on the Clinton servers would only contain the emails sent or received by that person.

While the Midyear team was interested in speaking with Mills and Samuelson about this culling process, they also were interested in interviewing Mills concerning her time at the State Department with Clinton, due to evidence that Mills frequently communicated directly with Clinton and that she received and forwarded classified information on both her unclassified State email and personal Gmail accounts.⁹⁶ During Clinton's tenure as Secretary of State, Mills served as, among other things, Clinton's Chief of Staff and Samuelson served as a senior advisor to Clinton and White House Liaison.

According to documents we reviewed, Mills and Samuelson told the FBI and Wilkinson told the prosecutors that Mills and Samuelson had attorney-client relationships with Clinton for purposes of their work culling Clinton's emails in 2014. According to internal memoranda and emails, the prosecutors began asking Wilkinson to provide her clients for voluntary interviews regarding the culling process in December 2015, but Wilkinson raised objections. Specifically, Wilkinson argued that any interview questions regarding the culling process "would require answers revealing privileged information," and she suggested that the Department obtain the information through an attorney proffer by Wilkinson instead.⁹⁷ Prosecutor 2 told us, and contemporaneous notes show, that the prosecutors also asked Wilkinson to voluntarily turn over the culling laptops in March 2016, after Wilkinson informed them that the laptops were still in her clients' possession. However, Wilkinson refused to voluntarily turn over the culling laptops, arguing that the laptops contained privileged information related to both Clinton and Mills's and Samuelson's other clients. Wilkinson told the prosecutors that she would instead take possession of the culling laptops from her clients, disconnect them from the Internet, and secure them in a safe in her office.

B. Debate over Interviewing Mills and Samuelson Regarding the Culling Process and Obtaining the Culling Laptops

FBI case agents and the SSA told us, and contemporaneous emails show, that they believed that interviewing Mills and Samuelson regarding the culling process and searching the culling laptops were essential investigative steps. They stated that they hoped to be able to find the full 62,320 emails that were originally reviewed by Mills and Samuelson to determine whether any additional emails—beyond those that Clinton's attorneys provided to the State Department and those that the FBI found through other sources—contained classified information. They further stated that they believed the culling process might have been flawed,

⁹⁶ Prosecutor 1 told us that the Midyear team did not have an investigative need to interview Samuelson concerning her time at State.

⁹⁷ Wilkinson also represented two other witnesses, a former senior State Department official and Jake Sullivan. According to emails we reviewed, Wilkinson agreed to provide the former senior State Department official for an interview, but at first refused to provide Sullivan, although she acknowledged that Sullivan never had an attorney-client relationship with Clinton. On January 14, 2016, the prosecutors prepared a memorandum requesting authorization to notify Wilkinson that the Department was prepared to issue a grand jury subpoena for Sullivan's testimony, as well as authorization to issue the grand jury subpoena if Wilkinson continued to object. On January 18, 2016, Toscas emailed Laufman approving both requests. Wilkinson ultimately agreed to provide Sullivan for a voluntary interview, which took place on February 27, 2016.

because their other reconstruction efforts had revealed a significant number of work related emails to or from Clinton that had not been included in the State Department production. Strzok told us that the FBI investigators hoped that asking questions about the culling process and reviewing the culling laptops would help determine why this was the case and whether there was a nefarious purpose. For example, several FBI witnesses stated that they believed that asking questions about the culling process might help them determine why Abedin's emails were underrepresented in the State IG production.

FBI witnesses told us that once Wilkinson refused to voluntarily provide her clients for interviews and the culling laptops, they believed it was appropriate and in the interest of efficiency to subpoena Mills and Samuelson before the grand jury and seek a search warrant to seize the culling laptops from Wilkinson's office. The FBI witnesses stated that even if a judge ultimately were to quash a subpoena or decide that there was no probable cause to issue a search warrant, it was the FBI's obligation to at least try to obtain what they believed to be critical potential sources of evidence.

The line prosecutors and Laufman told us, and contemporaneous emails and internal memoranda show, that they agreed that it would be helpful to interview Mills and Samuelson regarding the culling process and obtain the culling laptops. However, they had several concerns about using compulsory process to do so. First, they were concerned that at least certain questions regarding the culling process would seek information protected by attorney-client privilege and the attorney work product doctrine. Second, they were concerned that the culling laptops contained privileged material relating to both Clinton and Mills's and Samuelson's other clients. Third, they raised questions about establishing probable cause to search the culling laptops given evidence that they had been wiped of the emails relevant to the Midyear investigation. Fourth, based on conversations with Wilkinson, they believed she would file a motion to quash any search warrant or subpoena and that this would lead to protracted litigation that would delay the investigation. Finally, they stated that they were required to follow the procedures set forth in the Department policy for obtaining physical evidence and testimony from an attorney regarding the attorney's representation of a client. They stated that, at a minimum, 28 C.F.R. § 59.4 and USAM 9-19.220 and 9-13.420 did not permit them to execute a search warrant on Wilkinson's office under these circumstances.

The prosecutors told the OIG that the FBI did not appreciate the complexity involved with obtaining the culling testimony and laptops. Prosecutor 4, whom several witnesses told us was known for being an experienced prosecutor with significant experience handling privilege issues, explained that he was frustrated that the FBI was "willing to litigate to the death issues that [he] thought would be very close calls and could delay the investigation for two years without a strong belief that it would actually change the results" of the investigation.

C. Events Leading to Voluntary Interviews of Mills and Samuelson Regarding the Culling Process

1. Attorney Proffer on March 19, 2016

On February 1, 2016, Toscas received from the NSD prosecutors their proposed investigative steps for Mills and Samuelson. The prosecutors proposed pursuing a grand jury subpoena to question Mills concerning her State Department tenure (where there were no attorney-client privilege issues), but seeking attorney proffers before considering grand jury subpoenas for Mills's and Samuelson's testimony about the culling process. They provided two reasons for this approach.

First, they indicated that, pursuant to the USAM, to obtain Criminal Division authorization for a subpoena to an attorney regarding the attorney's representation of a client they must show that the information sought is not protected by a valid claim of privilege and that "[a]ll reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful." USAM 9-13.410(C). The prosecutors described how they would tailor their questions about the culling process to avoid seeking information protected by attorney client privilege.⁹⁸ However, they indicated that they could not represent that all reasonable attempts had been made to obtain the information from alternative sources without first attempting to obtain the information through an attorney proffer.

Second, they indicated that they were concerned that issuing subpoenas for testimony regarding the culling process could result in protracted litigation with an uncertain outcome. They indicated that, despite extensive legal research, the team had been unable to find clear authority indicating that a court should allow an attorney to be questioned about actions taken on behalf of a client, even if describing those actions would not implicate confidential communications between the client and attorney.

In February 2016, Wilkinson agreed to both an attorney proffer by Wilkinson regarding the culling process and a voluntary interview of Mills regarding her State Department tenure. On February 8, 2016, the prosecutors emailed Wilkinson a short list of broad topics for the attorney proffer and the proffer was scheduled for March 19, 2016. Separately, Mills's interview regarding her State Department tenure was set for April 9, 2016.

According to Prosecutor 2's notes of the March 19 attorney proffer, the proffer was attended by all four line prosecutors, Beth Wilkinson, and two other attorneys from Wilkinson's firm. Mills's and Samuelson's attorneys told the prosecutors, consistent with a State IG Report described above, that Mills and Samuelson initiated the culling process after the State Department requested Clinton's assistance reconstructing her work-related emails. The attorneys further

⁹⁸ Specifically, they indicated that they intended to ask Mills and Samuelson questions falling into three categories: "(1) receipt of emails from PRN; (2) general questions about the culling process that do not implicate the attorney-client privilege; and (3) handling of the emails, which have been confirmed to contain classified information."

stated that the State Department had told Mills that “it was HRC’s responsibility to determine” what was personal and what was work-related, because this would be “too burdensome for State.” The attorneys described the manner in which Mills and Samuelson obtained the emails from Combetta and generally how they conducted their review. The attorneys told the prosecutors that Mills asked Combetta to remove the .pst files from Mills’s and Samuelson’s laptops after Clinton’s work-related emails were produced to the State Department; however, the attorneys stated that they “never heard of BleachBit.” According to the notes, the attorneys confirmed that Clinton had changed her email retention policy to 60 days in early 2015, but would not “say reason for changing policy – either [privilege] or HRC’s question to answer.”

2. Midyear Team Meeting on March 28, 2016

After the March 19 attorney proffer, the FBI team took the position that it was still essential to interview Mills and Samuelson regarding the culling process. On March 28, 2016, the Midyear team held a meeting to decide the best way forward. McCabe and Toscas were the highest level FBI and Department officials, respectively, at the meeting. Witnesses told the OIG and contemporaneous emails show that this meeting was contentious and that the FBI insisted that the team either interview Mills regarding the culling process during the scheduled interview on April 9, 2016, or inform Wilkinson before April 9 of its intent to do so at a future date. The FBI witnesses stated that they believed if they did not do this, Mills would only give the FBI one “bite at the apple”—that she would assert publicly that she cooperated with the FBI without an incentive to return for another interview.

Based on a review of emails and text message exchanges, we determined that Page was one of the more outspoken FBI personnel at the March 28 meeting in favor of interviewing Mills and Samuelson about the culling process and countering the Department’s privilege concerns. In a March 29, 2016 email exchange, Strzok asked Prosecutor 4, “[H]ow are you doing? You seemed none too pleased at times on Monday [March 28].” Prosecutor 4 replied with an email about Page:

I am fine. I don’t like “former prosecutors” [Page] giving their opinions from the cheap seats. I have been known throughout my career by the agents I work with as the most aggressive prosecutor that they have ever seen. During my last five jury trials I have forced no fewer than a dozen lawyers to testify against their former clients. It is easy for FBI attorneys to second guess our opinions when they haven’t ever had to actually stand before a judge and defend their opinion.⁹⁹

In response, Strzok defended Page and wrote, “Best I can tell is I think everyone in the room’s motives were (are) pure.” Prosecutor 4 then wrote:

⁹⁹ Page told us that she had been a prosecutor in the Department’s Organized Crime and Racketeering Section before joining the FBI.

I am stuck in the middle of pushing NSD along and trying to get FBI to be realistic. The investigation is degenerating into everyone trying to figure out what the congressional testimony looks like in the future. My job is to put criminals in jail, period.

Following the March 28 meeting, Strzok drafted an email to send to the prosecutors to memorialize the FBI's understanding of the decision made at the meeting regarding Mills and Samuelson. The email was approved by FBI OGC, Steinbach, and McCabe. Strzok sent the email on March 29, 2016, to the four line prosecutors and copied Toscas and several FBI employees. In the email, Strzok wrote that the prosecutors had agreed to "inform Wilkinson of DOJ's and FBI's intention to interview Mills and Samuelson about the sort process." In addition, Strzok wrote that the prosecutors had agreed to contact the Department's Professional Responsibility Advisory Office (PRAO) regarding whether they could seek a waiver of attorney-client privilege from Clinton through Kendall.

According to emails we reviewed, the line prosecutors and Laufman agreed with reaching out to PRAO for advice on seeking a waiver from Kendall and did so on March 31, 2016. In addition, in early April, 2016, they sought guidance from the Criminal Division as to whether seeking the waiver was permissible under Department policy. On April 12, 2016, three days after the Mills interview, a Criminal Division official told NSD that he was "not aware of any DOJ policy that would prevent [CES] from seeking the waiver."

As far as Strzok's assertion that the prosecutors had agreed to notify Wilkinson that the FBI intended to interview her clients regarding the culling process, Prosecutors 1 and 2 indicated in an email exchange on March 30, 2016, that this was not correct. According to the March 30 email exchange, the prosecutors were concerned that certain issues had not yet been resolved, including obtaining necessary approvals from the Criminal Division. Also on March 30, 2016, Prosecutor 1 wrote to Prosecutor 2 and Laufman that he did not want to take a position with Wilkinson that they would be unable to "stand behind" and thus be accused of "dealing with her in bad faith." Prosecutor 1 told us, "It's not smart to make demands when you don't understand what kind of leverage you have." Thus, Prosecutor 2 told us, and documents showed, that before the April 9 interview the prosecutors told Wilkinson that the FBI "had not foreclosed" the possibility of interviewing her clients regarding the culling process, but not that the FBI insisted on doing so.

3. FBI Call to Wilkinson on April 8 About Mills and Samuelson Interviews Without Informing Prosecutors

On April 8, 2016, the day before the Mills interview, FBI GC Baker contacted Wilkinson, without notifying the line prosecutors or higher Department officials in advance, to convince her to consent to the FBI's demands for the culling testimony

and culling laptops.¹⁰⁰ The prosecutors learned of Baker's call to Wilkinson the following day, when Wilkinson told the prosecutors at the Mills interview she had been contacted by a "senior FBI official" regarding interviews of her clients.

Comey told us that he approved Baker's call to Wilkinson and that he "must have known [Baker] was not going to tell DOJ." In addition, Laufman's notes of a meeting following the Mills interview indicate that McCabe was aware of the call beforehand. Baker told us that he reached out to Wilkinson because he believed the line prosecutors had not been sufficiently aggressive. Laufman stated that he took "great offense" to Baker's assertion that the prosecutors had not been aggressive with Wilkinson, "because we were accomplishing and had accomplished great things through creative troubleshooting of extraordinarily sensitive issues with counsel to obtain the media and devices whose review was the foundation of this investigation." Prosecutors 1 and 2 told us that Baker's efforts were not effective, because Wilkinson continued to refuse to provide consent.

4. FBI Surprise Statement at Outset of April 9 Mills Interview

On April 9, 2016, Mills appeared with Wilkinson for a voluntary interview concerning Mills's tenure at State. According to a FBI memorandum ("Mills Interview Memorandum"), shortly before the interview Strzok advised the prosecutors and Laufman that the agent conducting the interview would be making a statement at the start of the interview "concerning the scope of [the] interview, the FBI's view of the importance of the email sorting process, and the expectation of a follow-up interview once legal issues had been resolved." Witnesses referred to this statement as "the preamble."

Comey told the OIG that he approved of the preamble but did not suggest it, and McCabe stated that he "authorized" the preamble. McCabe told us that he directed the FBI team not to discuss the preamble with the prosecutors before the day of the interview because he was "concerned that if we raised another issue with DOJ, we would spend another two weeks arguing over the drafting of the preamble to the interview, which I just was not prepared to do."

The prosecutors told us that they were surprised and upset because the preamble was inconsistent with their prior representations to Wilkinson and they believed it was strategically ill-advised. The Mills Interview Memorandum states that the prosecutors objected to the preamble but that they were told that "the FBI's position was not subject to further discussion."

According to the Mills Interview Memorandum, the interviewing agents delivered the preamble at the outset of the interview as planned. Witnesses told us

¹⁰⁰ Baker told us that he had known Wilkinson for many years, and documents show that she had previously reached out to him in Midyear as part of a broad effort to speak with senior Department and FBI officials, up to and including Attorney General Lynch. Lynch and other high level Department officials told us that they did not speak with Wilkinson during the course of the investigation.

that Wilkinson was visibly angered by the preamble and that she and Mills stepped outside the interview room after the agent delivered it. The prosecutors stated that they convinced Wilkinson and Mills to return for the remainder of the scheduled interview concerning Mills's tenure. However, according to Prosecutor 1, Mills was "on edge the whole time."¹⁰¹

According to notes of the interview, the prosecutors told Wilkinson that they were "sandbagged" by the FBI and that they did not know in advance about the preamble. Additionally, according to the notes, Wilkinson informed the prosecutors of the call the previous day from a "senior FBI official."

Prosecutors and FBI agents told us that the events surrounding the April 9 Mills interview, including both the preamble and Baker phone call that were planned without Department coordination, caused significant strife and mistrust between the line prosecutors and the FBI. AAG Carlin told us that the prosecution team asked him to call McCabe and "deliver a message that this is just not an acceptable way to run an investigation." Carlin told us that he delivered this message to McCabe and also briefed Lynch and Yates on the issues.

Witnesses told us that the strife between the prosecutors and the FBI team culminated in a contentious meeting chaired by McCabe a few days later. On the Department side, this meeting was attended by the line prosecutors, Laufman, and Toscas. Prosecutor 2 told us that during this meeting the prosecutors explained that they were trying to be "careful" in their handling of complicated issues, and that McCabe responded that they should "be careful faster." Laufman stated that McCabe's comment "undervalued what we had been able to accomplish to date investigatively through negotiating consent agreements." According to Laufman's notes, McCabe agreed that Baker's unilateral contacts with Wilkinson should not have happened, and Baker agreed not to have further contact with Wilkinson. With respect to the preamble, however, the prosecutors told us that McCabe stated that he would "do it again."

5. Mills and Samuelson Agree to Voluntary Interviews Regarding the Culling Process

In May 2016, Wilkinson agreed to allow Mills and Samuelson to be voluntarily interviewed regarding the culling process, provided the questions asked during the interviews did not seek information that was considered "opinion work product."¹⁰²

¹⁰¹ During the interview, according to the FD-302, Mills told the FBI that she "did not learn Clinton was using a private server until after Clinton's [State Department] tenure." The FD-302 further states, "Mills stated she was not even sure she knew what a server was at the time." Abedin similarly told the FBI that she "did not know that Clinton had a private server until...it became public knowledge." The prosecutors told us that they found it credible that Mills and Abedin did not understand that Clinton had a "private server," even though Mills and Abedin knew Clinton had an email account on the clintonemail.com domain. They further stated that Mills's and Abedin's statements were consistent with what the prosecutors understood to be Mills's and Abedin's limited technical knowledge and abilities.

¹⁰² Opinion work product is attorney work product that involves "mental impressions, conclusions, opinions, or legal theories" concerning litigation and, like communications protected by

The prosecutors told us that this meant that the agents could ask questions regarding the “mechanics” of the culling process, including how Mills and Samuelson obtained and reviewed the emails for production to the State Department. However, they told us that they could not put a particular email in front of Mills or Samuelson and ask why the call was made to consider it work-related or personal. The prosecutors explained that, based upon their research and Prosecutor 4’s experience with privilege, they believed they would not likely be successful convincing a judge that such questions were permissible.

Samuelson and Mills were interviewed regarding the culling process on May 24, 2016, and May 28, 2016, respectively, which was before the Midyear team obtained access to the culling laptops. Witnesses told us and contemporaneous documents show that the agents prepared outlines in advance of the interviews and the prosecutors reviewed them to ensure they were consistent with the agreed upon parameters. For example, based on witness testimony and the outline we reviewed, the prosecutors eliminated a question that asked for the “exact” search terms that were used during the culling process. Prosecutor 2 told us that during

the attorney-client privilege, is generally protected from discovery. Strzok told us that the Midyear team considered whether questions regarding how Mills and Samuelson made decisions to exclude particular emails could have been asked based on the “crime-fraud” exception to the attorney-work product doctrine. In the Fourth Circuit (which includes EDVA), in order to invoke the crime-fraud exception, the government “must make a prima facie showing that (1) the client was engaged in or planning a criminal or fraudulent scheme when he sought the advice of counsel to further the scheme, and (2) the documents containing the privileged materials bear a close relationship to the client’s existing or future scheme to commit a crime or fraud.” In order to apply the crime-fraud exception to an attorney’s opinion work product, the government must also “make a prima facie showing that the attorney in question was aware of or a knowing participant in the criminal conduct.” *In re Grand Jury Proceedings No. 5*, 401 F.3d 247, 251-52 (4th Cir. 2005).

While we did not ask the prosecutors about the crime-fraud exception directly, it appeared, based on their answers to other questions, that that they did not believe that they could show that Mills or Samuelson were “engaged in or planning a criminal or fraudulent scheme” when they culled Clinton’s emails for production to the State IG. Prosecutor 2 stated that the Midyear team had not uncovered evidence during the course of the investigation that Mills or Samuelson had a criminal “motive” when they conducted the culling process. Prosecutor 2 explained, “[T]here was nothing that was different in the type of emails that were produced and the types of emails that were found elsewhere to indicate to us that there was any sort of...nefarious intent.” Similarly, Prosecutor 1 stated that the notion that Mills or Samuelson had criminal mens rea when they conducted the sort process was contradicted by the fact that the production to the State Department contained numerous classified emails. This prosecutor stated, “[L]ots of classified stuff got turned over in FOIA, so the notion that they would have been deleting the classified didn’t make a lot of sense to us at this point in the investigation, because [they] probably would have done a better job of getting rid of it.” The Lead Analyst told us that “he had no evidence to suggest that” there was “some sort of willful arrangement to...remove and otherwise sideline material that would, you know, reflect criminal activity.” He further stated, “We didn’t see anything else to suggest that there [are] these like willful criminal arrangements with attorneys.”

Prosecutor 2 told us, and contemporaneous documents show, that the Midyear team also considered whether there was a waiver of privilege, due to either (1) the publication of certain information regarding the culling process on the Clinton campaign website; or (2) Mills’s testimony about aspects of the culling process before the House Benghazi Committee. Prosecutor 2 stated, “[W]e thought we had pretty good arguments to argue waiver on fact work product but not opinion work product, which is kind of like...the way I differentiate it, asking about the mechanics versus asking about why substantive decisions were made.”

the interviews “there were a couple of assertions of privilege,” but overall the interviews went well.

One of the case agents who led Mills’s and Samuelson’s interviews told us that he believed the interviews regarding the culling process were not as productive as he would have liked, because Mills and Samuelson were “so well-rehearsed.” He attributed this to a number of factors, including that they were interviewed late in the investigation, Wilkinson was aware of the scope of the interview in advance from discussions with the prosecutors, and Mills was a “highly-trained professional” with an “excellent” attorney. He further stated that the limited scope of the questioning “took away some of our tools that we would have had going into that interview.” Other FBI witnesses, however, told us that while there was some debate over the scope of the interviews beforehand, the team was ultimately satisfied with the information that was obtained. Prosecutor 2 told us that “nobody ever expressed a concern following the interviews that there was something that we needed that we didn’t get.”

D. Steps Taken to Obtain and Search the Culling Laptops

As noted above, the investigators wanted access to the laptops primarily because such access promised the possibility of reconstructing the emails that had been deleted in the culling process. However, because Mills and Samuelson were both attorneys, the issue of obtaining access to the laptops implicated questions regarding how to protect any privileged information residing on them.

1. Internal Strategizing and Call with Clinton’s Counsel

Documents we reviewed reflected that the prosecutors spent significant time and effort conducting research, analyzing relevant legal, policy, and ethical issues, and strategizing how to best handle the issue of the culling laptops. Contemporaneous emails and text message exchanges we reviewed show that Strzok and Page challenged the prosecutors’ laptop privilege concerns and were two of the most outspoken proponents of using compulsory process to obtain the culling laptops. Page explained to the OIG why she did not agree that the emails on the laptops were privileged:

These are materials, these are the State Department’s records. And if the Secretary in the first place had actually followed normal protocol, every single one of these emails, whether personal or work-related would have been in the State Department’s possession, and there would be no attorney-client discussions happening with respect to the sort of this material.

In addition, Page stated that any other privileged material on the laptops could be handled by the Midyear team’s already established filter team.

On May 18, 2016, Toscas, McCabe, Page, and Prosecutor 1 had a telephone conference with DAAG Paul O’Brien of the Department’s Criminal Division regarding the likelihood of Department approval for search warrants or subpoenas to obtain the culling laptops. O’Brien told the OIG, and Page’s and Toscas’s

contemporaneous notes show, that during this call McCabe advocated in favor of a search warrant, but O'Brien stated that a search warrant was "a nonstarter." O'Brien stated that he explained to McCabe that a search warrant for Beth Wilkinson's office was inconsistent with the USAM and 28 C.F.R. § 59.1. He further stated that he told McCabe that a judge was likely to question why the government was seeking a search warrant to seize the laptops from Wilkinson's office, when a subpoena would suffice to obtain them (and a search warrant could be sought later to review their contents).¹⁰³ O'Brien told the OIG that even with a filter team, "any time you issue a search warrant for an attorney's office, you run the potential and the possibility that you can be inadvertently coming across protected client, sensitive attorney-client information." He further told us that he believed a subpoena was more appropriate, because it would be less intrusive and "there was no thought that Beth Wilkinson was going to destroy the evidence." According to Page's notes, O'Brien stated on the call that he had never seen the Department seek a search warrant in similar circumstances.¹⁰⁴

On May 23, 2016, Toscas, McCabe, Page, and Prosecutor 1 spoke with Kendall based on the approval previously received from the Criminal Division. During the call, they described to Kendall the difficulty the team was having obtaining the culling laptops and told him that they would not interview Clinton before obtaining the laptops. Prosecutor 1 stated that the team assumed Kendall and Wilkinson were speaking with one another and that a conversation with Kendall might ultimately lead to Wilkinson voluntarily providing the laptops.

2. Approval to Subpoena the Culling Laptops

On May 31, 2016, after hearing nothing further from Kendall, the Midyear team submitted applications for the approval of subpoenas for the culling laptops to the Criminal Division through O'Brien. The applications were signed by EDVA U.S. Attorney Boente. The team also prepared and submitted to O'Brien search warrant

¹⁰³ O'Brien told us that even if the laptops were still in the possession of Mills and Samuelson, "we still would have looked to determine whether we could obtain the materials with a subpoena rather than doing a search warrant," as required by the USAM.

28 C.F.R. § 59.1 and USAM 9-19.220 apply to the use of process against "disinterested third parties." Pursuant to 28 C.F.R. § 59.1, "It is the responsibility of federal officers and employees to...protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive." Similarly, USAM 9-19.220 provides, "As with other disinterested third parties, a search warrant should normally not be used to obtain...confidential materials" from a disinterested third party attorney."

USAM 9-13.420 applies to searches of the premises of an attorney that is a "suspect, subject or target" of an investigation and provides: "In order to avoid impinging on valid attorney-client relationships, prosecutors are expected to take the least intrusive approach consistent with vigorous and effective law enforcement when evidence is sought from an attorney actively engaged in the practice of law."

¹⁰⁴ The policies set forth in the USAM are binding on both FBI and Department employees.

applications for reviewing the content of the culling laptops, to submit to a court once the laptops were obtained.

In a letter to Toscas dated June 3, 2016, O'Brien authorized the issuance of the proposed subpoenas. He further wrote that the team "had satisfied the requirement, pursuant to USAM 9-13.420(C), to consult the Criminal Division before applying for a warrant to search the laptop computers."¹⁰⁵ Toscas told us, and contemporaneous emails show, that he proposed applying to the court for an "anticipatory search warrant." An anticipatory search warrant is one that is approved by the court for use once a triggering event occurs, in this case the FBI securing the laptops by subpoena. Toscas stated that he was in favor of the anticipatory search warrant because he thought it might help persuade a judge to side with the government when litigating a possible later motion to quash the subpoena. However, he said that Boente and the prosecutors in EDVA did not agree because anticipatory search warrants were not typically used in that fashion in their jurisdiction.

On June 4, 2016, Prosecutor 1 wrote to Wilkinson:

I had wanted to speak to you personally today to discuss next steps. Since we were unable to connect, in the interest of time, I am advising you that DOJ has authorized subpoenas for both laptops, which we intend to serve by COB Monday. It is important that we speak on the phone as soon as possible tomorrow.

The prosecutors had a series of phone calls with Wilkinson over the next two days, ultimately resulting in four letters dated June 10, 2016: two from the Department (one for Mills and one for Samuelson) granting Wilkinson's clients "act of production" immunity in exchange for voluntarily providing the culling laptops and two from Wilkinson (one for Mills and one for Samuelson) granting the Department consent to review the culling laptops, with certain restrictions. Witnesses told us that McCabe and Toscas were the highest level FBI and Department officials, respectively, to approve these agreements.

3. Act of Production Immunity for Mills and Samuelson

The Department entered into "act of production" immunity agreements with both Mills and Samuelson on June 10, 2016. The immunity agreements provided that the government would "not...use any information directly obtained from" the culling laptops in any prosecution of either witness "for the mishandling of classified information and/or the removal or destruction of records," pursuant to "18 U.S.C. § 793(e) and/or (f); 18 U.S.C. § 1924; and/or 18 U.S.C. § 2071." Therefore, Prosecutors 1 and 2 told us it was their view that the government would have been free to use in any future prosecution of Mills and Samuelson leads developed as a result of the FBI's review of the information on the culling laptops, as well as information provided by Mills and Samuelson during their voluntary interviews.

¹⁰⁵ The USAM did not require Criminal Division approval for the search warrant, just consultation once the request had been approved by a U.S. Attorney (here that was Boente). USAM 9-13.420(C)

FBI and Department witnesses told us that no one within the team disagreed with the decision to enter into these immunity agreement with Mills and Samuelson in exchange for obtaining the culling laptops. We also were told by FBI and Department witnesses that, based on the evidence they had gathered at that point in the investigation, they did not expect to uncover anything on the culling laptops that would be incriminating to Mills or Samuelson. The prosecutors told us that that Mills and Samuelson had included in the State Department production numerous emails containing classified information, including emails containing SAP information which was the most sensitive material identified during the Midyear investigation. They also had included the emails with the (C) portion markings, which were the only emails containing classification markings that were discovered during the investigation. According to Prosecutor 2, "[T]here was nothing that was different in the type of emails that were produced and the types of emails that were found elsewhere to indicate to us that there was any sort of motive" or "nefarious intent."

In addition, Prosecutor 1 stated that, even after the prosecutors had approval to obtain the laptops by subpoena, they believed that obtaining them through consent was preferable, because they expected a motion to quash and time lost through subsequent litigation. Similarly, FBI agents and supervisors told us that they did not object to the immunity agreements because the protection offered by them was limited and allowed the team to obtain needed sources of potential evidence without inhibiting the investigation.

Comey explained in a speech at an FBI conference for Special Agents in Charge in October 2016 that there were "huge concerns" about attorney-client privilege and attorney work product on the culling laptops that warranted entering into the immunity agreements with Mills and Samuelson in order to secure them. He stated:

You can also imagine given that you're experienced people the challenge in trying to get a lawyer to give you their laptop that you use for all of their legal work. Huge concerns there about attorney-client privilege, attorney work product. We had a few options there. One was to serve them with a Grand Jury subpoena and then litigate the work product protection and the attorney-client protections for probably the next five years, or reach some agreement with them to voluntarily produce it and give them some sort of assurance as to how the information will be used on that laptop.... Department of Justice reached an agreement at the request of the lawyer for these two lawyers that for act of production of immunity is the way I understand it in my career that is you give this laptop, we will not use anything on the laptop against you personally in a prosecution for mishandling of classified information or anything else related to classified information. Reasonable to ask for a lawyer to ask to give us the laptops and enabled us to short circuit the months and months of litigation that would've come otherwise. I was actually surprised they agree[d] to give us the laptops.

4. Limitations in the Consents to Search the Culling Laptops

In addition to the immunity agreements, which the Department entered into to obtain possession of the culling laptops, the Department entered into consent agreements with both Mills and Samuelson in order to enable the FBI to search the laptops with certain limitations. The consent agreements provided that the “sole purposes of the search” were:

“[T]o search for any .pst files, or .ost files, or compressed files containing .pst or .ost files, that were created by Platte River Networks (“PRN”) after June 1, 2014 and before February 1, 2015, in response to requests for former Secretary Clinton’s email from her tenure as Secretary of State;”

“[T]o attempt to identify any emails from, or remnants of, the PRN Files that could potentially be present on the Device;”

“[T]o identify any emails resident on the Device sent to or received from” Hillary Clinton’s known email accounts, “for the period of January 21, 2009 through February 1, 2013;” and

“[T]o conduct a forensic analysis of the device to determine whether the Device was subject to intrusions or otherwise compromised.”

The consent agreements described in detail a two-phase process the FBI would use to search the devices for the listed purposes. In the first phase, OTD would search the allocated space of the devices for the .pst files created by Combetta. If the intact .pst files were found, OTD would not move on to the second phase. If not, OTD would go on to the second phase, which would entail searching both the allocated and unallocated space for “any emails, fragments of emails, files, or fragments of files” that could “clearly be identified as having been sent to or received by” one of Clinton’s email accounts during her tenure.¹⁰⁶

Witnesses told us, and contemporaneous text and instant message exchanges among FBI employees show, that negotiating the consent agreements was a difficult process and, at least at the outset, Strzok and others at the FBI believed that the prosecutors were giving Wilkinson too much control.¹⁰⁷ However,

¹⁰⁶ The consent agreements also each provided: “As soon as the investigation is completed, and to the extent consistent with all FBI policies and applicable laws, including the Federal Records Act, the FBI will dispose of the Device and any printed or electronic materials resulting from your search.” According to talking points drafted by members of the Midyear team in October 2016, the FBI had agreed to destroy the laptops because the laptops contained classified information and, as such, could not be returned to the attorneys following compliance with FOIA and Federal Records Act obligations. The draft talking points stated that as of October 2016 the laptops had not been destroyed, because the FBI was still “under a legal obligation to preserve the laptops and other electronic media due to numerous pending FOIA requests.” On June 11, 2018, the FBI informed the OIG that the FBI still had in its possession the culling laptops and all other evidence collected during the Midyear investigation.

¹⁰⁷ FBI employees have the ability to communicate internally via Microsoft Lync instant messages when logged on to their FBI workstation. We discovered several Lync messages that were relevant to our review, and we discuss these in Section XI of this chapter and in Chapter Twelve.

when we interviewed Strzok, he told us that he no longer could remember what his specific concerns were at the time and, in the end, "we got what we needed to credibly come to the resolution that we did in the investigation." He further stated that some of the sentiments he expressed over text message to Page about the prosecutors' handling of the issue reflected only the heat of the moment and his opinions at the time.

Agent 1 told us that the phases outlined in the consent agreements were overly complicated and that he did not agree that the FBI should not have been able to review the unallocated space if the analysts found the .pst files in phase 1. Contemporaneous instant messages show that the Lead Analyst, FBI Attorney 1, and FBI Attorney 2 shared this concern. However, this concern became moot when OTD was unable to find the .pst files in phase 1 and ultimately went on to phase 2 and searched the unallocated space.

FBI Attorney 1 exchanged instant messages with the Lead Analyst and FBI Attorney 2 in which she expressed frustration during the drafting of the consent agreements. For example, on June 8, 2016, she wrote to the Lead Analyst, "The fact that Pete [Strzok] met with [Prosecutor 1] and hashed all this out and capitulated really pisses me off." Also on June 8, 2016, she wrote to FBI Attorney 2, "OMG. I'm so defeated. Why do I bother?" FBI Attorney 1 told us, in an interview before viewing these instant messages, that she had concerns with the filter process set forth in the consent agreements, which limited the filter team to "two attorneys, one FBI agent, and one FBI analyst, none of whom are members of the investigative team." The agreements stated that OTD would provide the emails from its search to the filter team, which would then "review those results to identify and remove: (1) any privileged material; (2) any material that, upon further review, is determined not to be an e-mail sent to, or received by, the Relevant Accounts during the Relevant Period; and (3) any material that, upon further review, is determined not to be a work-related e-mail sent to, or received by," Clinton's relevant email account. FBI Attorney 1 stated that she opposed this language because it differed from the filter process that had been used for other devices, wherein the filter team, with the assistance of OTD, relied more heavily on search terms to eliminate material that was beyond the scope of review or privileged. She stated that her concern was that the filter process would be too time-consuming. However, she told us that in the end the filter team was able to "get it done in a timely manner" and that resolved her concerns.

In a follow up interview after viewing the instant messages, FBI Attorney 1 told us that the June 8, 2016 instant messages were exchanged during a lengthy telephone conference with Prosecutors 1 and 2, Strzok, the Lead Analyst, FBI Attorney 2, and OTD technicians. She stated that the frustrations expressed in her instant messages related to her concerns about the filter process discussed during her first interview. She further stated that her complaints about Strzok had to do with him not including her in certain conversations with the prosecutors. However, she told us that she did not believe that Strzok was failing to represent the FBI's interests in those conversations. She also reiterated that she was ultimately satisfied with the terms of the consent agreements. On June 28, 2016, FBI Attorney 1 sent an instant message to the lead filter team attorney offering to

provide the filter team with additional resources to review the culling laptops. The filter attorney responded, "Just got data from OTD and we seem to be in a good place with our current filter resources."

Agent 3 told us he was concerned by the requirement in Phase 2 that the emails be "clearly identifiable" as having been sent to or from one of Clinton's email accounts during her tenure, because sometimes the metadata in the unallocated space was unclear. However, he told us that he did not express this concern to the prosecutors at the time the consent agreements were being negotiated and that he was not sure that he had sufficient "technical basis" to do so. We asked Prosecutors 1 and 2 about this concern and they stated that the language was developed with input from the investigative team and OTD to ensure that they were able to access what they needed to access in order to adequately review the laptops. Prosecutor 2 stated, "We came to the conclusion that the procedures that were in this letter would allow us to look at the material that we thought was critical to look at, and yet protect the attorney-client privilege in a way we thought we were required to do."

Other FBI employees told us that they would have preferred to be able to search for emails sent or received just before or after Clinton's tenure, in the hope of identifying Clinton's intent in setting up the email server or the intent behind the later deletions of emails. The Lead Analyst told us that he would have liked to have been able to search Mills's and Samuelson's own emails on the culling laptops, to determine what instructions were provided to Samuelson regarding how to conduct the culling process and to see if there was any evidence regarding why later deletions occurred. He stated that this information would have helped the FBI determine whether Mills and Samuelson "willfully" did something "illegal or inappropriate" during the sort process or whether there were "serious flaws" in the process. However, he stated he had "no evidence to suggest" that Clinton or her attorneys had a criminal purpose in the way they conducted the sort process or in the deletion of emails. He further stated, "We didn't see anything anywhere else to suggest that there is these like willful criminal arrangements with attorneys. Like, there's nothing to suggest that that's the case. It's just, you know, it's the curious part of the investigator in all of us that thinks about that."

The prosecutors and some of the agents told us that the consent agreements were date restricted, because the primary purpose of reviewing the culling laptops was to find the .pst files of Clinton's emails that were transferred by Combetta, in order to reconstruct, to the extent possible, the deleted emails. They further told us that the attorneys' own communications following Clinton's tenure, with either Clinton or other clients, would mostly consist of items protected by privilege, and that they had already obtained records of communications between Clinton's attorneys and PRN staff from PRN.¹⁰⁸ Similarly, the Lead Analyst acknowledged that he might not have been able to view such emails even with legal process due to privilege and probable cause concerns. He stated, "[T]his was not a snap

¹⁰⁸ As noted in Section V of this chapter, the Midyear team also did not seek a search warrant of Mills's personal Gmail account for email exchanges following Clinton's tenure, when she had an attorney-client relationship with Clinton.

decision. This decision was made, and this was the best and most effective way to...obtain this content. And there's going to be trade-offs involved in that."

Most of the Department and FBI witnesses we interviewed told us that they were ultimately satisfied with the consent agreements to search the Mills and Samuelson laptops and did not feel that the consent agreements unduly limited their investigation. In addition, some witnesses told us that in the end they believed that the FBI obtained more through the consent agreements than it would have obtained through a subpoena or search warrant. For example, Prosecutor 4 stated that that he told the FBI "repeatedly in no uncertain terms that I thought that the probability of success on a grand jury subpoena for the laptops [because of a motion to quash] was, that they would get some things, but the vast majority of what they wanted, they would not get." Similarly, the Lead Analyst told us that he eventually learned that sometimes consent allows the FBI to obtain "a broader swath of material."

5. Review of the Laptops

The FBI and Department witnesses told us that they ultimately did not identify evidence on the Mills or Samuelson laptops that changed the outcome of the investigation. According to documents we reviewed, the team recovered 9,000 emails on Mills's laptop, which were mostly duplicates of the emails included within the 30,490 produced to the State Department, and they found no new classified emails. The team was able to recover "approximately 112 files" from Samuelson's laptop, but the analysts did not believe these files contained "work-related material."

E. Involvement of Senior Department and FBI Officials

Witnesses told us, and documents show, that the issues surrounding the culling laptops and testimony was one of the few issues in the Midyear investigation that was briefed to high-level Department officials. The highest level Department official involved in substantive decisionmaking regarding the culling testimony and laptops, including the decision to grant immunity, was Toscas. Toscas told us that while he agreed with the prosecutors that there were complicated privilege concerns, he also agreed with the FBI that the culling laptops had to be reviewed and that the prosecutors had more leverage than they realized in negotiating with Wilkinson.

Toscas told the OIG that he briefed Lynch on the negotiations with Wilkinson because of the potential for litigation, and because Wilkinson had stated that she planned to contact Department leadership. He stated that Lynch responded that she knew Wilkinson and was familiar with her aggressive style. He stated that Lynch told him, "[P]ursue whatever you want to do, she's going to be that way. That is her reputation.... Tell the team to get what they need done." Based on that guidance, Toscas told us that he conveyed to the line prosecutors to "be civil" but "be just as aggressive back" to Wilkinson.

Lynch told us that she did not recall Toscas bringing to her attention the prosecutors' difficulties negotiating with Wilkinson or conflict with the FBI. However, she stated that in the spring of 2016 Toscas briefed her and Yates that "additional laptops were found" and that "because the people who owned the laptops were lawyers, in addition to having had a connection with Secretary Clinton's team, there were issues of privilege." She stated that the only reason this issue was brought to her attention was because it "raised the possibility of litigation." She further told us that the team was able to "resolve" the issues without litigation, but she did not "know the specifics." In addition, Lynch stated that she and Wilkinson had been "prosecutors together in Brooklyn" and that, based on that experience, she described Wilkinson's "aggressive" style to Toscas. Yates and Carlin similarly told us that they were briefed on the Mills and Samuelson issues, but could not remember many details. Carlin stated that at one point he reached out to McCabe to discuss the issues and that he "fully agreed" with the recommendation of the prosecutors that "trying to do an adversarial search warrant on a lawyer's office" would result in the case being "tied up in litigation for a period of time."

On the FBI side, Comey, McCabe, and Baker were all substantively involved with the debate with the prosecutors over whether and how to obtain the culling testimony and laptops. McCabe stated, "I was very clear about this with the Director, that we could not conclude this investigation in a credible way until we had done everything humanly possible to look at those laptops, fully realizing that it likely, there may not be anything on them." He stated he also made this point clear to "Carlin, Toscas, and others." Comey told the OIG that he agreed with the FBI team that the culling laptops were "critically important." He stated:

I believe we could not credibly complete this investigation without getting access to those laptops, and that I was not going to agree to complete this investigation until we had access to those laptops because...we just couldn't credibly say we had done all we could do, if we didn't do everything possible to see, is there a forensic trace of emails that were deleted and can we tell whether there was obstructive intent.

Comey, Baker, and other FBI witnesses told us that they believed the prosecutors were overly cautious about obtaining the laptops, because they were intimidated by high-powered defense counsel like Wilkinson. Referencing the prosecutors' concerns about obtaining the laptops, Comey stated:

And I remember a general concern that...there was a sense that [the prosecutors] didn't want to do things that were too overt or too aggressive and I don't know whether that extended to the use of a grand jury or not....

But there was a sense that there was a general lack of aggressiveness and willingness to take steps that would roil the waters. In my judgment honestly, was that that wasn't politically motivated that's just the normal cowardice...this is the normal fear and conservatism

and the higher profile the matter, the more afraid sometimes the prosecutors are.

And so I didn't attribute that to a political motive....

Lynch and Yates told us that they were unaware of any complaints that the prosecutors were not sufficiently aggressive, or that they were believed by the FBI to be intimidated by high-powered defense counsel. Lynch stated, "I don't remember that being conveyed to me. You know, agents always think that prosecutors aren't aggressive enough. But they don't know the discussions and decisions that go behind the decisions as to...what steps you're going to take[.]" She said that she would have viewed any such complaints as part of the normal dialogue that often occurs between prosecutors and agents unless someone had brought the complaints to her as a "catalogue" of specific decisions that were problematic.

Comey told us that he addressed the laptop issue with Yates, because he was concerned that higher level Department officials needed to be involved. He stated:

I think I had the sense that there's nobody home. That the grownups aren't home at Justice because they've, they're stepping away from this. And so to be fair to myself, I think the laying over this was this sense that, in a way Carlin and above has abdicated responsibility for this.

However, despite his testimony that the prosecutors were not aggressive enough with Wilkinson and that higher level Department officials were not engaged, Comey told us that he did not discuss his concerns with the Department, ask the Department to assign new prosecutors, or seek the appointment of a special counsel.¹⁰⁹ As discussed in Section II.A.2 of Chapter Six of this report, Comey told the OIG that he told Yates in April 2016 that the closer they got to the political conventions, the more likely he would be to insist that a special counsel be appointed. Comey said that his comment to Yates was motivated in part by his frustration that it was taking the Midyear prosecutors too long to obtain the Mills and Samuelson laptops. However, as explained in Section VII of Chapter Six, we did not find evidence that Comey ever seriously considered seeking the appointment of a special counsel. His reasons for not seeking the appointment of a special counsel or even seeking the assignment of new prosecutors were that he had the "A-team" working on the investigation on the FBI side and it was "too late in the game" at that point. In addition, Comey stated that he believed Yates "must have done something" in response to his discussion with her, "because the team perceived an adrenaline injection into the DOJ's side that we had not seen before" and secured the culling testimony and laptops. Comey indicated to the OIG that he was satisfied with this result, stating, "We got access, we negotiated access to the

¹⁰⁹ Comey also told us that he was not "troubled or struck" by the Department's decision to have NSD run the investigation.

laptops and interviews of the lawyers, so the team got what the investigators thought they needed.”

F. Motivations behind the Culling Testimony and Laptop Dispute

Several FBI officials told us that they perceived that the prosecutors were reluctant to obtain the culling laptops and testimony, but they did not believe that such reluctance was motivated by bias or political considerations. Comey stated, “There was serious concern about the reluctance to pursue the laptops...I had no reason to believe that was driven by an improper consideration.”

Based on the evidence we reviewed, Comey and others at the FBI were primarily motivated in the debate over obtaining the culling testimony and laptops by a desire to credibly complete the investigation and to do so sufficiently in advance of the election to not be perceived as political. Indeed, witnesses told us, and contemporaneous notes show, that by the time the Midyear team was debating how to handle Mills and Samuelson, the team generally agreed that the investigation was headed toward a declination and did not believe that it was likely that anything found on the culling laptops would change that outcome. For example, according to Laufman’s notes from May 11, 2016, Strzok told Laufman that although he did not believe that finding something on the culling laptops that would change the outcome of the investigation was likely, it was nonetheless important to secure them from an “investigative standpoint.”

In addition, the notes of both Department and FBI employees show that beginning as early as May 2016, Comey conveyed to his employees a sense of urgency to complete the Midyear investigation. For example, Page wrote in her notes from a meeting on May 9, 2016, “Need to act with incredible urgency.” In the same notes, she included a reminder to herself to “call John [Carlin]” and ask, “do your people know D’s urgency?” The next day, an analyst wrote in her notes:

[The Lead Analyst] and Pete
Meeting with Director
Sense of urgency

Similarly, Laufman’s May 11, 2016 notes state:

Director Comey...
- Extraordinary sense of urgency...
- As get closer to election would be more difficult to close
- Risk of perception that won’t be credible, be seen as partisan...
FBI desires to wrap up in weeks, not months.

Moreover, as described in Chapter Six, Comey shared with Baker, McCabe, Rybicki, Priestap, Strzok, the Lead Analyst, and Page his first draft of a public statement recommending that no charges be pressed against Clinton in early May 2016, before the Midyear team interviewed Mills and Samuelson or obtained the culling laptops.

As described above, Strzok and Page were two of the strongest advocates of obtaining the culling testimony and laptops by compulsory process. On May 4, 2016, a few weeks before Mills and Samuelson were voluntarily interviewed regarding the culling process and a little over a month before the FBI obtained the culling laptops, Strzok and Page exchanged the following text messages. The sender of each message is identified after the timestamp.

8:40 p.m., Page: "And holy shit Cruz just dropped out of the race. It's going to be a Clinton Trump race. Unbelievable."

8:41 p.m., Strzok: "What?!?!?"

8:41 p.m., Page: "You heard that right my friend."

8:41 p.m., Strzok: "I saw trump won, figured it would be a bit."

8:41 p.m., Strzok: "Now the pressure really starts to finish MYE..."

8:42 p.m., Page: "It sure does. We need to talk about follow up call tomorrow. We still never have."

The same day, at 8:48 p.m., Strzok sent a similar text message to the Lead Analyst. However, the Lead Analyst responded, "Did he? We need to finish it well and promptly, but it's more important that we do it well. A wise man once said that." The Lead Analyst told us that the "wise man" referenced in his text message was Comey.

Both Strzok and Page told us that the May 4, 2016 text message exchange was not an example of them allowing their political viewpoints to impact their work on the Midyear investigation. Rather, they told us that Comey had expressed a desire complete the investigation as far in advance of the elections as possible to avoid impacting the political process, and the fact that the presidential race was down to two candidates was a milestone that enhanced that sense of urgency. They both told us that their desire to move quickly to finish Midyear was not impacted by Donald Trump, in particular, securing the nomination over the other Republican candidates.

IX. Interview of Former Secretary Clinton

The interview of Hillary Clinton took place on Saturday, July 2, 2016. Comey provided a few reasons for conducting the interview on a Saturday, including to complete the interview as soon as possible after the team finished all other investigative steps, to accommodate Clinton's schedule, and to "keep very low visibility." Comey told us that he received a briefing before the interview regarding general parameters, including when the interview would take place and who would be conducting it. However, he stated that he was not involved in formulating the questions for the interview.

We reviewed several issues related to the Clinton interview, including: the decision to conduct her interview last; a debate over the number of FBI agents and Department employees who would attend her interview and whether there were

any efforts to adjust that number for political reasons; the conduct of the interview; the decision to allow Mills and Samuelson to attend the interview as Clinton's attorneys even though they were also witnesses in the investigation; and the decision to conduct a voluntary interview rather than subpoena Clinton before the grand jury.

A. Decision to Conduct Clinton's Interview Last

Witnesses told us that interviewing Clinton at the end of the investigation was logical. Prosecutor 3 told us that generally if investigators want to determine whether someone "at the top" is culpable, they first want to see what "lower level people have to say." Prosecutor 3 told us that none of the prosecutors or agents disagreed with the decision to interview Clinton last.

Witnesses told us that in the Midyear case in particular it made sense to start at the bottom, because lower level people generally originated the emails containing classified information on unclassified systems and sent them to Clinton's closer aides who, in turn, forwarded them to Clinton. Prosecutor 1 explained:

[T]he natural thing to do was work your way up the chain. And I say chain, but I also mean email chain.... And just get to the, get to the end. The Secretary's email system was obviously the sort of foundation of all of this and why it became an issue. So we needed to understand the thinking in, in setting that up. So we naturally wanted to do her last. Also, doing interviews in that order in my experience allows you not to have to come back in serial fashion to the higher-level people who it's harder to get time with them.

Toscas stated that the team wanted to ask the lower level employees who originated the emails that turned out to be classified why they wrote the emails on unclassified systems, before asking the same questions of Clinton's aides and Clinton herself. Comey told us that one of the strategies behind interviewing Clinton last was that the interviewing agents would know enough information from other witnesses that they could test Clinton's credibility by asking her questions to which they already knew the answers.

B. Number of People Attending ("Loaded for Bear" Text Message)

Witnesses told us that there were disagreements within the Midyear team regarding who should attend the interviews of certain key players in the investigation. They stated that Laufman insisted on attending certain interviews, including Clinton's interview, although he normally did not attend interviews. The FBI took the position that if Laufman would be at an interview, Strzok, who was roughly his counterpart at the FBI, should also be at the same interview.

Strzok and Page told us, and contemporaneous emails and notes show, that they and other members of the Midyear team, including the line prosecutors, were concerned about the number of people attending Clinton's interview and Laufman's insistence on attending. These discussions started well before Clinton's July 2

interview.¹¹⁰ On February 24, 2016, Strzok emailed Priestap that Laufman had called him earlier stating that he "felt strongly about DoJ bringing four attorneys ([Laufman] + 3), and that he was going to raise it up his chain." Strzok further wrote that he told Laufman that raising the issue up the chain would be "necessary because the DD had indicated the group should be 2-2," meaning two agents and two prosecutors. Strzok forwarded this email to Page and another employee, who was also an advisor to McCabe, two minutes later. Strzok told us, and the email chain that followed shows, that Strzok agreed with McCabe that two agents and two prosecutors would be ideal, but he was amenable to three agents and three prosecutors as a compromise. However, both McCabe and Strzok were opposed to allowing four prosecutors to attend the interview.

Later that evening, Strzok and Page exchanged several text messages about the dilemma over how many people should attend Clinton's interview. Based on a review of this exchange, Strzok was concerned that if only two agents and two prosecutors attended the interview and Laufman insisted on being one of the prosecutors, it would be difficult for Strzok to decide whether to send two case agents or himself and one case agent. The following text messages were part of this exchange. The sender of each message is identified after the timestamp.

10:32 p.m., Page: "Do you or Bill [Priestap] fundamentally believe that 3 and 3 is the RIGHT thing for the case? If the answer is no, then you call [McCabe's advisor] back and say we're good as is. You have never wavered from saying 2 and 2 is best. I don't get what the hesitation is now."

10:52 p.m., Page: "One more thing: she might be our next president. The last thing you need us going in there loaded for bear. You think she's going to remember or care that it was more doj than fbi?"

10:56 p.m., Strzok: "Agreed."

Page sent a similar text message to an advisor to McCabe a few minutes after her text message to Strzok, and later to McCabe himself. With McCabe's advisor, she had the following exchange.

10:56 p.m., Page: "Hey, if you have one opportunity to discuss further with andy, please convey the following: She might be our next president. The last thing we need is us going in there loaded for bear, when it is not operationally necessary. You think she's going to remember or care that it was more doj than fbi? This is as much about reputational protection as anything."

11:00 p.m., Advisor: "I'll catch him before the morning brief to give him this nugget...."

¹¹⁰ Both FBI and Department witnesses, including Comey, told us that the Midyear team had originally planned to interview Clinton much earlier, but the interview was delayed because other tasks took longer than expected to complete.

The next morning, on February 25, 2016, this exchange continued as follows.

4:10 a.m., Page: "Hey I'll just text andy this morning with my thought."

4:11 a.m., Advisor: "Sounds good."

The text message to McCabe was on February 25, 2016, at 7:41 a.m.:

Page: "Hey, you've surely already considered this, but in my view our best reason to hold the line at 2 and 2 is: She might be our next president. The last thing we need is us going in there loaded for bear, when it is not operationally necessary. You think she's going to remember or care that it was more doj than fbi? This is as much about reputational protection as anything."

The next text message exchange between McCabe and Page was in the evening on February 25, 2016:

9:16 p.m., Page: "Hey I'm sorry. It's just wildly aggravating how much churn has gone on this. Have a good night."

9:50 p.m., McCabe: "Agree. Strongly."

Page told us that the term "loaded for bear" in her mind meant "a ton of people," such that the FBI was "trying to intimidate." She stated that the message she was trying to send in her text message was not that Clinton should be treated differently, but that she should be handled the same as any other witness the FBI interviews. She further stated that as a former prosecutor her "personal preference" would be to not have too many people in an interview, because "[t]hat's just sort of not conducive to both rapport-building and also just...what it looks like...just pure optics." In addition, she told us that she believed the additional interviewers were "unnecessary" and "if there is no value to be added, then we should do things the way we always do things, which is with a smaller, more discrete footprint." She further told us that, while "it's irrelevant whether or not [Clinton]...would or would not become president...if she did become president, I don't want her left with a feeling that...the FBI marched in with an army of 50 in order to interview me." In other words, Page stated that her concern had to do with the "reputational risk" to the FBI.

McCabe's advisor told us that he was not substantively involved in the Midyear investigation but, as an advisor to McCabe, he was sometimes present when Midyear was discussed at meetings and copied on emails in which Midyear was discussed. He stated that he believed that he was involved in the late February conversations regarding how many Midyear team members should attend Clinton's interview, because he was filling in for Page at one point during the conversations. McCabe's advisor told us that he did not recall the above text message exchange with Page, likely because he was not substantively involved with the issues and was distracted at the time he received it. McCabe's advisor stated that he "did not know that the fact that [Clinton] might be our next President might be one of those motivating factors in Pete's or in Lisa's mind in determining the size

of the interview team.” After reviewing the text message exchange during his OIG interview he stated:

My reaction to that is that that should not be a consideration in, in determining the right investigative step to take in the investigation, in determining the size of the team, the interview team. That...should have no bearing on it. What’s right for the case is right for the case, and that’s how we should make our decisions.

However, Strzok told us that he did not take Page’s comment to mean that “we need to treat her differently because she’s the next president.” He further told us, “I am certain I made no decision based on anything [Clinton] might be or become.” Strzok stated that strategically, to obtain “the best answer” it is “always ideal” to conduct an interview with “two agents and the subject.” He went on: “Now, if they want counsel, fine. If you have a DOJ attorney, fine. But ideally...my experience is the smaller the setting, the more effective the interview.” Strzok told us that the only relevance of her being the next president was that “you don’t want the president thinking you’re a bunch of clowns.”

Similarly, McCabe stated that the “typical” way to run an interview is with two agents and one attorney, and “one of the reasons for doing that is to kind of keep the interviewees...defenses a little bit lower and not make people so concerned.” He stated that he understood Page to be saying in her text message that she would not want the future president to think the FBI was “a bunch of...brutes.” In addition, McCabe told us that when he wrote that he “agree[d] strongly” with Page, he was agreeing that it was “ridiculous that we’re still talking about who is going to what interview from which side,” not that the team should not go into Clinton’s interview too aggressively.

Several other FBI and Department witnesses we interviewed corroborated Page’s, Strzok’s, and McCabe’s testimony that typically the FBI limits the number of interviewers in an interview for strategic investigative purposes, and that Laufman’s insistence on attending certain interviews caused frustration within the FBI. For example, Agent 2 stated, “when the room gets too big...it’s hard as the interviewer to try to build that connection with the person you’re interviewing...to get a good interview.” AAG Carlin told us that disputes regarding which prosecutors and agents will attend an interview are common. He further told us that “to do an effective interview you don’t want to have 50 people in the room.” As noted in Section VI of this chapter, Laufman told us that he attended the interviews of Clinton and other key witnesses to ensure that those interviews were handled properly and to ensure that he had a complete picture of the investigation before accepting the FBI’s and the prosecutors’ recommendations.

Ultimately, Clinton’s interview was attended by Agents 1 and 2, Strzok, Laufman, and all four line prosecutors. McCabe stated that the number of people that ultimately attended Clinton’s interview shows that investigative steps were not influenced by a desire to go easy on Clinton. In addition, multiple witnesses told us that they never heard anyone discussing the need to go easy on Clinton in light of her candidacy for president and that any such discussions would have been

inappropriate. Carlin stated that such discussions would have been “thoroughly unacceptable and no one on our team would have done that.”

C. Conduct of Clinton’s Interview

Both agents and prosecutors told us that by the time of Clinton’s interview they did not believe criminal charges were likely because they had conducted all other investigative steps and, absent a confession from Clinton, they had concluded that there was insufficient evidence of intent. Comey told us that by early May 2016 (when he circulated a first draft of a public statement recommending that the Midyear investigation be closed without prosecution), the team had not “found anything that seemed to the team or to me as a case that DOJ would prosecute” and he had a “reasonable confidence read at this point that barring something else, this looks like it’s on a path” toward declination. However, he stated that if Clinton had “lied to us in a way that we thought we could prove, that would have changed everything.” Prosecutor 1 stated that there were important topics the team wanted to cover with Clinton, including whether she was aware that classified information was present in her emails, her understanding of the highly classified SAP material contained in some of her emails, why she used a private email account on a private server, and security measures she took when emailing overseas.

Agents 1 and 2 were the case agents that conducted Clinton’s interview, in the presence of all four prosecutors, Laufman, Strzok, and Clinton’s attorneys. Witnesses told us that Agent 2 focused on questioning Clinton regarding her involvement in emails that the FBI determined to contain classified information, while Agent 1 questioned her regarding her server and the production of emails to the State Department by her attorneys.

As discussed in Chapter Twelve, we identified instant messages from Agent 1 that raised concerns about potential bias. This included an instant message exchange on November 8, 2016 (Election Day), between Agent 1 and Agent 5 (who were in a relationship at the time and are now married), in which Agent 1 messaged, “You should know;.... that I’m.... with her.”¹¹¹ (Punctuation in original). Additionally, we observed instant messages in which Agent 1 expressed concerns about the quality of the Midyear investigation, as described in Section XI of this chapter. Two of the instant message exchanges we identified occurred close in time to the Clinton interview.

On June 28, 2016, four days before the Clinton interview, Agent 1 sent an instant message complaining about the numerous people involved in preparing for the Clinton interview. Agent 1 messaged, “...very aggravating making this flow with 20+ voices for disparate information anyway. We have nothing – shouldn’t [sic] even be interviewing. Today, someone said we really need to call out that she had two phones when her excuse not to have a state bb [State Department Blackberry] in the first place was because she didnt [sic] want to carry two phones.” Agent 1 sent a series of messages that continued, “My god.... I’m

¹¹¹ “I’m with her” was one of the Clinton campaign slogans.

actually starting to have embarrassment sprinkled on my disappointment.... Ever been forced to do something you adamantly opposed."

We asked Agent 1 about this instant message exchange. He told us that when he wrote "20+ voices" he was referring to the number of FBI and Department employees involved in the Clinton interview preparation. He stated that Agent 2 and he were "working together well," and they "just kept saying to each other when are we going to actually have time to prepare for this other than prepare everyone else for it?" He stated that the frustration expressed in the instant message exchange was related to his sense that Midyear was not the "normal" case where the FBI "culminate[s]" with an interview of a subject who introduced classified information onto an unclassified system, unlike Clinton who mostly received classified material from others. We asked Agent 1 if he thought that the Clinton interview was unnecessary. Agent 1 told us he thought the interview was necessary and stated:

I think we needed to get statements from the Secretary about what she knew this information to be, she was the Secretary of State, so if you thought this was classified, why did you not, if you had an impression it was classified, why did you not stop it, or why did you not say to the people that were underneath you that you should handle this better? What did you know about where it was? How do you understand a server to, to work, and do you know that a copy resides there? Those types of things, to include a couple that we found. I don't, I don't want to make it sound like there was no reason to interview her. That, including, including a couple of emails we found where there were portion markings, what we thought to be portion markings inside of the email. And she had made statements before that...there were no emails that were marked classified.

Agent 1 told us that he did not know what he meant by "forced to do something you adamantly opposed." Agent 1 stated that this may have been a reference to not being able to prevent Mills and Samuelson from attending the Clinton interview.

On July 6, 2016, four days after Clinton's interview, Agent 1 sent an instant message in which he stated that he was "done interviewing the President," referring to Clinton. We asked Agent 1 if he thought of Clinton as the next president while conducting the Midyear investigation. Agent 1 stated, "I think my impression going into the election in that personal realm is that all of the polls were favoring Hillary Clinton." We asked Agent 1 if he treated Clinton differently because of this assumption. Agent 1 stated, "Absolutely not. I think the message they said that our leadership told us and our actions were to find whatever was there and whatever, whatever that means is what it means."

We interviewed all eight of the FBI and Department officials that attended Clinton's interview, and none of the witnesses we interviewed expressed concerns about the way the case agents handled the interview. Prosecutor 1 told us that Prosecutors 1 and 2 and the case agents did "most of the talking during the interview," which was "led by the agents." Prosecutor 1 further told us that

generally “agents would lead [the interviews], and attorneys would interject as needed, and we’d pause after different, as we transitioned to make sure things were covered.” In addition, Prosecutor 1 stated that, “The agents had a good rapport with [Clinton].” Prosecutor 1 further stated, generally, that the agents did a “good job” in interviews and that he did not have concerns about the agents not “pushing hard enough.”

Based on a review of the FD-302 and contemporaneous notes from Clinton’s interview, Clinton told the Midyear team that she chose to use a personal Blackberry connected to her personal email account for official communications for convenience, and she denied using personal email or a personal server to avoid FOIA or Federal Records Act requirements. Clinton further told the FBI that during her tenure she received classified information through secure briefings, secure calls, classified hard documents, and classified faxes, and she “did not recall receiving any emails she thought should not be on an unclassified system.” According to the FD-302, Clinton stated that she was aware that her email was supported by a private server, but she did not know the details of the different server systems she used. The FD-302 indicated that the interviewers showed Clinton numerous unmarked emails she had received containing information that was determined to have been classified. Clinton responded with respect to each email that she did not believe the information contained in the email was classified or that she relied on the State Department employees who worked for her to use their judgment in determining whether information was classified and appropriate to send on unclassified systems. Agent 1 told us that the interviewers asked “probing questions” with respect to each of Clinton’s responses. Prosecutor 1 told us, and our review of other FD-302s showed, that Clinton’s responses to these questions were consistent with the testimony of other witnesses on the email chains, including Clinton’s senior aides who forwarded classified information to her.

The FD-302 and contemporaneous notes indicate that the interviewers asked Clinton about her understanding of her record keeping obligations, the culling process that was used to provide her work-related emails to the State Department, and the deletion of emails from her server. According to the FD-302, Clinton told the FBI, among other things, that she did not recall being asked to turn over her email records upon her departure from State and that she believed her work-related emails were “captured by her practice of sending them to state.gov email addresses of her staff.” She stated that, upon receiving a request from the State Department in 2014, she “expected” her attorneys to turn over any emails that were “work-related or arguably work-related,” but she did not otherwise participate in developing the culling process. Agent 1 told us, consistent with the FD-302, that he pressed her on her lack of involvement in the State Department production, by showing her a work-related email that was not produced as part of the 30,490. Clinton responded that she agreed that the email was work-related and did not know why it was not included in the State Department production. Clinton told the FBI that in December 2014, after the production of her work-related emails to the State Department, her staff asked her what she wanted to do with her personal emails and she responded that she “did not need them anymore.” The FD-302 states that “Clinton never deleted, nor did she instruct anyone to delete, her email

to avoid complying with Federal Records Act, FOIA, or State or FBI requests for information" and that she "trusted her legal team" would comply with the March 3, 2015 Congressional preservation request.

In addition, the interviewers asked Clinton about an email that contained a parenthetical with a "(C)" at the beginning. According to the prosecutors, Clinton received three email chains during her State Department tenure that contained at least one paragraph that began with a '(C),' a classification marking used to denote information classified at the Confidential level. The prosecutors stated that these were the only emails containing classification markings that the FBI identified during its investigation, the emails did not contain any markings other than the one or two paragraphs in each email beginning with a "(C)," and as of July 6, 2016, the State Department had not responded to the FBI's request for a determination as to as to whether the information in these three emails was classified at the time the emails were sent. The prosecutors further stated that the State Department had determined through the FOIA process that only one of the three emails contained information that was classified as of July 6, 2016, and that this email was classified at the Confidential level. According to the FD-302 from Clinton's interview, Clinton told the FBI that she did not know what the "(C)" meant and "speculated it was a reference to paragraphs ranked in alphabetical order." The FD-302 indicates that the FBI had added a classification marking of "Confidential" to the top of the document and that, upon noticing this marking, Clinton asked if the "(C)" meant Confidential. Clinton told the interviewers that she did not agree that the information contained in the email was classified, because it described information that was already in the press. Witnesses told us, and contemporaneous emails show, that the FBI and Department officials who attended Clinton's interview found that her claim that she did not understand the significance of the "(C)" marking strained credulity. Agent 1 stated, "I filed that in the bucket of hard to impossible to believe." Agent 1 further stated that he and the other interviewers asked Clinton about her understanding of the "(C)" markings four or five times, but she did not change her answer. He told us, "I also don't know at that point in the interview what else we could have done besides all the different ways that we asked it."

Comey told us that one of the purposes of interviewing Clinton was to see if she would be truthful. However, he stated that the agents that conducted the interview found her credible and were surprised at how "technically illiterate" she was. While Comey did not specifically comment on the team's reactions to Clinton's testimony regarding the "(C)" portion markings, he stated, "By her demeanor, she was credible and open and all that kind of stuff, but—so I can't sit here and tell you I believed her. I can only tell you, in no particular could we prove that she was being untruthful to us." The prosecutors similarly indicated that the team did not believe it could prove that Clinton had been dishonest during her interview or that she knew that the document with the "(C)" marking was classified. The prosecutors stated that the "(C)" markings were somewhat ambiguous given their placement in the email chains and the fact that the classification marking 'Confidential' was not spelled out anywhere in the email, let alone in a readily apparent manner. They further stated that Clinton's statement regarding her knowledge of the "(C)" marking was not one that could be affirmatively disproved.

D. Decision to Allow Mills and Samuelson to Attend Clinton Interview

According to the FD-302 for Clinton's interview, Mills and Samuelson attended the interview as Clinton's counsel, in addition to Clinton's three attorneys from the Williams and Connolly law firm. Numerous FBI and Department witnesses told us that they were opposed to Mills and Samuelson attending Clinton's interview, because Mills and Samuelson were also witnesses in the investigation. They stated that they were concerned both that Mills and Samuelson could influence Clinton's testimony and that their presence would be bad from an "optics" standpoint.

Prosecutor 1 told us that the prosecutors first learned that Mills and Samuelson planned to attend Clinton's interview less than a week before the interview took place. Witnesses told us that the prosecutors contacted Kendall to discuss their concerns about Mills and Samuelson attending, but that Kendall "pushed back." Several Midyear team members stated, and contemporaneous notes show, that after the call with Kendall the Midyear team conferred more than once and that everyone agreed that, although they were not comfortable with the situation, they could not prevent Clinton from bringing her counsel of choice to a voluntary interview. Laufman stated, "We gave careful thought to whether we had any grounds to bar admission to Mills and Samuelson from the interview of Secretary Clinton. And we determined we did not have a legal or bar rule-slash-ethics based premise to do so." Several witnesses also told us that they were more concerned with the "optics" of Mills and Samuelson attending than them influencing Clinton's testimony, because they were confident that Clinton had already been well prepared by her attorneys and had probably conferred with Mills and Samuelson in advance of the interview in any event (which the investigators could not prevent).

Based on the evidence we reviewed, the issue of Mills's and Samuelson's attendance was raised up the chain within the FBI through former Director Comey and within NSD through Toscas. According to FBI Attorney 1, the issue was discussed at a meeting she attended that included Comey, McCabe, Baker, Rybicki, Deputy General Counsel Anderson, EAD Steinbach, AD Priestap, Strzok, Page, and the Lead Analyst. FBI Attorney 1 stated that the lawyers in the meeting, including Comey, all agreed that there was no legal basis to exclude Mills and Samuelson from the interview. Comey told us that he could not remember the specifics of his conversations regarding Mills and Samuelson attending the Clinton interview; however, he stated that he believed "it was a fairly brief discussion because our judgment was it's an essential interview, we've washed them out. We've looked at their conduct pretty carefully and so those two things together, so we don't really have a basis for excluding...either of them from the interview."

Lynch and Yates both told us they did not recall being briefed on Mills and Samuelson attending Clinton's interview. Carlin told us, "I don't remember [Mills's and Samuelson's attendance] being a major issue so I'm assuming they worked that out without, I kind of more was just briefed that that was occurring rather than that there was some dispute over it."

The prosecutors told us that the team put a plan in place to prevent Mills or Samuelson from influencing Clinton's testimony: if Mills or Samuelson "actively involved themselves in the interview" they would address the issue further at that time, possibly through a "side bar" with Kendall. The prosecutors and agents that attended the interview all told us that ultimately Mills and Samuelson did not interfere or object, engage in side-bars with Clinton, or speak substantively during the interview. Rather, Prosecutor 1 told us that Clinton's Williams and Connolly attorneys did the "actual...lawyering, such that there was any there."

Prosecutor 1 stated that they did not consult PRAO regarding the ethical implications of Mills's and Samuelson's attendance. We asked the prosecutors whether they spoke to Wilkinson about their concerns or suggested to Wilkinson that her clients' attendance could violate their own ethical duties, given that at the time of the culling testimony and laptop dispute Wilkinson had indicated that her client's interests were different from Clinton's in the Midyear investigation.¹¹² They told us they had not done so, and Laufman stated he did not recall considering those ethical concerns. However, Laufman and FBI Attorney 1 both told us that if there was such a conflict, Clinton could waive it. In addition, Prosecutor 1 stated that the team did not question at the time of the Clinton interview whether Mills and Samuelson in fact had ongoing attorney-client relationships with Clinton, because the prosecutors had already concluded there were ongoing attorney-client relationships when they sought subpoenas for the culling laptops.¹¹³

E. Consideration of Subpoenaing Clinton before the Grand Jury

We asked several witnesses whether they considered subpoenaing Clinton before the grand jury in order to avoid Mills's and Samuelson's presence at the interview. We also asked whether they considered simply refusing to interview Clinton if she insisted on having Mills and Samuelson present, given the pressure on Clinton to cooperate with the investigation—in other words, whether the Midyear team underestimated its strategic position against Clinton's attorneys.

Some witnesses told us that use of the grand jury was the only way to legally prevent Mills and Samuelson from attending, but that the team did not seriously consider that option. Prosecutor 4 stated:

¹¹² In the March 31, 2016 PRAO request seeking advice on whether the prosecutors could seek a waiver of attorney-client privilege from Kendall, Laufman wrote that Wilkinson had represented that her clients' interests "may differ from, or conflict with" Clinton's interests.

¹¹³ As part of the application for the subpoenas for the laptops, the prosecutors had to answer whether Mills and Samuelson had ongoing attorney client relationships with Clinton and whether the subpoenas would have any potential adverse effects on those relationships. The prosecutors wrote in the applications that Wilkinson had represented that Mills and Samuelson continued to have attorney-client relationships with Clinton, but that "the nature and scope of that representation is unclear given that the former Secretary has separate counsel (David Kendall) representing her during this investigation." They further wrote, "Even if [Mills and Samuelson are] representing Clinton in conjunction with this matter, it is highly unlikely that issuance of the subpoena would result in Mills being disqualified from representing the former Secretary."

I thought Mills being present was idiotic. And I believe that [Prosecutor 1] and I talked about it. And I said, well, look, we cannot exclude her as a legal matter unless we are willing to threaten to throw Hillary in the grand jury, at which point I'm fairly confident that they will fold. And [Prosecutor 1] and I discussed it. And I don't know if he ever raised that possibility. But it was obvious to me that nobody was willing to, to threaten, to threaten Hillary in the grand jury.

However, Prosecutor 4 stated that his concern about Mills and Samuelson attending Clinton's interview was "from an optics standpoint" and that "from my vantage point, the cost-benefit analysis of trying to go through and get somebody to authorize me to threaten to throw Hillary in the grand jury was not worth getting the, the interview done at that point." Prosecutor 3 told us that if the Midyear team insisted that Mills and Samuelson not attend, Clinton likely would have relented because of her desire to say publicly that she cooperated with the investigation. Other FBI and Department witnesses we interviewed told us that they simply did not consider these options.

The SSA told us that it would have been anomalous to subpoena Clinton before the grand jury given that no other witnesses had testified before the grand jury and Clinton, like the other witnesses, was cooperating. Strzok told us that the team decided against subpoenaing Clinton to testify before the grand jury because "the expectation of the information we would get from her in either setting was not substantively different," given that she had "extraordinary counsel" preparing her.

Toscas told us that if Clinton had been required to testify before the grand jury, members of the FBI team would not have been able to participate in the interview. In addition, Laufman, Prosecutor 1, and FBI Attorney 1 told us that admitting classified information before the grand jury would have involved an uncertain and lengthy process of obtaining approvals from the various government agencies that owned the classified information. Prosecutor 1 stated that, even if the approvals could be obtained, it is better to avoid sharing classified information with the grand jury, if possible.

Laufman stated that subpoenaing Clinton to testify before the grand jury would have been "a grossly disproportionate course of action in relation to what we were dealing with and [out of] step with how we had previously been conducting the investigation throughout its course." He further stated, "[W]e did not think this was worth blowing up the investigation, and, and creating what almost certainly would have become a matter of public knowledge that we had suddenly issued a grand jury subpoena to the Secretary at this stage of the national electoral process." He explained that throughout the investigation the team was attempting to avoid "extrinsic information" from the investigation being publicly disclosed and used for political purposes, and this was no exception.

Witnesses told us that at the point of Clinton's interview, they had conducted all other investigative steps and knew that there was insufficient evidence to prosecute Clinton unless she incriminated herself. Laufman told us that because the prosecutors did not believe a subsequent trial was likely, they were not

concerned that Mills's or Samuelson's later testimony would be influenced by being privy to Clinton's interview. Prosecutor 4 told us that if he had the investigation to do over again, the one thing he would have done differently was "insist that Mills not attend the Hillary interview." However, he also stated that at that point he agreed with the rest of the team that there was no prosecutable case and the main reason to have put her in the grand jury was to avoid subjecting the investigation to criticism.¹¹⁴

Comey told us that he did not remember discussing with anyone the possibility of subpoenaing Clinton before the grand jury. However, he stated:

At that point, I really didn't think there was a there there, and the question was, is she going to lie to us? She'd be as likely to lie to us in a grand jury or in an interview. And I just suppose in the grand jury is you've got the transcript, but we've got a bunch of agents taking notes, so I don't think it would've mattered much to me at that point.

X. FBI Inspection Division Internal File Review of the Midyear Investigation

In September and October 2017, the FBI assigned three SSAs (File Review SSAs) from the Boston Field Office to the FBI's Inspection Division (INSD) to conduct a special review of the Midyear investigation (File Review).¹¹⁵ Baker told us that he proposed the File Review after being informed of the OIG's discovery of text messages between Strzok and Page expressing political views. He stated that once he learned of the text messages, he suggested to EAD Carl Ghattas and possibly other senior FBI officials that a review team be brought in to "look at the case and all the decisions that were made in a quiet way." Baker further stated that the purposes of the File Review were to "make sure that [Strzok, Page,] or others did not make decisions in the case based on improper political considerations, including failing to taken actions they should have," and to "make sure that, from a management perspective, if other steps needed to be taken, we should find that out quickly and take those steps, including reopening the investigation." He told us that they decided that the File Review team would not interview witnesses, because they did not want to interfere with the ongoing OIG review. Baker stated that Ghattas took the lead on the review.

Two of the SSAs who conducted the File Review had experience in the FBI's Criminal Investigative Division (CID) while the third SSA had experience in the FBI's Counterintelligence Division (CD). The File Review SSAs told us that Ghattas requested that they do the File Review, and that they met with Ghattas in FBI

¹¹⁴ Prosecutor 4 stated that once he realized there was no prosecutable case, he had two goals in the investigation: "One was to conduct the investigation quickly to get it resolved before the election, as soon before the election as possible. And the second was to do it in a way that would engender public trust to the maximum extent possible."

¹¹⁵ Due to fact that the OIG's review was ongoing at the time, the FBI sought and obtained permission from the OIG to conduct the File Review.

Headquarters at the start of their review. They stated that they were instructed not to discuss their review with other FBI employees. The File Review SSAs also told us that they were not told about the text messages between Strzok and Page before the start of the review. Baker told us he was unaware that the File Review SSAs were not told about the text messages before the start of the File Review.

File Review SSAs 2 and 3 told us that they understood the purpose of the review to be to assess what the Midyear investigators appeared to have done well, what investigative steps were missed, and what lessons could be learned from the investigation. File Review SSA 2 stated that the File Review was not intended to be a reinvestigation. The File Review SSAs told us that their review was limited, by design, to the official FBI Midyear file. They did not interview any witnesses nor did they review any documents that were not included in the official file, such as handwritten notes taken by Midyear team members during meetings, emails or text messages sent or received by Midyear team members, or materials maintained by the prosecutors or others Department officials. They also did not review SAP material. File Review SSA 2 told us that the team did not "intend [for the file review] necessarily to be a...final...judgment or indictment on the FBI or on WFO or the case agents. It was more just...here are our observations, and here are some questions...should anyone else...take a look at this...take this into consideration. That's kind of all we intended by it."

The File Review SSAs told us, consistent with their File Review Report, that they conducted their review over the course of six days, between September 5 and September 8, 2017, and between October 3 and 4, 2017; however, the first day was mostly spent meeting with Ghattas and locating the records to review. They stated that thereafter they spent approximately 12 hours per day reviewing records in the official file, discussing items they came across that caused them concern, and recording information in spreadsheets. File Review SSAs 2 and 3 told us that each File Review SSA focused on a different portion of the file, and none of them individually reviewed the entire file. During the course of their review, in addition to reviewing and discussing the records, the File Review SSAs completed a first draft of the File Review Report, which File Review SSA 1 finalized with minor edits thereafter. The File Review SSAs told us that they all approved the final File Review Report.

Under the heading "FBI Investigative Actions," the File Review Report stated:

The [File] Review Team's analysis of the MIDYEAR EXAM investigation did not find substantial or significant areas of investigative oversight based on the stated goals of the investigation. In contrast, [the File Review Team] assessed [that] the [Midyear] investigative team conducted a thorough investigation within the constraints imposed by DOJ. Appropriate witnesses were interviewed, records preserved, information and computer devices obtained, and necessary business records were subpoenaed to meet the goals of the investigation. FBI resources such as [Computer Analysis and Recovery Team (CART) personnel], Intelligence personnel, communication analysis, and Cyber Agents were skillfully and successfully utilized to review and fully

exploit substantial amounts of data in support of the investigation....
The efforts of the case Agents and case team should be commended.

Nonetheless, the File Review Report also contained criticisms of the Midyear investigation. Generally, the File Review Report assessed that it would have been better to run the Midyear investigation as a traditional criminal investigation out of a Criminal Investigative Division (CID) field office, rather than as a counterintelligence investigation out of CD. The File Review SSAs expressed concern that treating the investigation as a CD investigation with NSD oversight resulted in more limited use of compulsory process such as grand jury subpoenas and search warrants. However, the File Review SSAs told the OIG that they were not aware of any precedent for handling a counterintelligence investigation out of CID. File Review SSA 2 stated that counterintelligence investigations "are always run out of the Counterintelligence Division."¹¹⁶

The File Review SSAs identified specific concerns with the Midyear investigation, although we found that many of these concerns were the result of the fact that the File Review SSAs had incomplete information. For example, the File Review Report states, "No immunity in exchange for testimony was observed in the investigation," and "[o]ne instance of a proffer letter was observed," referring to the limited use immunity agreement between the Department and John Bentel. The File Review SSAs told us that they were unaware that the Midyear prosecutors also entered into letter use immunity agreements with Combetta and Pagliano.¹¹⁷

The File Review SSAs told us, consistent with the File Review Report, that they believed the Midyear agents relied too heavily on outlines during interviews and did not ask sufficient follow-up questions. However, they stated that they based this assessment only on their review of the FD-302s. The Midyear SSA and Agent 1 told us that the CD Division does not draft FD-302s in such a way that a reader would know what follow-up questions were asked of witnesses; instead, the FD-302s generally set forth each witness's ultimate statements in response to series of questions.

In addition, the File Review SSAs told us that they considered the DIOG, but did not consider any Department policies, such as the USAM, regarding guidelines for obtaining evidence relevant to the Midyear investigation. For example, they

¹¹⁶ The File Review Report also described a concern that the Midyear Team was "directly supervised by CD-4 personnel [in FBIHQ] as opposed to an SSA and ASAC as found during field office investigations." In fact, at the time the Midyear investigation began, Strzok was an ASAC in the FBI's Washington Field Office (WFO) and the Midyear SSA was an SSA in WFO.

¹¹⁷ Additionally, the File Review Report expressed a concern regarding the timing of the Pagliano declination letter, but we found that this concern was based on incomplete information. The report stated, "It was unclear to the [file] review team the need for such an expedited prosecution declination." However, the File Review SSAs told us they were unaware that the declination concerned only Pagliano's compensation from the Clintons (for which PIN ultimately determined he faced no criminal exposure), and not the mishandling of classified information or destruction of federal records.

stated they did not consult the USAM provisions regarding obtaining evidence from attorneys concerning their representation of clients.

Based on these findings, the report concluded:

INSD assessed the FBI Midyear Exam investigation successfully determined classified information was improperly stored and transmitted on Clinton's email server, and classified information was compromised by unauthorized individuals, to include foreign government's or intelligence services, via cyber intrusion or other means [referring to compromises of email accounts associated with certain individuals who communicated with Clinton's server, such as Blumenthal]. However, the structure of the investigation and prosecution team, as prescribed in the CD PG, and treatment of the investigation as a traditional espionage matter rather than a criminal investigation significantly hindered the ability of the investigative team to obtain full, accurate and timely information.

XI. Instant Messages Relating to the Conduct of the Midyear Investigation

FBI employees have the ability to communicate internally via Microsoft Lync instant messages when logged on to their FBI workstation. As part of our review, the OIG identified contemporaneous instant messages in which Agent 1 expressed concerns about the quality of the Midyear investigation. These messages were sent to numerous FBI employees, including an agent assigned to the Midyear filter team (Agent 5). Agent 1 and Agent 5, who are now married, were in a relationship for the entirety of the Midyear investigation. We identified additional instant messages sent by Agent 1 and Agent 5 that raised concerns about potential bias. We discuss these messages and others in Chapter Twelve.

The Midyear filter team was responsible for conducting an initial review of evidence obtained during the investigation and ensuring that nothing that was either beyond the scope of the FBI's authority to review or protected by a valid privilege was provided to the investigative team. We found that Agent 1 and Agent 5 exchanged numerous instant messages about the Midyear investigation. However, we identified no instances where Agent 5 provided Midyear-related information to Agent 1 that should have been withheld from the investigative team. Agent 1 and Agent 5 told us that their Midyear supervisors were aware of their relationship by the end of 2015 at the latest and it was never identified as a concern.

We asked Agent 1 generally about his use of instant messaging on his FBI workstation. Agent 1 told us that he believed that instant messages were not retained by the FBI and therefore used less caution with those communications than he would have with other types of communications, such as email or text messages. Agent 1 also repeatedly emphasized that the instant messages served as a type of emotional release for him. Agent 1 stated:

I took that [instant messaging] as an informal, akin to a conversation almost, almost, you know, water cooler style. I think in there.... There is personal and emotional communications between my then girlfriend, now wife. There is some jocularity there. There is, you know, I think, I think some outlet, stress outlet....

You know, guys, I just, I think this was primarily used as a personal conversation venting mode for me. I'm embarrassed for it. I don't think that it affected my actions.

Agent 1 told us that the nature of his workspace also contributed to his use of instant messaging. Agent 1 explained that for the Midyear investigation he was relocated to FBI Headquarters and placed inside a SCIF with others on the Midyear team. Due to this, he was effectively unable to use his personal electronic devices at work and was also in a small space with his coworkers and supervisors, thereby preventing phone communication. Agent 1 emphasized that these were not excuses for the substance of his instant messages, but explanations for why he used them as an outlet for "stress relief" about frustrations he encountered at work. Agent 1 described his instant messages with Agent 5 as personal communications with his significant other that they used for mutual support and complaints. Similarly, Agent 1 stated his instant messages with FBI personnel not assigned to the Midyear investigations were typically communications with friends. He also noted that many of these communications were initiated by FBI personnel seeking information on the Midyear investigation. Agent 5 echoed many of Agent 1's explanations, stating that she considered instant messaging to be a private channel to communicate with Agent 1. Agent 5 told us that Agent 1 was her outlet at work for "emotional outbursts" and "relief of stress."

Agent 1 sent instant messages in the initial months of the Midyear investigation commenting on the investigation. Some of these messages are listed below, along with the date sent and the recipient.

September 2, 2015, to Agent 5: "Have a really bad feeling about this...this case...situation.... No control and horrible decisions and chaos on the most meaningless thing I've ever done with people acting like fucking 9/11."

September 25, 2015, to an FBI employee: "...I dont care about it. I think its continued waste of resources and time and focus...."

October 26, 2015, to Agent 5: "Its just so obvious how pointless this exercise is. And everyone is so into it...."

We asked Agent 1 about these messages. Agent 1 told us that prior to Midyear he had worked on other high-profile cases and part of the sentiment he expressed in these messages was a reluctance to be involved in another high-profile investigation. Agent 1 stated that he knew from prior experience that decisions in such investigation were typically made at higher levels. Agent 1 described the comment about the investigation being "meaningless" as "a little exaggerated" and explained that "maybe the intense scrutiny didn't seem commensurate to what we

had to do.” Agent 1 explained, “The FBI absolutely needs to investigate why classified information is in a place where it should not be. I just, it would, this is more probably an emotional comment on how scrutinized and how focused and how continued, there’s a continued focus on it to this day.”

Agent 1 also sent numerous messages that referenced “political” considerations in the context of the Midyear investigation. We list examples of these messages below with the date sent and the content of the message along with context where necessary. Unless otherwise identified, the recipients of the messages are FBI employees not involved in the Midyear investigation.

January 15, 2016: Responding to a question of when the investigation would be finished, Agent 1 stated, “[M]y guess is March. Doesn’t matter what we have, political winds will want to beat the Primaries.”

January 28, 2016: “...The case is the same is all of them. A lot of work and bullshit for a political exercise.”

February 1, 2016: “...Its primary season – so we’re being dictated to now....”

February 1, 2016: “This is the biggest political shit show of them all. No substance. Up at dawn – pride swallowing seige. No headset and hermetically sealed in SIOC.”

February 2, 2016: Responding to a question about how the investigation was going, “Going well.... Busy, and sometimes I feel for naught (political exercise), but I feel good....”

May 6, 2016, to Agent 5: “pretty bad news today...someone has breathed some political urgency into this.... Everyday DD brief and once a week D brief from now on.”

We asked Agent 1 about these messages. Agent 1 stated that he hoped these messages “would just directly reflect upon me and not anybody else that worked the case.” He explained that these messages simply reflect the fact that he wanted to work on something besides Midyear. We asked Agent 1 whether these messages indicated that the Midyear investigation was simply an exercise in “going through the motions.” Agent 1 responded, “No. I think this investigation needed to be worked.” He later continued, “I think if classified information is found in a place that it shouldn’t be, there should be an investigation.” Agent 1 added that he felt the scrutiny and attention that Midyear received was not “commensurate” with the nature of the violation the team was investigating. As to the messages about timing, Agent 1 told us that at some point in the investigation the “pace” increased and, although the team was never given a “finish by” date, there was “a sense that things were picking up.”

On February 9, 2016, Agent 5 sent Agent 1 an instant message complaining about a meeting the filter team had with a Department attorney and the frustrating review task she was assigned. Agent 1 responded:

Yeah, I hear you. You guys have a shitty task, in a shitty environment. To look for something conjured in a place where you cant find it, for a case that doesnt matter and is predestined. All you ask for is acknowledgment of that and clear guidance. But no. DOJ comes in there every once in awhile and takes a wishy-washy, political, cowardice stance. Salt meets wound. That is the environment love. Can't sugar coat it. Now, what? What can you do? What can you control? Work hard, do the best you can, and try to keep others motivated.

After reading this message during his OIG interview, Agent 1 stated:

I have no information that it was a pre-determined outcome by anyone. I had, I had no statement from anyone that I can tell you that I worked with that said this is where we're going.... I think even the leadership that stopped by in the, in the, in our space always said that as well. Whatever you find, you know, is what it is. You know, just, just find what it was, and, you know, don't worry about anything else, the outside noise.

All I can tell you is this is probably, I mean, it's a little overwhelming to see all [these messages] at once, as probably somebody who was, who wanted to do something else, I think.

Agent 1 stated that he could not recall anything specific to add to this exchange.

In another exchange on February 4, 2016, Agent 1 and an FBI employee who was not assigned to the Midyear investigation discussed Agent 1's interview with a witness who assisted the Clintons at their Chappaqua residence. Part of this exchange follows.

FBI Employee: "boom...how did the [witness] go"

Agent 1: "Awesome. Lied his ass off. Went from never inside the scif [sensitive compartmented information facility] at res, to looked in when it was being constructed, to removed the trash twice, to troubleshot the secure fax with HRC a couple times, to everytime there was a secure fax i did it with HRC. Ridic,"

FBI Employee: "would be funny if he was the only guy charged n this deal"

Agent 1: "I know. For 1001. Even if he said the truth and didnt have a clearance when handling the secure fax – aint noone gonna do shit"

We asked Agent 1 about the implication in this message that no one would be charged irrespective of what the team found. Agent 1 stated:

Yeah, I, I don't think I can say there's a specific person that I worked with in this case that wouldn't charge him for that. I think it's a general complaint of, you know, of FBI agents that are kind of, kind of

being emotional and, and complaining that no one is going to do something about, about something.... But there's nothing specific that I, that I can tell you.

Agent 1 told us he did not recall any discussion about whether this witness should be charged with a crime.

In a January 19, 2016 message to Agent 4, Agent 1 stated, "What we want to do and what we're going to be allowed to do are two different things." Agent 1 told us that he did not remember this exchange and did not know what he was referring to in this message. However, he stated that he appears "to be venting a little bit" to Agent 4.

XII. Analysis of Investigative Decisions

In this part, we provide our analysis of whether the investigative decisions taken in connection with the Midyear investigation that we reviewed were based on improper considerations, including political bias. As described in the Analytical Construct set forth in Chapter One of this report, we selected for examination particular case decisions that were the subject of public or internal controversy. For each decision, we analyzed whether there was evidence of improper considerations or evidence that the justifications offered for the decision were a pretext for improper, but unstated, considerations. If a choice made by the investigative team was among two or more reasonable alternatives, we did not find that it was improper even if we believed an alternative decision would have been more effective. Thus, a determination by the OIG that a decision was not unreasonable does not mean that the OIG has endorsed the decision or concluded that the decision was the most effective among the options considered. We took this analytical approach because our role as an OIG is not to second-guess valid discretionary judgments made during the course of an investigation, and this approach is consistent with the OIG's handling of such questions in past reviews.

In undertaking this analysis, our task was made significantly more difficult because of the text messages we discovered between Strzok and Page, given the critical roles they played in most of the decisions made by the FBI; the instant messages of Agent 1, who was one of four Midyear case agents; and the instant messages of FBI Attorney 2, who was one of the FBI attorneys assigned to the investigation.¹¹⁸ That these employees used an FBI system or device to express political views about individuals affected by ongoing investigations for which they were responsible was particularly disappointing in comparison to their colleagues on the Midyear investigative team who, based on the emails, notes, memoranda, and

¹¹⁸ As we describe in this chapter and in Chapter Twelve, many of those messages reflected hostility toward then candidate Trump and statements of support for candidate Clinton, and some of them mixed political commentary with discussions regarding the Midyear investigation.

other materials we reviewed, conducted themselves with professionalism during a difficult and high-pressure investigation.¹¹⁹

We were cognizant of and considered these messages in reaching the conclusions regarding the specific investigative decisions discussed below. In particular, we were concerned about text messages exchanged by Strzok and Page that potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. As we describe in Chapter Twelve, most of the text messages raising such questions pertained to the Russia investigation. Nonetheless, the implication in certain Russia-related text messages that Strzok might be willing to take official action to impact presidential candidate Trump's electoral prospects—for example, the August 8, 2016 text exchange in which Page asked Strzok "[Trump's] not ever going to become president, right? Right?!" and Strzok replied "No. No he won't. We'll stop it"—caused us to question the earlier Midyear investigative decisions in which he was involved, and whether he took specific actions in the Midyear investigation based on his political views.¹²⁰ As we describe in this chapter, we found that Strzok was not the sole decisionmaker for any of the specific investigative decisions examined in this chapter. We further found evidence that in some instances Strzok and Page advocated for more aggressive investigative measures than did others on the Midyear team, such as the use of grand jury subpoenas and search warrants to obtain evidence.

There were clearly tensions and disagreements in a number of important areas between Midyear agents and prosecutors. However, we did not find documentary or testimonial evidence that improper considerations, including political bias, directly affected the specific investigative decisions discussed below, or that the justifications offered for these decisions were pretextual. We recognize that these text and instant messages cast a cloud over the FBI's handling of the Midyear investigation and the investigation's credibility. But our review did not find documentary or testimonial evidence that these political views directly affected the specific investigative decisions that we reviewed in this chapter. The broader impact of these text and instant messages, including on such matters as the public perception of the FBI and the Midyear investigation, are discussed in Chapter Twelve.

¹¹⁹ As discussed in Section X of this chapter, FBI INSD conducted a File Review of the Midyear investigation. We found that the File Review's ability to assess the Midyear investigation was limited based on the narrow scope of the review and the limited information available to them. We also found that, as a result of the limited information available to the File Review SSAs, a number of the factual statements in the File Review report were inaccurate. Accordingly, the assessments and recommendations of the File Review did not significantly influence the analysis of the OIG, which had a far more developed record, including extensive interviews, as discussed in our report.

¹²⁰ As we describe in Chapter Nine, these text messages also caused us to assess Strzok's decision in October 2016 to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop. We concluded that we did not have confidence that this decision by Strzok was free from bias.

A. Preference for Consent Rather than Compulsory Process to Obtain Evidence

At the outset we note that, contrary to public perception, the Midyear team used compulsory process in the Midyear investigation. This included grand jury subpoenas, search warrants, and 2703(d) orders. Nonetheless, the Midyear prosecutors told us that they obtained evidence through consent whenever possible. We found no evidence that the use of consent to obtain evidence in the Midyear investigation was based on improper considerations. The decisions regarding how to obtain particular pieces of evidence were primarily made by the career prosecutors, for whom we identified no evidence of political or other bias, and we found that the reasons they provided for those decisions were not unreasonable.

The FBI investigators, attorneys, and supervisors involved with the Midyear investigation—including individuals for whom we identified electronic messages expressing political opinions—advocated for greater use of compulsory process and for more aggressive investigative methods, including the use of search warrants. However, the prosecutors told us that they often chose consent over compulsory process or court orders based on the following considerations: (1) avoiding delay that could result from motions to quash subpoenas or search warrants; (2) complying with Department policies; (3) protecting classified and other sensitive information; (4) avoiding media leaks and public disclosures that could harm the investigation; (5) the perceived obstacles to establishing probable cause; and (6) the risk of improperly accessing privileged information. We found these explanations to be supported by Department and FBI policy and practice, and that the disputes between the agents and the prosecutors about how aggressively to pursue certain evidence were good faith disagreements.

It was not unreasonable for Department prosecutors to consider the delay that could result from motions to quash subpoenas and search warrants. Both Department and FBI witnesses told us that they hoped to complete the investigation well in advance of the election, if possible, to avoid influencing the political process. Indeed, Comey pressed in early May for the prompt completion of the investigation. However, in seeking to avoid delay, prosecutors were required to balance the need for timely completion of an investigation against the need to ensure a thorough and complete investigation. We did not identify bias or improper considerations affecting that judgment call by the prosecutors.

Both Department and FBI policies generally support the use of consent agreements to obtain evidence. The USAM advises prosecutors to consider alternatives to grand jury subpoenas when practicable, such as obtaining testimony and other evidence by consent, in light of the requirement that the government maintain the secrecy of any testimony or evidence accessed through the grand jury. USAM 9-11.254(1). Had the prosecutors not used consent agreements to obtain most of the evidence in the Midyear investigation, the FBI likely would not have been able to be as transparent as it was in response to FOIA and Congressional requests following the conclusion of the investigation.

The Attorney General's Guidelines for Domestic Operations (AGG-Dom) and the FBI's Domestic Investigations and Operations Guide (DIOG) require the FBI, when choosing among two or more operationally sound and effective methods for obtaining evidence or intelligence, to strongly consider using the one that is "least intrusive" with respect to "such factors as the effect on the privacy and civil liberties of individuals and potential damage to reputation." AGG-Dom § I.C.2; DIOG §§ 4.1.1, 4.4, 5.3, 18.2. The DIOG specifically identifies search warrants as a method that is "very intrusive." DIOG § 4.4.3 The DIOG's guidance regarding choosing the least intrusive method is emphasized in relation to Sensitive Investigative Matters (SIMs), such as the Midyear investigation. The DIOG states, "In the context of a SIM, particular care should be taken when considering whether the planned course of action is the least intrusive method if reasonable based upon the circumstances of the investigation." DIOG § 10.1.3. Assessing which investigative options to use, and whether various options are operationally sound and effective, are judgment calls. Accordingly, the Midyear team's use of consent agreements, after their evaluation of the circumstances, was an approach to gathering evidence that complied with Department policies. Likewise, had the prosecutors and agents agreed to pursue a more aggressive course after evaluating the circumstances and determining that it would have been a more effective method, it also would have been a rational approach to gathering evidence.

Under FBI policy, it also was appropriate for the Midyear team to consider how the use of compulsory process or more intrusive evidence collection methods might result in the public disclosure of information about the investigation—particularly public disclosure that had the potential to negatively impact the investigation. The DIOG states that in deciding the least intrusive method necessary for effectively obtaining information, the FBI should consider the "risk of public exposure" and the potential that public exposure will be used to an individual's "detriment and/or embarrassment." DIOG §§ 4.4.3(E), 5.3. Witnesses told us that there is a need to be particularly cautious with respect to the use of process in national security cases, due to the risk of classified information being leaked.

It was, of course, proper for the prosecutors to consider whether they could demonstrate probable cause before using criminal process. The Fourth Amendment protects individuals from unlawful searches and seizures of their property, and courts have held that individuals have privacy interests in their electronic communications. See *Ross*, 456 U.S. at 822-23; *Riley*, 134 S. Ct. at 2485; *Trulock*, 275 F.3d at 403. Generally, the government must obtain a search warrant before searching data contained in an individual's electronic storage devices, such as computers and cellular telephones. *Id.*; *Riley*, 134 S. Ct. at 2485. To obtain such a search warrant, the government must make a showing of facts under oath demonstrating probable cause to believe that a device to be searched contains evidence of a crime. See Fed. R. Crim. P. 41. Both Department and FBI witnesses told us that, in some circumstances, they were not certain they could make such a showing.

It was also proper for the prosecutors to consider privilege issues. By law, prosecutors cannot use compulsory process to override privileges, such as

attorney-client or marital privilege. G.J. Manual § 5.1 (*quoting Branzburg*, 408 U.S. at 688); G.J. Manual §§ 5.6, 5.26. While a filter team may be used to cull privileged material from seized evidence before an investigative team reviews that evidence, there are also Department policies that apply to seizing evidence that may contain privileged information. For example, under USAM 9-13.410, prosecutors can only issue a subpoena to an attorney for information or evidence related to the representation of clients if the prosecutors first obtain approval from the AAG or DAAG of the Criminal Division. The AAG or DAAG will only provide such approval if the prosecutors make reasonable efforts to first obtain the evidence through alternative sources, including consent, unless such efforts would compromise the investigation. USAM 9-13.410. Similarly, the DIOG provides that, "It is less intrusive to obtain information from existing government sources...or from publicly-available data in commercial data bases, than to obtain the same information from a third party (usually through legal process) that has a confidential relationship with the subject." DIOG § 4.4.3(D).

We questioned why the Midyear team did not serve subpoenas on or seek to obtain search warrants related to the last known persons to possess devices that the team was never able to locate. These included Combetta for the missing Archive Laptop and Clinton or her attorneys for Clinton's handheld devices. Both FBI and Department witnesses told us that they believed Combetta and Clinton's attorneys were being truthful that they could not locate these devices and therefore subpoenas would not have made a difference in these situations. This was a judgment call made by the prosecutors and agents, and we did not identify evidence that it was infected by bias or improper considerations.

We also found no evidence that the particular limitations contained in the consent agreements were based on improper considerations or bias. For example, the prosecutors told us that the scope of consent was often limited to the time period of Clinton's tenure as Secretary of State, because that is when she had access to classified information. Although email communications among Clinton, her attorneys, and PRN staff following Clinton's tenure may have been relevant to Clinton's production of work-related emails to the State Department and the subsequent deletions of emails her attorneys deemed personal, the prosecutors told us that (1) most of these communications would have been protected by attorney-client privilege; and (2) the FBI obtained communications between Clinton's staff, including her attorneys, and PRN staff from PRN. In determining that these and other limitations in the consent agreements were not unreasonable, we considered the Department and FBI policies cited above.

B. Decisions Not to Obtain or Seek to Review Certain Evidence

The Midyear team did not obtain or review some evidence that we found might have been useful to the investigation. The team's reasons for not doing so appear to have been based on limitations they imposed on the scope of their investigation, the desire to complete the investigation well before the election, and their belief that the foregone evidence was likely of limited value. Those reasons were, in part, in tension with Comey's reaction and response in October 2016 to the discovery of emails between Clinton and Abedin on the Weiner laptop. However,

we found no evidence that the decisions not to obtain this evidence were based on improper considerations or bias. We concluded that these were judgment calls made by the prosecutors and agents.

We asked members of the Midyear team why they did not seek to obtain the personal devices that Clinton's senior aides used during their tenure at the State Department, given that these devices were both (1) potential sources of Clinton's work-related or classified emails; and (2) unauthorized locations where classified emails were potentially being stored. In addition, we inquired about the decision not to obtain Huma Abedin's personal devices given (1) that she stated during her interview that she had given them to her attorneys for production of her work-related emails to the State Department; and (2) the decision to seek a search warrant in October 2016 in order to search the Weiner laptop. Witnesses also told us they believed there was a flaw in the culling process that resulted in the exclusion of most of Abedin's clintonemail.com emails from the State Department production.

We found that the FBI team and the prosecutors decided together to generally limit the devices they sought to those that either belonged to Clinton or were used to back-up or cull Clinton's emails. The team provided, among others, the following reasons for placing this limitation on the scope of the investigation: (1) the culture of mishandling classified information at the State Department which made the quantity of potential sources of evidence particularly vast; (2) the belief that Clinton's own devices and the laptops used to cull her emails were the most likely places to find the complete collection of her emails from her tenure as Secretary of State; and (3) the belief that the State Department was the better entity to conduct a "spill investigation." With respect to the first rationale, we note that it fails to acknowledge that the team was not required to take an all-or-nothing approach. For example, a middle ground existed where those devices belonging to Clinton's three top aides—which the team determined accounted for approximately 68 percent of Clinton's email exchanges—would have been reviewed, but devices belonging to other State Department employees would not.

Regarding Abedin's devices, witnesses told us that Abedin played largely an administrative role on Clinton's staff and, as such, they did not believe her emails were likely to be significant to the investigation. Yet, as referenced above, this view was in tension with Comey's approach in late October 2016, discussed in detail in Chapters Nine and Ten. Comey described the discovery on the Weiner laptop in October as being the potentially "golden emails" based on what we concluded was very little information about the possible contents of the emails—a stark contrast to the Midyear team's assessment that the potential emails on Abedin's devices, including exchanges with Clinton, were unlikely to be significant. The team distinguished their approach with the Weiner laptop based mostly on the fact that it happened to be in the government's possession.

We recognize that reasonable minds differ on investigative approaches. We concluded that, in deciding not to seek the devices of Clinton's top aides, the Midyear team members weighed what they believed to be the limited evidentiary value of the senior aides' devices against their concerns about how pursuing them

would add time to and increase the scope of the investigation. Ultimately, Department prosecutors have discretion with respect to “when, whom, how and even whether to prosecute for apparent violations of federal criminal law,” provided that discretion is exercised without reliance on improper considerations, such as political bias or concerns for personal gain, and otherwise consistent with their oath of office and Department policy. See USAM 9-27.110 (comment) (*citing* U.S. Const. Art. II § 3; *United States v. LaBonte*, 520 U.S. 751, 762 (1997); *Nader v. Saxbe*, 497 F.2d 676, 679 n. 18 (D.C. Cir. 1974); *Oyler v. Boles*, 368 U.S. 448 (1962); *United States v. Fokker Servs. B.V.*, 818 F.3d 733, 741 (D.C. Cir. 2016); *Newman v. United States*, 382 F.2d 479 (D.C. Cir. 1967); *Powell v. Ratzenbach*, 359 F.2d 234 (D.C. Cir. 1965)); 5 U.S.C. § 3331 (oath of office). We did not find evidence that the decisions not to obtain the senior aides’ devices were based on improper considerations, nor did we find that the reasons provided were a pretext for improper considerations. We also did not find that the decisions regarding the scoping of the investigation were inconsistent with any Department policies. Accordingly, these were judgment calls that were within the discretion of the Midyear agents and prosecutors to make.

In addition, as we describe in the classified appendix to this report, the OIG learned near the end of our review that the FBI had considered obtaining permission from the Department to review certain classified materials that may have included information potentially relevant to the Midyear investigation. Although the Midyear team drafted a memorandum to the Deputy Attorney General in late May 2016 stating that review of the highly classified materials was necessary to complete the investigation and requesting permission to access them, the FBI never sent this request to the Department. FBI witnesses told us that they did not seek access to these classified materials for various reasons, including that they believed this information would not materially impact the conclusion. The classified appendix describes in more detail the highly classified information, its potential relevance to the Midyear investigation, the FBI’s reasons for not seeking access to it, and our analysis.

C. Voluntary Interviews

The Midyear investigation did not use the grand jury for the purpose of collecting testimony from witnesses. FBI and Department witnesses told us that through voluntary interviews they were able to establish better rapport with witnesses and avoid risks associated with exposing grand jurors to classified information. We found no evidence that the use of voluntary interviews instead of grand jury testimony was based on improper considerations or influenced by bias. Rather, we concluded that these were judgment calls made by the prosecutors and agents.

As with the use of consent to obtain documentary and physical evidence, the use of voluntary interviews instead of grand jury testimony was consistent with the DIOG’s preference for the “least intrusive” method. In addition, due to grand jury secrecy the use of voluntary interviews contributed to the FBI’s ability to be transparent in response to FOIA requests and Congressional inquiries. The preference for voluntary interviews also was consistent with Department policy

regarding the use of classified information before the grand jury. Before classified information can be utilized before the grand jury, the USAM requires prosecutors to seek approval from the agency responsible for classifying the information. USAM 9-90.230. Witnesses told us that this can be a lengthy process. In addition, the USAM cautions that questioning grand jury witnesses regarding classified information poses a risk that the witness will disclose more classified information than expected or permitted. *Id.* Even if the Midyear team could have obtained the necessary approvals to use classified information in the grand jury, the prosecutors told us that there are concerns with exposing grand jurors to classified information—the more individuals that are exposed to classified information, the greater the risk of compromise.

The Midyear prosecutors told us they kept open the possibility of subpoenaing witnesses before the grand jury, especially witnesses like Paul Combetta, whose testimony would not likely require the disclosure of classified information. The Midyear team subpoenaed Combetta to appear before the grand jury. However, Department prosecutors and FBI agents ultimately decided that questioning him before the grand jury was unnecessary because (1) they perceived him to be credible during his third interview; and (2) he did not implicate anyone else in criminal conduct such that it would have been helpful to “lock in” his testimony for a future trial. We did not find evidence that this decision was motivated by an improper consideration.

D. Use Immunity Agreements

Prosecutors have wide latitude in deciding to whom to give immunity, and the Department entered into “letter use” or “Queen for a Day” immunity agreements with three witnesses in the Midyear investigation: Pagliano, Combetta, and Bentel. We found no evidence that the decisions to enter into these immunity agreements were based on improper considerations. The factors that the Midyear prosecutors told us they considered in deciding to grant immunity were consistent with the factors Department policy required them to consider, including:

- “The value of the person’s testimony or information to the investigation or prosecution;”
- “The person’s relative culpability in connection with the offense or offenses being investigated or prosecuted;” and
- “The possibility of successfully prosecuting the person prior to compelling his or her testimony.”

See USAM 9-23.210.

With respect to Pagliano, the prosecutors told us that they entered into a letter use immunity agreement because they believed the information he could provide regarding the set-up and maintenance of Clinton’s servers was critical to the Midyear investigation and they determined that he faced no criminal exposure. Based on a review of his FD-302s (as described in Section VII.A of this chapter) and the fact that PIN considered and declined criminal charges against Pagliano, we

found that the prosecutors' assessments regarding Pagliano were not unreasonable or motivated by improper considerations or bias.

With respect to Bentel, the only immunity agreement was a Queen for a Day proffer agreement. This agreement prevented the Department from using any statements made by Bentel pursuant to the agreement against him in its case-in-chief in any subsequent prosecution, but did not prevent the Department from using leads obtained from Bentel's statements or using Bentel's statements to cross-examine him in any future prosecution. See Chapter Two, Section I.E.3. The prosecutors assessed that interviewing Bentel was a necessary investigative step, and that he faced no criminal exposure. Based on our review of Bentel's FD-302 and the limited nature of the Queen for a Day immunity agreement, we found that the prosecutors' decision to grant Bentel immunity was not unreasonable or based on improper considerations or bias.

With respect to Combetta, we found his actions in deleting Clinton's emails in violation of a Congressional subpoena and preservation order and then lying about it to the FBI to be particularly serious. We asked the prosecutors why they chose to grant him immunity instead of charging him with obstruction of justice, in violation of 18 U.S.C. § 1505, or making false statements, in violation of 18 U.S.C. § 1001.

Department policy provides that, when considering whether to pursue criminal charges against an individual:

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution.

USAM 9-27.220. In determining whether the prosecution would serve a federal interest, the Department should "weigh all relevant considerations," including:

- "The nature and seriousness of the offense;"
- "The person's culpability in connection with the offense;" and
- "The person's willingness to cooperate in the investigation or prosecution of others."

USAM 9-27.230.

We received mixed testimony from Department and FBI witnesses regarding the strength of the evidence that Combetta committed obstruction or made false statements following his first two interviews. The prosecutors and agents we interviewed indicated that, even assuming that "the admissible evidence [was] probably...sufficient to obtain and sustain a conviction" after Combetta's first two

interviews—an assumption the prosecutors indicated was not necessarily true—they believed prosecuting Combetta would not “serve a federal interest.” The reasons they provided to us for reaching this conclusion included: (1) relevant to the nature and seriousness of the offense, there was no evidence that Combetta knew anything about the content of the emails on Clinton’s server or that they were classified when he deleted them; (2) relevant to Combetta’s culpability, they believed Combetta’s failure to be forthcoming had been primarily due to poor representation rather than a motive to mislead the investigators; and (3) relevant to his willingness to cooperate, Combetta was willing to cooperate with immunity. Prosecutor 1 told us that the team would have considered pursuing charges against Combetta if he refused to cooperate with immunity, but that granting immunity was “the most expedient way” to obtain truthful information from him.

The prosecutors told us they believed granting Combetta use immunity was the best available option. They told us that they could not forgo Combetta’s testimony, because they believed his truthful testimony regarding his role and the roles of others in the March deletions was essential to the investigation. Moreover, they said they had no means other than immunity to gain his testimony, because he had stated that he would invoke his Fifth Amendment privilege against self-incrimination. The prosecutors told us they did not charge Combetta and then pursue his cooperation in exchange for a guilty plea to reduced charges or a sentencing reduction because of, as discussed above, concerns about the strength of the admissible evidence and because they did not believe criminal charges were in the federal interest given his willingness to cooperate with immunity. The decision to choose a use immunity agreement over a non-prosecution agreement is supported by the USAM, which provides that immunity is (1) appropriate when “the testimony or other information that is expected to be obtained from the witness may be necessary to the public interest;” and (2) preferable to a nonprosecution agreement in exchange for cooperation because immunity “at least leave[s] open the possibility of prosecuting [the witness] on the basis of independently obtained evidence.” USAM 9-23.210; 9-27.600 (comment).

We did not find evidence that the judgments made by the prosecutors in entering into these immunity agreements were inconsistent with Department policy, or based on improper considerations or bias. Ultimately, assessing the strength of the evidence and applying the provisions of the U.S. Attorney’s Manual in determining whether to pursue federal criminal charges is a matter within the discretion and judgment of the prosecutors.

E. Mills and Samuelson

The issues surrounding obtaining Mills’s and Samuelson’s testimony regarding the culling process and searching the culling laptops consumed a significant amount of the Midyear team’s time and attention and caused significant strife between the FBI and Department prosecutors. Several members of the FBI Midyear team, including Comey, expressed concerns that the prosecutors had not been sufficiently aggressive. Ultimately, Mills and Samuelson submitted to voluntary interviews—albeit with limitations that prevented the investigators from soliciting privileged information—and the laptops were secured through consent

agreements and act-of-production immunity. Both the prosecutors and the FBI told us that the team obtained what it needed from Mills and Samuelson to conduct a thorough investigation. Comey himself, during a speech at an October 2016 FBI conference for Special Agents in Charge, which we describe below in Chapter Eight, acknowledged the complex issues involved with obtaining the culling laptops from Mills and Samuelson. He further stated that the decision to obtain the culling laptops by consent was “reasonable...to short circuit the months and months of litigation that would’ve come otherwise” and that he was “actually surprised they agree[d] to give us the laptops.”

We noted that these decisions concerning the laptops were occurring at a time when Comey and the Midyear team had already concluded that there was likely no prosecutable case and believed it was unlikely the culling laptops would change the outcome of the investigation. Moreover, as we describe in Chapter Six, at the time of the deliberations regarding the Mills and Samuelson issues, Comey was motivated by a desire to “credibly” complete the investigation sufficiently in advance of the election to not be perceived as political. Consistent with this motivation, Comey told us that one of the reasons he raised the possibility of a Special Counsel with Yates in April 2016 was to push the Department to move more quickly to obtain the culling laptops. Comey also pressed the Midyear investigators in early May for the prompt completion of the investigation.

The Mills and Samuelson issues were somewhat complicated. Not only were Mills and Samuelson both fact witnesses, Mills had numerous classified emails pass through her unclassified government and personal email addresses while working at the State Department under Secretary Clinton; both Mills and Samuelson acted as attorneys for Clinton after they departed from the State Department; and both were represented by their own (and the same) counsel, Beth Wilkinson, while former Secretary Clinton was represented by separate counsel, David Kendall, in connection with the Midyear investigation. These different layers of conduct and representation made obtaining evidence from Mills and Samuelson complex, whether the prosecutors sought to obtain the evidence by consent or compulsory process. In seeking evidence by consent, they had to consider whose consent was necessary—Wilkinson’s on behalf of Mills and Samuelson, Kendall’s on behalf of Clinton, or both. They had to be cognizant of attorney-client privilege and attorney-work product with respect to Mills’s and Samuelson’s relationship to Clinton, Kendall’s relationship to Clinton, Wilkinson’s relationship to Mills and Samuelson, and information on the laptops related to Mills’s and Samuelson’s representation of other clients. They had to consider the implications of the fact that Wilkinson represented both Mills and Samuelson, as well as two other witnesses in the Midyear investigation. They also had to consider the policy restrictions set forth in the USAM, ethical issues, strategic issues (such as whether issuing criminal process might jeopardize the testimony that Mills consented to provide regarding her tenure at the State Department), and the concern that using criminal process could delay the investigation. Based on the evidence we reviewed, the Department prosecutors extensively considered all of these issues, analyzed the relevant law and policy, and ultimately made judgment calls with respect to Mills

and Samuelson that were within their exercise of prosecutorial discretion and we found were not unreasonable.

We likewise found no evidence that bias impacted the decision to obtain testimony and evidence from Mills and Samuelson by consent agreement and with act-of-production immunity. Indeed, individuals for whom we had concerns about potential bias due to the content of their electronic messages advocated for the use of aggressive investigative measures with respect to Mills and Samuelson. For example, Strzok and Page both urged the Department to issue grand jury subpoenas for Mills's and Samuelson's testimony regarding the culling process and to seek a search warrant to seize the culling laptops from Wilkinson's office.

The prosecutors told us that they followed the procedures set forth in Department policy for obtaining testimony and evidence from attorneys related to their representation of clients. Based on our review of the relevant Department policy and privilege law, we found that the prosecutors' interpretations of the relevant Department policy were not unreasonable and we found no evidence that they were motivated by improper considerations. In accordance with 28 C.F.R. § 59.4, USAM 9-19.220, and USAM 9-13.420, the prosecutors correctly determined that, in the absence of evidence that such efforts would compromise the investigation, they could not seek a search warrant to seize the culling laptops from Wilkinson's office without first attempting to obtain the culling laptops through consent and, if that was unsuccessful, a grand jury subpoena. Under the circumstances, and in accordance with USAM 9-13.410, they determined that they could not issue a subpoena for the culling laptops without first taking several preliminary steps, including: (1) assessing whether the laptops were reasonably needed for the successful completion of the investigation, (2) attempting to first obtain the laptops by consent, and (3) seeking approval from the AAG or DAAG of the Criminal Division. Also in accordance with USAM 9-13.410, they determined that they could not issue subpoenas for Mills's and Samuelson's testimony regarding the culling process without first seeking their testimony by consent and tailoring their questions such that they did not seek information that was "protected by a valid claim of privilege."

In accordance with these policies, the prosecutors conducted voluntary interviews with Mills and Samuelson, obtained Criminal Division approval to issue subpoenas for the culling laptops, and ultimately obtained the culling laptops through consent agreements and act-of-production immunity agreements rather than subpoena. They told us that, even with the approval for subpoenas, they believed securing the laptops through consent was preferable to avoid the uncertainty and delays of a potential motion to quash the subpoenas. The act-of-production immunity agreements prevented the Department from using information obtained from the laptops in a criminal prosecution against Mills or Samuelson for violations of 18 U.S.C. §§ 793(e) and (f) (felony mishandling of classified information), 18 U.S.C. § 1924 (misdemeanor mishandling of classified information), and 18 U.S.C. § 2071 (destruction of federal records). The immunity agreements did not prevent the Department from: (1) using information obtained from the laptops to prosecute Mills or Samuelson for other crimes, such as obstructing a Congressional or FBI investigation or lying to federal investigators;

(2) using evidence obtained from other sources, including their voluntary interviews, to prosecute Mills and Samuelson for mishandling classified information, destroying federal records, or any other offenses; (3) using information obtained from the laptops to prosecute other individuals, including Clinton, for mishandling classified information, destroying federal records, or any other offenses; or (4) using leads developed as a result of the FBI's review of the information on the culling laptops.

Ultimately, these decisions were judgment calls made by, and within the discretion of, the prosecutors, much like the decisions discussed above regarding use immunity agreements. We found no evidence that these decisions were the result of improper considerations or were influenced by bias.

F. Handling of Clinton's Interview

By the time of Clinton's interview on July 2, we found that the Midyear agents and prosecutors, along with Comey, had decided that absent a confession or false statements by Clinton, the investigation would be closed without charges. We further found that this conclusion was based on the prosecutors' view that there was insufficient evidence of Clinton's knowledge and intent to support criminal charges, which we discuss in detail in Chapter Seven.

We did not find evidence that decisions regarding the timing or scoping of Clinton's interview were based on improper considerations or influenced by bias. In addition, based on our review of the FD-302 and contemporaneous notes, the investigators appeared to ask appropriate questions of Clinton and made use of documents to challenge Clinton's testimony and assess her credibility during the interview.¹²¹ However, we had three primary concerns related to the Clinton interview: (1) text messages sent by Page to Strzok, McCabe, and another FBI employee that appeared to suggest that the team limit the number of attendees at Clinton's interview because she might be the next President and it could leave her upset at the FBI; (2) certain instant messages sent by Agent 1, who was one of the case agents that handled Clinton's interview; and (3) the presence of Mills and Samuelson at Clinton's interview, despite that they were also witnesses in the investigation.

With regard to the number of attendees, Page sent the following text message in support of fewer agents and prosecutors attending Clinton's interview: "[S]he might be our next president. The last thing you need us going in there loaded for bear. You think she's going to remember or care that it was more doj

¹²¹ For example, based on the FD-302 from Clinton's interview, Clinton told the interviewing agents that she "expected her team to provide any work-related or arguably work-related emails to State." The interviewing agents then challenged this statement by showing Clinton a work-related email that was not produced to the State Department. Clinton acknowledged that the email was work-related and stated that she did not know why her team did not produce it.

than fbi?"¹²² The text messages and contemporaneous emails reflect that Page was particularly concerned with the Department's request that four prosecutors attend the interview. Ultimately, eight people attended Clinton's interview from the Department and FBI, including five prosecutors. Therefore, we concluded that Page's suggestion of limiting the number of attendees to four or six did not in fact occur. Moreover, based on witness testimony, we found that the approach Page was advocating—keeping the number of interviewers down to a lower number—was consistent with legitimate investigative strategy.

Nevertheless, we found that Page's statement, on its face, consisted of a recommendation that the Midyear team consider how Clinton would treat the FBI if she were to become President in deciding how to handle Clinton's interview. Suggesting that investigative decisions be based on this consideration was inappropriate and created an appearance of bias.

We also were concerned that Agent 1 was one of the two agents who questioned Clinton during the interview given certain instant messages that we identified from Agent 1, including some that expressed support for Clinton and hostility toward Trump. We interviewed each of the seven other FBI and Department attendees at Clinton's interview, and none of them expressed concerns regarding the conduct of the interview. We also did not find, based on our review of the interview outline prepared in advance of the interview as well as the FD-302 and contemporaneous notes of the interview, evidence that bias or improper considerations influenced the conduct of the interview. We took note of the fact that, because the Midyear team and Comey had concluded prior to the interview that the evidence did not support criminal charges (absent a confession or false statement by Clinton during the interview), the interview had little effect on the outcome of the investigation. Nonetheless, as discussed above, we found Agent 1's messages to be troubling and in Chapter Twelve, we discuss the impact of these instant messages on such matters as the public perception of the handling of the Midyear investigation and the FBI.

Finally, we questioned why the Department and FBI allowed Mills and Samuelson, two percipient witnesses (one of whom, Mills, herself had classified information transit through her unclassified personal email account) attend Clinton's interview, even if they had also both served as lawyers for Clinton after they left the State Department. The FBI and Department employees we interviewed all agreed that the attendance of Mills and Samuelson at Clinton's interview posed potential evidentiary problems, was unusual, and was unhelpful from an "optics" perspective. Witnesses also told us that the only way they could have excluded Mills and Samuelson was by subpoenaing Clinton before the grand jury, but that the team did not seriously consider that option. If the team had issued a grand jury subpoena, Clinton either would have been required to testify before the grand jury without her attorneys in the room or she might have agreed to a voluntary interview outside the presence of Mills and Samuelson to avoid having to appear

¹²² From the context of this message in the series of text messages that day, we determined that the text message was focused on the number of Midyear team members attending and not on the nature of the questioning.

before the grand jury, given that a grand jury appearance would have delayed the investigation.

We did not find evidence that bias played a role in the decision to proceed with the Clinton interview with Mills and Samuelson in attendance. Rather, we concluded that it was largely based on four factors. First, the Midyear prosecutors were concerned about interviewing Clinton before the grand jury because of the challenges of presenting classified information before the grand jury. Second, the Midyear team had decided by the time of Clinton's interview that the case was headed toward a declination absent a confession or false statement by Clinton. Third, had Clinton been required to testify before the grand jury, the FBI would not have been able to participate in the interview. Fourth, the team planned to pause the interview and conduct a sidebar with Kendall if Mills or Samuelson interfered during the interview.

Ultimately, witnesses told us that Mills and Samuelson did not interfere, object, or speak substantively during the interview. Moreover, Clinton's interview did not result in any change in the conclusion of the Midyear team and Comey that a declination decision was warranted. Accordingly, we found no persuasive evidence that Mills's or Samuelson's presence influenced Clinton's interview, or that the outcome of the investigation would have been different had Clinton been subpoenaed before the grand jury.

Nevertheless, we found the decision to allow the Clinton interview to proceed in the presence of two fact witnesses, who also were serving as Clinton's counsel, was inconsistent with typical investigative strategy and gave rise to accusations of bias and preferential treatment.¹²³ Moreover, there are serious potential ramifications when one witness attends another witness's interview. The Midyear team could have developed information during the Clinton interview that led the team to reconsider its conclusion that the investigation was headed towards a declination, or led the team to believe that Clinton made a false statement during the interview. In either case, the presence of two fact witnesses at the interview could have negatively impacted subsequent FBI investigative efforts or a subsequent trial. We believe that it would have been useful for the Midyear team to have had guidance to consider in this situation. Thus, we recommend that the Department and the FBI consider developing guidance consider developing practice guidance that would assist investigators and prosecutors in identifying the general risks with and alternatives to permitting a witness to attend a voluntary interview of another witness, in particular when the witness is serving as counsel for the other witness.

¹²³ We recognize that, as a general matter, a witness is free to consult with counsel of the witness's choice. However, the government is not required to agree to conduct an interview of a witness in the presence of counsel who is also a witness.

CHAPTER SIX: “ENDGAME” DISCUSSIONS AND FORMER DIRECTOR COMEY’S PUBLIC STATEMENT

Our review found that the Midyear team concluded beginning in early 2016 that evidence supporting a prosecution of former Secretary Clinton or her senior aides was likely lacking. This conclusion was based on the fact that the Midyear team had not found evidence that former Secretary Clinton or her senior aides knowingly transmitted classified information on unclassified systems because (1) classified information exchanged in unclassified emails was not clearly or properly marked, and (2) State Department staff introducing classified information into emails made an effort to “talk around” it. Although the Midyear team continued its investigation, taking the investigative steps described in Chapter Five and looking for evidence that could change their assessment, they also began discussing what witnesses referred to as the “endgame” for the investigation—ways for the Department and FBI to credibly announce the closing of the investigation.

In this chapter, we discuss the factors that led the Midyear team to conclude that the investigation likely would result in a declination. We then describe the discussions among Comey, Rybicki, Yates, and Axelrod beginning in April 2016 about how to announce the closing of the Midyear investigation, including Comey’s mention of a special counsel and Lynch’s knowledge of these discussions. We also describe the origins of Comey’s decision to hold a press conference without coordinating with or informing the Department in advance, the various drafts of his public statement, and the Department’s reactions to the statement after he delivered it on July 5, 2016. In addition, we describe the tarmac meeting between Lynch and former President Bill Clinton on June 27, 2016, and its impact on the Midyear investigation. Finally, we describe Comey’s congressional testimony about the reasons for his public statement.

I. Evidence that the Case Was Headed toward a Declination

As described above, both Department and FBI witnesses said that the central question in the Midyear investigation was whether there was evidence that former Secretary Clinton and her aides acted with knowledge that the information transmitted was classified or transmitted with criminal intent. Various witnesses told the OIG that the investigation focused on identifying what classified information transited former Secretary Clinton’s server, who introduced it, and why. The investigative team looked for evidence that individuals who sent emails containing classified information did so with knowledge that the information was classified—for example, took information from documents that were marked with classification headers and stripped off the header information—or that former Secretary Clinton’s private server was set up to circumvent classification requirements.

From early in the investigation, the investigative team said they knew that proving intent would be a challenge.¹²⁴ Prosecutor 1 told the OIG:

[T]his whole case turned on mens rea [guilty state of mind].... I've run a lot of mishandling cases. The issue is usually that people are taking things home or they're communicating them to someone for, to set up a business outside or to do something that's like, what we don't tend to prosecute criminally anyway are people who are communicating things for work purposes.... Usually to people who are already cleared. So, those are the kinds of things that when we're talking about mens rea, were sort of instructive for us....

This prosecutor explained that Secretary Clinton and her staff did not display any of the counterintelligence indicators that prosecutors typically see in mishandling cases, such as unreported foreign contacts or "weird" meetings with foreigners. This prosecutor said that evidence of intent was lacking for other reasons as well, including that numerous witnesses testified that the State Department had terrible information technology (IT) systems and that its remote email system did not work when employees were traveling and sending emails in different time zones. As a result, the investigative team said they could not infer bad intent from the use of personal email accounts as they might in other cases.

Prosecutor 2 similarly stated that mishandling cases generally involve "people who have an intent to give classified information to others, people who have an intent to...take documents home and...do nefarious things with them, or sometimes hoarders of classified information." This prosecutor told the OIG that, unlike the typical mishandling case, the State Department employees who introduced classified information into the unclassified system were trying to "talk around" it in the course of doing their jobs. This prosecutor stated, "And looking in terms of some of the times when the classified information appeared on [un]classified systems in this case, we see, we see problems, you know, late at night, weekends, the time between Christmas and New Year's when no one is in the office."

FBI officials agreed with the prosecutors that the need to prove intent was problematic from the outset. In his recent book, Comey stated:

...Hillary Clinton's case, at least as far as we knew at the start, did not appear to come anywhere near General Petraeus's in the volume and classification level of the information mishandled. Although she seemed to be using an unclassified system for some classified topics,

¹²⁴ The legal framework for the Midyear investigation and the basis for the decision not to recommend or pursue prosecution of former Secretary Clinton or her staff are described in Chapters Two and Seven, respectively. Even though Section 793(f)(1) does not require intent, prosecutors told us that the Department has interpreted the provision to require that the person accused of having removed or delivered classified information in violation of this provision possess knowledge that the information is classified. In addition, based on the legislative history of Section 793(f)(1), the prosecutors determined that conduct must be "so gross as to almost suggest deliberate intention," be "criminally reckless," or fall "just a little short of willful" to meet the "gross negligence" standard.

everyone she emailed appeared to have both the appropriate clearance and a legitimate need to know the information. So although we were not going to prejudge the result, we started the Clinton investigation aware that it was unlikely to be a case that career prosecutors at the Department of Justice would prosecute. That might change, of course, if we could find a smoking-gun email where someone in government told Secretary Clinton not to do what she was doing, or if we could prove she obstructed justice, or if she, like Petraeus, lied to us in an interview. It would all turn on what we could prove beyond a reasonable doubt[.]¹²⁵

As described in more detail below, Comey said that by early May 2016, when he wrote the first draft of his public statement, the Midyear team was aware that evidence of intent was lacking.

Others on the Midyear team agreed. FBI Attorney 1 stated, "I have cases where there [are] people with thousands of classified documents in their home and we don't prosecute them.... [T]his is not something we prosecute lightly or we do regularly. There needs to be, usually, some either nefarious intent or some...actual harm that has happened because of it." Agent 2 told the OIG:

[F]rom like my level looking at it...you were hard-pressed to find the intent of anyone to put classified information on that server. And again, sloppy security practices, for sure. Right? But, and, and preventable? Yes. But somebody intentionally putting classified on it, we just never found clear-cut evidence of somebody intending to do that.

As early as September 2015, FBI and Department officials realized that they were unlikely to find evidence of intent. Prosecutor 2 stated that within a month of first obtaining criminal process, they had seen no evidence of intent. This prosecutor told the OIG that the team realized that the case likely would lead to a declination after they had reviewed the classified information in former Secretary Clinton's emails and heard the explanations for including that information in unclassified emails. Prosecutor 2 said that there were a number of other investigative steps they needed to take to complete their due diligence, but that by September 2015 they knew that they would need a "game changer" to be able to prove intent.

Notes obtained by the OIG from a meeting between Toscas and then EAD John Giacalone on December 4, 2015, confirm that the lack of intent was the subject of ongoing discussions. According to the notes, Giacalone asked the team, "Still [do not] have much on the intent side, right?" The notes show that the team members present at the meeting agreed with him. Giacalone, who retired from the FBI in February 2016, said that there were "no smoking guns" showing intent when he left.

¹²⁵ COMEY, *supra*, at 164-65.

Similarly, other notes show that prosecutors met with NSD supervisors on January 29, 2016, to discuss the lack of evidence supporting prosecution. The notes state:

Don't see prosecutable case at this point.

A lot of stuff done from Ops Center [lower level State Department staff] —> up. HRC is receiving.

Want to insulate DOJ from criticism about how we did this work.

No daylight [between] FBI management and investigative team agents re: view of criminal liability.

Asked what led the team to conclude by January 2016 that there would not be a prosecutable case, Laufman said that there was not a fixed point in time or organized discussion that produced this realization. He said that every time the team concluded "another consequential investigative step, and no additional information emerged that...pointed in the direction of potential criminal liability, then the...foundation of facts emerged that was not likely to support a recommendation to charge."

Asked whether there was a particular piece of evidence or an interview that led to the realization that the case would result in a declination, Prosecutor 3 stated that it became apparent once the team had interviewed all of former Secretary Clinton's senior staff members, including Jake Sullivan and Cheryl Mills, and heard the same explanation for what they believed to be an innocuous transmission of emails containing classified information. Other witnesses described the team's realization that the investigation would not result in a prosecutable case as "iterative" or "emerging over time" based on the cumulative lack of intent evidence over the course of the entire investigation. In any event, various witnesses agreed that the team had come to the conclusion that there likely was not a prosecutable case by the Spring of 2016.

Baker told the OIG that he thought that the conduct of former Secretary Clinton and her senior aides was "appalling with respect to how they handled the classified information...[and] arrogant in terms of their knowledge and understanding of these matters." He stated that he was concerned about former Secretary Clinton's level of knowledge and intent, and thought that she should have recognized the sensitivity of information in the emails sent to her. Baker said that he "debated and argued" with Comey and the Midyear team about former Secretary Clinton's criminal liability, but ultimately came to the conclusion that declining prosecution was the correct decision after reviewing a binder of her emails. Baker said that he recognized there was a lack of evidence establishing knowledge or criminal intent, and that based on "the volume of...communications coming at [Clinton] at all times, day and night, given the heavy responsibilities that a Secretary of State has, isn't she entitled to rely on [the classification determinations by] her folks?" Baker stated that he "did not like it.... I eventually agreed with it, but I did not like it."

Yates told the OIG that she had been getting updates regularly from Carlin and Toscas about where the investigation was going. In Spring 2016, Carlin or Toscas told her that if the investigation continued in the same direction it was going, they expected that the prosecutors and the agents would be recommending a declination. Yates told us that this assessment of the case was based on evidence indicating that the people transmitting classified information did not have a "bad purpose." She pointed to a variety of factors, including that emails were sent by State Department employees to other State Department employees, and usually contained time-sensitive logistical information that former Secretary Clinton needed to receive. She said that the information was not marked classified, with the exception of three paragraphs that were portion marked as "Confidential," and that there were even disputes within the originating agencies as to whether the information should be classified at all.

Yates said that Department leadership began talking internally in the Spring of 2016 about how to convey a declination decision because they knew that it would be controversial, and that they were all of the view that it needed to be clear that the decision was supported by both the FBI and the Department. Yates said that these discussions always proceeded with the "great big caveat" that former Secretary Clinton could lie during her interview, but that they could not wait until after the interview to begin preparing for a declination due, in part, to the proximity of the election. Discussions between the FBI and the Department about the "endgame" for concluding the Midyear investigation began around this same time, and are described in more detail below.

II. Discussions between FBI and Department Leadership about How to Credibly Announce a Declination (Spring 2016)

As noted above, Comey said that the Midyear team was aware from the outset that the investigation was unlikely to result in a prosecutable case, absent a "smoking-gun" email. Comey told the OIG that he realized sometime in March or April 2016 that the evidence obtained in the Midyear investigation likely would not support a prosecution. Asked what led him to that conclusion at that time, Comey stated:

[T]he picture that was fairly clear at that point, [was] that Hillary Clinton had used a private email...to conduct her State Department business. And in the course of conduct [of] her State Department business, she discussed classified topics on eight occasions TS, dozens of occasions SECRET, and there was no indication that we had found that she knew that was improper, unlawful, that someone had said don't do that, that will violate 18 U.S.C. [the federal criminal code], but that there was no evidence of intent and it's looking, despite the fact of the prominence of it, like an unusual, but in a way fairly typical spill and that there was no fricking way that the Department of Justice in a million years was going to prosecute that.

And because Counterintelligence Division of the FBI was involved in all the other spill cases and it collected for me the history of them, no way, there's no way, unless we find something else in May and June or we get [18 U.S.C. §] 1001 [false statements] handed to us during her interview.

Comey said that, as he came to this realization, he became concerned that the Department would be unable to announce the closing of the investigation in a way that the public would find credible and objective. Comey said he was concerned that having the Department's political leadership announce a declination would expose it to a "corrosive doubt about whether you did [the investigation] in a credible way." He said that this concern "dominated [his] thinking...for most of 2016, but especially from the spring on." According to Comey, his concern was based on the appearance or perception created by the Department's leadership declining prosecution of the presumptive Democratic nominee, because they were political appointees; it was not based on evidence that Lynch or Yates were interfering in the investigation or were politically biased.

A. Initial Discussion between Comey and Yates in April 2016

1. Options Discussed at the Meeting

Comey said that beginning in March or April 2016, he began to think of ways to announce a declination. Comey said that during this time he had a meeting with Rybicki, Yates, and Axelrod to discuss how the FBI and Department could credibly close the investigation. Based on Yates's description of the circumstances of the meeting (described below) and FBI emails, we determined that this meeting likely took place on Tuesday, April 12, 2016.

According to Comey, he told Yates and Axelrod during the meeting that they needed to begin thinking about the how to announce the end of the investigation. Comey said that he told Yates, "[M]y sense of this, and I'm not done, but my sense of this is this is heading for a declination and how do you credibly decline this? And what can you say to people to support the credibility of the work that's been done?"

Comey said that he urged Yates and Axelrod to consider the most transparent options available for announcing a declination. Comey told the OIG:

[M]y view was, still is, that the more information you are able to supply, the higher the credibility of the investigation and the conclusion. And that especially in a poisonous political atmosphere, where all kinds of nonsense is said, the more you can fill that space with actual facts, the more reliable, believable, credible the conclusion is.

He stated, "People are still going to disagree. They are still going to fight, but at least there will be facts in the public square that show...[we] did this in a good way, thought about it in a good way and here is our reasoning as to why we think there is no there there."

Comey told the OIG that they did not discuss or consider specific options, but that he simply said to Yates, "[Y]ou need to get smart people working on what are the range of possibilities...what is possible under the law, I remember mentioning the Privacy Act, what is possible and what are the vehicles for transparency, what are the outer boundaries.... I think I just teed up the issue and said, hope you will get smart people thinking about this." Asked whether he was ever involved in discussions about a joint appearance with Attorney General Lynch, Comey said that he did not recall any discussions about that option.

Yates recalled this discussion with Comey differently. Yates said that she had a regular monthly meeting with Comey, and that the day before one of these meetings, Axelrod received a call from Rybicki suggesting that they meet to discuss how to conclude the case. She did not recall precisely when this meeting took place or what had happened in the investigation leading up to it, but she described the investigation at that time as "wrapping up."

Yates said that the meeting took place in her office. She said that they talked about the investigation and agreed that public confidence in its resolution was important. She said that everyone was of the same view that there was not a criminal case based on the evidence to date, and that it was not going to be sufficient to announce the conclusion by saying, "We looked at it...case closed." She said that the four of them agreed that people needed to have confidence that there had been a thorough look at the facts, and that a declination was the right decision.

Yates told the OIG that any discussion about how to announce a declination always proceeded with "great big caveat on it" that former Secretary Clinton could lie during her interview. Yates stated, "This is if things continue to go that way. Because you don't want to be like planning the declination that you don't really know is a declination yet. Because I mean, if she lied for example. There's about, that could change things entirely if she wasn't truthful in the interview."

According to Yates, one of the options they considered was a written memorandum released to the public, which would give some level of facts about the investigation. Yates stated that they all agreed that if they released a written memorandum, they also would need to hold a press conference to allow them to "look the [American] people in the eye" and say that there was not a criminal case, rather than "hiding behind a behind a [press] release or a writing that...would not be sufficient to convey the earnestness of that decision." She said that no one committed to a decision at this meeting, but rather they were "thinking out loud."

We asked Axelrod about these discussions between Yates and Comey. He said they focused on whether the FBI would be part of any announcement at the conclusion of the investigation. Axelrod said that they discussed preparing a letterhead memorandum (LHM) that could at least be provided to Congress, along with some form of a public announcement.

Axelrod said that one of the options they discussed was a joint announcement involving Lynch and Comey. Axelrod told the OIG that "the view

from the Department was it would be important for the Bureau to be part of that.” He stated, “[Comey] hadn’t committed to it but was...comfortable with it being some sort of joint thing.” Asked why he thought it was important to have Comey participate in an announcement, Axelrod said that it was important for the Department and the FBI to display a “unified front...having both organizations together saying the truth, which was this was done by the book and this was the result.”

Axelrod said that they never discussed the idea of Comey being the one to announce a declination because it was never raised, but that he was “not sure that would have been rejected out of hand.” He stated, “[T]here would have been some advantages to that having been coordinated and planned that way. And some disadvantages, too.... [T]he thing...that I knew that the Department felt strongly about was that Bureau had to be part of that [announcement].”

Rybicki said that he did not recall any specific discussions, stating, “I just remember all ideas sort of being, you know, people talking about, you know, press conferences and, and, and ways of closing and things like that. I don’t remember specific conversations.”

2. Comey Mentions a Special Counsel at April Meeting with Yates

Comey’s Testimony

Comey told the OIG that during the April meeting with Yates and Axelrod, he told Yates that the closer they got to the political conventions, the more likely he would be to insist that a special counsel be appointed, because there was no way the Department could credibly finish the investigation once former Secretary Clinton was the Democratic Party nominee. Comey said that his comment to Yates was motivated in part by his frustration that it was taking the Midyear prosecutors too long to obtain the Mills and Samuelson laptops (discussed above in Chapter Five). He said that he emphasized to Yates that the team needed to obtain the laptops to be able to finish the investigation. According to Comey, Yates reacted to his comment about the possible need for a special counsel with concern, and that he responded, “[L]ook I’m not saying we have to do it, but the deeper we get into this summer, the more likely it’s going to be that I’ll feel that way. And I was saying it in part to get them to just move—to move, to get us this thing [the laptops].”

As part of this discussion, Comey said he recounted his experience when he was the DAG appointing then U.S. Attorney Patrick Fitzgerald as the special counsel to investigate the leak of the name of a covert CIA operative, Valerie Plame.¹²⁶ He said he explained to Yates that the investigation focused in part on whether Karl

¹²⁶ Comey served as the DAG from December 9, 2003, to August 15, 2005, under President George W. Bush. On July 14, 2003, the Washington Post published Plame’s name, sourced to unidentified senior administration officials. On December 30, 2003, then Attorney General Ashcroft recused himself from the investigation. Comey became the Acting Attorney General for purposes of the investigation and appointed Fitzgerald to oversee it.

Rove, then President George W. Bush's senior political advisor, had leaked the information, and that he (Comey) was concerned about the appearance of a conflict of interest between Rove and then Attorney General John Ashcroft because Rove had managed one of Ashcroft's Senate campaigns. He told the OIG that he mentioned this to Yates because he saw similarities between the Plame leak case and the Midyear investigation: namely, that in the Plame case there was no basis to prosecute Rove, and he did not think the Bush Administration could have announced a declination in a way that assured the public the investigation was done objectively.

Comey said that his comment to Yates about appointing a special counsel also was motivated by concerns about the appearance of political bias in the Department. He said that these concerns were based on the overall political environment—given then President Obama's comments about the investigation, he did not think the Department leadership could credibly complete the investigation without charges.¹²⁷

Comey said that he also was concerned about an issue specific to Lynch. As discussed in more detail in the classified appendix to this report, Comey told the OIG that the FBI had obtained highly classified information in March 2016 that included allegations of partisan bias or attempts to impede the Midyear investigation by Lynch. Numerous witnesses we interviewed—including Comey—said that the FBI assessed that these allegations were not credible based on various factors, including that some of the information was objectively false. For example, the information also suggested that Comey was attempting to influence the investigation by extending it to help Republicans win the election, which witnesses said the FBI knew was not true. By mid-June 2016, the FBI had obtained no information corroborating the Lynch-related allegations.

When asked about this information, Comey stated that he knew it was not credible on its face because it was not consistent with his personal experience with Lynch. Comey stated, "I saw no, I'll say this again, I saw no reality of Loretta Lynch interfering in this investigation." However, Comey said that he became concerned that the information about Lynch would taint the public's perception of the Midyear investigation if it leaked, particularly after DCLeaks and Guccifer 2.0 began releasing hacked emails in mid-June 2016.

Despite these concerns, Comey told the OIG that it did not occur to him to request a special counsel in late 2015, after Lynch's instruction to use the term "matter" or former President Obama's public comments about the investigation (discussed in Chapter Four), because Comey was satisfied with the nature and the quality of the investigation being conducted by the FBI. Comey emphasized that

¹²⁷ As discussed in Chapter Four, former President Obama made comments about the investigation in October 2015 and April 2016, while White House Press Secretary Josh Earnest made statements in January 2016 suggesting that the Midyear investigation was not headed toward an indictment.

the FBI had its “A team” working on the investigation, and that he was closely involved to ensure that the team was protected from political or other influence.

As we describe in more detail in the classified appendix, Yates and Axelrod told us that the FBI mentioned this information to them sometime in the Spring of 2016 and provided a defensive briefing on it on July 12, 2016.¹²⁸ Yates said that the FBI told her that the information was not deemed credible and did not show her the relevant documents. After being shown the documents in her OIG interview, Yates expressed frustration and said that, had she been informed that the FBI had concerns about the information, she would have engaged Comey in discussions about the impact on the Midyear investigation. The FBI also did not provide Lynch with a defensive briefing about the information until August 2016, more than a month after investigative activity in Midyear was concluded, and she also was told that the information was not credible. Lynch said that until Comey’s public testimony in 2017, she was never told that the information played a role in his unilateral decision to make a public statement about the Midyear investigation or concerns about whether a special counsel was necessary.

However, Comey said that he became increasingly concerned and began thinking about the possible need for a special counsel when he realized in March or April 2016 that the case likely would result in a declination, and that the declination might not happen until after the political conventions. He explained that the Department’s leadership could not credibly announce a declination around or after the nominating convention, because “the confluence of a decision on a case and a key political event” would cause “grievous” damage to the Department’s and the FBI’s reputation.¹²⁹

Yates’s and Axelrod’s Testimony

Yates told us that she recalled Comey raising the possibility of a special counsel at the April meeting. She told the OIG that Comey commented that they may need a special counsel to announce the closing of the Midyear investigation if the investigation ran past the convention and former Secretary Clinton was formally the Democratic Party’s nominee.¹³⁰ According to Yates, Comey added that there was no reason to request a special counsel because the investigation would be

¹²⁸ A defensive briefing is intended to warn government officials of specific security concerns or risks. As we describe in the classified appendix to this report, the Department discussed this information with career Department officials in March 2016, and later provided defensive briefings to Yates and Lynch on July 12, 2016 and August 10, 2016, respectively.

¹²⁹ In Section VI.C below, we describe Comey’s testimony before the Senate Select Committee on Intelligence on June 8, 2017. During that testimony, Comey was asked whether Lynch had an appearance of a conflict of interest in the Midyear investigation. Comey replied, “I think that’s fair. I didn’t believe she could credibly decline that investigation—at least, not without grievous damage to the Department of Justice and to the FBI.”

¹³⁰ The Democratic National Convention was held from July 25 to 28, 2016. Clinton was formally nominated to be the Democratic Party’s Presidential nominee on July 26, and accepted the nomination on July 28, 2016. However, she secured a majority of delegates and became the presumptive nominee several weeks earlier, on June 6, 2016.

completed before the convention. She said that she did not interpret Comey's comment as a line drawn in the sand, but more of a "musing."

Yates characterized Comey's suggestion as a "weird thing" that he raised "out of the blue," and said that she did not understand why the convention was a bright line for him. She stated, "Because if you were concerned about an appearance that [Clinton is] the Democratic nominee and you have a Democratic Attorney General, well, you got that before the convention. You've kind of had that for quite some time now." Yates said that she may have mentioned to Comey that Clinton had been the presumptive Democratic Party nominee for some time and that using the convention as a dividing line seemed "really artificial."

Yates also said that she was taken aback by Comey's comments, because the investigation had been going on for some time and he had never mentioned the need for a special counsel. She said that his concern was based on the perception created by a Democratic-appointed Attorney General announcing that the Democratic Party's Presidential nominee would not be prosecuted. Yates said that she understood that this was "all for appearance reasons." She stated, "Jim [Comey] never, ever, raised any concern about Attorney General Lynch having any kind of actual conflict or even an appearance of a conflict before we got to the tarmac. Never, ever. Nor did anyone else at the FBI ever raise any concern about that that I'm aware of."

Asked whether Comey at any time raised concerns about the involvement of Lynch in either the investigation or the announcement, Yates stated:

No...I mean, this is where, and when I am so emphatic about that it's because I read articles and testimony later that frankly, shocked me. Because I thought, this was not the only discussion that I had with former Director Comey about how we would roll it out. And I thought...I read and I have no way of knowing if this is true, but I think Director Comey's testimony indicated that he had been thinking for quite some time that he felt like he needed to go in alone in making the announcement. And not only did I never hear that, I'm not aware of anybody, I mean, maybe somebody else at DOJ had heard that and it never made its way to me. But I'm not aware of anybody else at DOJ hearing that.

In fact, that's just the opposite of what our discussions were. I would have thought when...we're talking about a joint press conference, et cetera, that if he harbored either (A), any reservations about whether Attorney General Lynch had a conflict or appeared to have a conflict he would have said something. I don't know how you have a discussion about that and have those feelings and not say anything about it. And then (B), if he was actually planning on doing it on his own I don't know how he didn't tell me that.

Yates said that she would have expected Comey to discuss any concerns he had about Lynch or the Department with her, and said that Comey had not been shy or

hesitant to give his opinion in discussions with her. However, she said that Comey "kept FBI's information very tight," and that she "sometimes...felt like [she] had to pry information out of him."

Axelrod gave a similar account of Comey's mention of a special counsel. He said that Comey was concerned with the dates of the national political conventions, particularly the Democratic National Convention, because he thought that it would not be tenable for the Department's leadership to continue to oversee the investigation or announce a declination once former Secretary Clinton was the Democratic Party's nominee. Axelrod said that he perceived Comey's concern as "purely calendar-driven." He told the OIG that he did not know if Comey appreciated the way that the appointment of a special counsel would be perceived by the outside world, or whether it was "some sort of gambit to sort of say hey, if you guys don't pick up the pace, right, this is going to get really ugly." Axelrod said that at the time he interpreted the suggestion as Comey thinking through how to "navigate this in such a way that it gets accepted by, again, not by everyone but at least by some chunk of the public, the reasonable center, as having been done on the level."

Rybicki told the OIG that he did not recall any discussions between Comey and Yates about the need to appoint a special counsel.

3. Lynch's Knowledge of the April Meeting

Asked about her knowledge of the meeting between Yates and Comey, Lynch said that Yates told her that she met with Comey, and that Comey indicated that he was not sure there was a "there there" with respect to the Midyear investigation. According to Lynch, Yates said that Comey mentioned that he should be the one to make any announcement about the resolution of the case, because this would be best for the independence of the Department. Lynch said that Yates and she both thought that any discussion about an announcement was "very premature."

Lynch said that she did not think about the option to have Comey make any eventual announcement in terms of a "decision tree" because it was so premature. She stated that she was not aware of any other options that Comey and Yates discussed, but that she did not see a basis for the Department to "have the investigative arm announce a prosecutive decision." Asked whether there was anything about the case that in her view would warrant deviating from the standard practice of having prosecutors announcing a prosecutorial decision, Lynch responded that there was not.

Lynch told the OIG that she understood from Yates that Comey wanted to complete the investigation before the political conventions. However, she said she did not recall being told that Comey had mentioned the possibility of requesting a special counsel if the investigation continued beyond that point. She said that, other than letters from Members of Congress requesting a special counsel to handle

the investigation, no one ever mentioned that a special counsel might be necessary or might be requested if the investigation took too long.¹³¹

Lynch said that she had looked at the special counsel regulation at one point because that is “a decision that the AG has to make,” but had not taken steps to have anyone look into it or research it. She said that she was convinced that the team handling the investigation could come to a conclusion. She stated, “I was convinced that if, for example, they thought that someone should be charged, they were not going to hesitate to recommend that.”

As we discuss in Section IV.B below, Lynch received an ethics opinion following the tarmac meeting with former President Bill Clinton on June 27, 2016, that she was not required to recuse herself from the Midyear investigation. She decided not to voluntarily recuse herself for a variety of reasons, including that she did not have a personal relationship with either former President Clinton or former Secretary Clinton.

B. Subsequent Discussions Between Comey and Yates

Yates said that sometime after her initial meeting with Comey, she received a phone call from him in which he said that he had been talking to “his people,” and they had decided that the FBI would not make a recommendation at all. Yates said that Comey told her that the FBI instead would “just give DOJ the facts and DOJ would make the decision and [the FBI] wouldn’t make a recommendation.” According to Yates, Comey described this as the way the FBI and the Department “normally do it.”

Yates said that she asked Comey what he was talking about, because the FBI always makes recommendations about charging decisions. According to Yates, she recalled saying the following to Comey:

Jim, I thought we had talked about it the last meeting.... That we were all going to hold hands and jump off the bridge together. Because that’s kind of how I viewed this was that this was going to be a tough thing here. That a lot of people were not going to like our decision but that’s our job. And that we were going to, you know, we were all going to stand there together. We were going to announce it together.

Yates said that Comey was non-committal after she made this statement.

¹³¹ On October 28, 2015, 44 Members of the House of Representatives sent a letter to Lynch requesting the appointment of a special counsel in the Midyear investigation, citing former President Obama’s comments about the investigation on 60 Minutes as evidence that he had prejudged the investigation. The letter stated that a special counsel was warranted to ensure that the investigation was conducted free of undue bias from the White House. In addition, Senator Charles Grassley sent a letter to former Director Comey on May 17, 2016, asking various questions, including whether Comey believed that a special counsel was necessary.

Yates said that she remembered sitting at her desk after this call and thinking, "What?" She said that she spoke to Axelrod and Carlin after hanging up the phone, saying, "Holy cow. I mean, what is this business of now they're not even going to make a recommendation?"

Yates said that when she thought back to every major announcement she had done throughout her career, the lead investigative agency was always involved. She said that by that point it was "really clear that from the line agents all the way up they were all of the view that this shouldn't be a criminal prosecution." She said that given that agents and prosecutors agreed there was no basis to prosecute former Secretary Clinton, it was important to present a unified view of the investigation.

Comey told the OIG that he did not recall discussions about the end of the investigation with the Department other than his initial April meeting with Yates and Axelrod, and he did not recall any discussions with them about a joint Director-Attorney General announcement. Rybicki also said he did not recall any discussions about the end of the investigation.

Axelrod said he recalled that the FBI "went back and forth on whether...they wanted to be, whether they were willing or the Director was going to be willing to be part of...sort of some sort of joint roll out." Lynch also told the OIG that she recalled Yates mentioning that at some point that she had had another discussion with Comey, and that Comey was no longer sure that he should be the person making the announcement.

Yates said that after this call with Comey, there were other discussions with him where they were "back on track" and "all holding hands and jumping off the bridge together." Yates said she did not recall whether these subsequent discussions took place face-to-face or on the phone, or whether anyone else from the FBI was there. She said that they never made a final decision about how they would announce the declination, but that it was likely to be with a press conference where they laid out the facts supporting a conclusion that there was not a crime to be prosecuted. Yates said she had anticipated that Lynch would speak, but that they had not determined whether there would be other speakers. She said that they also planned to release a written document.

Yates told the OIG that she did not recall identifying a target date for making the announcement, but that they understood it would be a "matter of days" after the interview of former Secretary Clinton on Saturday, July 2, 2016. Yates stated, "And we were trying to be careful not to plan this too much, again, because we hadn't made the final decision yet. This is where we thought it was going to go but you don't know until that interview is concluded." Axelrod also told us that plans for an announcement were not "solidified because we weren't quite at the end."

C. Other Discussions within the FBI and Department

1. Discussions between McCabe and Carlin

Axelrod said that the discussions between Yates and Comey about the conclusion of the case were not the only ones that took place between the Department and the FBI. He said that during the Spring of 2016, Toscas, Carlin, Rybicki, and McCabe also were involved in discussions about how to credibly conclude and announce the conclusion of the investigation.

We asked various witnesses about these discussions but were unable to develop a precise timeline for them or a specific recollection of what was discussed. Carlin told the OIG that he may have talked about how to credibly announce a declination with McCabe "once or twice." He said that they discussed the "incredible scrutiny" that the case would receive and the need to memorialize in writing any disagreements between the team. He said they also discussed the need for a written description recounting the steps that were taken in the investigation. Carlin stated:

And then what made this a little unusual for me anyway was that it came over as an IG, an 811 referral matter. And so one thing we had discussed was doing some closeout [summary of] facts to the IG.... If there were no criminal charges that doesn't mean there's not more to be done for the IG and lessons that they can learn from what we did in terms of the steps that they apparently felt they couldn't take...for things that were outside Government servers. And so I'd always thought at the end that some version of just the facts, not our thinking as to whether or not you bring a criminal charge, should go back to the IG in a closeout form. So then they could continue with whatever they were going to do, either administratively because there may be bad practices, or the set. Substantively it was clear to me from the investigation that there could be improvements made in terms of how the State Department was giving guidance and handling potentially classified information.

Carlin said that he did not know if Comey ever approved the idea of a referral back to IC IG, "But at the Deputy [McCabe] level I thought there was some agreement by a meeting of the minds that that was the likely way we were going to proceed." He said that he did not want to overstate it or give the impression that everyone had "signed off on" the idea, but that when he "raised that as a potential course it seemed like people thought that was reasonable." Carlin said that he did not recall discussing a joint press appearance by Lynch and Comey.

McCabe told the OIG that he recalled talking to Carlin about how to credibly conclude the investigation during lunch together in May or June 2016. McCabe said that neither of them had a "very well-formed idea" about what the end of the investigation looked like at that point, but that Carlin felt strongly that Comey should have a "very active and prominent role" in any public announcement.

McCabe said that they discussed various options, including a written memorandum or a joint press conference.

Asked about his involvement in discussions with the FBI about how to announce the conclusion of the case, Toscas said that he did not have a specific recollection of any such discussions. He stated:

I very much wanted the Bureau [to be] part of the discussion and I know that there was some discussion of making sure that—or to try to have a joint AG/FBI Director statement, whether in front of cameras or an issued written statement, and I remember thinking, and I may have even talked to our team you know specifically about this, like we want—like we want the FBI Director talking about this, right. We want there to be—the American public to know that DOJ and FBI are together on this and that we’ve run it down and we’ve concluded the investigation.

Toscas also said that he thought that Department leadership separately was involved in discussions with the FBI about how to announce a declination, and that he vaguely recalled a discussion the week before the interview of former Secretary Clinton about what a joint appearance or statement would look like.

2. Discussions among Prosecutors and NSD Supervisors

On March 30, 2016, Prosecutor 1 sent an email to Prosecutor 2 stating, “Read the Ruth Marcus column in the [Washington] Post if you haven’t yet.”¹³² The column referenced in the email discussed the public skepticism that would result from a decision not to indict former Secretary Clinton and recommended that the Department consider releasing a detailed investigative summary. It included a hyperlink to a public report released by the Department in 2010 that summarized the investigation into the 2001 anthrax letter attacks. The column also highlighted the need for a credible government official to provide the public with information about the investigation, noting, “Senior Justice officials will be mistrusted whatever they say, but what about FBI Director James B. Comey, who served in the Justice Department under George W. Bush?” Apparently after reading this column, Prosecutor 2 replied, “It is not dissimilar from some of the thoughts running through my head in the middle of the night...or what I tried expressing at that disastrous meeting we called with Toscas a couple months ago.”

Prosecutor 2 told the OIG that they had a meeting with Toscas in or around February 2016 focused on what the end of the investigation should look like. According to Prosecutor 2, Toscas said at this meeting that the prosecutors would provide their legal analysis and conclusions to Carlin, through Toscas, and that there was some “vague idea” that Comey or McCabe would release a statement. This prosecutor told the OIG that the Department’s involvement in any FBI statement was uncertain, and it was unclear at that point whether the statement would be written or oral. This prosecutor described this meeting as “contentious,”

¹³² See Ruth Marcus, *What If Clinton Isn’t Indicted?*, WASH. POST, Mar. 30, 2016, A17.

and said that NSD supervisors seemed to wonder what the line prosecutors wanted from them. This prosecutor said they brought up the issue of how to announce the end of the investigation because they were searching for assurances from their management that high-level Department officials would be involved. Prosecutor 2 stated:

[I]f the statement is made, who is making that statement? Is it Comey? Will DOJ be standing by his side? If DOJ is standing by his side, is that going to be the Attorney General, or is that going to be [Prosecutor 1] and [Prosecutor 2]? Because [Prosecutor 1] and [Prosecutor 2] are driving this investigation for DOJ.

Prosecutor 1 did not recall when the meeting with Toscas took place, but estimated that it was sometime in early 2016. Prosecutor 1 stated that the plan discussed at that meeting was for them to finalize their legal analysis and conclusions and provide it to the NSD chain of command. Prosecutor 1 said that he also expected that there would be a public announcement of some sort given the high-profile nature of the investigation. As described in Section II.C.4 below, Prosecutor 1 said that as the investigation moved toward completion, he understood that Comey likely would be the official publicly announcing a declination.

Prosecutors 3 and 4 said that the team thought that the FBI would be involved in announcing the conclusion of the investigation, but they did not know what the plans were. Prosecutor 3 stated, "We speculated...that it would be some FBI report, like maybe a classified report of findings, and then a public report...because it was a high-profile investigation.... And no one really knew what, what the FBI was going to do." Prosecutor 4 told the OIG that he did not care how announcing a declination was handled, other than he wanted Comey to participate in it. This prosecutor stated:

And from my vantage point, I didn't care other than the fact that I wanted Comey up there on a podium. I didn't care whether the AG was sitting next to, standing next to him or not. But I wanted Comey to make the announcement that, that the investigation was closed and that in FBI's viewpoint that there was not a prosecutable case....

Because Comey was a Republican, or [had] a Republican background. He'd been a Republican-appointed U.S. Attorney. He had been a Republican-appointed DAG. I know Comey from his EDVA days. I think, thought he was widely respected on both sides of the aisle, before this case especially. And I thought that he had the gravitas, that no matter what he did, it was going to be questioned, but that it would be, that there would be an air of legitimacy to what I thought was a legitimate investigation if he made the announcement, and especially after the tarmac meeting.

This prosecutor told the OIG that Laufman had tried on several occasions to raise the issue of planning for a joint announcement at meetings with the FBI, and

that Strzok was “always really squirrely about that.” He said that Strzok would say that they should wait to see how everything worked out, or that the decision was “above [his] pay grade.”

3. Additional Special Counsel Discussions

FBI Attorney 1 told us that the FBI Midyear team discussed whether they needed a special counsel at the beginning of the investigation in 2015. She said that at that time they had a legal intern research the statute, which expired and was replaced by regulations requiring appointment by the Attorney General.¹³³ She said that the discussion among the FBI Midyear team was, “[D]o we need one? When would we need one? How does this work sort of questions.... Was it necessary? And I, and I think we kind of thought we could handle this without the special counsel.”

FBI Attorney 1 stated that the idea of a special counsel came up again at various points during the investigation, but that “[t]here was not any really significant discussion about it.” She said that the team thought that they could complete the investigation, and they saw no signs of a conflict of interest on the part of the NSD lawyers.

Discussions about requesting a special counsel resurfaced within the Midyear team in mid-March 2016, following the discovery of the highly classified information, and occurred at various points through at least mid-May 2016. Text messages between Page and Strzok on March 18, 2016, indicate that the two of them discussed requesting a special counsel to oversee the investigation:

7:31 a.m., Strzok: “Thought of the perfect person D[irector Comey] can bounce this off of.”

7:31 a.m., Page: “Who?”

7:37 a.m., Strzok: “Pat [Fitzgerald]. You gotta give me credit if we go with him. And delay briefing him on until I can get back and do it. Late next week or later.”

7:38 a.m., Page: “We talked about him last night, not for this, but how great he is. He’s in private practice though, right? Suppose you could still bring him back. And yes, I’ll hold.”

7:57 a.m., Strzok: “Yes, he’s at Skadden in Chicago. I haven’t talked to him for a year or two. Don’t forget that D[AG] Comey appointed

¹³³ As discussed in Chapter Two, Department regulations at 28 C.F.R. § 600.1 provide that the Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, will appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and (a) that investigation or prosecution of that person or matter by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances; and (b) that under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

him as special counsel in the Plame matter, and that he was there for Comey's investiture."

7:58 a.m., Strzok: "I could work with him again. And damn we'd get sh*t DONE."

7:58 a.m., Page: "I know. Like I said, we discussed boss and him yesterday."

Based on the date of this exchange, Page told the OIG that the discovery of classified information relating to Lynch likely prompted her discussion with Strzok, but that she did not recall the idea of appointing Fitzgerald to be the special counsel for the Midyear investigation being discussed with FBI leadership. After reviewing a draft of the report, Page stated that she and Strzok had discussed consulting Fitzgerald about the classified information relating to Lynch, not about serving as a special counsel. Strzok said that he did not recall what led to this discussion, but he speculated that it may have been motivated by concerns about the information discussed in the classified appendix to this report. Strzok told the OIG that discussions about a special counsel reflected a genuine concern about the Department's ability to credibly close the investigation, denying that the idea was intended to get the Department to move more quickly on the Mills and Samuelson laptops.

Although witnesses denied that there was a specific deadline for completing the Midyear investigation, witnesses told us that Comey and other senior FBI officials strongly encouraged the team to finish the investigation as quickly as possible to avoid impacting the 2016 election. Notes reviewed by the OIG reflect that Comey increasingly was concerned by the timetable for completing the investigation as the debate about obtaining the laptops continued into May 2016. According to these notes, on May 9, 2016, Comey met with the FBI's Midyear team and told them that there "will come a point when DOJ can't credibly close this, and will need a special prosecutor." On May 11, 2016, other notes indicate that Comey told agents and prosecutors at a Midyear briefing that there was an "extraordinary sense of urgency" to complete the investigation, and that there was the risk that a declination would be perceived as partisan the closer they got to the election.

The next day, May 12, 2016, Strzok raised the possibility of a special counsel during a meeting with Laufman. Notes indicate that there was a lengthy discussion about Comey's timetable for completing the investigation and the need to obtain the Mills and Samuelson laptops, and that Strzok mentioned the possibility of requesting a special counsel if they got closer to the election. Laufman said that he viewed Strzok's comment as a "veiled threat" to make it clear that the FBI was dissatisfied with how NSD was handling the laptop issue and would proceed how it wanted. Laufman said he did not recall other instances where anyone from the FBI mentioned the possibility of requesting a special counsel.

4. NSD Notes Reflecting Plans for an Announcement

As the team progressed toward the end of the investigation, information obtained by the OIG indicates that prosecutors and NSD supervisors were aware

that Comey was planning to participate in an announcement. On May 16, 2016, Priestap sent an email to Toscas stating:

I wanted you to be aware that Director Comey would like to see a list of all cases charged in the last 20 years where the gravam[e]n of the charge was mishandling classified information. He requested the information in chart form with: (1) case name, (2) a short summary for context (3) charges brought, and (4) charge of conviction.

Toscas forwarded the email to Laufman, who replied, "What is the meaning of this request? Have no problem sharing data we have amassed, but am concerned that it signifies an expectation by Bureau to play a larger role in DOJ charging decision than usual." Toscas replied, "We will all continue to work together with the Bu[reau] on all aspects of this, including with respect to any such decisions, so we should plan for and expect that our usual close collaboration with the Bureau will continue all the way through to the conclusion, including any such decisions."

Toscas also asked Laufman to call him. Notes memorializing a telephone call that day indicate that Toscas told Laufman, "Bureau may simply close this.... Don't think this is an insane request. Thinks Comey wants to see cases because he wants to be able to say why outcome not [out] of line. Everyone knows where we are going to end up."

NSD prosecutors prepared a chart of cases indicted since 2000 under various provisions prohibiting the mishandling and improper retention of classified information. Toscas emailed McCabe and Rybicki about the chart on May 23, 2016, and hand-delivered a copy to them at his routine morning meeting. The email sent by Toscas included the following caveats distinguishing the charged cases from the Midyear investigation:

While it is not noted specifically in the chart, the vast majority of the listed cases involved documents or electronic files with classification markings on them. The few examples of charged cases where no markings were present involved photographs taken by the defendant (e.g., a case involving photos inside sensitive areas of a nuclear submarine) or handwritten notes where there were clear indications of knowledge of the sensitive nature of the materials (e.g., a case in which there was a recording of the defendant speaking about the classified nature of information in his hand-written notebooks).

The "charging/plea information" column should make it clear, but the mishandling noted in the chart often occurred in conjunction with other criminal activity, including espionage, export control violations, and false statements, among others.

The chart did not include any examples of cases charged under Section 793(f).

Asked whether he thought Comey's request signaled a plan for greater involvement by the FBI, Laufman told the OIG that he viewed it as part of Comey's

desire to make as knowledgeable a decision as possible about whether to charge Secretary Clinton or her senior aides. He stated, "And that's a conversation prosecutors always have with the agent, right?... So, I didn't have any problem arming him with the legal precedents that we thought informed our judgment, which we expected to be somewhat controversial, especially on the gross negligence statute."

Notes reviewed by the OIG indicate that Laufman had, or was told about by Toscas, discussions with the FBI regarding plans to announce a declination as the interview of former Secretary Clinton approached. In early June, the FBI and NSD began working jointly on an LHM outlining the facts developed in the investigation. The prosecutors began developing the legal framework for their analysis around the same time, but did not finalize any charging recommendations until after the interview.

On June 19, 2016, Laufman had a telephone conversation with Strzok about Comey's plans to make a statement about the investigation. Laufman's notes from this conversation listed the following topics for discussion:

(1) July 2 -----> Director's statement.

Q: How many days later?

Q: Content?

E.g., is he planning on saying anything about DOJ's conclusions?

(2) Do you foresee any investigative activity after July 2?

The notes do not indicate what Strzok's responses were about Comey's plans for a statement. However, according to the notes, Strzok told Laufman that Comey wanted the investigation to be completed as soon as feasible, and thought it could be "largely done" other than classification reviews that were "unlikely to change [our] view" by July 2.

Laufman's notes from a telephone call with Toscas on June 24, 2016 indicate that the two of them discussed plans for a coordinated statement with Comey. The notes state:

"Good news/bad news"

Sounds like greater sense of "ownership" than expected – coming to realization that better if Dir[ector] is person who announces it; and seems like Dir[ector] will be up front explaining thoroughness, conclusion, not proceeding with any case. Voice of joint investigation.

But don't know what form this will take.

Bureau's exploitation of computers: by July 2 completed ---> goal.

Soon after interview, all will be put into motion.

Director will be champing at bit to make announcement....

Want team to sit down w[ith] DAG and AG, before Dir[ector] speaks.

On June 27, 2016, Laufman provided this information to Prosecutor 1 and another NSD supervisor. Laufman's notes from this date state, "Director will want to wrap up and make announcement quickly after interview.... Will be withering pressure after interview...expect to be very little that occurs at interview pertinent to mens rea determinations." These notes discuss the need to complete the joint LHM and the prosecutors' legal analysis and conclusions as quickly as possible.

Other notes obtained by the OIG indicate that prosecutors expected an announcement by Comey by Friday, July 8, 2016. On June 30, 2016, Laufman was told by another NSD supervisor, "Expect that FBI wants to announce by next Friday.... Wed or Thurs: briefing for DOJ leadership." On July 1, 2016, Laufman received a telephone call from Toscas stating that Toscas had spoken to McCabe and was told they were "still on track for Friday and FBI statement that day." Laufman met with Prosecutors 1 and 2 later that day and told them, "No change in known timetable for next week ---> Friday, July 8 announcement by Bureau. Details not known yet. Expect briefing of DAG + AG before (Thursday?)" The notes indicate that the team proposed staying at the FBI after the Clinton interview to "hash out differences" and finalize the closing LHM.

Asked whether these notes reflected advance knowledge by NSD supervisors and prosecutors about former Director Comey's plans for a public statement, Laufman said they did not. He told the OIG that discussions about how to announce the closing of the case intensified as the interview of former Secretary Clinton approached. He said that they understood that Comey was going to make some kind of a statement, but that anything he was going to say would be closely coordinated with the Department. He said he had no knowledge of and was not privy to discussions about plans for a joint statement by Comey and Lynch. Asked what he thought would happen as of July 1, 2016, he stated:

I expected that we would complete the Clinton interview. The Bureau would complete its LHM. We would complete our [legal analysis]. Discussions would take place within DOJ, between DOJ and the Bureau, there would be a closely-coordinated endgame, like there is in the disposition of many matters in the Department where a bunch of people stand up...in front of a bunch of flags and carefully orchestrated, well thought through set of statements about a matter.... And we were going to be briefing the AG and the DAG before that.

Laufman also recalled Toscas telling him on several occasions that there was value in having Comey out front on the investigation, given the accusations by "political actors" that the Department could not be trusted to conduct a fair and balanced or complete investigation.

Strzok told the OIG that he participated in discussions with prosecutors about how to announce the closing of the investigation, including some discussions with Toscas. Strzok said they discussed whether there would be a press conference, who would participate in a press conference, and what level of detail any statement would provide, but he characterized these discussions as "preliminary." Anderson

similarly told the OIG, "So, I think at some point, DOJ began pressing us to start talking about the end game. But we, within the Bureau, were already pretty far along in terms of our own thinking about what we thought the end game should be, such that we didn't really engage that meaningfully with DOJ on the issue at the line level."

However, notes indicate that FBI agents, lawyers, and senior officials were aware that the Department expected to make a joint announcement with the FBI at the end of the investigation. According to FBI Attorney 1's notes from a Midyear update meeting with Comey on June 27, 2016, the FBI discussed this expectation, stating, "Laufman saying pros memo + joint statement one week after HRC interview." Page's notes from the June 27 meeting indicate that FBI leadership told the Midyear team what to say to NSD about an announcement: "[Clinton] Interview Sat[urday]; LHM Tues[day], and our leadership will be talking to yours, & what you expect a final announcement will look like."

The next day, June 28, 2016, Laufman's notes reflect that an attorney in NSD's Front Office asked him to call Strzok and find out when the FBI planned to close the investigation. The notes read, "If not w/in short order after July 2 – if not by next week – Why not?! What's the plan...?" The notes indicate that Laufman spoke to Strzok, and Strzok told him that the FBI would finalize the LHM by the following Tuesday. The notes indicate that Laufman asked what Comey's goal was for announcing the closing of the investigation, and Strzok told Laufman he was not sure how soon it would be. That same day, Strzok and Page exchanged the following text messages:

12:43 p.m., Strzok: "God I am getting GRILLED by Laufman right now."

12:46 p.m., Page: "You've got your answer to give him...."

12:52 p.m., Strzok: "I do...Still going...."

III. Drafting of Former Director Comey's Public Statement

A. Original Draft Statement

Former Director Comey told the OIG that after his initial meeting with Yates and Axelrod in April 2016, he began thinking about the "outer boundaries" for announcing the conclusion of the investigation. He explained that a one-line press release by the Department stating that the case was closed was one outer boundary, and an FBI-only press conference providing a detailed statement about the investigation was the other. Comey said that the team from Strzok and the Lead Analyst on up discussed every option in between these two "outer boundaries." Comey told the OIG that he considered what options would be best calculated to minimize the reputational damage to the Department that might result from a declination decision given the partisan political environment in the country at that time.

Comey said that the possibility of the FBI doing a statement separate from the Department occurred to him around that time. He stated:

I mean to my mind it was a crazy idea, but we were in a [500]-year flood, as you all have now investigated enough and lived enough to know, that this is a circumstance that has never happened before. We're criminally investigating one of the candidates for president of the United States.... [P]resident [Obama's] comments obviously weighed on me as well. You've got the President who has already said there's no there there.... And so all of that creates a situation where how do we get out of this without grievous damage to the institution?

Comey told us that, in addition to preserving the credibility and integrity of the Department and the FBI, his concern was protecting "a sense of justice more broadly in the country—that things are fair not fixed, and they're done independently."

McCabe told the OIG that he recalled that Comey first mentioned the idea of doing an independent statement as "an aside, at either the beginning or the end of a meeting that we had...in his conference room." McCabe said that Baker and Rybicki also were present, and that the group had been discussing where the investigation was going and what the end would look like "if we end up with nothing." He said that Comey asked them, "[W]hat do you think about the prospect of just like me doing something solo?" McCabe stated:

And I remember when he said it kind of looking at Rybicki. And the both of us are just kind of like, oh my God, you know? And I, I mean honestly I, I, at first blush I was like, whew, wow, that's, that could go really wrong.... Because for, you know, for the obvious reason. It's just so not what we do. And we thought...that would be a huge break with...protocol...and everything else.

McCabe said that he may have told Comey that he was concerned that an independent statement would be a "complete departure" from Department protocol and could set a "potentially dangerous precedent" for the FBI. McCabe said that Comey was "very aware" that there were many reasons he should not do a statement on his own, and that "conventional wisdom might mitigate against it." He said that in late April and early May 2016, Comey was "not anywhere close to having decided to do it that way."

Comey told the OIG that he sat down one weekend and typed out a draft statement. He told the OIG that he did so from memory, explaining that it helps him to write when he is struggling with an idea. Comey described the draft statement as a "straw person," and told the OIG that he did this with the intention of giving the draft to the team and asking, "What do you think?"

On May 2, 2016, Comey sent an email to McCabe, Baker, and Rybicki including the text of the draft "straw person." He stated at the beginning of the email:

I've been trying to imagine what it would look like if I decided to do an FBI only press event to close out our work and hand the matter to DOJ. To help shape our discussions of whether that, or something different, makes sense, I have spent some time crafting what I would say, which follows. In my imagination, I don't see me taking any questions. Here is what it might look like.

Comey sent a four-page draft statement outlining what the Midyear team did and found by email, which we have provided as Attachment C to this report. The May 2 draft was substantially similar to Comey's final version, but with several notable exceptions. In particular, the May 2 draft statement used the statutory language from Section 793(f)(1), describing former Secretary Clinton's handling of classified information as "grossly negligent." It also concluded that there was evidence of potential violations of this provision and the misdemeanor removal statute, Section 1924. The draft stated:

There is evidence to support a conclusion that Secretary Clinton, and others, used the private email server in a manner that was grossly negligent with respect to the handling of classified information.... There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for such an email conversation. Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.

Similarly, the sheer volume of information that was properly classified as Secret at the time it was discussed on email (that is, excluding the "up classified" emails) supports an inference that the participants were grossly negligent in their handling of that information....

Finally, with respect to our recommendation to the Department of Justice. In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. Although we don't normally make public our recommendations to the prosecutors, we frequently make recommendations and engage in productive conversations with prosecutors about what resolution may be appropriate, given the evidence. In this case, given the importance of the matter, I think unusual transparency is in order.

Although there is evidence of potential violations of the statute proscribing gross negligence in the handling of classified information and of the statute proscribing misdemeanor mishandling, my judgment is that no reasonable prosecutor would bring such a case. At the outset, we are not aware of a case where anyone has been charged solely based on the gross negligence prohibition in the statute. All charged cases of which we are aware have involved the accusation

that a government employee intentionally mishandled classified information. In looking back at our investigations in similar circumstances, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: (1) clearly intentional misconduct; (2) vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; (3) indications of disloyalty to the United States; or (4) efforts to obstruct justice. We see none of that here.

As described in more detail below, the language characterizing former Secretary Clinton's conduct as "grossly negligent," the inference of gross negligence from the volume of classified email, and the reference to the misdemeanor mishandling statute were omitted from the final version delivered by Comey on July 5, 2016.

We asked Comey about the date of this initial draft and whether it indicated that he had predecided the outcome of the investigation even before the interview of former Secretary Clinton. Comey stated:

[I]f you were in my position after nine months you're incompetent if you don't know where this is going. Now the notion that I committed perjury by saying the decision wasn't made by then. The decision was not made by then. But it was a high probability...this was going to end in a certain way that would be really, really hard, which is the declination, so we better get to work thinking about that. Now if we find something else, great, or if...Hillary Clinton either gives us [18 U.S.C. §] 1001 [false statements] during the interview or the team says you know what, we've got to dig into some more stuff because she might have lied to us, wants to pursue additional investigative steps, you either recommend the 1001 or you say you know what, we've got more work to do here.... But in May, unless those things happen, I can see where this is headed and we've got to start to think carefully because you cannot be thinking about this on the weekend before the case ends. That's my reaction.

Comey also told the OIG that when he wrote the May 2 draft, he thought the investigation would be completed by June. As described in more detail below, Comey said he did not recall that his original draft used the term "gross negligence," and did not recall discussions about that issue.

On May 6, 2016, Comey emailed Rybicki and McCabe, stating, "Think maybe you should share my straw person announcement with Priestap, [Strzok], and [the Lead Analyst]. Close hold to the three of them but might be good to get them thinking." That afternoon, McCabe forwarded the draft statement to Priestap, Strzok, and the Lead Analyst, as well as Page. In the email, McCabe stated:

The Director composed the below straw man in an effort to compose what a "final" statement might look like in the context of a press conference. This was really more of an exercise for him to get his

thoughts on the matter in order, and not any kind of decision about venue, strategy, product, etc.

The Director asked me to share this with you four, but not any further. The only additional people who have seen this draft are Jim Rybicki and Jim Baker. Please do not disseminate or discuss any further. (Emphasis in original).

McCabe's email noted that Comey might want to discuss the draft at the update meeting the following Monday, May 9, 2016. Strzok replied, "Understood and will do." McCabe then replied to Comey, "Spoke to Bill [Priestap] and passed the email on the red side to Bill, Pete and [the Lead Analyst]. Also took the liberty of including Lisa [Page] – I hope that was ok."

On May 6, 2016, shortly after receiving the draft, Priestap sent McCabe his initial comments. Priestap stated, "The piece is superb," and made several suggestions for minor changes. Priestap also noted that the draft contained information indicating that former Secretary Clinton did not comply with federal record requirements, suggesting that Comey have someone study the impact such a statement could have on administrative inquiries related to federal record obligations. McCabe sent these comments to Comey the following week.

On May 16, 2016, Rybicki sent the original draft to a larger group of people that included Anderson, FBI Attorney 1, and Bowdich, stating, "Please send me any comments on this statement so we may roll into a master doc for discussion with the Director at a future date." The draft statement also was discussed at a meeting that day that was attended by Comey, Rybicki, Bowdich, Steinbach, Priestap, Strzok, the Lead Analyst, Baker, Anderson, FBI Attorney 1, and Page. According to notes from this meeting, one of the items discussed was, "Do we agree w[ith] gross negligence assessment?"

Later that same day, the Lead Analyst provided comments to Strzok for incorporation into a "team response." The Lead Analyst characterized his comments as technical corrections, including one in which he recommended highlighting that some of the emails were found to contain classified information when sent, not just after the fact. The Lead Analyst stated, "All of this to emphasize that it is not true that this is all a matter of classification after-the-fact and that the people sending these emails should have known better."

Strzok included these comments and added his and Page's to an email that he sent to Rybicki, McCabe, and Priestap on behalf of the team on May 17, 2016. This email provided "overarching observations" about the draft, stating that they would provide additional comments and fact checking as Comey narrowed down what he wanted to say. Among the specific recommendations provided were suggestions that the statement include the number of emails containing information that was determined to be classified at the time they were sent to "more directly counter the continuous characterization by Hillary Clinton describing the emails involved in this investigation as having been classified after the fact."

The May 17 comments also noted the need to distinguish between prior high-profile mishandling prosecutions and the Midyear investigation. Strzok stated:

We'd draw the distinction in noting that we have no evidence classified information was ever shared with an unauthorized party, i.e., notwithstanding the server set up, we have not seen classified information shared with a member of the media, an agent of a foreign power, a lover, etc. Additionally, it's important to note that had these same emails been sent on a state.gov system rather than a private one, it's not clear that the FBI would currently have an open investigation.

The May 17 email also commented on language in the initial draft that it was "reasonably likely that hostile actors gained access to Secretary Clinton's private email account." Strzok stated:

It is more accurate to say we know foreign actors obtained access to some of her emails (including at least one Secret one) via compromises of the private email accounts of some of her staffers. It's also accurate to say that a sophisticated foreign actor would likely have known about her private email domain, and would be competent enough not to leave a trace if they gained access. But we have seen no direct evidence they did.

Finally, the May 17 comments listed "whether her conduct rises to the legal definition of gross negligence" as a topic for further discussion.

Responding to Strzok's email, Priestap provided additional comments on the draft the following day, May 18, 2016. Priestap suggested that the statement should more fully describe the FBI's role in recommending or not recommending that charges be brought in criminal cases, and why Comey was recommending that charges not be brought against former Secretary Clinton, stating:

I believe it's equally important for the Director to more fully explain why the FBI can, in good faith, recommend to DOJ that they not charge someone who has committed a crime (as defined by the letter of the law). It's important the Director explain our recommendation from the FBI perspective and not from the DOJ/prosecutorial perspective. The FBI is recommending that charges not be brought in this instance, not only because "no reasonable prosecutor would bring such a case," but because the FBI believes it's the right thing to do based on.... (Emphasis and ellipses in original).

Priestap also suggested that Comey had the option of not making a charging recommendation at all, but that this would undermine the FBI's position with the Department in future cases. He suggested that Comey could emphasize privately to the Department that it should take the FBI's charging recommendations seriously, stating, "DOJ can't just stand with us when it's easy for them to do so." Priestap's comments also stated, "While I was initially wary of having the Director

provide an investigative update, I'm beginning to warm to the idea...if we don't soon shape the narrative with the facts, the narrative will be shaped by others, potentially harming the FBI."

According to a meeting log prepared by FBI OGC, on May 24, 2016, Comey met with Page, Strzok, Baker, Anderson, FBI Attorney 1, and others to discuss the statement. Page's notes from the meeting indicate that the group discussed adding language highlighting how well the Midyear investigation was done and that there had been no political interference. The notes also state that they planned to "have another conversation about the strategy at all [sic]."

B. The Decision to Omit "Gross Negligence"

Comey again met with Rybicki, Bowdich, Steinbach, Priestap, Strzok, the Lead Analyst, Baker, Anderson, FBI Attorney 1, and Page to discuss the statement on May 31, 2016. Notes from this meeting indicate that the discussion included "Lisa [Page]/[FBI Attorney 1] legal thinking." According to Page, she raised concerns about the use of "grossly negligent" in the draft statement at one of the meetings with Comey (likely the May 31 meeting) before making edits to the statement. Page told us:

I believe that I raised with [Comey] the concern...with the use of gross negligence in particular because I was concerned that it would be confusing if we used a...term that has a legal definition...if we say she's grossly negligent, that despite the fact that we, we and the Department had a good reason to not charge her with gross negligence, given the fact that they thought it was unconstitutionally vague, and it had never been done, and, you know, sort of all of the concomitant defenses that would also follow from, from her conduct, that it would just be overly confusing.

Page further stated, "If the purpose of this is sort of clarity, and the purpose of this is to sort of try to explain to the American populace what happened and what we think about it, that to use a term that had an actual legal definition would be confusing." She said that the team discussed the need to find some other way to characterize former Secretary Clinton's conduct.

FBI Attorney 1 told the OIG that she remembered sitting down with Rybicki, Strzok, the Lead Analyst, and Page to discuss the language of the statute and whether to use "grossly negligent" wording in the draft statement. Based on a meeting log prepared by FBI OGC, we determined that this meeting took place on June 6, 2016. Rybicki said that he did not recall the substance of discussions about removing "grossly negligent" from the draft, but that there was "a lot of discussion" among the FBI OGC lawyers about the statute." He said he primarily input changes made by others and described his role in revising the statement as "scribe detail."

After this meeting, Strzok, the Lead Analyst, Page, and FBI Attorney 1 met to edit the statement. Page told the OIG that the four of them edited the document

together at Strzok's computer. Metadata from a version of the statement indicates that Strzok modified the draft on June 6, 2016.¹³⁴

The next day, June 7, 2016, Strzok emailed an electronic copy of the revised draft to Page, and Page sent it to Rybicki, stating in the email, "Our thoughts, for the Director's consideration." The revised draft attached to Page's email was entitled "MYE thoughts 06-07-16" and included a number of changes from Comey's original draft. Among the changes in the revised draft was the removal of the conclusion that there was evidence that former Secretary Clinton and her staff were "grossly negligent" in their handling of classified information. Instead, the June 7 draft moved language from the end of the same paragraph in Comey's original version to the beginning of that paragraph, stating:

Although we did not find evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.... There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for such an email conversation.

Page told us that FBI Attorney 1 was the one who moved "extremely careless" to the beginning of the paragraph. FBI Attorney 1 agreed that she likely was the one who suggested this edit given that she had the most familiarity with the statute. This change was included in the final version of the statement.

The draft also removed a reference to evidence of potential violations of the misdemeanor mishandling statute.¹³⁵ The draft instead concluded that there was evidence of potential violations of statutes regarding the handling of classified information, and used the language from Comey's original draft that no reasonable prosecutor would bring such a case.

The June 7 draft included two other significant changes. It removed the statement that the sheer volume of information classified as Secret supported an inference of gross negligence, replacing it with a statement that the Secret information they discovered was "especially concerning because all of these emails

¹³⁴ Separately, on June 6, 2016, Priestap sent an email to McCabe and other providing input on the draft statement. In this email, he stated, "In my opinion, due to the election, this matter warrants the Director providing the American public an update. Ideally, this update would be provided as many weeks in advance of the National Conventions as is possible." When asked about this email, Priestap told the OIG that in his view the investigation had been politicized, and that former Secretary Clinton engendered strong feelings of support or dislike in some. He explained that he viewed it as the FBI's obligation to "let people know what was and was not found."

¹³⁵ As set forth in Chapter Two, 18 U.S.C. § 1924 prohibits the knowing removal of documents or materials containing classified information without authority and with the intent to retain such documents or materials at an unauthorized location.

were housed on servers not supported by full-time staff.” The draft also stated that it was “possible,” rather than “reasonably likely,” that hostile actors gained access to former Secretary Clinton’s server.¹³⁶

Comey told the OIG that he did not recall that his initial draft used “grossly negligent,” and did not specifically recall what discussions led to this change. He said that the group that met to discuss the drafts of his statement—which included Rybicki, Bowdich, Steinbach, Priestap, Strzok, the Lead Analyst, Baker, Anderson, FBI Attorney 1, and Page—struggled to figure out what term to use to describe former Secretary Clinton’s conduct, because “it was more than your ordinary somebody left a document in a unprotected place or had a single conversation.” According to Comey, they tried to capture the sense that her use of the private server was “really sloppy, but it doesn’t rise to the level of prosecution.” He speculated during his OIG interview that the team advised him that it was unwise to track the statutory language because the “grossly negligent” conduct required by Section 793(f) is something just short of willful or reckless.

Comey told the OIG that nothing the FBI learned between May 2 and July 5 changed their view of whether former Secretary Clinton’s conduct met the definition of “gross negligence.” Comey said that it was his understanding based on the statute’s legislative history that Congress intended for there to be some level of willfulness present even to prove a “gross negligence” violation. When asked whether he believed at any time in the process that former Secretary Clinton was grossly negligent within the meaning of Section 793(f), Comey said, “No.” Comey explained:

There was no evidence to establish anything close to willfulness which I take as a conscious disregard of a non-legal duty and that the closest to there to me was, it’s just really sloppy. A reasonable person in her position should have known, but what I understood 793(f) to be about is something closer to actual knowledge, but I think that it was this is obviously wildly distorted, but I think that’s what we were grappling with....

I’m trying to find a way to credibly describe what we think she did and our sense was, frankly mere negligence didn’t get it because it was not just ordinary sloppiness, it was sloppiness across a multiyear period and so there was, I had in my head some sense that to be credible, we have to capture that and what words do we use to capture it—and

¹³⁶ As described in Chapter Five, the LHM summarizing the Midyear investigation stated, “FBI investigation and forensic analysis did not find evidence confirming that Clinton’s email server systems were compromised by cyber means.” The LHM noted that the FBI identified one successful compromise of an account belonging to one of former President Clinton’s staffers on a different domain within the same server that former Secretary Clinton used during her tenure, as well as compromises to email accounts belonging to certain people who communicated with Clinton by email, such as Jake Sullivan and Sidney Blumenthal. The FBI Forensics Agent who conducted the intrusion analysis told the OIG that, although he did not believe there was “any way of determining...100%” whether Clinton’s servers had been compromised, he felt “fairly confident that there wasn’t an intrusion.”

that's where we found the formulation extremely careless. Now if I had to do it over again, I might have tried to find another term because this, we sort of walked into this entire side show about 793(f), but I haven't thought of another term since then.

Comey said that he thought that the June 7 edits "track[ed] [his] formulation" by moving the "extremely careless" language from the end of the paragraph in his original draft to the beginning.

After reviewing a draft of the report, Anderson told the OIG that she raised concerns about the use of the phrase "extremely careless" to describe former Secretary Clinton's conduct, as being unnecessary to the statement and also likely to raise questions as to why the conduct did not constitute gross negligence. Anderson said that she recalled that others voiced the same concern, but that she did not recall precisely who raised this issue or what was said. She said that she recalled that Comey felt strongly that former Secretary Clinton's behavior was "extremely careless," and thought that this was the most accurate phrase to describe Clinton's conduct notwithstanding concerns about criticizing her uncharged conduct or the potential for confusion.

C. Comey's Edits to the Statement

On June 10, 2016, Rybicki emailed a revised draft of the statement to Comey. Two days later, on June 12, 2016, Comey emailed additional revisions to Rybicki. Comey stated in his email, "Here is my near final [draft]. Please have the team review it. I have saved as PDF so the team reads it fresh and not as a track-change."

Comey's June 12 draft incorporated the "extremely careless" language from the previous revisions:

Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.

For example, seven email chains concern matters that were classified at the Top Secret/Special Access Program level when they were sent and received. These chains involved Secretary Clinton both sending emails about those matters and receiving emails from others about the same matters. There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for that conversation. In addition to this highly sensitive information, we also found information that was properly classified as Secret by the U.S. Intelligence Community at the time it was discussed on email (that is, excluding the later "upclassified" emails).

Comey's June 12 draft added new language that stated, "Separately, it is important to point out that even if information is not marked 'classified' in an email, participants who know or should know that the subject matter is classified are still obligated to protect it." This language was included in a revised form in the final statement delivered by Comey.

The revisions by Comey and Rybicki included new language about the factors that a "reasonable prosecutor" would consider in declining to prosecute a case. Comey's June 12 draft stated:

Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges. There are obvious considerations, like the strength of the evidence, especially about intent. Responsible decisions also consider the context of a person's actions, and how similar situations have been handled in the past.

In looking back at our investigations into mishandling or removal of classified information, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: clearly intentional and willful mishandling of classified information; or vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; or indications of disloyalty to the United States; or efforts to obstruct justice. We do not see those things here.

To be clear, this is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions. But that is not what we are deciding now.

Following these revisions, discussions about the draft statement continued. Meetings took place on June 13, 14, and 15 to discuss various issues related to the draft. Documents provide little information about the substance of these meetings, and witnesses did not have a specific recollection of them.

Comey and Rybicki also continued to refine the draft statement, exchanging revised versions on June 25, 26, and 30, and July 1, 2, and 4. Two significant changes appeared in the statement during this time period.

A June 25 draft added a sentence to a paragraph that summarized the factors that led the FBI to conclude that it was possible that hostile actors accessed former Secretary Clinton's private server. This new sentence stated, "She also used her personal email extensively while outside the United States, including from the territory of sophisticated adversaries. That use included an email exchange with the President while Secretary Clinton was on [sic] the territory of such an adversary." On June 30, Rybicki circulated another version that changed the second sentence to remove the reference to the President, replacing it with

"another senior government official."¹³⁷ The final version of the statement omitted this reference altogether and instead read, "She also used her personal email extensively while outside the United States, including sending and receiving work-related emails in the territory of sophisticated adversaries." FBI emails indicate that the decision to remove this sentence was based on concerns about litigation risk under the Privacy Act.

In addition, on the morning of June 30, Comey added the following paragraph to the statement introduction:

This will be an unusual statement in at least a couple ways. First, I am going to include more detail than I ordinarily would, because I think the American people deserve those details in a case of intense public interest. Second, I have not coordinated or reviewed this statement in any way with the Department of Justice or any other part of the government. They do not know what I am about to say.

This paragraph was included in the final version of the statement that Comey publicly delivered on July 5, 2016. While we did not ask Comey if he added this paragraph in response to the tarmac meeting between Lynch and former President Clinton, as described below in Section IV.D, Comey told us that this meeting "tipped the scales" in terms of his decision to deliver his statement "separate and apart" from the Department.¹³⁸

¹³⁷ After reviewing a draft of this report, Rybicki explained that, although he circulated the new version of the draft statement, he did not suggest or make this specific edit.

¹³⁸ Text messages between Page and Strzok on July 1, 2016, the day Lynch announced she would accept the recommendations of career prosecutors and agents, speculated that the tarmac meeting was the reason for inserting the "no coordination" language:

5:34 p.m., Strzok: "Holy cow...nyt breaking Apuzzo, Lync[h] will accept whatever rec D and career prosecutors make. No political appointee input."

5:41 p.m., Strzok: "Lynch. Timing not great, but whatever. Wonder if that's why the no coordination language added[.]"

7:29 p.m., Strzok: "Timing looks like hell. Will appear choreographed. All major news networks literally leading with 'AG to accept FBI D's recommendation.'"

7:30 p.m., Page: "Yeah, that is awful timing. Nothing we can do about it."

7:31 p.m., Strzok: "What I meant was, did DOJ tell us yesterday they were doing this, so D added that language[?]"

7:31 p.m., Strzok: "Yep. I told Bill the same thing. Delaying just makes it worse."

7:35 p.m., Page: "And yes. I think we had some warning of it. I know they sent some statement to rybicki, bc he called andy."

7:35 p.m., Page: "And yeah, it's a real profile in courag[e], since she knows no charges will be brought."

D. FBI Analysis of Legal and Policy Issues Implicated by the Draft Statement

Comey told the OIG that he included criticism of former Secretary Clinton's uncharged conduct because "unusual transparency...was necessary for an unprecedented situation," and that such transparency "was the best chance we had of having the American people have confidence that the justice system works[.]" He said that that he asked Baker and FBI OGC to "scrub" his draft statement and "think about it through all possible policy, legal lenses." He said that his recollection was that "the only [issue] they thought that was worthy of discussion was the Privacy Act, and they had their Privacy Act czar d[o] a memo for me laying out how—why they thought it was fine under the Privacy Act."¹³⁹ Comey said that Baker's advice to him was that "there w[ere] no policy or legal issues created by you doing this." Baker told the OIG that he and other FBI OGC attorneys did see numerous legal and policy issues associated with the statement, but that they could not find a clear legal prohibition that would have prevented Comey from issuing the statement.

Comey cited as precedent for his statement the press conference he gave in June 2004, when he was the Deputy Attorney General, summarizing the evidence against José Padilla, a U.S. citizen who had been designated as an enemy combatant due to his support for al Qaeda.¹⁴⁰ He stated:

I mean it wasn't a case, but I actually remember when I was DAG providing extraordinary transparency to the public around José Padilla which was a subject of great concern and controversy at the time and I remember commissioning the drafting of a very transparent statement about everything we knew about him and then pushing to get it declassified, get it reviewed for Privacy Act compliance which we

¹³⁹ The Privacy Act of 1974, 5 U.S.C. § 552a, prohibits an agency from disclosing a record about an individual to a person, or to another government agency, from a "system of records" absent the written consent of the individual, unless the disclosure is pursuant to a statutory exception. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or some other personal identifier assigned to the individual. Relevant information about an individual may be disclosed without consent under 12 statutory exceptions set forth in the Privacy Act, including one permitting "routine use" by the agency. See 5 U.S.C. § 552a(b)(3). One of the "routine uses" adopted by the FBI permits disclosure to "members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the FBI," for example, "to provide notification of arrests...or to keep the public appropriately informed of other law enforcement or FBI matters or other matters of legitimate public interest where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy." This includes the disclosure of information under 28 C.F.R. § 50.2, which governs the release of information about criminal and civil proceedings by Department personnel (including the FBI).

¹⁴⁰ See Transcript, Press Conference of James Comey, CNN, June 1, 2004, <http://www.cnn.com/2004/LAW/06/01/comey.padilla.transcript> (accessed May 1, 2018). Padilla was initially arrested on a material witness warrant in May 2002 but was then declared an enemy combatant by President Bush in June 2002 and transferred to military custody. Padilla was subsequently prosecuted by the Department in the civilian court system and in August 2007 a federal jury found him guilty of conspiring to commit murder and fund terrorism.

also did here and then getting that out, so I remembered that pretty well.

Comey also cited the Department's letter to Congress summarizing the results of the criminal investigation into Internal Revenue Service (IRS) officials, including Lois Lerner.¹⁴¹ Comey said that the Lerner letter, which criticized IRS officials for "mismanagement, poor judgment, and institutional inertia" that did not amount to criminal conduct, supported his decision to criticize former Secretary Clinton's handling of classified information even in the absence of sufficient evidence to establish her criminal liability.¹⁴²

Witnesses told us that the Privacy Act concerns stemmed largely from Comey's criticism of former Secretary Clinton's conduct in his draft statement, but that they believed including such criticism served a legitimate law enforcement function (and thus was permitted). According to FBI Attorney 1, the high public interest in the case, the particular individual involved, and the need to deter others provided justifications for including the information:

So it wasn't just that we weren't prosecuting her, but you didn't want to leave the impression with...the rest of the community that she's getting away with something or...that this is okay to do this. And so I think there was that, that balance. And that's why I don't think I thought so hard about the, the fact that we were talking about uncharged conduct of her. I was thinking more in terms of well we need to kind of balance this so that people understand that we're not

¹⁴¹ On October 23, 2015, the Department's Office of Legislative Affairs (OLA) sent a letter to Congress summarizing the results of a criminal investigation conducted by the Criminal and Civil Rights Divisions, in conjunction with the FBI and the Treasury Inspector General for Tax Administration, into whether any IRS official targeted tax-exempt organizations for scrutiny based on their ideological views. The letter stated that the investigation uncovered "substantial evidence of mismanagement, poor judgment, and institutional inertia," but "no evidence that any IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives that would support a criminal prosecution." Regarding Lois Lerner, the former Director of the IRS Exempt Organizations Division, the letter stated that the investigation had focused on her criminal culpability given her oversight role and emails discovered in which she "expressed her personal political views and, in one case, hostility toward conservative radio personalities." The letter concluded that Lerner "exercised poor judgment in using her IRS email account to exchange personal messages that reflected her political views," but that prosecutors could not "show that these messages related to her official duties and actions[.]" Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, letter to The Honorable Bob Goodlatte and John Conyers, Jr., October 23, 2015, at <http://online.wsj.com/public/resources/documents/IRS1023.pdf>.

¹⁴² Comey told the OIG that "a friend of [his who] is a law professor" had a law student compile a chart showing cases in which the Department made a public statement announcing the closing of an investigation. The chart was created in January 2017, and included 31 cases since February 2010 in which such statements were made by Department leadership or a U.S. Attorney's Office. Although the chart noted one case in which an FBI agent spoke at a press conference with the U.S. Attorney, every case listed in the chart involved a public statement coordinated with or made by the prosecutors. The OIG determined that the "law professor" referenced by Comey was Dan Richman, a professor at Columbia Law School who was also a special government employee (SGE) for the FBI from June 2015 to February 2017.

giving her a clean bill of health, you know, and that people can do this kind of activity.

Anderson told the OIG that she expressed concerns about criticizing uncharged conduct during discussions with Comey in June 2016. She said that the decision to include such criticism "was a signal that...we weren't just letting her off the hook.... [O]ur conclusions were going to be viewed as less assailable...at the end of the day if this kind of content was included."

Baker told the OIG that "there were multiple audiences" for the criticism of former Secretary Clinton in Comey's statement. He recounted hearing that FBI employees not involved in the Midyear investigation hated former Secretary Clinton and had made comments such as, "[Y]ou guys are finally going to get that bitch," and, "[W]e're rooting for you." Baker stated, "And if we're not going to get her on these facts and circumstances, then we'd better explain that now." Related to this idea, notes taken by Strzok at a May 12, 2016 meeting involving the Midyear team state, "Messaging thoughts: Workforce Qs: (1) If I did this, I'd be prosecuted; (2) Petraeus, Berger, etc. were charged; (3) Overwhelming conservative outlook."

FBI Attorney 1 told the OIG that she also considered whether the July 5 statement would violate the Department's Election Year Sensitivities Policy. As described in Chapter Two, that policy requires approval from the Public Integrity Section of the Criminal Division before filing charges or taking overt investigative steps near the time of a primary or general election. However, the policy applies only to election crimes cases. FBI Attorney 1 told us, "Someone mentioned [the policy] at that time. And I looked into it, and...it's not specific to this kind of case. And that's kind of the problem, I think, with the policy."

Baker told the OIG that the FBI took into account and complied with the requirement that Department personnel obtain the approval of the Attorney General or the Deputy Attorney General for the public release of certain information.¹⁴³ Baker said that Comey's call to Lynch and Yates on the morning of his July 5 press conference (described below) telling them that he planned to hold a press conference later that morning, and their failure to instruct him not to do so, constituted "permission" under Department regulations. Baker said that this was so even though Comey called Lynch and Yates only after calling the press and he had refused to tell Lynch and Yates what he planned to say. When pressed by the OIG about this interpretation of the regulation, Baker acknowledged that it was "aggressive." In comments to the draft report, Baker further explained that because Comey did call Yates and Lynch on July 5:

They could have demanded to know what he was going to say, and/or could have told him not to do it without a full discussion with them. They did not. One is the AG, the other the DAG. They had an

¹⁴³ Under 28 C.F.R. § 50.2(b)(9), the permission of the Attorney General or the Deputy Attorney General is required "if a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released."

opportunity to say “no” or “stop” to the FBI Director. For whatever reasons, they did not. That is on them.

E. Concerns about a Public Statement

Numerous witnesses told the OIG that, while they did not recall any significant disagreement within the FBI about whether Comey should do a public statement, there was concern about whether he should do one on his own, without advance notification to or coordination with the Department. McCabe’s initial reaction to the idea was that it would breach Department protocol and create “dangerous precedent” for the FBI, among “a million other possible things” that could go wrong. However, McCabe told the OIG, “[U]ltimately I was convinced that, that he was doing what he thought was right and that what was right for the case.”

Baker told the OIG that he raised similar concerns in various one-on-one discussions with Comey over an extended time period. Baker said he did so because he “viewed it as my obligation to push back aggressively with respect to whatever [Comey] said if I thought it was wrong,” to make sure that all legal, policy, and ethical issues were fully evaluated, and to “think about how others would think about things” from different perspectives and at different times. Baker said that he and Comey discussed a range of options for announcing a declination and thought through the benefits and drawbacks of each, “tr[ying] to find some door other than the doors that led to hell.”

Comey also sought input from his former FBI Chief of Staff, Chuck Rosenberg, who at the time was the Acting Administrator of the Drug Enforcement Administration. Comey told the OIG that in May and June 2016 he spoke to Rosenberg and “sounded him out” about the possibility of doing an FBI-only press announcement to close the investigation. According to Comey, Rosenberg was concerned that doing a statement would be unprecedented, expose Comey to “extraordinary fire,” and create an irreparable breach with the Department. Comey said that Rosenberg thought that doing the statement was a “close call, but on balance, it’s the right call.”

Rosenberg told the OIG that he spoke to Comey three times about the draft statement. He said that Comey first reached out to him in late April or early May 2016, before there was a draft statement and well before the tarmac meeting between Lynch and former President Clinton. Rosenberg said that Comey was seeking guidance on whether he should make a public statement to announce the FBI was closing the Midyear investigation, or should do a referral to the Department. Rosenberg described Comey as “wrestling” with the decision and trying to figure out the right thing to do.

Rosenberg said that Comey showed him a hard copy of the May 2 draft statement, and told him that he planned to do the statement on his own, without coordinating with the Department. Rosenberg said that Comey thought he could more credibly announce a declination without the Department because of the “politics” of having an Attorney General appointed by a Democratic President close

an investigation into the Democratic presidential nominee without charges. Asked whether Comey discussed concerns about Lynch based on her instruction to him to call the investigation a "matter" or classified issues reflecting potential bias by her, Rosenberg said that he did not recall Comey mentioning those to him.

Rosenberg said that he had two competing reactions to the statement. He said that on one hand, it was "outside the norm" and inconsistent with the Department's practice, and that had the FBI publicly announced a recommendation when he was a U.S. Attorney instead of giving it to him privately, he would not have been happy. On the other hand, he thought that Comey was a "compelling and credible public servant," and he said he understood why Comey thought he could "do this and do it well." Rosenberg said that he did not tell Comey that it was a good or bad idea, but instead raised questions about what other options were available and the potential ramifications of an FBI Director giving a public declination. Rosenberg said that he recalled telling Comey it was a "52-48 call," but that he went back and forth on whether the "52" weighed in favor of or against doing the statement.

F. Comey's Decision Not to Inform the Department

As described above, documents and testimony indicate that Comey planned to do the statement independently without advance notice to the Department even before the tarmac meeting between Lynch and former President Bill Clinton. Comey acknowledged that he made a conscious decision not to tell Department leadership about his plans to independently announce a declination because he was concerned that they would instruct him not to do it, and that he made this decision when he first conceived of the idea to do the statement. He stated:

The, come May, and I'm trying to figure out how the endgame should work, to preserve the option that I ended up concluding was best suited to protect the institutions, I couldn't tell them that I was considering that. Because if I told them that one of the—in my mind I drew this spectrum—at one end of the spectrum is I'm going to announce separate from you what the FBI thinks about this and very practical about it they, I remember thinking this, if I surface that with them, they might well say, I order you not to do that and then I would abide that, I wouldn't do that.

And so I remember saying to the Midyear team when I circulated in May my first draft I said what would the most, one end of the spectrum, what would that option look like? I said keep this close hold, I mean you can have conversations with the Department of Justice about the endgame, but don't tell them I'm considering this because then that option is going from us. Because if I were the DAG, maybe they wouldn't have, but what I was thinking was, if I'm the DAG I say, just to be clear, I order you not to make any statements on this case without coordinating it with us. And so to be honest, I would lose that option.

Asked whether he owed it to Department leadership to inform them of what he was thinking so that they could make a decision on behalf of the Department, Comey stated, "In a normal circumstance, sure." He explained that the Midyear investigation was not a normal circumstance:

[T]o my mind, the peril to the Department, including the FBI, was so extraordinary, the potential for damage to the institution, that I needed to preserve that option.... And so look I, everything about this is unprecedented and God willing no Director will ever face this circumstance, but I thought that to protect the institution I care about so much, I have to preserve that option. Of course, in a normal circumstance it's the right of the Attorney General and Deputy Attorney General to make those decisions and the FBI Director should tell them, but this was not the normal circumstance.

Comey told the OIG that he did not credibly think that Lynch and Yates were going to stop him when he informed them about his plans on the morning of his press conference, and that he wrestled with whether to tell them at all.

IV. June 27, 2016 Tarmac Meeting and Aftermath

A. Meeting between Lynch and Former President Clinton

1. How the Meeting Came About

On June 27, 2016, Lynch flew to Phoenix as the first stop in a week-long community policing tour.¹⁴⁴ Traveling with her were her husband, her Deputy Chief of Staff, a senior counselor to the AG (Senior Counselor), a supervisor in the Department's Office of Public Affairs (OPA Supervisor), and another Department official. Lynch told the OIG that her plane landed several hours late, and they arrived in Phoenix around 7 p.m. local time. According to Department witnesses, Lynch's staff left the plane first and boarded the staff van. Lynch remained on the plane with her husband and the head of her security detail, and waited to get off the plane until her motorcade was ready. The OPA Supervisor explained that this practice is standard FBI protocol and is intended to leave the Attorney General "out in the open for the least amount of time."

Approximately 20 to 30 yards from Lynch's plane was a private plane with former President Bill Clinton on it. Former President Clinton had been in Phoenix for several campaign events, including a roundtable discussion with Latino leaders and a campaign fundraiser, and his plane was preparing to depart. Former President Clinton said that he did not know in advance that Lynch was in Phoenix and was not aware that her plane was close to his until his staff told him. Asked

¹⁴⁴ The Attorney General is required to travel on government aircraft for communications and security reasons, and used FBI and Department aircraft to do so.

about news reports that he purposely delayed his takeoff to speak to Lynch, former President Clinton stated:

It's absolutely not true. I literally didn't know she was there until somebody told me she was there. And we looked out the window and it was really close and all of her staff was unloading, so I thought she's about to get off and I'll just go shake hands with her when she gets off. I don't want her to think I'm afraid to shake hands with her because she's the Attorney General.

He said that he discussed with his Chief of Staff whether he should say hello to Lynch, and that they debated whether he should do it because of "all the hoopla" in the campaign. He stated, "I just wanted to say hello to her and I thought it would look really crazy if we were living in [a] world [where] I couldn't shake hands with the Attorney General you know when she was right there."

Former President Clinton said that he did not consider that meeting with Lynch might impact the investigation into his wife's use of a private email server. He stated, "Well what I didn't want to do is to look like I was having some big huddle-up session with her you know.... [B]ecause it was a paranoid time, but...I knew what I believed to be the truth of that whole thing. It was after all my server and the FBI knew it was there and the Secret Service approved it coming in and she just used what was mine." As a result, he said that he never thought the investigation "amounted to much frankly so I didn't probably take it as seriously as maybe I might have in this unusual period[.]"

Former President Clinton said that he recalled walking toward Lynch's plane with his Chief of Staff, and that Lynch and her staff were "getting off the airplane." He said that he greeted Lynch, who was on the plane, and Lynch stated, "[L]ook it's a 100 degrees out there, come up and we'll talk about our grandkids."

The Senior Counselor told the OIG that she was waiting in the van with the three other Department employees on the trip, and she saw two people walking toward Lynch's plane. She said that as the two people went up the stairs to the plane, she realized that one of them was former President Clinton. The Senior Counselor said that she saw the head of Lynch's security detail turn away the second person at the door and allow former President Clinton to board the plane. Other witnesses recalled that former President Clinton had additional staff members with him, and that these people did not board the plane.

The Deputy Chief of Staff said that she had "zero knowledge" that former President Clinton was there before she saw him approach the plane. She stated, "And if I had knowledge, I would not have been in that van. I would've...stayed on the plane and got everybody off.... No heads up or anything." The Senior Counselor said she asked everyone in the van if they knew that former President Clinton was going to be there, and they all said no. The OPA Supervisor said that he later learned that former President Clinton's Secret Service detail had contacted Lynch's FBI security detail and let them know that the former President wanted to meet with Lynch. Although Lynch's staff was supposed to receive notice of such

requests, witnesses told us that they were not informed of the request from former President Clinton.¹⁴⁵

Lynch said that she was on the plane with her husband and the head of her security detail, and that they were preparing to leave when she learned that former President Clinton had asked to speak to her. She stated:

[W]e were walking toward the front door, and then...the head of my detail stopped and spoke to someone outside the plane, turned around and said former President Clinton is here, and he wants to say hello to you. And I think my initial reaction was the profound statement, what? Something like that. And he repeated that. And he spoke again to someone outside the plane. And we were, we were about to walk off the plane. We were going to go down the stairs and get into the motorcade and go on, and...the head of my detail said...can he come on and say hello to you? And I said, yes, he can come on the plane and say hello. And he was literally there. So I don't know if he was talking to President Clinton or somebody else. I don't know who was on the steps.

Lynch said that former President Clinton boarded the plane in a matter of seconds, suggesting that he was in the stairwell near the door to the plane. Lynch said that she was very surprised that he wanted to meet with her because they did not have a social relationship, and she was also surprised to see him "right there in the doorway so quickly."

Lynch said that she had "never really had a conversation" with former President Clinton before this meeting, or with former Secretary Clinton at any time. She said that "years ago" when she was the U.S. Attorney for the Eastern District of New York, she saw former Secretary Clinton at a 9/11 event and said hello.¹⁴⁶ She said that she also saw both of them at the funeral for former Vice President Joe Biden's son, Beau Biden, which was held on June 6, 2015. She said that she recalled that during that conversation former President Clinton congratulated her on the FIFA corruption case. Lynch told the OIG that she did not have a social

¹⁴⁵ On July 2, 2016, the head of Lynch's security detail sent an email to another agent in the FBI Security Division, stating, "I will explain the details later, but you know, we [are] not the final word as to who comes in or out of the AG's space. Her staff dropped the ball in a big way, and we were the easy scapegoats! I'm pretty pissed about the way things went down and how they were handled afterwards, needless to say I will be making some changes as to how much interaction we will have with this staff going forward." The OIG considered but decided not to interview the head of Lynch's FBI security detail because of concerns that requiring a member of the Attorney General's security detail to testify about what he observed in the course of conducting his official duties could impair the protective relationship and because the security concerns raised by the head of the security detail in his email were not a focus of this review. Further, we believed it was unlikely that the head of the security detail would have been in a position to be able to overhear the conversation between Lynch and former President Clinton.

¹⁴⁶ Lynch was nominated by former President Clinton to be the U.S. Attorney for the Eastern District of New York, and served from June 2, 1999 to May 2, 2001. Lynch served in the same position from May 8, 2010 to April 27, 2015.

relationship or socialize with either former President Clinton or former Secretary Clinton.

However, Lynch said that public officials often stopped her to say hello when she traveled, and that as a result she was not initially concerned when former President Clinton wanted to say hello. For example, Lynch told us that Ohio Governor John Kasich, who was a candidate in the 2016 Republican presidential primary, stopped her one time to say hello in an airport, and they had a 10-minute conversation even though they had never met before. The OPA Supervisor told the OIG, "It wouldn't be uncommon for [Lynch] to...match courtesy with courtesy regardless of [whether the person was] Republican, Democrat, whatever."

2. Discussion between Former President Clinton and Lynch

During our review, we found no contemporaneous evidence, such as notes, documenting the substance of the discussion between Lynch and former President Clinton. The only documentary evidence we identified that summarized the meeting were "talking points" created by Lynch's staff after the meeting became a subject of controversy, as discussed in Section IV.B.

Former President Clinton and Lynch denied that they discussed the Midyear investigation, the upcoming interview of former Secretary Clinton, any other Department investigation, or plans for Lynch to serve in some capacity in a Hillary Clinton administration. We summarize below what they told us about their discussion.

Former President Clinton's Testimony

Former President Clinton told us that he congratulated Lynch on being named Attorney General and mentioned several things that she had done that he thought were good policy, such as continuing with criminal justice reforms that were implemented by former Attorney General Eric Holder. He said that they then talked about their grandchildren, his recent visit to see former Attorney General Janet Reno, and his golf game.

We asked former President Clinton if he had discussed Brexit or West Virginia coal policy with Lynch. He said he did not recall Brexit coming up, but acknowledged that he probably did discuss it with her because he was very worried that it would disrupt the Irish peace process.¹⁴⁷ When asked whether his comments included the potential implications of the Brexit vote and the rise of populism for the U.S. election, he stated that he did not remember discussing that, but that one of his "automatic responses" during the campaign was to describe how the press had underestimated the reaction to globalization and the resulting identity crisis, and how Brexit was simply a manifestation of that. As a result, he said he could not rule out that he said something similar to Lynch. Former President Clinton also said that he did not recall mentioning West Virginia coal policy to Lynch, but that he

¹⁴⁷ On June 23, 2016, voters in the United Kingdom approved a referendum to leave the European Union, a decision known as Brexit.

would not be shocked if he had done so because he thought a lot about it, and he frequently talked about the issue.

Former President Clinton said he did not recall telling Lynch that she was doing a great job, but told us he probably did so because "the Justice Department...when President Obama was there, I thought they did a lot of good things that needed doing, especially in criminal justice." However, he denied that his comments were motivated by an intent to influence the investigation. He told us that he did not recall telling Lynch that she was his favorite cabinet member, and he did not think it was likely that he would have made such a comment. He stated, "I like her, but I'm very close to Tom Vilsack and was very close to a couple of the others, so I couldn't have said that, but I do like her a lot."

Former President Clinton said he only mentioned former Secretary Clinton once during the discussion, and that concerned how happy she was to be a grandmother. He said he told Lynch:

[T]hat she was a happy grandmother and an ardent one and that we were very lucky because our daughter and her husband and our grandchildren live in New York, so they are about an hour from us in a decent traffic day. And I told her that before the campaign was underway Hillary and I tried to see our grandkids every week and in the best weeks, she would see them once when she was down there. Then I would see them once and then we'd see them once together and I was down, and I remember talking about every now and then we got them up in Chappaqua where we live and it was quite bracing trying to keep up with them and how much fun it was and that's really what we talked about.

I do remember saying that grandparents typically say it's better than being a parent because it's all the fun and none of the responsibilities, and I told Chelsea once after [her daughter] was born that she would never hear me say that, that I still thought being her father was the best gig I ever had.

When asked whether they discussed former Secretary Clinton's upcoming interview with the FBI, Clinton replied, "Absolutely not.... [I]t wouldn't have been appropriate for me to talk to her about any of that and I didn't." He said that they also did not discuss the Midyear investigation, the Clinton Foundation matter, any other Department investigation, the Benghazi hearings held by Congress, or then FBI Director Comey.

We asked former President Clinton whether he discussed the possibility of Lynch serving as Attorney General or in another position in a future Hillary Clinton administration, or a possible judicial nomination. He stated:

No. Not even with anybody else. Not with Hillary. Not with anybody.... We didn't discuss that because...I'm very superstitious. I never discuss anything like that. I want everybody to focus on the

matter at hand and I thought the environment was much more volatile than a lot of people did.

Former President Clinton also said that he was a little surprised by the criticism after his tarmac meeting with Lynch. He stated:

[T]he mainstream media wasn't as bad on that as they were on a lot of things, I thought, I think the ones that were criticizing me, I thought you know, I don't know whether I'm more offended that they think I'm crooked or that they think I'm stupid. I've got an idea, I'll do all these things they accuse me of doing in broad daylight in an airport in Phoenix when the whole world can see it in front of an Air Force One crew and I believe one of her security guards. It was an interesting proposition, but no we did not.

Lynch's Testimony

As described above, Lynch said the head of her security detail told her that former President Clinton wanted to speak to her, and she said that he could come on the plane and say hello. Lynch told the OIG that she thought that she and former President Clinton would briefly exchange greetings, and then she would get off the plane. She described what happened after he boarded the plane:

Well first we're...standing in the...the cabin of the plane because, again, he's saying he wanted to say hello. I introduce him to my husband. We were standing up, because I thought we were going to stand up, say hello, and then keep walking. There were two members of the flight crew in the back section of the plane. So, President Clinton shook hands with the head of my detail, with my husband, with me. He went back and spoke to the two members of the flight crew, and he stayed back there for a few minutes, like five minutes maybe, because he spoke individually to each of them for a few minutes.... And they were very excited, you know.... [H]e was very gracious to them.

Lynch said that former President Clinton then returned to the front of the plane where she and her husband were standing and began talking to her husband. She said they had a brief discussion about Lynch's trip to Phoenix, Clinton's new grandchild, and various family issues including how to deal with sibling rivalry. She said they were still standing during this discussion, but that former President Clinton sat down after a few minutes:

At some point, after two or three minutes, President Clinton turned around. I had my tote bags on the bench seat of the plane, because I had put them there when he came on board. I had been holding them. I put them down. He picked up my tote bags and moved them, and then he sat down. So he sat down, and my husband and I were still standing in front of him having the discussion. And...he sort of sat heavily, and...I didn't know...how he felt, so I can't say one way or the

other. But he sat down and started talking about, you know, the grandkids and how they introduced them to each other. And so, and ultimately, because this went on for a little but, my husband and I sat down also, and, you know, had that discussion about his family and the kids[.]

She said that after this, the discussion continued, with former President Clinton doing most of the talking. She stated:

Well, after he was sharing with us his story about how...they introduced the two grandchildren to each other, which involved a toy...and that was green, and just, again, the family issues, he said what brings you to Phoenix. And I said I'm here on a police tour, and I'm doing a lot about the law enforcement community relations. And I said, you know, how did you find Phoenix? And he mentioned that he had been there for several meetings, he had played golf. I made a reference to the heat, because it was still incredibly hot while we landed, which was why we were still on the plane.

And he made a comment about playing golf, and you can manage the heat. Just, he was talking a lot about the golfing issue was well, but nothing of substance about that. And he asked about my travels, and I said that I had been recently traveling to China. I had to come back for the Pulse Nightclub [shooting]. I had been to Alaska and met with Native youth. I then said...you know, that was an issue of great importance to [former Attorney General Janet] Reno. Have you talked with her lately and do you know about her health? And he said, yes, I've seen her. I visited her along with Donna Shalala, I visited her, and he told me when. And I said because she's not doing well. We talked about that for a few minutes.

And I remember at that point saying, well, you know, thank you very much kind of thing, and he sort of continued chatting and, and said, and made a comment about his travels he was headed on. And I said, well, we've got to get going to the hotel. And I said I'm sure you've got somewhere to, to go. And he said yes. And I forget where he told me he was going. He was flying somewhere, but...I've forgotten where. He said I'm going to wherever I'm off to. And then he made some comment about West Virginia. And I do not know if he was headed to West Virginia. I just don't know...if that was the reference to it. And he made a...comment about West Virginia and coal issues and how their problems really stem from policies that were set forth in 1932. And he talked about those policies for a while. And, and I said, okay, well.

According to Lynch, Clinton discussed West Virginia coal policy as an historical issue, not in connection with the campaign. She said that he discussed Brexit in a similar context, talking about the cultural issues that led to the decision and whether "people in the UK viewed themselves as citizens of the world or the country or whatever."

In response to specific questions asked by the OIG, Lynch said that she and former President Clinton did not discuss the Midyear investigation or any other Department investigation, James Comey, Donald Trump, or the upcoming Presidential election. She said that they also did not discuss possible positions for her in a future Hillary Clinton administration, a potential nomination to the Supreme Court, or her future plans after President Obama left office.

Lynch said that Clinton told her that she was "doing a great job as a cabinet member or...words to that effect." She said that she thought that he was flattering her and "would have said that to every cabinet member at that time. No, I, I viewed it as...him being jovial, honestly, and being genial."

Lynch estimated that she talked to former President Clinton for approximately 20 minutes before a member of her staff came back onto the plane, as we describe below. She said that she became increasingly concerned as the meeting "went on and on." Lynch said that when she thought about it later that evening and discussed it with her staff about in the context of the case, she concluded "that it was just too long a conversation to have had. It...went beyond hi, how are you, shake hands, move on sort of thing. It went beyond the discussions I've had with other people in public life, even in political life, it went beyond that [in terms of length]."

3. Intervention by Lynch's Staff

While former President Clinton was on the plane, Lynch's staff were waiting in the staff van. The Deputy Chief of Staff said that they quickly realized that the meeting was problematic, because Clinton was not just the former President but was also the husband of someone who was under investigation. The Deputy Chief of Staff said that she felt "shocked," and that they all "just felt completely...blindsided." The Senior Counselor said that they immediately were aware that the meeting was ill-advised and that the "optics were not great."

The OPA Supervisor said that he waited approximately 5 minutes, and then he left the van. He said he went over to one of the other agents on Lynch's security detail, who was waiting in the vehicle that was going to carry Lynch. The OPA Supervisor said that he asked the agent what was going on, whether there had been any notice that former President Clinton wanted to say hello, and how long he was supposed to be on the plane. The OPA Supervisor said that the agent did not know. According to the OPA Supervisor, he asked the agent to tell the head of Lynch's security detail that Lynch needed to end the meeting. The OPA Supervisor stated, "And I don't know that [the head of Lynch's security detail] thought it was appropriate to [ask her to] wrap it up because I guess that's his boss too."

The OPA Supervisor said that there was a photographer outside, and he recalled telling the photographer that Lynch would not be taking pictures. The OPA Supervisor said that he remembered telling the photographer that he (the photographer) needed to go back in his car. The OPA Supervisor stated, "I'm going back in my car. Like, no one is hanging out. I like President Clinton, too. I'm not

hanging out for a photo." The OPA Supervisor said that he then got back in the staff van.¹⁴⁸

By this time, former President Clinton had been on the plane for approximately 10 to 15 minutes. The Deputy Chief of Staff said that they were discussing the need for someone to go back on the plane when the Senior Counselor, who led the Phoenix portion of the trip and therefore was seated in the front of the van closest to the door, told the group that she was going to go and jumped out of the van. The Deputy Chief of Staff said, "And then [the Senior Counselor] was just running upstairs. And so, that's how—that's when we decided...to do something." The Senior Counselor described her thinking at the time: "And I don't know what's going on up there, but I should at least go up to intervene or help her if she needs help.... I think...it was part uncertainty and part kind of like this is a bad idea."

The Senior Counselor said that when she tried to go back on the plane, she was stopped by the head of Lynch's security detail, who was at the door of the plane. The Senior Counselor said that she told him that Lynch's meeting with former President Clinton was not a good idea, and that she needed to get back on the plane, but he still would not let her on. The Senior Counselor said that she then asked him to convey to Lynch that she was advising that the meeting was a bad idea. According to the Senior Counselor, he told her, "All right, why don't you tell her yourself," and finally allowed her to board.

The Senior Counselor said that when she got on the plane, she saw Lynch, Lynch's husband, and former President Clinton sitting down and "chatting...in a casual way." The Senior Counselor said that she walked up to the three of them and stood there hoping that her presence would break up the meeting. She said that Lynch saw her and introduced her to former President Clinton, and she shook his hand. The Senior Counselor said that she hoped this would get everyone moving, but then former President Clinton sat back down. The Senior Counselor stated, "So then...I kind of didn't know what to do because...it was a little bit unusual to be in a room with...a former president and say...you need to leave.... So...I think I stared at them for a little bit longer, and then went back to where [the head of Lynch's security detail] was standing." The Senior Counselor said that she considered whether she should go get someone else or go back over to Lynch and tell her, "Look, ma'am, we have to go." She said she then went and stood in front of the group again.

The Senior Counselor said that her presence prompted Lynch to tell former President Clinton that the reason she (the Senior Counselor) was standing there was that she was too polite to tell Lynch that they had to go. The Senior Counselor said that Lynch told former President Clinton, "And we do have to go. You know...we have a pretty busy schedule." The Senior Counselor said that she could not recall what Lynch and former President Clinton were discussing, but that her

¹⁴⁸ We asked Lynch about news reports that her security detail did not allow photos to be taken of the meeting. Lynch said that she did not recall any such discussions, but that it was her standard practice not to take photos with anyone involved in a campaign around an election.

impression was that Lynch was "uncomfortable and wanted the meeting to be done."

Lynch said that after the Senior Counselor got back on the plane, former President Clinton commented, "Oh, she's mad at me, because I'd been on the plane too long. And she's come to get you." Lynch said that she replied to him, "[W]ell, we do have to go. And then he kept talking about something else." She said that he kept talking for "a good 5 minutes" after the Senior Counselor got back on the plane. Lynch said that she finally stood up and said, "[Y]ou know, it was very nice of you to come. Thank you so much. And just...thank you again for stopping by." She said that they said goodbye several times, and her husband shook former President Clinton's hand again. Former President Clinton then left the plane.

The Senior Counselor said she went to talk to Lynch after former President Clinton left. She stated, "And I kind of looked at her and...I think I said...something like that was not great, or...something like that. And she's like, yeah." She described Lynch as "look[ing] kind of...gray and, you know, not pleased." The Senior Counselor said that after they left the plane, she got into the staff van, Lynch got into her vehicle, and they went to the hotel. She said that they did not talk to Lynch about what happened until the next day.

The Deputy Chief of Staff told the OIG that they did not attempt to get information from the head of Lynch's security detail about the conversation that took place on the plane. She explained:

And my only conversation with [the head of Lynch's security detail] was a rare, fairly admonishing one...just saying, this is not okay, this shouldn't be the protocol; you didn't contact me; you could've radioed your FBI guy in the van to say, send someone up. So...my conversation was not a very pleasant one by the time I talked to [the head of Lynch's security detail]. So I didn't ask questions like, oh, what did you hear. I was just like, we need to figure this out, and this never needs to happen again.

The Deputy Chief of Staff said that the security protocol was changed almost immediately as the result of what happened. Under the revised protocol, the senior counselor (*i.e.*, the staff member in charge of the trip) was required to remain on the plane with Lynch and the head of her security detail, and to escort her at other times.

B. Responding to Media Questions about the Tarmac Meeting

Melanie Newman, the Director of OPA, said that the OPA Supervisor called her from the van and "sounded the alarm," telling her that he just saw former President Clinton board Lynch's plane. According to Newman, she asked the OPA Supervisor a number of questions, including why former President Clinton was there and whether he had a press pool with them, which he could not answer. Newman said that she asked the OPA Supervisor to get out of the van and figure out what was going on. Newman said that she was not just concerned that there was a

press event going on that they did not know about, but that the potential implications for the investigation were obvious to everyone "except apparently the FBI agents on the Attorney General's detail."

Newman said that the OPA Supervisor called her back approximately 30 minutes later, after the Senior Counselor had returned to the van. According to Newman, the OPA Supervisor told her that there was no press pool, but that former President Clinton had his own photographer there. Newman said that the OPA Supervisor told her that former President Clinton had asked Lynch's FBI detail if he could go on Lynch's plane, and no one had communicated this to her staff. Newman stated, "No one talks to the AG without staff saying they can talk to the AG. But they didn't do this because he's a former President."¹⁴⁹

Newman said she spoke to Lynch and the staff traveling with her by phone the next day, June 28, 2016. According to Newman, during this call Lynch described how the meeting with former President Clinton happened, what they discussed, and how she had tried to end the discussion. Newman characterized Lynch as "devastated" about the tarmac meeting. She stated:

[Lynch] doesn't take mistakes lightly, and she felt like she had made...an incredible...mistake in judgment by saying yes instead of no, that he could come on the plane. But also, she's like the most polite, Southern person alive. I, I don't know in what circumstances she would have said no, or what would have happened if she had said no.... I would have much preferred a story that the Attorney General turned a former President of the United States away on the tarmac, but...she doesn't make mistakes, and she was not pleased with herself for making this kind of high-stakes mistake.

Newman said that they discussed the best way to respond to any press questions about the meeting. She said that Lynch had a press conference scheduled in Phoenix, so she (Newman) wanted to have talking points prepared in case someone asked about the meeting with former President Clinton.

At approximately 1:15 p.m. EDT, Newman received an email from an ABC News reporter asking about the meeting between Lynch and former President Clinton, based on information from its Phoenix affiliate. Newman said that this inquiry confirmed that the meeting would come up at Lynch's press conference, and she sped up the process to develop talking points. Newman forwarded the inquiry to the OPA Supervisor and Lynch's Acting Chief of Staff stating, "We need to talk."

The Acting Chief of Staff arranged a conference call, and added Matt Axelrod, the Deputy Chief of Staff, and the Senior Counselor to the list of invitees. However, the OPA Supervisor and the Senior Counselor were waiting for an event in Phoenix to begin and could not join the call. Following the call, Newman emailed a short

¹⁴⁹ After reviewing draft of the OIG's report, Newman clarified that "typically" no one talks to the AG without staff approval, and that she "assumed" that this typical practice was not followed because Clinton was a former president.

draft statement to the Senior Counselor and the Deputy Chief of Staff, copying Axelrod, the Acting Chief of Staff, the OPA Supervisor, and Peter Kadzik, the AAG for the Office of Legislative Affairs (OLA). A number of additional emails and phone calls followed as the draft statement was expanded and edited to include talking points about the topics Lynch and former President Clinton discussed. Newman then emailed the statement to Lynch and her staff.

During Lynch's Phoenix press conference, a local reporter asked Lynch about her meeting with former President Clinton and whether Benghazi was discussed. She answered the question based on the talking points and draft statement:

No. Actually, while I was landing at the airport, I did see President Clinton at the Phoenix airport as I was leaving, and he spoke to myself and my husband on the plane. Our conversation was a great deal about his grandchildren. It was primarily social and about our travels. He mentioned the golf he played in Phoenix, and he mentioned travels he'd had in West Virginia. We talked about former Attorney General Janet Reno, for example, whom we both know, but there was no discussion of any matter pending before the Department or any matter pending before any other body. There was no discussion of Benghazi, no discussion of the State Department emails, by way of example. I would say the current news of the day was the Brexit decision, and what that might mean. And again, the Department's not involved in that or implicated in that.

Lynch did not receive any follow up questions from either the reporter who asked the question or from the other reporters in attendance.

Based on the lack of follow up questions, Newman decided not to release a statement about Lynch's meeting with former President Clinton. However, by the following afternoon, several media organizations had begun picking up coverage of the meeting.

On June 29, 2016, Newman emailed Lynch's statement at her Phoenix press conference and the Department's talking points to two officials in the FBI's Office of Public Affairs (OPA), stating, "I want to flag a story that is gaining some traction tonight...about a casual, unscheduled meeting between former [P]resident Bill Clinton and the AG." The FBI OPA officials forwarded the talking points to McCabe, Rybicki, and Comey. We discuss the impact of the tarmac meeting on Comey's decision not to tell the Department about his decision to do a public statement in Section IV.E below.

C. Discussions about Possible Recusal

1. Departmental Ethics Opinion

Lynch told the OIG that she began discussing whether she needed to recuse herself from the Midyear investigation on June 28, 2016, the morning after the tarmac incident. Lynch said that she called her Acting Chief of Staff, who was back in Washington, D.C., and asked her to contact the Departmental Ethics Office to find out if the ethics regulations required recusal. Lynch said (and the Acting Chief of Staff confirmed) that she obtained an oral ethics opinion that there was no legal requirement to recuse herself.

Janice Rodgers, the former Director of the Departmental Ethics Office, said that she remembered receiving a call from someone on Lynch's staff, although she did not remember who it was. Rodgers said that she spoke to Lynch's staff member over the phone, and after hearing what happened, concluded that the ethics regulations did not require recusal. Rodgers explained her understanding of the facts:

[T]he fact that the subject's spouse had, I don't know what the right word is. You know, sort of created, engineered a, you know, contact with the AG, which was apparently, you know, completely non-substantive, and in my view. And also in circumstances that made it very difficult for the AG to decline or avoid contact.

Rodgers said that the question was "more of...a capital-P political issue...meaning people were going to make hay of it," and that Department leadership would have to weigh the amount of heat they were willing to take versus the importance of Lynch's participation in the matter. She stated, "There was nothing about that that required recusal.... [W]hether the AG chose to recuse based on sort of the more...global considerations was...out of my bailiwick."

2. Discussions about Voluntary Recusal

Lynch said that she then considered whether she should recuse voluntarily based on appearance concerns—*i.e.*, concerns that the meeting created the appearance that former President Clinton was influencing the Midyear investigation through her, or that she was influencing it by having a connection to him. Lynch said she wanted to be able to make a statement about her plans for remaining involved in the Midyear investigation during an interview with a Washington Post reporter at the Aspen Ideas Festival, which was scheduled for the last day of her trip, July 1, 2016.

Lynch said she held a number of calls that involved Yates, Axelrod, Newman, the Acting Chief of Staff, and other Department officials, and that these calls likely took place on the Wednesday or Thursday of that week. She said she also discussed the issue with the staff members who were traveling with her. Lynch said that she did not recall anyone expressing the view that she should recuse

herself; she said that her staff raised issues and concerns for discussion, but no one presented her with a conclusion that she should recuse.

Discussions Involving Yates, Axelrod, and Other Department Officials

Yates told the OIG that the group participating in these calls quickly dismissed the idea of recusal because they knew that the Department was going to announce what they expected to be a declination "in a matter of days." She stated:

And the fear [was] that this is going to look really artificial...if you've spent over a year with [Lynch] at the helm of this investigating it, and then this tarmac thing happens and she recuses.... That's going to look really artificial then if all of a sudden somebody else is announcing it and we're saying oh, there's no problem with the tarmac because she's recused. When really that decision had been all but made...while she was AG.

Axelrod expressed a similar opinion, and stated that other factors weighed against recusal as well. In particular, he said that he understood that Lynch had not discussed anything improper with former President Clinton, and for her to recuse would have made it look like she had. He said he also thought that the people calling for her recusal would not be satisfied by it:

I thought that for folks who had already, again, for...political reasons been calling for a special counsel I wasn't sure that a recusal...would be sufficient. That it would end there with...the AG stepping aside and the DAG taking over. I thought calls would increase for Department leadership to step out altogether. Which again, I didn't think was good for the integrity of the investigation. And that was my goal was to protect the integrity of the investigation.

Axelrod told the OIG that he did not specifically recall having a discussion with Rybicki or McCabe about the tarmac incident, but said that he was "sure [he] did have conversations.... [T]his would be a big thing not to have a conversation about[.]" Rybicki told us that Axelrod called him early in the week to tell him that the tarmac meeting had happened. McCabe said that he also spoke to Axelrod a day or two after the tarmac meeting, and that Axelrod told him that Lynch likely would not recuse herself from the Midyear investigation.

Toscas said he was on vacation the week of the tarmac meeting, and Axelrod contacted him by phone to tell him about it. Toscas said that he contacted Laufman, and that both he and Laufman thought that recusal was unwise. Toscas stated, "I thought that a recusal would make it look like, oh this person who is doing inappropriate things has been overseeing this thing for a long time now, so that means the whole thing is tainted by it.... [T]hat would actually probably be more harmful to our investigation and the appearance to the public of our investigation."

Lynch's Decision Not to Recuse

Lynch said that she decided not to recuse herself from the Midyear investigation. In making this decision, Lynch said she considered whether her meeting with former President Clinton would cause people not to have faith in the judgment or decisions of the Department. She said she weighed this against the concern that stepping aside would create a misimpression that she and former President Clinton had discussed inappropriate topics, or that her role in the case somehow was greater than it was.

She explained that other considerations informed her decision:

And I, and I also had the view that, you know, when you create a situation, as I felt I did by sitting down with, with the President, it's, yes, it can be almost a relief in some ways to say, you know what? I'm going to recuse myself and get out of it and not take, not take the hits. And then you're just asking someone else to step up and endure all the hits the Department will take for the case for the result, whatever it is.

And, you know, I thought about it from that, that angle as well. You're just asking someone else to step up and do your job for you. And if I did not think it rose to the level of recusal, then I did not want to do something out of a desire to protect myself sort of personally from embarrassment also because that's not the way to make somebody else take on that responsibility.

Lynch said that she took into account that NSD did not think recusal was necessary. She said she conveyed her regrets to the Midyear prosecutors for putting them in the position of having people outside the Department look at their work and think that it would be influenced by anything improper.

Planning for the Aspen Interview

Axelrod told the OIG that the "game plan" that emerged from these discussions was for Lynch to explain publicly how the Midyear investigation had been handled all along:

- It was handled by career agents and prosecutors;
- The career agents and prosecutors had been the ones doing the work for more than a year;
- When the career agents and prosecutors finished their work, they would make a recommendation to Department leadership; and
- When Lynch received that recommendation, she fully expected to accept it, but she ultimately was the decider.

Axelrod said it was "definitely not the game plan" for Lynch to convey that she would accept the recommendation of the career staff no matter what they brought her, or that she would take herself out of the decisionmaking process but not

formally recuse herself. However, he acknowledged that the different ways she described this process in her interview with the Washington Post reporter (discussed below) led to some confusion.

Carlin spoke at the Aspen Ideas Festival before Lynch arrived and said he was scheduled to return to Washington, D.C., with her. Carlin said that he met with Lynch, her husband, and her staff in person before her interview with the Washington Post reporter, and Carlin conveyed to her that NSD was not making a request that she recuse herself. Carlin said they also discussed what Lynch planned to say in her interview. Like Axelrod, Carlin told us that Lynch intended to provide more insight than she normally would into the investigative process, not to communicate that something had changed because of the tarmac incident.

Melanie Newman told the OIG that she made it known that she disagreed with this approach from a messaging perspective. Newman said that she thought recusal was appropriate because public statements and actions “need to be clear-cut.” Newman stated:

[W]e tried to have it both ways.... [W]e said that she would accept the recommendation of the senior career prosecutors and investigators on the case. Well, usually that is what the Attorney General does anyway. That means literally nothing....

This is the Attorney General, I mean, I’m not aware of, there may be disputes [in other cases] between the [FBI and the prosecutors] that the Attorney General is sort of the deciding vote. But generally speaking, in charging decisions, the Attorney General accepts the recommendation of those people who know the evidence most intimately. I think in the rare instance that there are disagreements, the Attorney General may, may accept the recommendation of one over the other, for example. But that’s, that’s sort of what they do.

Newman said that Lynch was doing the same thing that she usually does, except that “she was saying before the conclusion of the investigation that this was how she was going to handle it. That was the difference.”

D. Lynch’s July 1 Aspen Institute Statement

During the interview with the Washington Post reporter, Lynch acknowledged that her meeting with former President Clinton raised questions about her role in the Midyear investigation. Addressing how that investigation would be resolved, Lynch stated:

But I think the issue is, again, what is my role in how that matter is going to be resolved? And so let me be clear on how that is going to be resolved. I’ve gotten that question a lot also over time and we usually don’t go into those deliberations, but I do think it’s important that people see what that process is like.

As I have always indicated, the matter is being handled by career agents and investigators with the Department of Justice. They've had it since the beginning. They are independent.... It predates my tenure as Attorney General. It is the same team and they are acting independently. They follow the law, they follow the facts. That team will make findings. That is to say they will come up with a chronology of what happened, the factual scenario. They will make recommendations as to how to resolve what those facts lead to. Those—the recommendations will be reviewed by career supervisors in the Department of Justice and in the FBI and by the FBI Director. And then, as is the common process, they present it to me and I fully expect to accept their recommendations.

Lynch then responded to a question about a news article that morning reporting that she planned to recuse herself from the Midyear investigation. She stated, "Well, a recusal would mean that I wouldn't even be briefed on what the findings were or what the actions going forward would be. And while I don't have a role in those findings and coming up with those findings or making those recommendations as to how to go forward, I'll be briefed on it and I will be accepting their recommendations."

As the discussion continued, Lynch responded to additional questions about her continued role in Midyear. Asked about a news report that she had made the decision in April 2016 to accept the recommendations of the career staff, Lynch replied:

Yes, I had already determined that that would be the process.... And as I've said on occasions as to why we don't talk about ongoing investigations in terms of what's being discussed and who's being interviewed, is to preserve the integrity of that investigation. We also typically don't talk about the process by which we make decisions, and I have provided that response too.

But in this situation, you know, because I did have that meeting, it has raised concerns, I feel, and I feel that while I can certainly say this matter's going to be handled like any other, as it has always been, it's going to be resolved like any other, as it was always going to be. I think people need the information about exactly how that resolution will come about in order to know what that means and really accept that and have faith in the ultimate decision of the Department of Justice.

Lynch's comments about the status of her continuing involvement in the Midyear investigation created considerable confusion. After her appearance, various new articles reported that she had decided to defer to the recommendations

of the FBI or had effected a “non-recusal refusal.”¹⁵⁰ Lynch said she participated in a follow-up interview with the Washington Post reporter during which she attempted to clarify her statement. The resulting article quoted her as follows:

I can certainly say this matter is going to be handled like any other as it has always been. It’s going to be resolved like any other, as it was always going to be.... I’ve always said that this matter will be handled by the career people who are independent. They live from administration to administration. Their role is to follow the facts and follow the law and make a determination as to what happened and what those next steps should be.... This team is dedicated and professional. So I can’t imagine a circumstance in which I would not be accepting their recommendations.¹⁵¹

Lynch told us that her role in oversight of the Midyear investigation did not change. She stated:

[A]s I said to, to the reporter at the time, that the team is going to continue and, and do what they needed to do in terms of interviews, forensics, all the investigative steps that they would take that were not influenced by me. They would look at all the facts, all the evidence, and come up with a recommendation that was going to be vetted through supervisors on both sides of the house, the legal side of the house, the investigative side of the house, and they would make a recommendation to me.

Lynch continued:

[T]hey are going to present me with a recommendation, that I expect to accept, which I always expected that I would accept given the people involved in the process, then there is really no need for me to step aside from this because I’m, I’m listening to their recommendation. I’m doing what I’m supposed to do in terms of discharging my duties in running the Department, in, in managing the Department in what is an important case and a sensitive case. And, and essentially, there won’t be a change.

E. Impact of the Tarmac Meeting on Comey’s Decision to Make a Public Statement

As described above, Comey began drafting a public statement announcing the conclusion of the Midyear investigation in early May 2016, well before the tarmac meeting, and told the OIG that he planned not to inform the Department. Comey told us that he had struggled with the decision, and that “in a way the

¹⁵⁰ See, e.g., Mark Landler et al., *Loretta Lynch to Accept F.B.I. Recommendations in Clinton Email Inquiry*, N.Y. TIMES, Jul. 1, 2016; Joel B. Pollak, *Loretta Lynch’s Non-Recusal Recusal*, BREITBART, Jul. 1, 2016.

¹⁵¹ Jonathan Capehart, *This Is What Loretta Lynch is Thinking Now*, WASH. POST, Jul. 5, 2016.

tarmac thing made it easy for me” and “tipped the scales” towards making his mind up to go forward with an independent announcement. He stated, “I think I was nearly there. That I have to do this separate and apart.... And so I would say I was 90 percent there, like highly likely going to do it anyway, and [the tarmac meeting] capped it.”

Comey said that Lynch’s decision not to recuse herself and to defer to his recommendation impacted his decision. He stated:

[I]f you believe the nature, the circumstance, 500-year flood, if you believe that it’s officially unusual that you can’t participate meaningfully in one of the most important investigations in here, in your organization, then I think your obligation is to find another way to discharge leadership responsibilities. Either appoint someone within the organization to be in charge of the case to make sure there is leadership to engage across the street with us, not to be this neither fish nor fowl, I’m still the Attorney General and really in an odd way, what she said explicitly was sort of the culture of the case before the tarmac thing [in that she was not closely involved in the investigation], which was I’m the Attorney General and that’s not really my thing and then she made it explicit by saying, I’m still the Attorney General, but I’m going to accept what Jim Comey and the prosecutors say.

Comey also stated:

Had Loretta said, I’m stepping out of this [after the tarmac meeting]. I’m making Sally Yates the acting Attorney General and had I gone and sat down with Sally and heard her vision for it, maybe we would have ended up in a different place. I don’t know. It’s possible we’d end up in the same place, but it’s hard to relive different, imaginary lives.

As described in more detail in Chapter Eight, on October 13, 2016, Comey gave a speech at the SAC Conference in which he spoke at length about the Midyear investigation. Comey stated the following regarding the tarmac meeting in explaining his decision to deliver a unilateral public statement:

At the end of [the investigation], [the team’s] view of it was there isn’t anything that anybody could prosecute. My view was the same. Everybody between me and the people who worked this case felt the same way about it. It was not a prosecutable case.... The decision there was not a prosecutable case here was not a hard one. The hard one, as I’ve told you, was how do we communicate about it. I decided to do something unprecedented that I was very nervous about at the time, and I’ve asked myself a thousand times since was it the right decision. I still believe it was.

Here was the thinking. Especially after the Attorney General met with former President Clinton on that airplane the week before we [interviewed] Hillary Clinton.... The hard part in the wake of the

Attorney General's meeting was what would happen to the FBI if we did the normal thing? The normal thing would be send over an LHM even if we didn't write it. Go talk to them. Tell them what we think, tell them whether we think there's something here or whether we think a declination makes sense, but all of that would be done privately.

What I said to myself at the time, we talked about it as a leadership team a lot and all believed that this was the right course, try to imagine what will happen to the FBI if we do the normal thing. Then what will happen to us is the Department of Justice will screw around it for Lord knows how long, issue probably a one sentence declination, and then the world will catch on fire, and then the cry in the public will be where on the earth is the FBI, how could the FBI be part of some corrupt political bargain like this, there's no transparency whatsoever, where is the FBI, where is the FBI. Then, after a period of many weeks where a corrosive doubt about us leaks into the public's square, then I'd have to testify in exactly the way I did before. Our view of it would be dragged out in that way, in a way I think would've hugely damaging to us, and frankly, to the Justice Department more broadly and for the sense of justice in the country more broadly.

V. July 5, 2016 Press Conference

A. Notifications to Department Leadership

On July 1, 2016, Comey emailed Rybicki a script containing what he planned to say to Lynch and Yates on the morning of July 5. Entitled "What I will say Tuesday on phone," the script stated:

I wanted to let you know that I am doing a press conference this morning announcing the completion of our Midyear investigation and referral of the matter to DOJ. I'm not going to tell you anything about what I will say, for reasons I hope you understand. I think it is very important that I not have coordinated my statement outside the FBI. I'm not going to take questions at the press conference. When it is over, my staff will be available to work with your team.

Rybicki told the OIG that Comey wanted to be "very careful" about what he said on the phone to avoid substantive discussion before the actual press conference, and that was why he wrote out what he planned to say. Rybicki said that Comey did not deliver this script verbatim during his calls to Lynch and Yates, but that it was close to what he actually said.

Comey and Rybicki also developed a timeline for notifying the media, the Department, and Congress about the press conference. After notifying the press pool and sending out a media advisory by 8:00 a.m., Comey planned to call Yates at 8:30 a.m. and Lynch at 8:35 a.m. After those calls took place, McCabe, Rybicki,

and, Strzok were assigned to call Toscas, Axelrod, and Laufman, respectively, beginning at 8:30 a.m. The timeline is set forth below in Figure 4.1.

Figure 6.1: FBI Timeline for Notifications on July 5, 2016

0700-0730:	□	Pool notified. [AD Kortan]
0800:	□	Media Advisory sent out [AD Kortan]
0830:	□	DAG notified [Director]
	□	NSD/DAAG Toscas notified [DD]
	□	PADAG Axelrod notified [COS]
	□	CES notified [SC Strzok]
0835:	□	AG notified [Director]
1000:	□	House and Senate Judiciary and Intel Chair and RM staff notified that D would like to speak to members after noon [AD Kelly]
1050:	□	E-mail sent out to workforce
1100:		Press Conference in Webster

After Press Conference Notifications:

- ICIG [SC Strzok]
- DNI [Director or DD]
- USA/EOVA [DD]
- SJC Chair Grassley [Director]
- SIC RM Leahy [Director]
- SSCI Chair Burr [Director]
- SSCI Vice Chair Feinstein [Director]
- HJC Chair Goodlatte [Director]
- HJC RM Conyers [Director]
- HPSCI Chair Nunes [Director]
- HPSCI RM Schiff [Director]

Emails indicate that the Department first learned about Comey's press conference as the result of the media notifications on the morning of July 5, not from Comey or Rybicki. At 8:08 a.m., Melanie Newman sent an email to Lynch's Acting Chief of Staff, Axelrod, and Lynch's Deputy Chief of Staff entitled "FBI presser at 11 a.m." This email stated, "Just heard that the Director is having a press briefing today at 11 a.m. I have not heard anything but have asked for guidance." Axelrod replied at 8:15 a.m., "I'll call Rybicki." At 8:16 a.m., apparently after talking to the FBI Office of Public Affairs (OPA), Newman stated, "[The FBI OPA Section Chief] says the Director has called the DAG." Axelrod replied at 8:18 a.m., "Nope." At 8:31 a.m., Axelrod replied again and stated, "They just spoke. He's going to call the AG too."

Newman emailed Axelrod and Lynch's Acting Chief of Staff with additional information at 8:33 and 8:43 a.m. She stated in the first email, "For the record, these notifications [to Lynch and Yates] are happening AFTER they notified press. I learned from a reporter that they were requesting pool coverage—which means they want live TV." In the second email she stated, "They are also doing an off the record call this morning."

Newman told the OIG that in the weeks leading up to July 5, she had been "clamoring" for information from Axelrod about the conclusion of the investigation so that she could get some sense of the timeline. She said she had been "hearing from reporters that [the investigation] was, it was coming to an end and the FBI was likely to announce something." She said that Axelrod assured her that the FBI would not announce a conclusion without the Department, that they were not at the point where they were ready to announce anything, and that he would tell her when they were. Newman told the OIG that she did not doubt that Axelrod "believed this to be true."

Newman said that on the morning of July 5, after she found out from a reporter that the FBI would hold a press conference that day, she called the FBI OPA Section Chief to inquire about it and was told, "I can't tell you what this is about...but I'm sure you can guess." According to Newman, the Department's OPA had longstanding problems getting information from FBI OPA, but this was "unprecedented" and "absolutely ridiculous."

1. Call to Yates

Comey said that when he spoke with Yates, he told her he was about to make a public press statement about the email investigation, including that the FBI had finished it and was sending it to the Department with its recommendation. Comey told the OIG that Yates did not say anything except "thanks for letting me know." According to contemporaneous emails, both Yates and Axelrod were notified by the FBI by 8:28 a.m.

Yates told us that she remembered Comey saying that he was going to hold a press conference that morning. She said that she did not recall if Comey said that it would be about the Clinton investigation, but that she knew it would be. She stated, "And I remember thinking sort of, what the heck is this? And hanging up immediately and calling Matt [Axelrod] to find out more of what he knew, because if there's ever anybody who's going to know what's going on it's going to be Matt." She said that Comey's tone during the call was "very emphatic, I'm not going to tell you what it is," and that made her determined to find some other way to find out what Comey planned to say.

Yates said that she and Axelrod assumed that Comey would deliver a very brief statement that the FBI had concluded the Clinton investigation and had reached a determination, and possibly would state what the FBI's recommendation to the Department was going to be. She said that based on her knowledge of the investigation, they expected that if Comey announced a recommendation it would be a declination. She stated, "But [we] certainly didn't expect what then

happened.” She said that she viewed Comey’s decision to do a press statement without coordinating with the Department as problematic, particularly the failure to coordinate on the content of the statement. We discuss Yates’s reaction to the content of Comey’s statement in more detail below.

Axelrod said that he was surprised that Comey had chosen to do an independent press statement. He said he thought that the statement should have been “coordinated and planned and discussed” with the Department. However, at the time, he did not view the fact that Comey was the one delivering the declination as the primary problem. He stated:

I think it’s important to think about Comey’s press conference in two ways. One was the decision to do it. And then two was...what he said. I just, one was the decision to do it at all. And on the decision to do it at all, I mean, we’re surprised. We were like completely taken aback. But you know, again, we had already wanted the FBI to at least be, even before the tarmac, be part of the public face of this.... Comey was...about to be the entire public face of it. You know, there were some upsides and downsides to that. But you know, it wasn’t all bad.

As described in more detail below, Axelrod thought that the content of Comey’s statement was misleading, and that the way Comey executed the press conference hurt the perception of the integrity of the investigation in a significant way.

Axelrod said that he and Yates did not discuss ordering Comey not to make the statement. Axelrod stated, “I don’t recall that being discussed. Because I don’t think that would have been tenable, right. The press was already coming. And...ordering the Director not to do something can be very fraught. And so I don’t recall that being a discussion.”

2. Call to Lynch

At 8:24 a.m., Lynch’s Acting Chief of Staff, after being told by Newman about the notice of the FBI press conference, sent an email to Axelrod, asking, “[P]lease call my cell when you are done with Rybicki.” At 8:39 a.m., the Acting Chief of Staff sent the following email to Lynch: “AG: [Y]ou are about to receive a call from the director. Please give me a call on my cell, and I can fill you in as to what it’s about. Alternatively I will be in the office in about 5 to 10 minutes and will stop by.”

Comey said that he called Lynch that morning and told her that he was going to make a public press statement about the email investigation, and that the FBI had completed the investigation and was sending it to the Department with its recommendation. Comey stated that Lynch asked him, “Can you tell me what your recommendation is going to be?” He said that he replied, “I can’t and I hope someday you’ll understand why, but I can’t answer any of your questions—I can’t answer any questions. I’m not going to tell you what I’m going to say.” Rybicki

told us that Comey called from his (Rybicki's) office because of the "snafus" with connecting the calls and provided us with a similar account of what Comey said.

Lynch told the OIG that she was in her office when Comey called her. She said that he told her he was going to make a public statement "very soon," and that it would be about the email investigation. She described this call as follows:

And I said, when are you proposing to do this? And he said, very soon, within a few moments. I don't recall if he said 10:00, but certainly it was a short time period. And then he said, and I am not going to discuss the contents with you because I think it's best if we say, if we, if we are able to say that we did not coordinate the statement. Then I said something, I had another question.... I don't recall whether I said, what is it about? I just don't recall my other question. And he said, it's about, it's going to be about the email investigation.

Lynch said that he gave her no further indication about the substance of his statement. She said that Comey told her he was not going to go over the statement with her so they both could say that it was not coordinated. Asked whether this language raised a red flag indicating that she should find out more or tell him to stop, Lynch said it did not because it did not occur to her that Comey would talk about the end of the investigation or the FBI's recommendation. She stated, "And certainly I did not, at that time...on that day, even though [I] knew that they had interviewed the Secretary, I don't think I had a view that [the investigation] was done at that point."

Lynch told the OIG that, had she known what Comey was going to do, she would have told him to stop. She said she also would have asked him, "Why would you want to do this?" She stated, "Ultimately, announcing the end of a matter, whether it's going to be...how will we resolve it, would not be something that I would ever think that the, that the investigative side would do, which is why that was not what I thought he was going to do."

3. Notifications to NSD

At 8:28 a.m., McCabe and Strzok received notice that Axelrod and Yates had been notified, which served as the "green light" for them to contact Toscas and Laufman, respectively. At 8:33 a.m., McCabe sent an email to Toscas, stating:

The Director just informed the DAG that at 1100 this morning he has convened a press conference to announce the completion of our investigation and the referral to DOJ. He will not tell her what he is going to say. It is important that he not coordinate his statement in any way. He will not take questions at the conference. His next call is to the AG.

I wanted you to hear this from me. I understand that this will be troubling to the team and I very much regret that. I want to talk to

you after the [Principals Committee] and am happy to bring my folks over to DOJ this afternoon to discuss next steps.

McCabe said that he called Toscas, but Toscas was traveling, so he instead sent Toscas an email. At 8:53 a.m., Toscas sent an email to Carlin, Laufman, and Mary McCord, stating:

I'm on hold to talk to the DD now. I received a message from him a few minutes ago saying that this morning the Director informed the DAG that he will have a press conference at 11am today to announce the completion of the FBI's investigation and the referral to DOJ. He will not take questions at the conference, but he is not coordinating his statement with us. I'll call when I get off the phone.

According to Laufman's notes, Toscas then held a conference call with McCord, Laufman, and Prosecutors 1 and 2. According to these notes, Toscas told the group that he had spoken with McCabe and learned that Comey planned to hold a press conference at 11:00 a.m. to announce the conclusion of the investigation and the FBI's recommendation to the Department. The notes stated, "Director has told AG + DAG. McCabe refused to convey substance. Director doesn't want statement to appear coordinated with DOJ."

Laufman's notes also stated that, even though McCabe said that he would not share the content of Comey's planned statement, McCabe told Toscas that Comey planned to talk for 10 to 15 minutes and would say what the FBI had done, what the FBI had found, and what the FBI's recommendation to the Attorney General and the Department would be. Finally, the notes indicate that Toscas spoke to Carlin, and Carlin "said not to discuss w/ OAG or ODAG in advance."

Other notes obtained by the OIG indicate that Laufman separately spoke to Strzok at 8:35 a.m. that morning. According to these notes, Strzok called Laufman and said that he was "told to call [him] and say" that Comey would hold a press conference at 11:00 a.m. that morning. These notes indicate that Laufman asked, "What exactly will he say," and that Strzok replied, "Midyear." The notes also indicate that the "7th floor has told AG/DAG."

B. Reactions to the Statement

Comey held his press conference at 11:00 a.m. on July 5, 2016. He delivered the final version of his statement verbatim (provided as Attachment D to this report) and did not take any questions. In this section we describe reactions to his statement within the Department.

1. Department and NSD Leadership

Lynch told the OIG that she watched Comey's statement on the television in her office. She described her thoughts as she watched Comey speak:

[D]iscussing findings in something that was technically not closed was, I was a little stunned, actually.... I had no way to stop him at that

point, I mean, short of, you know, dashing across the street and unplugging something....

But, so, as he went further into the analysis of not only what they found but what they recommended, I just thought this was, this was done to protect the image of the FBI because of the perception that somehow the FBI was not going to be allowed to have their views known or their views expressed or their views respected within the process. Because that had, that in fact had been, for those of us who were inside the Department at the time, and I don't know how the FBI was taking it at the time, but certainly if you looked at criticism aimed at the Department, people said, oh yeah, you know, the AG was appointed by Bill Clinton to be U.S. Attorney.

But that was never the real, the real stated concern. It was that there was going to be, you know, these strong investigators who wanted to bring charges who would be somehow silenced or stepped on by the legal side of the house, whether it was the political side or the career side, they never really made much of a differentiation. Easy to attach it to the political side if you're talking to the AG. But that was really something that was, that was thrown around a lot in, in debate outside of the Department.

So I viewed it as him trying to make his recommendation clear so that, and from, and when he made the recommendation clear and said this is our recommendation, I remember wondering does the, does the team know that this is happening, you know, that the literal investigative team, both sides of it? Did George [Toscas] know this was going to happen? Who knew that this was going to occur? And why didn't we know in advance?... Meaning the fifth floor, myself, the DAG. Why weren't we informed in advance of this? So those are my thoughts during the, during, watching of the, of that particular press conference.

Lynch said that she thought that the strongest public concern about the Midyear investigation was not that she as the Attorney General was going to "kill it," but that the investigative side would want to charge somebody, and the legal side would say no for political reasons. She said that she viewed Comey's public statement as "basically saying...look...we're independent. We...aren't influenced by anybody. And now...no one is also silencing us." Lynch stated that she did not ascribe malicious intent to Comey, but that she thought that his statement was a "huge mistake."

Lynch told the OIG that she did not think that the FBI's recommendation should have been made public "because we don't make those things public. That's part of the discussion that we [agents and prosecutors] have. That's part of, you know, we can talk about it. We can argue about it. We can go back and forth about it."

Yates told the OIG that she had concerns about the substance of Comey's statement as she watched the press conference. She stated:

And while I can't point to specific facts in Jim [Comey]'s description, you know, narrative description there that I would say were inaccurate, I also remember at the time thinking the facts as those are being laid out with much more censure than the facts as I understood them to be and how I had been briefed on this matter. Sort of by way of example, I don't recall Jim going through and explaining that there were no classification markings on the vast, vast, vast majority. We got three email chains with a, you know, the small C [indicating that the information was Confidential]. Not the Top Secret or anything on there. That it was all to people within the State Department....

That were really, to me gave the most accurate picture of what the facts actually were there. And so I was stunned A, at the level of detail that he went into. B, that he then made judgments and said things like extremely careless and should have known that this material was. And every, anyone should know you shouldn't have it on a private server. That he gave the impression that, you know, the private server could have been hacked. We don't really know for sure.... That, you know, I thought wasn't really a balanced description of what the facts were here.

And so, you know, there are a number of things that are concerning about that. One, that he sort of put that slant on it, that it was done without any consultation with folks at Main Justice. That it impugned someone we weren't charging. We don't trash people we're not charging. And we don't get to just make value or moral judgments about their conduct. And there were things in there that I thought were unnecessary from a factual, those, they were opinion as opposed to laying out, even if he were going to do this, what was a fair, evenhanded recitation of what the facts were. And I thought that was way out of order.

Asked what her reaction was when she looked back on the statement, Yates said that she was "even more stunned." She stated:

At the time all of this is happening it's such a swirl. You know, the tarmac happens and trying to figure out what to happen. I mean, all of this is happening so quickly and in such a charged environment it's hard to fully, for it all to fully sink in like it does when you look at it then in the calm of day in, you know, in retrospect on that. And look, it was a difficult situation with the tarmac. But that's not something I think that was appropriate for the FBI Director to unilaterally then decide how he was going to handle that. I think that was a factor that we should consider in how we were going to publicly convey the results of the investigation. And certainly if he had views about how that ought to happen I think he should speak up and should convey those views. But to make the unilateral decision to do it is one thing.

And then to put out that level of detail without coordinating that with DOJ or, you know, DOJ agreeing with that, and then for it to be with a slant that I didn't think was accurate—and I'm not saying he did that intentionally. I don't know. I certainly wouldn't accuse anybody of that. But the way it was conveyed I didn't think gave the most accurate description. And then, as I said, impugning someone that we weren't charging with sort of personal judgments....

Yates said that she did agree with Comey's statement that no reasonable prosecutor would bring a case based on the facts developed in the investigation, but that she did not think that it was "the place of the FBI Director to be out telling the public what a prosecutor would do there."

Axelrod stated that he and Yates watched the press conference in her office. He said that he was "pretty confident" in what Comey was going to conclude based on what they had been led to believe about the investigation and did not fully process the content of the statement while Comey was delivering it. He said that he reacted more negatively to the statement after attending the briefing by prosecutors the next day:

I didn't know all the facts because we were giving George [Toscas] the space to tell us what we thought we needed to know. We were not in the weeds. And the next day when we got the briefing o[n] some of the stuff in the weeds there were important facts that the NSD guys briefed the AG on that were absent from Comey's statement. And so that was when I started to have a much more strongly negative reaction to what Comey had said.

Asked what facts were missing that he thought were important, Axelrod identified the following:

A couple. One, that according to the NSD guys and what I recall from their briefing is that if you look at the spectrum of cases that the Department has brought in the past historically in this area the Department has never brought a case where the classified information was shared between people who work for the Government. It was always someone sharing classified information with someone outside of the Government. That's a pretty important fact. That if you are laying out your reasons or reasons for recommending declining prosecution that's a, you know, to me a pretty important one. The other one I recall was that the NSD guys said that most of the emails were, I think whether it was all or most, the majority of the emails that turned out to be classified had been sent late at night or on the weekends. Which, you know, to me means it's people sort of trying to, you know, were not at their desks, right, where they have access to classified systems trying to talk about, you know, talk around or talk about issues. So I thought that was a really important fact. And again, just when you're talking about intent, right, that's an important thing that bears on intent.

Axelrod contrasted Comey's statement with the briefing by the prosecutors the following day, which he characterized as a "much more complete picture." He stated, "[W]hen [the prosecutors] were done talking the reaction was like oh, this is clearly a declination. When Comey was done talking, as I think you saw from the public reaction,...it was much more of a mixed bag."

Axelrod told the OIG that the way the press conference was executed hurt the perception of the integrity of the investigation in a significant way. He stated:

Because if the goal, to do what he did the goal would need to be, and I would imagine his goal was that by the time he's done talking that even if people don't agree with the outcome they can see why, you know, understand his thinking and see like why he got to the place he got. And that it would sort of be like a closing argument or something, right. It would be, right, here's the rationale and I've [seen] the facts and here's why I'm coming out the way I'm coming out. And people again, on the, and for the partisans and people with political agendas, they're not going to be convinced. But that reasonable center would say like okay, yeah, we get it.

That was not the reaction to the statement. Which I think just by its own terms means the execution failed. Because it raised a lot of questions. It, just it wasn't, it was much more of a, like I said, the difference in tone and emphasis between what he said and then what we heard in the AG's office the next morning was striking—to me. And I think if he had, you know, if the folks who gave the briefing the next [day] were the ones who, I mean, obviously not but that those words had been said at the press conference I think it would have been received quite differently.

Toscas told the OIG that his initial reaction to Comey's statement was, "[H]oly cow, like they [Axelrod and the FBI] were talking about doing a joint appearance or statement of some sort and he's just doing it all on his own." Toscas said that he had concerns about Comey's statement, both the substance of it and the fact that it deviated from Department practice. He stated:

We don't say we're closing something, but let me tell you some bad stuff that we saw along the way, but it doesn't rise to the level of bringing a case. We just don't do it.... I don't know whether you can point back to a document some place, but after doing this for almost 24 years, somehow it's ingrained in me and it appears to be ingrained in everyone around me and everyone who does this whether they're new or veterans, it's just something you don't do, you do not.

It's the same reason why, if you, for example, and we have these discussions in some cases, if you go get a search warrant and it's under seal and in the search warrant you're seeing Tom—there's probable cause that Tom committed, fill in the blank, whatever horrible crime you want or a lesser crime. You go do your search. There's no case. There's no prosecution. It never comes. You know it

never leads to a prosecutable case. You don't unseal that warrant and tell the public, hey, there's probable cause that Tom is, you know engages in child pornography or we suspect him of a bank robbery, you just don't do it.

And so it's the same type of principle. When you decide you're not proceeding, you say nothing more. I get that in some instances there's going to be a lot of public knowledge of the facts. A shooting, for example, where the public has seen what happened, so they already know of actual conduct whether it's criminal or not is different, so you could say, we're not bringing a charge, but still comment on what everyone has seen.

But that's not what this was and people could have tried to guess or you know surmise what the actual exchanges were in some instances or what the particular parts of the classified information were, but I just didn't see it as something that—it did not square with the way we would ordinarily operate.

Toscas said that Comey's decision to do the statement seemed "beyond strange" and "incredibly dangerous" considering the ongoing campaign and the proximity to the election.

Asked whether "extremely careless" was too similar to "gross negligence," Toscas said that it was. Toscas said that once Comey was getting "grilled about...gross negligence," it must have become obvious that they chose words that were so similar to the statutory language that they "created friction in being able to explain [his] ultimate decision." He told the OIG that he did not know how Comey's lawyers missed this issue, and that the statement would have benefitted from legal review by the prosecutors.

Toscas did not have a problem with Comey's statement that no "reasonable prosecutor" would bring a case. He stated:

[T]hat didn't bother me at all. This is a man who was the Deputy Attorney General of our country. He ran this Department. He was a lifelong prosecutor. I had no problem with that. I know other people do because they say, oh he's usurping authority and things like that, but I think he is a—he is perfectly qualified, and regardless of his position, even in private practice or as a citizen, a private citizen, he could say that and I think it has credibility.

However, Toscas expressed concerns about the downstream effects of Comey's deviation from Department practice in making a public statement in July, which he said then impacted Comey's decisions in October. We discuss those concerns in Chapter Ten.

2. Prosecutors

As described above, Prosecutors 1 and 2 learned about Comey's plan to hold a press conference as the result of McCabe's call to Toscas and Strzok's call to Laufman. Strzok also spoke directly to Prosecutor 1 that morning. Prosecutor 1 said that he was "extremely angry" on the phone and pressed Strzok to tell him what Comey planned to say, but that Strzok flatly refused and said that he was not allowed to tell him. Following this call, Prosecutor 1 contacted Prosecutors 3 and 4 and informed them that Comey planned to hold a press conference that morning.

The prosecutors had varying reactions to the substance of Comey's statement. Prosecutor 4 told the OIG that he was surprised at how strong Comey's "no reasonable prosecutor" language was and by the inclusion of negative commentary about former Secretary Clinton's conduct, but that he did not recall hearing anything factually inaccurate in the statement.

Prosecutors 1, 2, and 3 identified substantive concerns with Comey's statement. Prosecutor 1 highlighted Comey's negative comments about former Secretary Clinton, characterizing them as "declining to prosecute someone and then sort of dirtying them up with facts that you develop along the way." Prosecutor 1 also said that the use of "extremely careless" to describe her conduct "begs questions about gross negligence" that could have been avoided if the statement were more carefully crafted. Prosecutor 2 thought that the statement was "totally unfair on many levels," particularly the discussion of uncharged conduct, and that the characterization of the evidence in the statement was "very skewed."

Prosecutors 3 and 4 said they had concerns about Comey's use of "extremely careless" to describe former Secretary Clinton's conduct in the statement. On July 6, 2016, Prosecutor 3 sent the following email to Prosecutors 1, 2, and 4:

It's unfortunate that Comey didn't differentiate the standard of proof between 793(f) and the other statutes. He glossed over all with mention of the absence of intent and made no mention of the necessity of proving knowledge of classified [information] with regard to 793(f) and why that proof was deficient. By using the phrase "extremely careless" he lit up the talking heads last night, many of whom opined that such verbiage warranted a gross negligence charge and that Comey was giving Clinton an unwarranted pass. Even the so-called legal experts didn't seem to understand the elements of that statute and why it did not apply to the facts.

In his OIG interview, Prosecutor 3 said that he thought that Comey's remarks had a good assessment of the investigation, but that he should have better articulated the gross negligence provision "because that seemed to draw a lot of fire from the public." Prosecutor 3 said that Comey's statement did not explain well enough that under the gross negligence provision "you have to know...you're being careless with what is in fact classified information."

On August 2, 2016, Laufman sent an email to FBI Attorney 1 in connection with draft FBI responses to Congressional inquiries that had been made to Comey, and copied Toscas and the NSD prosecutors and supervisors on the email. Laufman stated the following about Comey's July 5 statement:

We appreciate the Bureau sending us its draft response to the inquiries Director Comey received from Congress. We assume you have already considered and rejected simply responding to the letters (which were sent before the Director's congressional testimony) by referring the Committees to the Director's lengthy [congressional] testimony. As the Director has publicly stated, the Bureau did not coordinate the Director's public statements about this case (many of which are repeated in the Bureau's draft response) with the Justice Department, and we therefore did not have an opportunity to express our views about those statements in advance. As I'm sure you understand, some of the Director's statements went beyond the types of statements that we, as prosecutors, would typically make in a case where no charges were brought (e.g., characterizing uncharged conduct of individuals within the scope of the investigation). While we understand and respect the Director's reasons for departing from normal practice in this one instance, we, of course, have not departed from our practice of refraining from making such statements—and we do not want to be perceived as concurring in or adopting such statements.

VI. Congressional Testimony Explaining the July 5 Statement

A. July 7, 2016

Two days after his statement, on July 7, 2016, Comey testified for several hours before the House Committee on Oversight and Government Reform (HOCR).¹⁵² During this hearing, Comey was asked numerous questions about the basis for the decision to recommend declining prosecution of former Secretary Clinton and whether there was evidence that former Secretary Clinton violated any criminal statutes, including the gross negligence provision in 18 U.S.C. § 793(f). He also was asked about the specific language used in his statement. In response to a question about the meaning of "extremely careless," Comey stated, "I intended it as a common sense term.... Somebody who is—should know better, someone who is demonstrating a lack of care that strikes me as—there's ordinary accidents, and then there's just real sloppiness. So I kind of think of that as real sloppiness."

Representative John Mica noted the proximity of the tarmac incident on June 27, Lynch's announcement that she would "defer to the FBI" on July 1, Comey's

¹⁵² See U.S. House of Representatives, Committee on Oversight and Government Reform, *Oversight of the State Department*, 114th Cong., 2d sess., July 7, 2016, <https://oversight.house.gov/wp-content/uploads/2016/07/7-7-2016-Oversight-of-the-State-Department.pdf> (accessed May 8, 2018).

statement on the morning of July 5, and former Secretary Clinton's campaign appearance with then President Obama on the afternoon of July 5. In response to a series of questions about the circumstances of his statement, Comey responded, "Look me in the eye and listen to what I'm about to say. I did not coordinate [my statement] with anyone. The White House, the Department of Justice, nobody outside the FBI family had any idea what I was about to say. I say that under oath. I stand by that. There was no coordination." Comey also testified that there was no interference in or attempt to influence the investigation by then President Obama, the Clinton campaign, or former Secretary Clinton herself.

Comey also was asked questions about his reasons for doing an independent press conference. In response to a question about whether the system was "rigged," Comey stated:

I get a 10-year term to ensure that I stay outside of politics, but in a way that it's easy. I lead an organization that is resolutely apolitical. We are tough aggressive people. If we can make a case, we'll make a case. We do not care what the person's stripes are or what their bank account looks like.

And I worry very much when people doubt that. It's the reason I did the press conference 2 days ago. I care about the FBI's reputation, I care about the Justice Department. I care about the whole system deeply. And so I decided I'm going to do something no Director's ever done before. I'm not going to tell the Attorney General or anybody else what I'm going to say, or even that I'm going to say it. They did not know, nor did the media know, until I walked out what I was going to talk about.

And then I offered extraordinary transparency, which I'm sure confused and bugged a lot of people.

Responding to another question about his statement, Comey stated:

[E]verything I did would have been done privately in the normal course. We have great conversations between the FBI and prosecutors. We make recommendations. We argue back and forth. What I decided to do was offer transparency to the American people about the "whys" of that, what I was going to do because I thought it was very, very important for their confidence in the system of justice. And within that their confidence in the FBI.

And I was very concerned that if I didn't show that transparency, that in that lack of transparency people would say, "Gee. What is going on here? Something—you know, something seems squirrely here?" So I said I would do something unprecedented because I think it is unprecedented situation.

Now, the next Director who is criminally investigating one of the two candidates for President may find him or herself bound by my

precedent. Okay. So if that happens in the next 100 years they'll have to deal with what I did. So I decided it was worth doing.

B. September 28, 2016

Comey also testified in an oversight hearing before the House Judiciary Committee on September 28, 2016, several weeks after the FBI released various materials from the Midyear investigation to Congress and in response to Freedom of Information Act (FOIA) requests.¹⁵³ During this hearing, Comey answered questions about the conduct of the Midyear investigation, including questions about the reliance on voluntary production of information, the destruction of devices used by former Secretary Clinton, decisions to grant immunity to witnesses, and the interpretation of the gross negligence provision.

Comey was asked again about the independence of the investigation. Representative Steve King asked about the interview of former Secretary Clinton and whether "Loretta Lynch had her people in there?" Comey responded, "There was no advice to me from the Attorney General or any of the lawyers working for her. My team formulated a recommendation that was communicated to me. And the FBI reached its conclusion as to what to do uncoordinated from the Department of Justice." Asked whether he was responsible for the decision to decline prosecution, Comey said that the decision to decline was made in the Department, but acknowledged that there was "virtually zero chance" that the Department would make a different decision once Comey had made his recommendation public. He stated, "But part of my decision was based on my prediction that there was no way the Department of Justice would prosecute on these facts in any event."

Importantly, at the September 28 hearing, Comey was asked, "Would you reopen the Clinton investigation if you discovered new information that was both relevant and substantial?" Comey answered, "It is hard for me to answer in the abstract. We would certainly look at any new and substantial information.... What we can say is...if people have new and substantial information, we would like to see it so we can make an evaluation."

C. June 8, 2017

On June 8, 2017, following his firing as FBI Director, Comey testified about Russian interference in the 2016 presidential election before the Senate Select Committee on Intelligence (SSCI).¹⁵⁴ In an exchange with Committee Chairman Senator Richard Burr, Comey was asked about the Midyear investigation, including whether his decision to publicly report the results of the investigation was

¹⁵³ See U.S. House of Representatives, Committee on the Judiciary, *Oversight of the Federal Bureau of Investigation*, 114th Cong., 2d sess., September 28, 2016, https://judiciary.house.gov/wp-content/uploads/2016/09/114-91_22125.pdf (accessed May 8, 2018).

¹⁵⁴ See U.S. Senate, Select Committee on Intelligence, *Open Hearing with Former FBI Director James Comey*, 115th Cong., 1st sess., June 8, 2017, <https://www.intelligence.senate.gov/hearings/open-hearing-former-fbi-director-james-comey#> (accessed May 8, 2018).

influenced by the tarmac meeting between former Attorney General Lynch and former President Clinton. Comey replied, "Yes. In—in an ultimately conclusive way. That was the thing that capped it for me that I had to do something separately to protect the credibility of the investigation, which meant both the FBI and the Justice Department."

Senator Burr then asked whether there were other things that contributed to Comey's decision that he could describe in an open session. Comey stated:

There were other things that contributed to that. One significant item I can't, I know the committee's been briefed on. There's been some public accounts of it, which are nonsense, but I understand the committee's been briefed on the classified facts.

Probably the only other consideration that I guess I can talk about in an open setting is at one point the Attorney General had directed me not to call it an "investigation," but instead to call it a "matter," which confused me and concerned me. But that was one of the bricks in the load that led me to conclude I have to step away from the Department if we're to close this case credibly.

The classified facts indicating potential bias by the former Attorney General referenced in Comey's testimony are discussed in the classified appendix to this report. As described in more detail in that appendix, Comey had concerns about Lynch's ability to credibly announce the closure of the investigation, in part because of classified information learned by the FBI in March 2016 regarding alleged attempts to influence the Midyear investigation by Lynch, as well efforts by Comey to extend the investigation to impact the election. Although the FBI did not find these allegations credible, did not investigate the allegations, and did not inform Lynch about the information until August 2016, Comey was concerned that, if the allegations became known, it could affect the public's perception of Lynch's involvement in the investigation.

Comey was asked to provide additional details about Lynch's instruction to call the Midyear investigation a "matter" by Senator James Lankford. Comey stated:

Well, it concerned me because we were at the point where we had refused to confirm the existence, as we typically do, of an investigation for months, and it was getting to a place where that looked silly, because the campaigns were talking about interacting with the FBI in the course of our work.

The Clinton campaign at the time was using all kind of euphemisms—security review, matters, things like that—for what was going on. We were getting to a place where the Attorney General and I were both going to have to testify and talk publicly about [it]. And I wanted to know, was she going to authorize us to confirm we had an investigation?

And she said, “Yes,” but don’t call it that, call it a “matter.” And I said, why would I do that? And she said, just call it a “matter.”

And, again, you look back in hindsight, you think should I have resisted harder? I just said, all right, it isn’t worth—this isn’t a hill worth dying on and so I just said, okay, the press is going to completely ignore it. And that’s what happened. When I said, we have opened a matter, they all reported the FBI has an investigation open.

And so that concerned me because that language tracked the way the campaign was talking about FBI’s work and that’s concerning.¹⁵⁵

In response to a follow up question about this testimony, Comey stated:

And again, I don’t know whether it was intentional or not, but it gave the impression that the Attorney General was looking to align the way we talked about our work with the way a political campaign was describing the same activity, which was inaccurate. We had a criminal investigation open with, as I said before, the Federal Bureau of Investigation. We had an investigation open at the time, and so that gave me a queasy feeling.

Comey also had an extended exchange with Senator John Cornyn about whether Lynch had an appearance of a conflict of interest requiring appointment of a special counsel.

SENATOR CORNYN: But it seems to me that you clearly believe that Loretta Lynch, the Attorney General, had an appearance of a conflict of interest on the Clinton email investigation. Is that correct?

COMEY: I think that’s fair. I didn’t believe she could credibly decline that investigation, at least not without grievous damage to the Department of Justice and to the FBI.

SENATOR CORNYN: And, under Department of Justice and FBI norms, wouldn’t it have been appropriate for the Attorney General, or, if she had recused herself—which she did not do—for the Deputy Attorney General to appoint a special counsel? That’s essentially what’s happened now with Director Mueller. Would that have been an appropriate step in the Clinton email investigation in your opinion?

COMEY: Certainly a possible step, yes, sir.

¹⁵⁵ In an interview on September 8, 2015, former Secretary Clinton described the FBI’s investigation as a “security investigation.... It’s not, as has been confirmed, a criminal investigation.” Interview with Hillary Clinton, ABC News (Sept. 8, 2015), <https://abcnews.go.com/Politics/full-transcript-abc-david-muir-interviews-hillary-clinton/story?id=33607656> (accessed June 1, 2018). Her campaign also referred to it as a “security review.” See Eugene Kiely, *More Spin on Clinton Emails*, FactCheck.org (Sept. 8, 2015), <https://www.factcheck.org/2015/09/more-spin-on-clinton-emails> (accessed June 2, 2018).

SENATOR CORNYN: And were you aware that Ms. Lynch had been requested numerous times to appoint a special counsel and had refused?

COMEY: Yes, from—I think Congress had, members of Congress had repeatedly asked. Yes, sir.

SENATOR CORNYN: Yours truly did on multiple occasions. And that heightened your concerns about the appearance of a conflict of interest with the Department of Justice, which caused you to make what you have described as an incredibly painful decision to basically take the matter up yourself and led to that July press conference.

COMEY: Yes, sir. After President Clinton, former President Clinton, met on the plane with the Attorney General, I considered whether I should call for the appointment of a special counsel and had decided that that would be an unfair thing to do, because I knew there was no case there. We had investigated it very, very thoroughly.

I know this is a subject of passionate disagreement, but I knew there was no case there. And calling for the appointment of a special counsel would be brutally unfair because it would send the message, aha, there's something here. That was my judgment. Again, lots of people have different views of it. But that's how I thought about it.

SENATOR CORNYN: Well, if the special counsel had been appointed, they could've made that determination that there was nothing there and declined to pursue it, right?

COMEY: Sure, but it would've been many months later or a year later.

VII. Analysis

We found no evidence that Comey's public statement announcing the FBI's decision to close the investigation was the result of bias or an effort to influence the election. Instead, the documentary and testimonial evidence reviewed by the OIG reflected that Comey's decision was the result of his consideration of the evidence that the FBI had collected during the course of the investigation and his understanding of the proof required to pursue a prosecution under the relevant statutes. Nevertheless, we concluded that Comey's unilateral announcement was inconsistent with Department policy, usurped the authority of Attorney General, and did not accurately describe the legal position of the Department prosecutors.

Although we found no evidence that Lynch and former President Clinton discussed the Midyear investigation or engaged in other inappropriate discussion during their tarmac meeting on June 27, 2016, we also found that Lynch's failure to recognize the appearance problem created by former President Clinton's visit and to take action to cut the visit short was an error in judgment. We further concluded that her efforts to respond to the meeting by explaining what her role would be in the investigation going forward created public confusion and did not adequately address the situation. Finally, we found that Lynch, having decided not to recuse

herself, retained authority over both the final prosecution decision and the Department's management of the Midyear investigation, including whether to respond to Comey's call to her on the morning of July 5 by instructing him to share his statement with her.

A. Comey's Decision to Make a Unilateral Announcement

Beginning in early 2016, and certainly by late April 2016, the Midyear team reached a general consensus that the evidence would not support a prosecution, absent major unexpected developments in the form of newly discovered emails or testimony. This assessment was based on a lack of evidence showing that former Secretary Clinton, her senior aides, or other State Department officials knew that they were emailing unmarked classified information or intended to introduce classified information onto an unclassified system. Witnesses told us that, at the time, they understood the emails in question were sent by State Department employees to other State Department employees in the course of doing their jobs, and that both the senders and recipients had the appropriate clearances and the need to know the information. As described in Chapter Two, the prosecutors determined based on their legal research and review of past Department practice that evidence of knowledge or intent was necessary to charge any individual with violations of 18 U.S.C. §§ 793(d), 793(e), or 793(f)(1).

Comey understood and agreed with this assessment. He told us that, as he realized that the case likely would not result in charges, he became concerned that senior Department officials were unable to announce a declination in a way that the public would find credible and objective. Comey said that these concerns were based on the public perception created by an Attorney General appointed by a Democratic President announcing that the Democratic Presidential candidate would not be prosecuted, not on any actions by or concerns specific to Lynch or Yates; however, as discussed below, Comey also pointed to public comments made by then President Obama and his White House Press Secretary about the Midyear investigation, concerns that classified information referencing Lynch would be publicly released and would impact her credibility, Lynch's alleged admonition to him early on to refer to the FBI's investigation as a "matter," and Lynch's meeting with former President Clinton as contributing to his concerns about her.

In April 2016, Comey initiated discussions with Yates and Axelrod about how to credibly announce the conclusion of the investigation based on the likelihood that the case would result in a declination. During this discussion, Comey stated that he was likely to request the appointment of a special counsel "the deeper we get into summer" without concluding the investigation. Comey told the OIG that his reference to a special counsel was intended to induce the Department to move more quickly to obtain the Mills and Samuelson laptops. We did not find evidence that Comey at any time seriously considered requesting a special counsel.

Lynch told us that she was aware that Yates met with Comey, and that Comey indicated that he was not sure there was a "there there"—*i.e.*, it was not a prosecutable case. Lynch also was receiving periodic briefings about the Midyear investigation, and said that she thought that any discussions about announcing a

declination were “very premature” at that time because there were remaining investigative steps to be taken. Lynch told us that she did not know that Comey mentioned requesting a special counsel during his discussion with Yates, and that no one in the Department or the FBI ever suggested to her that a special counsel was needed.

Discussions about a strategy for announcing a declination also took place within the FBI. Comey told the OIG that he considered every option for announcing a declination, from a one-line press release issued by the Department to an FBI-only press conference providing a detailed statement about the investigation. Comey said that foremost in his mind was the need to minimize the “reputational damage” to the Department and the FBI that would result from a declination, and to preserve the credibility and integrity of the institution.

In late April 2016, Comey raised the possibility of “doing something solo” in a meeting with Baker, McCabe, and Rybicki. He also began drafting a public statement that contemplated that he would act alone in announcing the declination, sending a first draft of this statement to Baker, McCabe, and Rybicki on May 2, 2016. Witnesses told us that Comey had not yet made a firm decision to deliver a public statement when he sent this draft, but that he wanted to discuss it as one possible option for announcing a declination.

According to various witnesses we interviewed, Comey and other senior FBI officials knew that delivering a separate public statement held substantial risk. McCabe said that he expressed concerns that such a statement would represent a “complete departure” from Department protocol and could set a “potentially dangerous precedent” for the FBI. Rosenberg said that in discussions with Comey, he raised the possibility that doing a separate statement would create an irreparable breach with the Department. Comey said that he knew it was a “crazy idea, but we were in a [500]-year flood.”

Comey discussed the draft public statement in meetings with members of the Midyear team and with senior FBI officials at various times in May and June 2016. These discussions included whether to do a separate statement at all, in addition to the specific language revisions discussed in Section III.B and C above. Comey said that by June 27, 2016, the date of Lynch’s tarmac meeting with former President Clinton, he was “90 percent there, like highly likely” in terms of deciding to deliver the statement.

Despite this, Comey and other senior FBI officials continued to engage their Department counterparts in discussions about how to credibly announce a declination. These discussions occurred at various levels: between Comey and Yates; between McCabe and Carlin; and between Strzok and Laufman. At no time did anyone from the FBI inform anyone from the Department that Comey was even considering making a statement on his own, let alone that he had already drafted such a statement. Department witnesses at all levels told us that they believed that shortly after the interview of former Secretary Clinton was completed, the Department and the FBI would work together to deliver some sort of coordinated statement, and that Comey would be involved. Yates told the OIG that her

understanding was that they would be “all holding hands and jumping off the bridge together.”

Comey said that from the time he first conceived of making a separate statement, he intended to deliver it without coordinating with the Department. He told the OIG that he made a conscious decision not to tell Department leadership about his plans to “go it alone” because he was concerned that they would instruct him not to do it. Comey admitted that he concealed his intentions from the Department until the morning of his press conference, and instructed his staff to do the same, to make it impracticable for Department leadership to prevent him from delivering his statement.

We found that it was extraordinary and insubordinate for Comey to conceal his intentions from his superiors, the Attorney General and Deputy Attorney General, for the admitted purpose of preventing them from telling him not to make the statement, and to instruct his subordinates in the FBI to do the same. Comey waited until the morning of his press conference to inform Lynch and Yates of his plans to hold one without them, and did so only after first notifying the press. As a result, Lynch’s office learned about Comey’s plans via press inquiries rather than from Comey. Moreover, when Comey spoke with Lynch he did not tell her what he intended to say in his statement.

Factors Cited by Comey as Influencing His Decision

Comey cited several factors that he said influenced his decision to make a statement on his own and without coordinating with the Department. In addition to public comments made by former President Obama and his White House Press Secretary about the Midyear investigation, Comey cited four things that he said caused him to be concerned that Lynch could not credibly participate in announcing a declination: her alleged instruction to call the Midyear investigation a “matter” in a meeting held on September 28, 2015, which Comey said “made [his] spider sense tingle” and caused him to “worry...that she’s carrying water for the [Clinton] campaign”; concerns that highly classified information referencing Lynch would be publicly released and would impact her credibility; the tarmac meeting between Lynch and former President Bill Clinton; and the fact that Lynch was appointed by a President that was the same political party as former Secretary Clinton.

We found none of these reasons persuasive, either standing alone or considered together, as a basis for deviating from well-established Department policies and acting unilaterally in a way intentionally designed to avoid supervision by Department leadership over his actions.

Lynch’s Reference to the Investigation as a “Matter.” We found that the discussion between Lynch and Comey on September 28, 2015, was not generally viewed as a particularly significant event, other than by Comey. As described in Chapter Four, Department and FBI officials present at this meeting did not interpret Lynch’s reference in the way Comey did, and contemporaneous notes indicate that the discussion at the meeting was focused on the need to track language in recent letters to Congress and the State Department. Lynch told us

that her intent in suggesting that Comey refer to Midyear as a “matter” was to allow them to answer questions about staffing and resources while also complying with longstanding Department policy to refrain from confirming ongoing criminal investigations, not to downplay the significance of the investigation. Other Department witnesses present at this meeting interpreted Lynch’s comment as a suggestion, not an instruction from Lynch. We found no evidence that this phrasing was intended to “track” the language used by the Clinton campaign or was an attempt to influence the investigation. Remarkably, Comey never told Lynch or Yates that this (or any other) incident raised questions about Lynch’s impartiality in his mind, or that such concerns might influence his actions in handling the case.

Concerns about Future Leaks of Classified Information. As described in the classified appendix to this report, Comey told the OIG that he became concerned in mid-June 2016 that classified information suggesting that Lynch was exerting influence on the Midyear investigation would be publicly released, and that this would impact her ability to credibly announce a declination. However, by mid-June Comey was already very far along in his plans to make a unilateral statement. Moreover, witnesses told us that the FBI determined based on various factors that the allegations that Lynch had interfered with the investigation were not credible, describing the information as “objectively false.”

Comey told the OIG that he never saw any actions by Lynch to interfere with the investigation, stating, “I’ll say this again, I saw no reality of Loretta Lynch interfering in this investigation.” Rather, Comey said he was concerned that leaks of this non-credible information about Lynch would undermine her credibility. The FBI did not inform Lynch about the allegation in the highly classified information until August 2016, more than a month after Comey’s announcement, and then (according to Lynch) did so in a way that highlighted the FBI’s assessment that the information lacked credibility.¹⁵⁶ At no time did Comey alert Lynch or Yates that the information raised concerns about Lynch’s ability to participate credibly in the Midyear investigation or in any declination announcement. At no time did Comey consult with Lynch or Yates about how to deal with this false information to protect the credibility of the declination decision.

Finally, the OIG found that the same classified information also included an allegation, equally lacking in credibility, that Comey planned to delay the Midyear investigation to aid Republicans. Comey did not inform Lynch or Yates of this fact, let alone discuss with them whether this information might be leaked or whether, if it was, it might undermine his credibility as a spokesman.

Lynch’s Tarmac Meeting with Former President Clinton. Comey told us that by the time the tarmac incident occurred on June 27, 2016, he was already “90 percent there” in terms of the decision to make a public statement, but that the tarmac meeting “tipped the scales” towards making his mind up to go forward with an independent announcement on the Midyear investigation. While Comey’s

¹⁵⁶ As described in the classified appendix to this report, the FBI notified senior career Department officials about this information in March 2016, but did not convey that it raised concerns about Lynch’s ability to credibly participate in announcing a declination in the Midyear investigation.

concerns about the impact of the meeting were legitimate, and warranted his informing Lynch of his concerns and providing her with any views he had on how it should be addressed, ultimately the decision whether Lynch should voluntarily recuse herself was Lynch's to make, not Comey's.

In his October 2016 SAC Conference speech, Comey emphasized the damage to the FBI that would result if he "did the normal thing" in the wake of the tarmac meeting. He stated that he was concerned that if the FBI made a private recommendation to Lynch, "the Department of Justice will screw around it for Lord knows how long, issue probably a one sentence declination, and then the world will catch on fire[.]" However, the stated concerns are inconsistent with what Comey had already discussed with the Department about the "endgame" of the investigation. Comey knew that the Department was well aware of his view that the Midyear investigation needed to be completed promptly. Comey had previously discussed with Yates the prospect of requesting a special counsel if the investigation continued past the nominating conventions, and Yates told us that she and Comey had made plans to "hold hands and jump off the bridge together" in announcing a declination. Moreover, notes from discussions of the Midyear team that occurred shortly before the Clinton interview on July 2 reflected that the prosecutors understood that Comey wanted to make the announcement by July 8 and therefore there would be "withering pressure" to complete the LHM and memorialize the Midyear prosecutors' conclusions immediately after the Clinton interview. There simply was no basis for Comey to believe that the Department would take weeks to act on the FBI's recommendation on such a consequential matter.

Moreover, Comey never raised his concerns about the tarmac meeting with Yates or requested that Lynch recuse herself. Instead, Comey viewed the tarmac meeting as a justification for proceeding with his existing plan to act alone. Comey admitted that had Lynch recused herself he might have reconsidered his decision to make a separate announcement, stating, "Had Loretta said, I'm stepping out of this. I'm making Sally Yates the Acting Attorney General and had I gone and sat down with Sally and heard her vision for it, maybe we would have ended up in a different place." While Comey indicated that he did not speak with Yates because Lynch had already made her announcement on July 1, we found that he still could and should have done so.

Lynch was Appointed by a Democratic President. Comey cited a general concern that Lynch was appointed by a President who was from the same political party as former Secretary Clinton. Yet that fact existed at the beginning of the Midyear investigation. At no time did Comey inform either Lynch or Yates that he viewed Lynch as having a "conflict of interest," or that he thought she should be recused from the investigation on the basis of party affiliation, or for any other reason. While Comey did mention the prospect of a special counsel in his April 2016 meeting with Yates, he did so seemingly as a bargaining chip to get the Department to move more quickly on the Mills and Samuelson laptops, and we found no evidence that he seriously pursued this option.

We found it troubling that Comey would have formed views about Lynch's inability to participate in or credibly decline prosecution of the Midyear investigation, yet never once raised them with Lynch or Yates. If Comey genuinely believed that Lynch could not credibly participate in the Midyear investigation or announce a declination, he should have raised these concerns with Yates or Lynch and requested that Lynch recuse herself. If he believed that neither Lynch nor Yates could credibly make a prosecutive decision, he should have discussed this with them at the beginning of the investigation and requested appointment of a special counsel. He did not.

Impact of Comey's Decision to Make a Unilateral Statement

Comey's decision to depart from longstanding Department practice and publicly announce the FBI's declination recommendation without coordinating with the Department was an unjustified usurpation of authority.¹⁵⁷ Although Comey was aware that the Midyear prosecutors and Department leadership viewed the case as a likely declination, Comey made the decision to announce the conclusion of the investigation before prosecutors had a chance to render their own formal prosecutorial decision. Comey's views on what a "reasonable prosecutor" would do—while informed by the prosecutors' views on the likely outcome of the case and the Department's research on past mishandling cases—were nonetheless made without consulting the Department in advance. Although Comey stated in his press conference that "the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect," by making this public announcement about the FBI's charging recommendation, and by stating his view that "no reasonable prosecutor" would bring charges, he effectively made the decision for the prosecutors because it would thereafter have been virtually impossible for them to make any other decision.

Even if Comey had every reason to believe that Lynch and Yates agreed with him, speaking unilaterally and publicly for the Department about a decision to decline prosecution is not a function granted to the Director. The authority to make such a statement had not been delegated to him by his superiors, the Attorney General and the Deputy Attorney General. Comey acknowledged this, but argued that "the potential for damage to the institution" outweighed the need to follow Department practice, stating, "[I]n a normal circumstance it's the right of the

¹⁵⁷ After reviewing a draft of the report, counsel for Comey stated that even before Lynch's July 1 statement that she would accept the recommendation of the career staff, the decision about whether to prosecute former Secretary Clinton was publicly framed as belonging to him, and Department leadership did not correct this impression. See, e.g., Massimo Calabresi, *Inside the FBI Investigation of Hillary Clinton's Email*, TIME, Mar. 31, 2016 (noting that Lynch testified in February 2016 that she was waiting for a charging recommendation from Comey, and that some Republicans were referring to the investigation as the "Comey primary"). As a result, counsel said that Comey did not "usurp" the Attorney General's authority, but rather had the role of the Attorney General given to him by Department leadership. However, waiting for a charging recommendation from the FBI Director is substantially different than making a public announcement without any prior consultation with or approval from the Attorney General. Indeed, there would have been no need for Comey to have affirmatively concealed his plans for a public statement from Lynch if he believed Lynch had effectively ceded authority over the prosecution decision to him.

Attorney General and Deputy Attorney General to make those decisions and the FBI Director should tell them, but this was not the normal circumstance.”

In our criminal justice system, the investigative and prosecutive functions are intentionally kept separate as a check on the government’s power to bring criminal charges. While Comey’s statement acknowledged those differing roles and responsibilities, his actions violated those separate authorities by arrogating to himself and the FBI the ability to make judgments about whether a case of the highest political consequence should be charged, and he did so by intentionally seeking to prevent Department leadership from being able to stop him based on concerns that he never even gave them an opportunity to consider. In making a statement announcing the conclusion of the Midyear investigation and opining on what the only possible prosecutorial decision could be, Comey made it virtually impossible for any prosecutor to make any other recommendation. He thereby effectively operated as not only the FBI Director, but also as the Attorney General. It is the Attorney General who is accountable to the public and to Congress for prosecutorial decisions made by the Department, not the head of the investigating law enforcement agency. Comey took that accountability away from Lynch and placed it on himself when he decided to deliver a unilateral statement.

Additionally, Comey’s decision to make an announcement without consulting or obtaining approval from Department leadership violated the Department’s media policy and also may have violated regulations regarding the public release of information. See 28 C.F.R. § 50.2(b)(9). Although Baker told the OIG that Comey’s call to Lynch and Yates on the morning of his press conference constituted approval for purposes of this regulation, Comey’s testimony that he concealed his plans from Lynch until the morning of July 5, only contacted her after the FBI had notified the press in order to make it impossible for her to stop him, and told Lynch when they did speak that he was not going to tell her what he intended to say in his statement, does not constitute consulting with or obtaining approval from Department leadership. In light of these events, we recommend that the Department consider making explicit in the USAM what we thought was obvious in light of Department policy and protocol—that an investigating agency cannot publicly announce its recommended charging decision in a criminal investigation prior to consulting with the Attorney General, Deputy Attorney General, U.S. Attorney, or his or her designee, and cannot proceed to publicly announce that decision prior to obtaining a final prosecution decision from one of these officials.¹⁵⁸

B. Content of Comey’s Unilateral Announcement

We identified two significant substantive concerns with the content of Comey’s July 5 statement. First, Comey included criticism of former Secretary Clinton’s uncharged conduct, including calling her “extremely careless,” thereby violating longstanding Department practice to avoid what others described as “trash[ing] people we’re not charging.” Second, having improperly decided to comment on what were prosecutorial decisions, Comey proceeded to inadequately

¹⁵⁸ Such a policy would necessarily need to include exceptions for certain situations where the law required or permitted disclosure.

and incompletely explain how the Department's prosecutors applied the relevant statutory provisions and why they believed the evidence was insufficient to support a prosecution. For example, Comey described former Secretary Clinton's handling of classified information as "extremely careless" but then asserted that such conduct did not amount to "gross negligence" under the relevant statute. In so doing, Comey failed to explain that, since at least 2008, it had been the Department's position that, before bringing a "gross negligence" case, prosecutors had to be able to prove that a defendant knew at the time that the information was gathered, transmitted, or lost that it was in fact classified information. As delivered, Comey's statement led to greater public confusion and second guessing, not greater public clarity.

Many of the problems with the statement resulted from Comey's failure to coordinate with Department officials. By deciding not to consult with the Midyear prosecutors about their assessment of the Department's historical approach to and interpretation of the "gross negligence" statute or their assessment of the evidence under the applicable legal standard, Comey lost the opportunity to hear the views of the career prosecutors responsible for prosecuting violations of the mishandling statutes. Based on our interviews, these prosecutors would likely have warned him about the substantive questions presented by his statement. In addition, Department witnesses told the OIG that the presentation of the case by the Midyear prosecutors at the briefing of the Attorney General on July 6, 2016, which is described in Chapter Six, differed significantly from Comey's statement, leading these witnesses to conclude that the presentation of the facts in Comey's statement was "very skewed" or delivered with a "slant."

Description of Uncharged Conduct

It is not unprecedented for the Department to announce the completion of an investigation without a prosecution. In fact, it happens frequently in high profile matters, including in many federal civil rights investigations. Such an announcement may serve several legitimate purposes, including allowing the public to know that the Department thoroughly investigated the matter and lifting the cloud over an individual known to have been under investigation. In limited instances, the Department has included criticism of individuals not charged with a crime. Comey cited as precedent for his July 5 public statement the June 2004 press conference by then DAG Comey summarizing the evidence against Jose Padilla, who was designated as an enemy combatant, and the Department's October 2015 letter to Congress summarizing the results of the criminal investigation into IRS officials, which did not result in criminal charges. However, in both of those instances, the *Department* was responsible for issuing the statement, not the FBI Director.

Moreover, Comey's announcement was unusual in that it concentrated in substantial part on criticizing former Secretary Clinton's uncharged conduct. This was contrary to longstanding Department practice and protocol. Witnesses told us that criticizing individuals for conduct that does not warrant prosecution is something that the Department simply does not do. For example, Toscas stated, "We don't say we're closing something, but let me tell you some bad stuff that we

saw along the way, but it doesn't rise to the level of bringing a case. We just don't do it." Prosecutor 1 characterized the negative comments about former Secretary Clinton as "declining to prosecute someone and then sort of dirtying them up with facts that you develop along the way."

Department witnesses did not identify a specific regulation or USAM provision that required Comey to refrain from commenting on uncharged conduct, and we found none. Rather, witnesses described this as a practice that is "ingrained" in every Department prosecutor. This principle underlies other Department policies and practices that do not directly apply in these circumstances, but that are nonetheless salient. USAM 9-27.760 requires prosecutors to remain sensitive to the privacy and reputation interests of uncharged third parties—for example, by not identifying or causing a defendant to identify a third-party wrongdoer by name or description in public plea and sentencing proceedings, without the express approval of the U.S. Attorney and the appropriate Assistant Attorney General prior to the hearing absent exigent circumstances. USAM 9-27.760 states, "In other less predictable contexts, federal prosecutors should strive to avoid unnecessary public references to wrongdoing by uncharged third-parties."

Similarly, when a case is closed without charges being filed, the Department does not seek to unseal a search warrant for the purpose of revealing to the public that there was probable cause that someone engaged in criminal activity. In addition, where the Department has concluded that an uncharged individual was a participant in a criminal conspiracy, the Department's rules specifically prohibit prosecutors from naming the uncharged co-conspirator in an indictment or including sufficient detail in public filings that would allow the co-conspirator to be identified. See, e.g., USAM 9-11.130. The common principle underlying these policies is that neither the FBI nor Department prosecutors are permitted to insinuate or allege that an individual who has not been charged with a crime is nevertheless guilty of some wrongdoing. We see no reason why an unindicted co-conspirator should be afforded greater protection than a person who has been investigated and found not to be criminally liable. We therefore recommend that the Department and the FBI consider adopting a policy addressing the appropriateness of Department employees discussing uncharged conduct in public statements.

Several witnesses acknowledged that one major purpose of including negative comments about former Secretary Clinton was to send the message that the FBI was not condoning her conduct: essentially, to protect the FBI from criticism that it failed to recognize the seriousness of her conduct and was "letting her off the hook." We recognize that this investigation was subject to scrutiny not typical of the average criminal case, but that does not provide a basis for violating well-established Department norms and, essentially, "trashing" the subject of an investigation with uncharged misconduct that Comey, every agent, and every prosecutor agreed did not warrant prosecution. Such norms exist for important reasons and none of the justifications provided by witnesses for why such criticism was warranted in the Midyear investigation—including expressing disapproval of former Secretary Clinton's conduct to the FBI workforce, "counter[ing]" statements made on the campaign trail that the emails in question were classified after the

fact, or informing the American people about the facts of the investigation—provided legitimate reasons to depart from normal and appropriate Department practice.

Substantive Issues with the Statement

Department witnesses told the OIG that they considered Comey's statement to be both factually and legally incomplete. These witnesses said that critical facts supporting the decision to decline prosecution were not included in Comey's statement. Axelrod told the OIG that Comey's most notable omission was the failure to explain that the Department has never prosecuted mishandling violations "where the classified information was shared between people who work for the Government.... That's a pretty important fact." Axelrod and other Department witnesses also noted that Comey did not include information explaining that "the majority of the emails that turned out to be classified had been sent late at night or on the weekends," suggesting that State Department employees sending the emails tried to "talk around" classified information in the course of doing their jobs. Department witnesses described the characterization of the evidence in Comey's statement as "very skewed" or unintentionally "slant[ed]."

Comey also included in his statement a comment that although the FBI did not find direct evidence that former Secretary Clinton's private email account was hacked, the FBI assessed that it was "possible" that hostile actors gained access to former Secretary Clinton's personal email account based on various factors. He added that the FBI assessed it would be unlikely to see such direct evidence given the nature of the system and the actors potentially involved in hostile intrusions, and that former Secretary Clinton had used her personal email in the territory of foreign adversaries. The statement thus insinuated that hostile foreign actors may have in fact gained access to former Secretary Clinton's private email account, based almost entirely on speculation and without any evidence from the Midyear investigation to support his claim. As described in Chapter Five, the FBI Midyear Forensics Agent told the OIG that, although he did not believe there was "any way of determining...100%" whether Clinton's servers had been compromised, he felt "fairly confident that there wasn't an intrusion." The LHM summarizing the Midyear investigation similarly stated, "FBI investigation and forensic analysis did not find evidence confirming that Clinton's email server systems were compromised by cyber means."

In addition, Comey's statement failed to describe accurately what the Midyear prosecutors deemed was essential to make out a violation of the "gross negligence" statute. As described in Chapters Two and Seven, the Midyear prosecutors took into account the legislative history of the statute, previous military prosecutions and indictments brought under it, and the Department's historical interpretation of the provision in declinations dating to at least 2008. Based on this authority, the Midyear prosecutors determined that a violation of Section 793(f)(1) requires (1) a state of mind that is "just a little short of being willful," "criminally reckless," or "so gross as to almost suggest deliberate intention," and (2) evidence that the individuals who sent emails containing classified information did so "knowingly." With respect to former Secretary Clinton, the Midyear prosecutors

determined that in the absence of evidence showing that she knew that emails she received contained classified information, such as through obvious classification markings, Department practice and precedent required that they decline prosecution.

Comey told the OIG that he understood Section 793(f)(1) to require “something closer to actual knowledge.” Yet nowhere in his statement did Comey say that the FBI concluded that former Secretary Clinton lacked knowledge that the information in question was classified, and that prosecutors determined that evidence of such knowledge was needed to bring charges under the “gross negligence” statute. On July 6, 2016, Prosecutor 3 sent an email to the other Midyear prosecutors highlighting this problem. He stated:

It’s unfortunate that Comey didn’t differentiate the standard of proof between 793(f) and the other statutes. He glossed over all with mention of the absence of intent and made no mention of the necessity of proving knowledge of classified [information] with regard to 793(f) and why that proof was deficient. By using the phrase “extremely careless” he lit up the talking heads last night, many of whom opined that such verbiage warranted a gross negligence charge and that Comey was giving Clinton an unwarranted pass. Even the so-called legal experts didn’t seem to understand the elements of that statute and why it did not apply to the facts.

By describing former Secretary Clinton’s conduct as “extremely careless” while failing to explain what the Midyear team concluded was the lack of proof for the other requirements of Section 793(f)(1), Comey created confusion about the FBI’s assessment of her culpability and the reasons for recommending that prosecution be declined. The focus on former Secretary Clinton’s “extremely careless” handling of classified information foreseeably and predictably led the public to question why former Secretary Clinton was not being charged with “gross negligence.”

The issue for the Midyear prosecutors was never whether former Secretary Clinton’s conduct was “extremely careless,” but whether her conduct met the requirements for charging a violation of Section 793(f)—*i.e.*, whether there was sufficient evidence to establish that she knowingly included classified information on her unclassified private email server, or learned that classified information was transferred to her unclassified server and failed to report it. The prosecutors concluded that there was not. As described in Chapter Seven below, the prosecutors found no evidence that former Secretary Clinton believed or was aware that the emails contained classified information, or had concerns about the information included in unclassified emails sent to her.

C. Lynch’s Decision Not to Recuse after the Tarmac Meeting

After the tarmac meeting with former President Clinton, Lynch obtained an opinion from the Departmental Ethics Office that she was not legally required to recuse herself from the Midyear investigation. Although the opinion was not memorialized in writing, former OAG staff and former officials in the Departmental

Ethics Office confirmed that Lynch obtained this opinion, and that the conclusion was that recusal was not required. Lynch was entitled to rely on that ethics opinion in the face of subsequent questions about her involvement in the Midyear investigation.

Lynch told the OIG that she considered voluntarily recusing herself. However, she thought that doing so would create the impression that something inappropriate had occurred during her conversation with former President Clinton. Lynch said that she felt a responsibility to remain involved in the Midyear investigation, because if she decided to recuse herself, she would be "asking someone else to step up and endure all the hits the Department will take for the case for the result, whatever it is."

Lynch said that she applied her usual process in the Midyear investigation, and that her role did not change after the tarmac meeting. Lynch told the OIG that the only thing that differed was that she decided to speak publicly about how the Department's process typically works. However, Lynch's July 1, 2016 statements at the Aspen Institute were confusing and created the impression that, while she would not formally recuse from the investigation, she also would not remain in a deciding role in the investigation (by stating "I will be accepting their recommendations"). In an effort to address the confusion, Lynch sought to clarify her remarks by providing the reporter with another formulation of her intentions, stating, "I can't imagine a circumstance in which I would not be accepting their recommendations." However, these statements continued to make it appear that Lynch would cede her decisionmaking authority to the career staff and the FBI Director in a way that was akin to some type of recusal.

In our view, Lynch should have either made it unambiguously clear that she did not believe there was a basis for recusal and that she was going to remain the final decisionmaker (thereby making her accountable for the final decision, not Comey), or recused herself and allowed Yates to serve as Acting Attorney General, or sought a special counsel appointment. Instead, Lynch took none of these actions, leaving it ambiguous to the public as to what her role would be. Ultimately, that left the public with the perception that the FBI Director, and not the Attorney General, was accountable for the declination decision.

D. Lynch's Response to Comey's Notification

As described above, Comey concealed his plans to make a public statement from senior Department officials, and instructed his subordinates to do the same. He did not inform Lynch and Yates of his plans to hold a press conference until the morning of July 5, 2016. Comey intentionally left Department leadership a short time to respond to his information, admitting that he did this to avoid having them tell him not to do it.

Comey notified Lynch and Yates of his plans only after first contacting the press. He did not tell Lynch what he planned to say when she asked. According to Lynch, Comey told her he would not go over his statement with her so they both could say that it was not coordinated. Department officials understandably had

concerns about directing Comey to cancel the press conference after he had already announced his plans to hold one.

Lynch said while Comey told her that his statement would be about the Midyear investigation, it did not occur to her that Comey would announce the end of the investigation or the FBI's recommendation. She explained that while she knew that former Secretary Clinton had been interviewed, she was not aware that the investigation was considered complete. Lynch told the OIG that if she had known what Comey was planning to do, she would have told him to stop. However, Lynch said that she trusted him based on her long relationship with Comey and his comment to her that it would be better if they could both say that they did not coordinate his statement. Lynch told the OIG that she thought this was a reasonable decision, and that it was the right decision under the circumstances because the Comey she knew followed the rules. She said that once Comey started speaking and she realized what he was doing, she had "no way to stop him at that point, I mean, short of, you know, dashing across the street and unplugging something."

Nonetheless, we found that Lynch retained authority over both the final prosecutive decision and the Department's management of the Midyear investigation. This included the authority to insist that Comey share his statement with her and allow the Department to review and comment on it. Although we recognize that Comey made it impracticable for her to tell him not to make any statement given the FBI had already notified the press, there was time still available for her to review his proposed statement and to instruct him to make changes to it. Even if Lynch did not think that Comey was going to announce that the FBI was closing its Midyear investigation, Comey told her the statement was going to be about the Midyear investigation, a case over which she retained the authority and responsibility as the Attorney General. As such, we believe she should have instructed Comey to tell her what he intended to say beforehand, and should have discussed it with Comey.

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CHAPTER SEVEN: THE DEPARTMENT'S DECISION NOT TO PROSECUTE

After former Director Comey's statement on July 5, 2016, the Midyear prosecutors finalized their analysis and conclusions under the relevant statutes, recommending that prosecution of former Secretary Clinton and others be declined. They then provided their conclusions to NSD supervisors.

On the afternoon of July 6, 2016, former AG Lynch held a briefing attended by Comey, McCabe, and other senior Department and FBI officials. The Midyear prosecutors briefed Lynch on the relevant evidence, the applicable statutes, and the basis for their recommendations. Following the briefing, the Department issued a brief statement announcing that Lynch had accepted the recommendation of the career prosecutors and agents who worked on the Midyear investigation.

In this chapter we discuss the prosecutors' conclusions and the July 6 briefing, focusing on issues that have been subject to public criticism. Consistent with the role of the OIG and our statement that we will not substitute the OIG's judgment for the judgments made by the Department or the FBI regarding the substantive merits of investigative or prosecutive decisions, we reviewed whether there was evidence that the Department's decision to decline prosecution was based on improper considerations or bias. As with our review of investigative decisions, our role was not to determine whether a prosecution should or should not have been brought but rather whether the Department's explanations for its declination decision were not unreasonable and whether there was evidence that the justifications offered for the decision were a pretext for improper, but unstated, considerations.

I. The Declination Recommendation

As described above, prosecutors and NSD supervisors began to realize that the investigation could lead to a declination in early 2016. As the investigation continued into the Spring of 2016, the prosecutors began to consider how to summarize the investigation and memorialize their legal conclusions to provide to their supervisors and to Department leadership. The prosecutors told the OIG that they wanted to wait until the end of the investigation before making a charging recommendation.

The prosecutors planned to complete their legal analysis after former Secretary Clinton was interviewed on July 2, 2016. Following Comey's announcement on July 5, 2016, they realized they had a much shorter time period to do so and worked until almost midnight on July 5 to finish their legal analysis. They completed this process the following afternoon and provided their analysis and conclusions to Toscas.

The prosecutors' legal analysis referenced an FBI letterhead memorandum (LHM) summarizing the Midyear investigation.¹⁵⁹ In their analysis, the Midyear prosecutors categorized the witnesses that had been interviewed in the investigation into four categories:

- Originators of classified information (*i.e.*, individuals who introduced classified information into unclassified emails, including State Department Bureau of Public Affairs employees, an individual who regularly interfaced with State Department employees, State Department Operations Center employees, and other State Department employees responsible for conveying information to their superiors);
- U.S. government employees who had involvement with a specific Top Secret//Special Access Program ("TS//SAP");
- Senior aides to former Secretary Clinton, including Huma Abedin, Cheryl Mills, and Jake Sullivan; and
- Former Secretary Clinton herself.

The prosecutors referred to the first three categories of witnesses—the Originators, the officials involved with the TS//SAP, and former Secretary Clinton's senior aides—collectively as the "senders."

The prosecutors analyzed the conduct of former Secretary Clinton and the "senders" under five statutes:

- 18 U.S.C. §§ 793(d) and 793(e) (willful mishandling of documents or information relating to the national defense);
- 18 U.S.C. § 793(f) (removal, loss, theft, abstraction, or destruction of documents or information relating to the national defense through gross negligence, or failure to report such removal, loss, theft, abstraction, or destruction);
- 18 U.S.C. § 1924 (unauthorized removal and retention of classified documents or material by government employees); and
- 18 U.S.C. § 2071 (concealment, removal, or mutilation of government records).

The requirements of these statutes are described in more detail in Chapter Three.

As summarized below, the Midyear prosecutors concluded that there was not a basis to prosecute former Secretary Clinton, her senior aides, or others under any of these statutes. The prosecutors cited the following factual conclusions from the investigation as critical to its recommendation not to prosecute:

¹⁵⁹ A redacted version of the LHM is publicly available on the FBI's website. See FBI Records: The Vault, Hillary R. Clinton, Part 1, <https://vault.fbi.gov/hillary-r-clinton> (accessed March 6, 2018).

- None of the emails contained clear classification markings as required under Executive Order 13526 and its predecessor. Only three email chains contained any classification markings of any kind. These email chains had one or two paragraphs that were marked "(C)" for "Confidential" but contained none of the other required markings, such as classification headers.
- There was no evidence that the senders or former Secretary Clinton believed or were aware at the time that the emails contained classified information. In the absence of clear classification markings, the prosecutors determined that it would be difficult to dispute the sincerity of these witnesses' stated beliefs that the material was not classified.
- The senders and former Secretary Clinton relied on the judgment of employees experienced in protecting sensitive information to properly handle classified information.
- The emails in question were sent to other government officials in furtherance of the senders' official duties. There was no evidence that the senders or former Secretary Clinton intended that classified information be sent to unauthorized recipients, or that they intentionally sought to store classified information on unauthorized systems.
- There was no evidence that former Secretary Clinton had any contemporaneous concerns about the classified status of the information that was conveyed on her unclassified systems, nor any evidence that any individual ever contemporaneously conveyed such concerns to her.
- Although some witnesses expressed concern or surprise when they saw some of the classified content in unclassified emails, the prosecutors concluded that the investigation did not reveal evidence that any U.S. government employees involved in the SAP willfully communicated the information to a person not entitled to receive it, or willfully retained the same.
- The senders used unclassified emails because of "operational tempo," that is, the need to get information quickly to senior State Department officials at times when the recipients lacked access to classified systems. To accomplish this, senders often refrained from using specific classified facts or terms in emails and worded emails carefully in an attempt to avoid transmitting classified information.
- There was no evidence that Clinton set up her servers or private email account with the intent of communicating or retaining classified information, or that she had knowledge that classified information would be communicated or retained on it.

In addition to these facts as described by the prosecutors, various witnesses told us that one reason it was difficult to establish intent was that the mishandling of

classified information was a persistent practice at the State Department. These practices made it difficult for the Midyear team to conclude that particular individuals had the necessary criminal intent to mishandle classified materials. According to Prosecutor 4, "[T]he problem was the State Department was so screwed up in the way they treated classified information that if you wanted to prosecute Hillary Clinton, you would have had to prosecute 150 State Department people."

Based on facts evincing a lack of intent to communicate classified information on unclassified systems, the prosecutors concluded that there was no basis to recommend prosecution of former Secretary Clinton or the senders of classified information under Sections 793(d) or (e).

In addition, as described in Chapter Two, prosecutors reviewed the legislative history of the gross negligence provision in Section 793(f)(1) and court decisions impacting the interpretation of it. The prosecutors noted that the congressional debate at the time the predecessor to Section 793(f)(1) was passed indicated that conduct charged under the provision must be "so gross as to almost suggest deliberate intention," criminally reckless, or "something that falls just a little short of being willful." The prosecutors also reviewed military and federal court cases and previous prosecutions under Section 793(f)(1), and concluded that they involved either a defendant who knowingly removed classified information from a secure facility, or inadvertently removed classified information from a secure facility and, upon learning this, failed to report its "loss, theft, abstraction, or destruction." In addition, based on a review of constitutional vagueness challenges of Sections 793(d) and (e), the Midyear prosecutors observed that "the government would very likely face a colorable constitutional challenge to the statute if it prosecuted an individual for gross negligence who was both unaware he had removed classified information at the time of the removal and never became aware he had done so."

The prosecutors concluded that based on case law and the Department's prior interpretation of the statute, charging a violation of Section 793(f) likely required evidence that the individuals who sent emails containing classified information "knowingly" included the classified information or transferred classified information onto unclassified systems (Section 793(f)(1)), or learned that classified information had been transferred to unclassified systems and failed to report it (Section 793(f)(2)).

Applying this interpretation, the prosecutors concluded that there was no evidence that the senders of emails knew that classified information had been improperly transferred to an unclassified system, or that former Secretary Clinton acted in a grossly negligent manner with respect to receiving emails determined to contain classified information. According to information reviewed by the OIG, the prosecutors also considered whether the decision to conduct official business using a personal server could itself constitute gross negligence, but concluded that there was no evidence that former Secretary Clinton ever considered the possibility that classified information would be present in unclassified emails or on her private email server.

Distinguishing military prosecutions for “grossly negligent” mishandling, the prosecutors also noted that there was no evidence that classified emails were provided to or discovered by people who were unauthorized to receive them. The prosecutors stated, “[A]ll of the emails containing information subsequently determined to be classified were sent for work purposes and were delivered to State Department or other U.S. government officials.”

Regarding Section 1924, the prosecutors stated that the statute requires proof that an individual knew of the removal of classified information and intended to retain that information in an unauthorized location, and that such proof was lacking. The prosecutors cited the absence of classification markings on the emails sent by the senders, with the exception of the three emails forwarded to Clinton containing paragraph markings denoting Confidential information, as well as the lack of evidence that the senders knowingly took classified information and sent it in unmarked emails over unclassified systems. The prosecutors similarly concluded that former Secretary Clinton did not recognize or have reason to believe that the information sent to her contained classified information. Prosecutors cited Clinton’s reliance on the judgment of senior aides and other State Department staff, their attempts to talk around sensitive information in unclassified emails, and her testimony that she did not have reason to question their use of unclassified systems to send that information. The prosecutors concluded that the evidence was insufficient to charge former Secretary Clinton under Section 1924.

The prosecutors also concluded that there was insufficient evidence to support prosecution under 18 U.S.C. § 2071, which prohibits the willful concealment, removal, or destruction of federal records. They concluded that there was insufficient evidence to establish beyond a reasonable doubt that former Secretary Clinton or her senior aides intended to conceal records, citing testimony that these witnesses expected that any emails sent to a state.gov address would be preserved. The prosecutors acknowledged that this testimony was undercut by former Secretary Clinton’s admission that she sometimes communicated with her senior aides using their personal email accounts, as well as an email she received from former Secretary of State Colin Powell at the beginning of her tenure outlining his use of personal email. However, the prosecutors noted that Section 2071 had “never been used to prosecute individuals for attempting to avoid Federal Records Act requirements by failing to ensure that government records are filed appropriately.”

Finally, the prosecutors evaluated whether Mills and Samuelson intentionally deleted emails during the culling process used to separate former Secretary Clinton’s “personal” and “work-related” emails for production to the State Department. They concluded that there was no evidence that emails intentionally were deleted by former Secretary Clinton’s lawyers to conceal the presence of classified information on former Secretary Clinton’s server, particularly because some of the emails produced as “work-related” later were determined to contain highly classified, compartmented information.

II. The Attorney General Briefing

A briefing for Lynch and Yates on the prosecutors' recommendation was held in the Attorney General's Conference Room at 4 p.m. on July 6, 2016. According to the prosecutors, they learned about the briefing after they completed their legal analysis, and had only a short time to prepare. Prosecutors 1 and 2 said they quickly divided the topics and prepared bullet points for the presentation based on their legal analysis.

Attending the briefing were Lynch, Yates, Axelrod, and David Margolis, at the time the most senior career official in ODAG, as well as several OAG and ODAG staff members. Toscas and Laufman were present from NSD, while Carlin participated by phone. Present from the FBI were Comey, McCabe, Rybicki, Baker, FBI Attorney 1, and Strzok. All four prosecutors attended the briefing.

Toscas told the OIG that he gave a brief introduction at the meeting. Toscas prepared handwritten talking points that he used as a guide for his comments at the meeting, but he said that these did not end up being his "precise script." Toscas said that he "frontloaded" his comments with an acknowledgement that Lynch had stated publicly that she planned to accept the recommendation of the career staff, and that the prosecutors and the FBI were in agreement that no charges should be filed. According to Toscas's handwritten talking points, he stated, "[A]t the conclusion of the meeting you will have the unanimous recommendation of the FBI [and] DOJ team that this investigation should be closed [and] that charges should not be brought against anybody within the scope of the investigation in this matter."

The notes indicate that Toscas then praised the team and handed the briefing over to Laufman to introduce the prosecutors. Following their introduction, Prosecutors 1 and 2 walked through the various legal statutes and the facts developed in the investigation. Prosecutor 2 handled sections 793(d) and (e), while Prosecutor 1 handled discussion of the other statutes, including the gross negligence provision.

Lynch described the briefing as "very, very thorough." She said that it lasted about an hour-and-a-half, and included a "very specific, very dense" briefing of the case. Lynch told the OIG that the prosecutors showed her various documents, including some of the emails that were determined to contain classified information. She said that she asked questions about access to the classified emails and who saw them, as well as numerous questions that related to the issue of intent. Lynch described the prosecutors as "very responsive" to her questions.

Lynch told the OIG that the meeting included a briefing on key interviews, including the interview of former Secretary Clinton. Lynch said that the prosecutors provided a synopsis of her interview, her reaction when shown documents, and their opinions about what she said. Lynch said that she asked whether any of the witnesses, including former Secretary Clinton, had engaged in obstruction of justice, committed perjury, or made false statements, and she was told that they had not.

Prosecutor 1 told the OIG that the discussion with Lynch about Secretary Clinton's interview included whether Clinton was credible when she testified that (C) paragraph markings in an email could mean subparagraphs (A), (B), and (C), rather than that the paragraph contained information classified at the "Confidential" level. Prosecutor 1 stated that he told Lynch that Clinton's testimony "strained credulity a little bit because, well, if anyone knows Confidential, the State Department is the entity that uses Confidential information a lot." He said that they discussed with Lynch that their reaction to this explanation was skeptical, but that they also did not know what "people at the very highest levels" understood about classification markings.

Prosecutor 4 said that he recalled Yates also asking whether former Secretary Clinton was truthful in her interview, and that they all responded that she was. He said that this answer caused him some "consternation" but that he did not disagree.¹⁶⁰ Asked to explain this statement, Prosecutor 4 told the OIG that he did not think that former Secretary Clinton lied in a provable way, but that her responses to questions about paragraph markings for information designated as "Confidential" and her statement that the private server was set up for convenience were questionable. Prosecutor 4 stated, "My view was and still remains that the private email server was set up to avoid FOIA.... [I]f you look at Colin Powell's email, he pretty much was trying to avoid FOIA too."

Various witnesses told the OIG that the briefing included legal discussion of the gross negligence provision, and that prosecutors fielded questions from Comey and Baker about the provision. Prosecutor 2 stated:

I think their attorneys hadn't really gotten him up to speed on the prior use of 793(f), and how it hadn't been used, and the Department's views on the statute. So I think it was kind of an opportunity for him and his team to figure out how Comey was going to explain the decision [to Congress] under 793(f). And following the briefing, questions from his team came our way, specifically about 793(f).

Prosecutor 1 similarly told the OIG that Comey was "very interested" in section 793(f), and that "a lot of notebooks came out from the Bureau" when Prosecutor 1

¹⁶⁰ On July 8, 2016, following Comey's congressional testimony about the Midyear investigation described in Chapter Six, Prosecutor 3 emailed Strzok and Prosecutors 1, 2, and 4 and stated the following:

[O]ne thing that was apparent just from the highlights of the Committee hearings that I saw last night was the fact that the Director's statements about the number and levels of classified doc[ument]s found are being used by the Hill and others to claim that [Clinton] was lying when she has said in the past that she never sent or received classified info[r]mation]. What undercuts the ability to prove intent in support of a false statement charge is that when [Clinton] made these statements she didn't have the benefit of later findings by those who did the classification reviews and of course there weren't the classification markings on the emails to put her on notice, and give us the ability to prove, that she was lying. This never seemed to get discussed or emphasized in the clips I saw last night.

began to talk about the provision. Prosecutor 1 stated that his briefing about section 793(f) included “[w]hat kind of factors we considered..., what gross negligence meant in the criminal context, what it meant in the statute, [and] how it had been applied in the [Uniform Code of Military Justice].”

Witnesses told the OIG that they did not discuss Comey’s statement at the briefing. However, Yates said that she recalled thinking that “you’d kind of wonder if it’s the same case” when she heard the facts as laid out by the prosecutors at the briefing and compared them to Comey’s statement. She said that she recalled discussing with Axelrod, Lynch, and Carlin after the briefing whether the briefing impacted what Comey’s thinking was about the case and how those facts were cast in his statement.

Witnesses said that at the end of the discussion, Lynch went around the room and asked for people’s opinions to see if anyone objected to declining prosecution. According to several witnesses, Margolis responded that he did not see a prosecutable case, and that if the Department prosecuted former Secretary Clinton, it would be because she was a high-profile public official. Toscas, Baker, and Comey said that Margolis described this as “celebrity hunting.” Lynch said that she recalled that Margolis then said, “[W]e at the Department don’t do that.... We will bring cases when they should be brought. We don’t when they shouldn’t be brought.”

Lynch told the OIG that after everyone had the opportunity to provide his or her opinion, she expressed her appreciation to the team and asked Comey and Strzok to convey her appreciation to the agents who had worked on the case. She said that she then told the group that she accepted the recommendation to decline prosecution, and that the Department would issue a statement reflecting the decision shortly. Lynch said that about half of the group stayed behind to talk about how to announce the declination, and that Toscas drafted a short statement. That afternoon, the Department released the following statement:

Late this afternoon, I met with the FBI Director James Comey and career prosecutors and agents who conducted the investigation of Secretary Hillary Clinton’s use of a personal email system during her time as Secretary of State. I received and accepted their unanimous recommendation that the thorough, year-long investigation be closed and that no charges be brought against any individuals within the scope of the investigation.

III. Analysis

We analyzed the Department’s decision to decline to prosecute former Secretary Clinton or anyone else according to the same analytical standard that we applied to other decisions made during the investigation. We sought to determine whether the declination decision was based on improper considerations, including political bias. We both looked for direct evidence of improper considerations and analyzed the justifications offered for the decision to determine whether they were

a pretext for improper, but unstated, considerations. We did not substitute the OIG's judgment for the judgments made by the Department.

We found that the prosecutors' decision was based on their assessment of the facts, the law, and past Department practice in cases involving these statutes. We did not identify evidence of bias or improper considerations. Our analysis focuses substantially on 18 U.S.C. § 793(f)(1), the "gross negligence" statute that has been the focus of much criticism of the Department's decision. However, we first address the declination decision with respect to the other statutes that the Department considered.

We begin with 18 U.S.C. §§ 793(d) and (e), which prohibit the "willful" mishandling or retention of classified information. As detailed in Chapter Two, Courts have interpreted "willfully" to mean an act done "intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law." All of the prosecutors and agents we asked told us that they could not prove that Clinton had actual knowledge that the emails in question were classified or that Clinton used private servers and a private email account with the purpose or intent of receiving classified information on them. None of the emails Clinton received were properly marked to inform her of the classified status of the information.¹⁶¹ Additionally, investigators found evidence of a conscious effort to avoid sending classified information by writing around the most sensitive material. The investigators did not find any emails in which the sender communicated information to someone not authorized to receive it. In brief, we found no evidence that the decision not to prosecute Clinton under these statutory provisions was tainted by bias or other improper considerations.

We reached a similar conclusion with respect to 18 U.S.C. § 1924, which, as described in Chapter Two, prohibits the "knowing" removal of classified information with "intent to retain" it in an unauthorized location. In determining that a Section 1924 prosecution was not viable, the prosecutors pointed to the same absence of evidence that Clinton had actual knowledge that any of the emails were classified or that she used private servers and a private email account with the purpose or intent of receiving classified information on them. The prosecutors distinguished the Petraeus case brought under this section (discussed in Chapter Two) on the basis that this case involved clear evidence that the defendant knew the information at issue was classified and took actions reflecting knowledge that his handling or storage of it was improper. This was precisely the evidence that the investigators told us was conspicuously absent in the Midyear case. We found no basis to conclude that the decision not to pursue a Section 1924 case was tainted by bias or other improper considerations.

The Department also determined that prosecution under 18 U.S.C. § 2071 was not viable. Section 2071 prohibits the concealment, removal, or destruction of a record filed in a public office. The prosecutors concluded that, as to emails on the

¹⁶¹ As noted above, even the handful of emails in which some paragraphs were marked "(C)" did not bear the required classification headers or footers, and Clinton testified that she did not recognize these paragraph markings as denoting classified information.

Clinton servers that were sent to or from government email accounts, because they also existed on government systems there was no evidence that Clinton or anyone else took any actions to conceal, remove, or destroy them from the government systems on which they resided. As to the work-related emails that were not sent to or from any government system, the prosecutors concluded that such emails were never "filed within a public office." The prosecutors also noted that every prosecution under Section 2071 involved the removal or destruction of documents that had already been filed or deposited in a public office. Additionally, the prosecutors found no evidence that the laptop "culling" process involved the intentional destruction of government records in an effort to conceal them in violation of Section 2071. We did not identify any evidence to suggest that these determinations were based on bias or other improper considerations.

The statute that required the most complex analysis by the prosecutors was 18 U.S.C. § 793(f)(1), which criminalizes the removal, delivery, loss, theft, abstraction, or destruction of national defense information through "gross negligence." Due in part to Comey's July 5 statement criticizing Clinton for being "extremely careless," which many observers equated with being "grossly negligent," this provision became the focus of much of the questioning of the declination decision. As detailed above, the prosecutors identified statements in the legislative history of Section 793(f)(1) that they found indicated that the state of mind required for a violation of that section is "so gross as to almost suggest deliberate intention," criminally reckless, or "something that falls just short of being willful." In addition, based on a review of constitutional vagueness challenges of Sections 793(d) and (e), the Midyear prosecutors stated that "the government would very likely face a colorable constitutional challenge to the statute if it prosecuted an individual for gross negligence who was both unaware he had removed classified information at the time of the removal and never became aware he had done so." Based on all of these circumstances, and a review of the small number of prior civilian and military cases under Section 793(f), the prosecutors interpreted the "gross negligence" provision of Section 793(f)(1) to require proof that an individual acted with knowledge that the information in question was classified. The investigators and prosecutors told us that proof of such knowledge was lacking.

We found that the prosecutors' interpretation of the requirements of Section 793(f)(1) was consistent with prior Department declination decisions that the prosecutors considered and that we reviewed. As noted in Chapter Two, in 2008 the Department declined to prosecute former Attorney General Gonzales based on an interpretation that would have required them to prove that his state of mind was "criminally reckless," or that he had "a state of mind approaching 'deliberate intention' to remove classified documents from a secure location." The same year, the Department declined prosecution of an AUSA for mishandling classified information because of its inability to prove that he was "criminally reckless." Prosecutors told the OIG that they reviewed these declination decisions to see how the Department had construed Section 793(f)(1) in the past. These prior cases demonstrate that the interpretation of the gross negligence requirement of Section

793(f)(1) used as a basis to decline prosecution of former Secretary Clinton was consistent with interpretations applied in prior cases under different leadership.

We found no evidence that the conclusions by Department prosecutors were affected by bias or other improper considerations; rather, we concluded that they were based on the prosecutors' assessment of the facts, the law, and past Department practice. In reaching this conclusion, we recognize that much of the questioning of the Department's prosecutorial decision in this case has focused on whether the Department too narrowly interpreted the "gross negligence" provision of Section 793(f)(1) and should have pursued a prosecution because the FBI found Clinton to be "extremely careless." That, however, is a legal and policy judgment involving core prosecutorial discretion for the Department to make.

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CHAPTER EIGHT: OCTOBER EFFORTS BY FBI LEADERSHIP TO RESPOND TO CRITICISM OF THE MIDYEAR INVESTIGATION

During October 2016, we found that FBI leadership devoted significant time and attention responding to both internal and external interest in, and criticism of, the Midyear investigation.¹⁶² This included remarks by Comey about the Midyear investigation at the FBI's SAC Conference, the development of Midyear talking points for all FBI SACs, a Midyear briefing for the Society of Former Special Agents of the FBI, and continued monitoring of media discussion of the Midyear investigation.

As described in Chapter Nine, these events occurred immediately after FBI Headquarters and the FBI Midyear team were made aware of the potential significance of the Weiner laptop by the FBI's New York Field Office (NYO) on September 28 and 29. And as we further describe in Chapter Nine, at the same time that FBI leadership was taking the steps we describe in this chapter to defend its handling of the Midyear investigation as thorough and complete, it was taking no action in response to the notification by NYO regarding the Weiner laptop.

I. SAC Conference (October 11 to 14)

The FBI held its annual SAC Conference in San Diego, California, from October 11 through October 14. The SAC Conference was immediately followed by the International Association of Chiefs of Police (IACP) Conference from October 15 through October 18. Almost the entire FBI executive workforce attends the SAC Conference and top leadership frequently stays for the IACP Conference as well. Comey and McCabe attended both of the conferences in San Diego.

On October 12, Comey spoke to the SAC Conference about a variety of topics. This speech included lengthy remarks about the Midyear investigation. In part, he stated:

I do want to hit Hillary Clinton's emails which I never tire of talking about, as you know. Because I want to make sure that you are equipped especially to answer questions and comments from our formers who are out trapped in a Fox News bubble and are hearing all kinds of nonsense. I want to make sure you have the information you need to bat some of that stuff down....

At the end of [the investigation], [the team's] view of it was there really isn't anything here that anybody would prosecute. My view was the same. Everybody between me and the people who worked this case felt the same way about it. It was not a cliffhanger. What

¹⁶² For example, during the presidential debate on Sunday, October 9, 2016, and at a campaign rally two days later, then candidate Trump, among other things, criticized the outcome of the investigation of Clinton.

sometimes confuses our workforces, and I have gotten emails from some employees about this, who said if I did what Hillary Clinton did I'd be in huge trouble. My response is you bet your ass you'd be in huge trouble. If you used a personal email, Gmail or if you [had] the capabilities to set up your own email domain, if you used an unclassified personal email system to do our business in the course of doing our business even though you were communicating with people with clearances and doing work you discussed classified matters in that, in those communications, TS/SCI, special access programs, you would be in huge trouble in the FBI....

...Of that I am highly confident. I'm also highly confident, in fact, certain you would not be criminally prosecuted for that conduct....

...What I'm getting from the left is savage attacks for violating policy and law by talking publicly about somebody who wasn't indicted, by revealing facts that you should've been prescribed from revealing by decades of tradition. All of that's nonsense just as this is nonsense. It is a uniquely difficult time. I expect after the election, which is coming up I'm told, we will have probably more conversations about this....

We asked Comey in general about the SAC Conference and whether he recalled receiving criticism about the Midyear investigation while at the conference. Comey said he did not recall specific criticism, but noted that "given how prevalent the criticism was, I would have expected it to be talked about."

II. Midyear Talking Points Distributed to FBI Field Offices (October 21)

On October 17, Page sent an email to Baker and Anderson entitled "MYE TPs (LCP)."¹⁶³ Strzok, the Lead Analyst, FBI Attorney 1, and FBI Attorney 2 were cc'd on the email. The email stated:

Last week, Jim Rybicki and Mike Kortan reached out to a couple of us to ask that we put together some detailed MYE information related to the topics SACs most frequently get asked about. I'm not 100% certain about the uses these talking points will be used to, (I think the current thinking is that they would be provided to SACs to use with formers, in Citizen's Academies, etc.), but attached is a very quick attempt at answering the specific questions requested by Jim and Mike. Could you both please take a look, and edit at will? Thanks.

The Midyear talking points were ultimately distributed to FBI SACs on October 21.

The talking points, which included a section on frequently asked questions, were nine pages and largely tracked Comey's July 5 statement and his July 7 testimony before Congress. At the top of the first page of the talking points was a

¹⁶³ After reviewing a draft of the report, Page asked the OIG to clarify that she did not draft the talking points, but was the conduit through which they were distributed.

note to FBI executives, the first sentence of which stated, "The purpose of these talking points is to provide FBI executive management with a factual basis by which to inform discussions with employees or interested parties in the community."

Comey described the talking points as "part of an effort to make sure that the workforce, given the prominence of the issue, understood why we had done what we did." Comey described this commitment to transparency as part of his management philosophy. When asked if he was concerned with essentially deputizing 56 different spokesmen for the Midyear investigation, Comey stated, "No, in fact I think it cuts the other way. They're all going to be talking about it anyway in lunchrooms, in town halls and sidebars, and so it makes sense to me to equip people who are going to be talking about it anyway with the actual facts and our actual perspective on it."

McCabe described the talking points as part of a broad effort "to keep the SACs particularly more well-informed about all the major issues" the FBI was dealing with. McCabe said that the SACs were being asked about Midyear frequently and this was an effort to "give them some information to work off of." McCabe also noted that the SACs requested this information from headquarters. When asked why the FBI did not just refer the SACs or anyone else to Comey's July 5 statement, McCabe stated that he believed the FBI did send Comey's statement to the field, but "maybe that didn't answer the mail."

Rybicki told us he agreed with the assessments given by Comey and McCabe and that SACs were contacting FBI Headquarters stating "that they weren't getting enough information from headquarters" about the Midyear investigation. Rybicki described the Midyear talking points as an effort by headquarters to arm SACs with information they could use to respond to questions they received.

Priestap attributed the revival of Midyear talking points in mid-October to the "churn" and the fact that "the issue [of Midyear] just didn't go away." Strzok agreed with this assessment, stating:

[B]ecause SACs were still getting an extraordinary number of questions because it had become a campaign issue and that was still being batted around by the Hill and by then candidate Trump. And SACs were getting questions. The thought was, you know, give them enough information so they can at least accurately answer some of those questions rather than just saying, you know, I don't know, or here is what I've read.

III. Midyear Briefing for Retired FBI Special Agents (October 21)

On October 7, the President of the Society of Former Special Agents of the FBI (the "Society") sent an email to Bowdich entitled "Controversy over the Director/Clinton Email Situation." The Society's President stated, in part:

I continue to hear negative comments about the Bureau's handling of the Clinton email controversy from former agents. This is after a

period where things seemed to quiet and comments mellowed. The renewed negative comments appeared to be timed with the release of additional emails in the Clinton situation and with the Director's recent congressional testimony.

I would like to offer a strategy which would possibly lower the rhetoric on this issue. My sense is there are probably 10-15 hard core issues that are at the heart of former agents' discontent. I know what those issues are based on the many emails and phone calls I've received.

My proposal is to have a small group of Society people meet with the Director and discuss those issues and formulate thorough in-depth answers, to be published in the Grapevine, or to be directly emailed to our members....

Bowdich replied that he would be "happy to discuss this weekend." Bowdich told us he recalled the Society wanting a sit-down with Comey, which Bowdich considered a bad idea, and we did not find evidence that the meeting with Comey occurred prior to the election.

However, on October 21, Strzok briefed a group of retired FBI personnel on the Midyear investigation during a conference call. This call was organized by Kortan, and Page also dialed into the call, although she did not speak. Strzok told us that the call was the idea of "the seventh floor," meaning top leadership at FBI Headquarters, and added, "Rybicki might have been the one whose idea it was." According to Strzok:

[O]ur Office of Public Affairs got a bunch of the former folks, like John Giacalone and other former EADs and Deputies and the head of the Society of Special Agents, to essentially say, okay, please sit down with them. And kind of walk through the investigation. And give a very fact-based pattern of, despite the huge turn of everything you're hearing and the allegations and people saying you gave immunity out like candy, and you didn't even issue subpoenas. Sit down to the extent you can and walk through, from the beginning to the end, what we did investigatively.... [S]it there and say...you know, we, we did a thorough job. This is what we did. This is what our mandate was. This is how we went about doing it. You know, here are, there are a lot of falsehoods and exaggerations being thrown around. This is the truth. And again, not giving out classified information, not giving the 6(e) information out. But to the extent that any of these folks, whether they are getting asked by CNN, whether they're appearing in front of a congressional committee, whether they are going to a Citizens Academy, that they have the facts.

We asked Page about this call and she told us:

[W]e got a ton of criticism from the formers about the, why we let her off the hook, and why she should have been prosecuted, and why if she had, if they had done this, they would have prosecuted, all those

sort of criticism that you have surely heard. And so Steinbach and Kortan, Mike Kortan, came up with the idea of well why don't we put Pete on, you know, kind of agent-to-agent to sort of, because we need to get the formers to stop sort of criticizing the, the case. And get them to understand actually the facts and why the facts led to not having a prosecution.

Page described her role on the call as "trying to like give advice along the way to sort of help them explain."

Comey told us that he is not sure he knew about Strzok's call beforehand, but "it rings true to me." We asked him if it was normal to have the agent who oversaw an investigation directly brief the retired agents on that case. Comey stated, "No...there's nothing normal at all about this, but it seemed a reasonable thing to do given the stakes which was the credibility of the organization."

Steinbach described a separate speech he gave to the Washington, D.C., chapter of the Society of Former Special Agents of the FBI in October 2016. A news article from October 31, 2016, reported on Steinbach's remarks and his comments on the Midyear investigation. Steinbach told us that his "intention" in giving the remarks was "to kind of level set that from one investigator to another former investigator. Say, hey look, you know, here is why we did it."

IV. FBI Office of Public Affairs Research Project (October 14 to 31)

On October 14, Rybicki and Kortan assigned an FBI Office of Public Affairs (OPA) Public Affairs Advisor a "research project." The Public Affairs Advisor's initial email to Kortan and Rybicki on October 14 stated, "Per Mike [Kortan]'s suggestion, I'll compile a list of stories from the past 24 hours that I've found that revolve around the recent email story from Fox."¹⁶⁴ Rybicki responded that evening, "Thanks.... This is very helpful. I think the idea is that you would also track all email investigation stories each day and then we can figure out which ones are so inaccurate that we need to respond in some way." Consistent with this assignment, from October 14 and continuing through the end of October, we identified a series of almost daily emails from the Public Affairs Advisor to Kortan and Rybicki highlighting critical media coverage of the Clinton email server investigation. The emails typically included links to and summaries of the articles cited.

We identified October 13 notes from FBI Attorney 1 entitled "MYE—Fox article w/Rybicki + Kortan." The notes included the following entry:

- Special projects person—fact check news of the day

¹⁶⁴ Based on the content of emails and the timing, we believe "the recent email story from Fox" refers to an October 13, 2016 article on Fox News entitled, "FBI, DOJ roiled by Comey, Lynch decision to let Clinton slide by on emails, says insider." See Malia Zimmerman and Adam Housley, *FBI, DOJ Roiled by Comey, Lynch Decision to Let Clinton Slide by on Emails, Says Insider*, Fox News, Oct. 13, 2016.

to SACs

and maybe bkgd to reporters? ✓ OPA

or maybe reach out to people who wrote article

FBI Attorney 1 told us she did not remember this meeting and "had no idea" what the "special projects person" notation signified.

An October 22 email from the Public Affairs Advisor to Kortan and Rybicki provided some insight into his assignment. He stated, "I've done several searches on the topic we discussed today and yesterday, and I'm not seeing anything falling under the themes that we discussed (destruction of materials, dissent [sic], etc.) that is creeping into the main stream."

We asked Rybicki about the Public Affairs Advisor's assignment and showed him examples of the emails cited above. Rybicki did not recall giving the Public Affairs Advisor "any directive to look at specific outlets or anything like that." Rybicki did recall that "the Director had [the Public Affairs Advisor] tracking stories I think from back in, you know, early July, maybe even prior to that about the [Midyear] investigation." Similarly, Kortan told us, "I think the Director or the Director's Office actually asked him during some period of time there just to keep track of the reporting on everything to see how it was, how things were being reported."

The Public Affairs Advisor said he recalled very little about this research assignment "other than...if there was an article that had c[o]me out, and they said can you see if, find the other stories that, that were like this or had this similar narrative, and if it was being picked up." He told us that he "can't imagine [Rybicki] would ask me to track all email investigation stories. As there were a mountain, a flood of them." When we pointed out the specific guidance about "destruction of materials" and "dissent" in the October 22 email, the Public Affairs Adviser said that he assumed the destruction guidance related to an inaccurate story about the destruction of Clinton's server and he was unsure what the "dissent" guidance meant. Kortan told us that he thought the "dissent" reference referred to stories about "all kind of conflict within the [Midyear] team about...the conclusion of the [Midyear] investigation."

The Public Affairs Advisor said he was not sure why he was given this assignment in mid-October, but recalled more coverage of the Midyear investigation "popped up" at this time. The Public Affairs Advisor also could not recall if he was given similar research assignments during other time periods.

We asked Comey about the Public Affairs Advisor and the assignment. Comey told us that he first met the Public Affairs Advisor when Comey worked in EDVA. Comey stated that he recruited the Public Affairs Advisor to SDNY after he became the U.S. Attorney there. The Public Affairs Advisor then followed Comey to the Department when Comey was appointed DAG and later to the FBI after Comey became Director. We pointed out to Comey that almost all of the media coverage identified by the Public Affairs Advisor in the October time period was negative

coverage of the FBI's handling of Midyear and asked if that was a particular focus of the FBI's efforts at the time. Comey stated that "knowing what critics are saying is very, very important." Comey added that this sometimes permitted the FBI to push back on inaccurate reporting.

We asked Comey more generally about the FBI's role in the run up to the election. Specifically, we cited several of the above examples—correcting inaccuracies in the media, issuing talking points to SACs, briefing former agents—and we asked Comey why the FBI was essentially inserting itself into the back and forth dialogue of two political campaigns. Comey replied:

It's not our role, but it's our role to be believed by the American people. And you've heard me say this before, when we rise and say, I found this under the car seat or I heard this statement or I seized this document in the bureau drawer...we have to be believed. And so my worry was, actually I had a great sense of relief after the July 5th thing, like that's over and now what I need to worry about is making sure that I did what I did in July as we talked about a million times because I thought it was best calculated to preserve the institutions, now I need to do my absolute best to make sure that the poison that follows doesn't continue to undercut the credibility of the institution in American life. And so I could have just pulled back, but if I pulled back without any push back, a doubt about the FBI's political independence first would be pushed in from the right and then it would be pushed in from the left and then I'd be left after the election trying to un-ring a bell and a lot of what I was trying to avoid to start with would have crept in and then the FBI would have been, oh they're those people with the Clintons or fix-it, we need to, so I was with the Clintons, then I was with the Trumps, and if—and so it's not, the reason I disagree with your characterization, it's not pushing our way into a political campaign, all this is flowing out from the campaigns and lots of other[s] through the media at the FBI and its reputation with the American people; I have to worry about that in my view.

V. FOIA and Congressional Requests in October

Throughout the month of October, the FBI responded to various Freedom of Information Act (FOIA) and congressional requests for information about the Midyear investigation. McCabe told us, "[T]he fact is, we were meeting about Midyear-related things constantly, like during [the October] time period. FOIA requests, Congressional requests." For example, McCabe, Rybicki, Anderson, Strzok, Page, FBI Attorney 1, Baker, and Priestap were invited to a meeting entitled "Mtg. w/DD RE Decision Points" at 2:30 p.m. on September 29. Contemporaneous notes from the meeting showed that this meeting involved a discussion of congressional requests for materials from the Midyear investigation. In another example, McCabe sent an email to Comey on October 17 to summarize the events of the day. Rybicki and Bowdich were copied on the email. The email stated, in part, "Lots of OPA action on the Midyear investigation email front with eh [sic]

18453

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release of the 302s. Nothing unexpected, will likely drive some additional committee requests...."

CHAPTER NINE: DISCOVERY OF CLINTON EMAILS ON THE WEINER LAPTOP AND REACTIVATION OF THE MIDYEAR INVESTIGATION

In this chapter, we discuss the discovery of Clinton emails on the Weiner laptop and the eventual reactivation of the Midyear investigation. Section I details the discovery of these emails by the FBI's New York Field Office (NYO) and Section II discusses the numerous notifications of this fact to FBI Headquarters in late September and early October. Section III describes the initial response by FBI Headquarters and Midyear personnel to this discovery. Section IV discusses NYO's processing of the Weiner laptop. Section V details the ensuing inaction by FBI Headquarters and Midyear personnel, and the explanations we received from FBI leadership and Midyear personnel for this inactivity. In Section VI, we discuss the Weiner case agent's concerns about this inactivity and, in Section VII, we describe the actions taken by the U.S. Attorney's Office for the Southern District of New York (SDNY) as a result of these concerns. In Section VIII, we discuss the response by the Department and FBI to SDNY's notification about the Weiner laptop. Section IX examines the reengagement on this issue by FBI Headquarters and Midyear personnel. Section X describes the events that led to the decision to seek a search warrant for the Weiner laptop. We provide our analysis in Section XI.

I. Discovery of Emails by the FBI's New York Field Office

A. Seizure of Weiner Laptop and Devices

In September 2016, the FBI and the U.S. Attorney's Office for the Southern District of New York (SDNY) began investigating former Congressman Anthony Weiner for his online relationship with a minor. The FBI's New York Field Office (NYO) was in charge of the investigation. A federal search warrant was obtained on September 26, 2016, for Weiner's iPhone, iPad, and laptop computer. The FBI obtained these devices the same day. The search warrant authorized the government to search for evidence relating to the following crimes: transmitting obscene material to a minor, sexual exploitation of children, and activities related to child pornography.

B. Emails and BlackBerry PIN Message Viewed by Case Agent

The case agent assigned to the Weiner investigation was certified as a Digital Extraction Technician and, as such, had the training and skills to extract digital evidence from electronic devices. The case agent told the OIG that he began processing Weiner's devices upon receipt on September 26. The case agent stated that he noticed "within hours" that there were "over 300,000 emails on the laptop."

The case agent told us that on either the evening of September 26 or the morning of September 27, he noticed the software program on his workstation was

having trouble processing the data on the laptop.¹⁶⁵ The case agent stated that he went into the email folder on the laptop to see why the processing was “hung up.” He explained that, because the laptop was still processing, he was only able to view the emails that were immediately visible in the window on his computer screen. The case agent told us that the first item he clicked on was “either an email between Hillary and Huma [Abedin] or a BlackBerry PIN message.” The case agent stated that, in the window of items visible to him, he saw a “couple” of emails between Clinton and Abedin and at least one BlackBerry PIN message between Clinton and Abedin. The case agent told us that the BlackBerry PIN message in particular caught his attention because his “general understanding” was that those messages reside on a “BlackBerry proprietary-like backbone” and would not “leave much of a trace because it doesn’t go through any external servers other than a BlackBerry server.” When asked specifically how he identified this BlackBerry PIN message as being between Clinton and Abedin, the case agent stated that “it was obvious” from the domains, which were “something like HR15@BBM-dot-something, and HAbedin@BBM-dot.” With respect to the emails he observed, the case agent said he recalled seeing emails associated with “about seven domains,” such as yahoo.com, state.gov, clintonfoundation.org, clintonemail, and hillaryclinton.com.

The case agent told us that he asked another agent to take a quick look at his computer to “make sure, am I, am I seeing what I think I’m seeing?” The other agent told the OIG that he “vividly” recalled what he described as the “oh-shit moment” when the case agent said that Hillary Clinton’s emails were on the laptop. The other agent stated that, while he did not view the content, he believed that he did see the domain portion of the emails and remembered thinking at the time that it was the same domain that had been associated with Clinton in news coverage. The other agent told the OIG that he and the case agent agreed that this information needed “to get reported up the chain” immediately.

C. Reporting of Clinton-Related Emails to FBI NYO Supervisors

The case agent told us that, after speaking with the other agent, he immediately told his Supervisory Special Agent (SSA) what he had observed, including that he had seen “private BlackBerry messages, private messages between Hillary and Huma to which Anthony Weiner was not a party.” The NYO SSA corroborated this account, stating that the case agent came into his office on September 27 and told him “he had discovered emails that could be tied to Hillary

¹⁶⁵ No electronic record exists of the case agent’s initial review of the Weiner laptop. The case agent told us that at some point in mid-October 2016 the NYO ASAC instructed the case agent to wipe his work station. The case agent explained that the ASAC was concerned about the presence of potentially classified information on the case agent’s work station, which was not authorized to process classified information. The case agent told us that he followed the ASAC’s instructions, but that this request concerned him because the audit trail of his initial processing of the laptop would no longer be available. The case agent clarified that none of the evidence on the Weiner laptop was impacted by this, explaining that the FBI retained the Weiner laptop and only the image that had been copied onto his work station was deleted. The ASAC recalled that the case agent “worked through the security department to address the concern” of classified information on an unclassified system. He told us that he did not recall how the issue was resolved.

Clinton.” The SSA told us that he specifically recalled the case agent mentioning domain names associated with Hillary Clinton, the Clinton Foundation, and possibly Clinton for President. The SSA also recalled the case agent telling him “early on” that there were “hundreds of thousands” of emails. The case agent and SSA told us that because the search warrant for the laptop was limited to child exploitation offenses, they agreed during this meeting that the emails were not covered under the search warrant and the case agent should not review those emails. The SSA and the case agent met with their Assistant Special Agent in Charge (ASAC) to make him aware of the emails. The ASAC told us that the SSA and case agent initially briefed him on September 28. The ASAC stated they reported that the laptop was still processing, but there were approximately 141,000 emails of interest at that moment. The ASAC further stated that the case agent and SSA identified seven different domains of interest. The ASAC’s notes from the morning of September 28 corroborated this account. The notes included references to “imaging, processing ½ way through,” “141k emails,” and seven domains, which were @clinton.com/gov, @state.gov, @clintonemail.com, @AW.com, @clintonfoundation.org, @presidentclinton.com, and @hillaryclinton.com.

The ASAC told us that he immediately instructed the case agent and SSA to stay focused on the Weiner investigation and to “stay completely out of” the Clinton email case. The SSA and case agent stated that the ASAC told them to stop reviewing the emails pending further guidance from FBI Headquarters. The ASAC told us that he briefed the information that he received from the SSA and case agent to his immediate supervisor, the Acting SAC (A/SAC), that day. The A/SAC confirmed this account, stating that he was “told there were emails here related to Hillary Clinton and others.”

According to both the A/SAC and NYO Assistant Director in Charge (ADIC) William Sweeney, the A/SAC relayed this information to Sweeney on September 28 immediately after the FBI’s weekly 3:00 p.m. secure video teleconference (SVTC) for SACs, which is a SVTC held by the Director or, in his absence, the Deputy Director or another FBI senior executive. The weekly SAC SVTC is followed by another SVTC for FBI Assistant Directors (AD). Sweeney explained:

Between those two SVTCs, so there’s a pause so all the other offices bail out, and then they basically reset. Between that pause I think is the first time I hear about Clinton domain names on this thing. And that comes from [the A/SAC].... And so he tells me about this laptop. I don’t know if he described [it as] a laptop, but I think he did. Hey, and there’s a whole bunch of Clinton email domain names. I don’t know if he described it as domain names, but, and I wrote them on an index card—which I can’t find for the life of me right now. But it was like Clinton.com, state-dot—like, it was clearly it was her stuff. And that they had about 141,000.

The A/SAC told us that he and Sweeney both had concerns about not exceeding the scope of the Weiner search warrant. The A/SAC’s notes from that meeting stated, “400 PM—Spoke w/Sweeney. Do not do anything with the emails [illegible] move forward with other agents.”

D. Reporting of Clinton-Related Emails to SDNY

On September 27, the case agent also began advising the two SDNY Assistant United States Attorneys (AUSA) assigned to the Weiner case about what he was finding on the Weiner laptop. Many of the case agent's communications with SDNY were captured in a timeline created by the two AUSAs detailing key events in the Weiner investigation in September and October 2016. This timeline was created in late October and AUSA 2 told us that she and AUSA 1 created the timeline because they thought that "at some point somebody is going to want to know sort of what was happening when, and [it's] better to piece this together now." That timeline showed, and the prosecutors confirmed during interviews, that the case agent first told the prosecutors about the presence of Abedin's emails on the Weiner laptop on September 27. Similar communication was also occurring between higher levels of NYO and SDNY. On September 27 at 3:30 p.m., the A/SAC and SDNY Deputy U.S. Attorney Joon Kim spoke by telephone. The A/SAC's notes stated, "Spoke with Joon Kim who advised we need to be very careful looking at that server because it is apparently a shared computer with Huma. SDNY will provide protocol and guidance." Similarly, Kim emailed prosecutors and supervisors at SDNY after the call, "I just got a call from [the A/SAC] about what to do with his computer in light of the facts that there are lots of emails, etc. including what appear to be [Abedin's]. We need to come up with a clear protocol."

The AUSAs provided written guidance to the case agent about how to handle review of the laptop. In a September 28 email to the case agent and the SSA, AUSA 1 advised that the case agent should review "only evidence of crimes related to the sexual exploitation of children, enticement, and obscenity" and instructed the case agent "that all emails and other communications between Anthony Weiner and Huma Abedin (even if there are other parties to the communication) should be sequestered and not reviewed at this time." The case agent agreed and responded that the "[o]nly emails I will review are those to/from Weiner accounts to which [Huma Abedin] is not party."

Later in the day on September 28, the AUSA-created timeline noted:

[The case agent] informed AUSAs that the header info previously described seen in plain view search revealed numerous emails between Abedin and HRC (on which Weiner was not a party) using potentially sensitive email addresses, which indicated that Abedin had used the laptop. [The case agent] said that his chain of command was aware of the information. AUSAs informed supervisors of these facts. Later that day, SDNY USAO and FBI NY leadership discussed situation and agreed that Rule 41 prevented any search in this case beyond scope of warrant, and that any emails outside that scope should be segregated and not reviewed in this case. Same day, FBI NY ASAC [] asked AUSA to forward him the guidance for conducting the search that the AUSA had sent to [the case agent] because FBI counsel was interested in issuing guidance for review and seeing what we had already said on this point.

This timeline entry was consistent with testimony by the case agent and AUSAs during their interviews with the OIG.

II. Reporting of Clinton-Related Emails to FBI Headquarters

A. AD Secure Video Teleconference on September 28

As noted above, ADIC Sweeney and the A/SAC both told us that, just before the start of the weekly AD SVTC on September 28, the A/SAC briefed Sweeney about the discovery of emails on the Weiner laptop that were potentially relevant to the Clinton email investigation. The AD SVTC typically includes the FBI Director, the Deputy Director (DD), the Associate Deputy Director (ADD), the General Counsel, all Executive Assistant Directors (EAD), all ADs, and the ADICs of the New York, Los Angeles, and Washington Field Offices. However, on September 28, Comey testified in front of the House Judiciary Committee until approximately 1 p.m. Comey and others told us that Comey was not present for the SVTC, and the SVTC was also not included on his calendar for September 28. Instead, the SVTC was chaired by then DD McCabe, which McCabe told us would be the typical practice in the absence of the Director. McCabe's calendar for September 28 included time for the weekly SVTC at 3 p.m. The FBI was unable to provide the OIG with a roster of attendees for the September 28 SVTC. However, based upon the leadership structure of the FBI at the time, there would have been approximately 39 FBI executives on the SVTC, including the DD, the ADD, 6 EADs, 28 ADs, and 3 ADICs. Any executive on leave or travel would have typically been replaced by a subordinate.

Sweeney stated that, during the September 28 AD SVTC, he reported that NYO agents involved in the Weiner investigation had discovered 141,000 emails on Weiner's laptop that were potentially relevant to the Clinton email investigation. Paul Abbate, then the ADIC for the Washington Field Office, recalled Sweeney stating that NYO had discovered "a large volume of emails that might be relevant to the Clinton email matter" on a computer in the Weiner investigation. Abbate told us that he believed Sweeney also provided specific numbers and added that Sweeney "very much emphasized the significance of what he thought they had there." Abbate described the moment as like "dropping a bomb in the middle of the meeting" and stated that "everybody realized the significance of this, like, potential trove of information."

Sweeney told the OIG that McCabe responded to his briefing by stating, "Hey, I'm going to Quantico. I'll call you en route." Abbate also recalled someone, possibly McCabe, telling Sweeney that they would "talk offline afterwards." McCabe's Outlook calendar for September 28 showed that he was scheduled to be at Quantico at 6:00 p.m. that evening.

McCabe told us that he did not remember Sweeney briefing the Weiner laptop issue on a SVTC, although he said it was possible that Sweeney had done so. McCabe explained that the reports by the ADICs on the SVTC are usually "like 10 seconds." We showed McCabe his notes from September 28, which contained the

following entry: "NY - ... Weiner - atty took data off cloud - 2007 emails." McCabe told us the notes did not refresh his recollection but agreed that they "would be a pretty good indication" that he was made aware of the issue.

Other witnesses also provided recollections of this briefing. Counterintelligence Division AD Priestap (one of the 39 FBI executives who regularly participated in the weekly AD SVTC) told us he vaguely recalled Sweeney mentioning the discovery of emails on the Weiner laptop that were potentially relevant to the Midyear investigation in a forum similar to the AD SVTC. The Human Resources Division AD told us that he recalled Sweeney mentioning "emails relevant to the Clinton investigation" that had been discovered on a laptop associated with Anthony Weiner. He added, "I remember Bill saying like hey, we think there's some stuff on here you guys may not have seen."

Comey, who was not present for the SVTC, stated that he was unaware that Sweeney had reported the discovery of Clinton emails on the Weiner laptop during the September 28 AD SVTC. When asked if this was information he would have expected to have been told, he stated, "Yeah, I would think so," adding that he was surprised that he had not been informed.

B. McCabe Post-SVTC Phone Call and Meeting on September 28

1. Phone Call with Sweeney

Sweeney told us that he had not heard back from McCabe after the September 28 SVTC, so he called McCabe on his drive home that evening. Phone records show two calls from Sweeney to McCabe on September 28. The first occurred at 4:51 p.m. and lasted for 9 minutes and 50 seconds, and the second occurred at 5:03 p.m. and lasted for 56 seconds. In addition, Sweeney's Outlook calendar for that day contained the following entry at 5:00 p.m.: "Telcal w/DD re: Weiner invest & Garner." Sweeney stated that NYO personnel had continued processing the laptop in the time since the initial notification on the AD SVTC and he had been informed there were now 347,000 emails on the laptop. Sweeney told us that he informed McCabe that there were now 347,000 emails.

McCabe, who told us that his earliest recollection of learning about the Weiner laptop was in a telephone call with Sweeney in late September or early October, recalled Sweeney informing him that NYO had seized a laptop from Anthony Weiner "and they thought there would be Clinton stuff in it." When asked what Sweeney specifically told him, McCabe stated, "I just remember him saying we think, you know, like, we've got this laptop and we opened it up, and it looks like there's stuff on there from Clinton, and, you know. Oh, my gosh, what do we do kind of thing." McCabe also recalled that Sweeney made "very clear" that "it was a large volume" of emails. McCabe stated that he understood "large volume" to mean "like many thousands of emails." McCabe recalled telling Sweeney that Counterintelligence Division personnel and NYO personnel should connect "[t]o figure out, like, what do we have or what do we do with this?"

McCabe stated that shortly after this call he contacted Priestap and said, "[Y]ou need to get somebody up to New York right away to take a look at what they have because it might be Clinton emails." Priestap told us that he did not recall either this conversation or McCabe telling him to send a team to New York to examine the Weiner laptop. As described below, Priestap's emails on the evening of September 28 reflect that he spoke with Sweeney and then instructed Strzok to have someone from his team contact NYO regarding the information.

2. Meeting with Strzok and Priestap

Our review of Strzok's text messages revealed that McCabe discussed the Weiner laptop with Strzok and Priestap on September 28. Later that same day, Strzok and Page discussed the meeting in a series of text messages. Their exchange is quoted below. The sender of each text message is identified after the timestamp.

7:25 p.m., Strzok: "Got called up to Andy's earlier...hundreds of thousands of emails turned over by Weiner's atty to sdny, includes a ton of material from spouse. Sending team up tomorrow to review...this will never end...."

7:27 p.m., Page: "Turned over to them why?"

7:28 p.m., Strzok: "Apparently one of his recent texting partners may not have been 18...don't have the details yet"

7:29 p.m., Page: "Yes, reported 15 in the news."

7:31 p.m., Strzok: "And funny. Bill [Priestap] and I were waiting outside his door. He was down with the director...."

7:51 p.m., Strzok: "So I kinda want to go up to NY tomorrow [sic], coordinate this, take a leisurely Acela back Friday...."

Strzok stated that he was sure that "got called up to Andy's" referred to McCabe's office, but he had no recollection of that meeting. Strzok could not recall who first told him about the Weiner laptop, only recalling that someone told him that some "Clinton-type emails" had been discovered in New York. Strzok's notes from September 28 stated, "NY invest Weiner sexting 15 y'o. Weiner atty produces copy of everything Weiner has on iCloud to SDNY. Significant email from Huma [NFI – their email vs. her independent email]? Relevance to MYE, Clinton Foundation? MYE go review." Strzok stated that he initially planned to send a team to New York to review the emails, but that a conference call with NYO was scheduled instead. (This conference call, which occurred on September 29, is discussed below.)

Strzok told us that he did not consider the new information all that noteworthy because "throughout the summer [we had] retired Foreign Service officers...any number of people coming and saying, hey, I've got, you know, a handful of emails related to, you know, the Secretary or Cheryl Mills or something. And so we would run if they, we thought they had potential merit. We would track them down." Strzok conceded that this lead was more credible since it came from

an FBI field office and involved information obtained from Abedin's husband. He added, though, "[T]here is no inkling, there is not a shadow of the, you know, what's going to unfold a month later."

Page said she believed the September 28 text message from Strzok was the first time she heard about the emails on the Weiner laptop and told us that she knew little information about it. Page explained that she was "not really that involved" in "most of the October stuff." Page stated her lack of involvement was due in part to the FBI's Russia investigation. Page explained that the many of the supervisors on the Midyear team were also assigned to the Russia investigation and they were "super-occupied" with the Russia investigation during October. Page stated that most of her information about the Weiner laptop came from either Strzok or FBI Attorney 1.

We showed McCabe these text messages and he said he did not recall talking to Strzok about the Weiner laptop on September 28. McCabe also did not recall Sweeney describing the quantity of emails numerically, other than to say there were a "large volume." When asked about Strzok's text message that he was "sending [a] team up tomorrow to review," McCabe noted that the text message would be consistent with what McCabe told Priestap. McCabe told us that the issue of the Weiner laptop "kind of falls off my radar" at this point, but when he reengaged with the team at a later point (he could not recall the amount of time that had elapsed), he discovered, "that [the team] did go up, but there [was] a problem, a legal, you know, an access problem because what they want to look for [was] not covered within the warrant, and yada, yada, yada." McCabe could not recall who told him this information about the trip to New York, but speculated it was Priestap.

C. Comey and McCabe Communications After AD SVTC on September 28

Phone records show two phone calls between McCabe and Comey on the evening of September 28. The first call was from McCabe to Comey at 7:34 p.m. for 1 minute and 31 seconds. The second call was from Comey to McCabe at 8:36 p.m. for 8 minutes and 13 seconds. McCabe told us he could not recall the content of either phone call. When asked specifically if they discussed the issue of the Clinton emails on the Weiner laptop, McCabe said he did not recall and noted that he would talk with Comey at the end of the day on an almost daily basis. Additionally, as noted above, Strzok's text message on September 28 reflected that, while Strzok was waiting outside McCabe's office to meet with him regarding the Weiner laptop emails, McCabe "was down with the director." McCabe told us that he did not recall that and noted that the text message did not "seem consistent" with McCabe's calendar, which showed that he was at Quantico the evening of September 28.

McCabe said he recalled talking to Comey about the Weiner laptop issue "right around the time [McCabe] found out about it." McCabe described it as a "fly-by," where the Weiner laptop was "like one in a list of things that we discussed." McCabe continued, "[A]nd it would have been like, hey, Bill Sweeney called. This is

what he has. I'm going to have [the Counterintelligence Division] take a look at it. I'll let you know." McCabe stated that he would have told Comey about the importance of sending a team up the next day in order "to get eyes on this thing and figure out what we have." McCabe did not recall Comey "weighing in on it at all." Given the scrutiny of the Clinton email server investigation, we asked McCabe why he believed Comey did not have a stronger reaction to this information and whether this was considered a "big deal." McCabe responded:

Well, it was a big deal to me. I can't tell you what he was thinking when I told him about it. But I, I represented to him that we were taking steps to figure out what we had and would come back with some sort of an assessment as to what we need to do. So, I mean, there's, I'm not sure that there's anything else that he would have said to do.

Comey told the OIG that he recalled first learning of the presence of the additional emails on the Weiner laptop at some point in early October 2016, although Comey said it was possible this could have occurred in late September. Comey explained:

I was aware sometime in the first week or two of October that there was a laptop that a criminal squad had seized from Anthony Weiner in New York and someone said to me that—and I'm thinking it might have been Andrew McCabe, but someone said to me kind of in passing, they're trying to figure out whether it has any connection to the Midyear investigation. And the reason that's so vague in my head is I think—I never imagined that there might be something on a guy named Anthony Weiner's computer that might connect to the Hillary Clinton email investigation, so I kind of just put it out of my mind.

Comey described himself as having a "reasonably good memory" and speculated, "[T]he reason I didn't index it is, it was a passing thing that almost seemed like he might be kidding, and so I don't think I indexed it hard. And I think it was the beginning of October and then I think it disappears from my memory. And then I remember for certain when Andy emails me, I think it's the 27th [of October] saying, the Midyear team needs to meet with you urgently or right away or something."

We asked Comey to explain why this initial information about the Weiner laptop did not "index" with him given that Abedin was closely connected to Clinton. Comey stated, "I don't know that I knew that [Weiner] was married to Huma Abedin at the time." Comey told us that even if he had had known that Abedin was married to Weiner "it wouldn't have been [at the] top of [my] mind." Comey also stated that the manner in which he was informed of this information affected his reaction. Comey told us that he was "quite confident" that he was not told this information in a "sit down" briefing in his office. Instead, Comey thought it most likely that McCabe was "passing the office" and said, "hey Boss, I just want you to know that the criminal squad in New York has got Anthony Weiner[s] laptop and I think it may have some connect to Midyear." Comey said he knew that "if it's

important, Andy [McCabe] will make sure that I focus on it.” Comey said that it “could be” that whoever told him about the Weiner laptop “understated the significance of the information.” He said, “The notion that I knew something important was on that laptop and did what—concealed or hid it or something?—is crazy.”

We asked Comey if McCabe told him that Sweeney had called McCabe about the emails on the Weiner laptop. Comey responded, “No.” We also showed Comey the Strzok text messages and asked him if he recalled being briefed in person by McCabe on September 28. Comey said he did not recall that occurring. Comey stated that he would have expected to be briefed if NYO had discovered a large volume of Hillary Clinton’s emails. However, if NYO had only discovered a large volume of Abedin’s emails, he was not sure that information would be briefed to him since there would not necessarily be a connection to Midyear. He acknowledged, however, that it “would be significant” if the laptop contained Abedin’s emails on a clintonemail.com domain.

We asked Comey, “[I]f [McCabe] had been told on September 28th that there were...at one point 141,000 and at another 347,000 emails related to the Clinton investigation and didn’t tell you, would you be concerned by that?” Comey responded, “Sure, I’d want to know why, what the thinking was.” Since Comey told us he did not recall being told this information, we asked for his reaction. Comey stated:

I’m mystified. First of all doubting, worried that I’m crazy is my first instinct, but I don’t think I’m crazy. You said and I think I would remember if I were being told, so the question is, why wouldn’t you tell me. I always try and keep an open mind and maybe some explanation and one I can’t see, but I’d want to know, why, what’s the thinking. Why didn’t the, given the Director is closely associated with this, why, what’s the reasoning. Maybe there is one I can’t see, but I certainly would want to ask.

As detailed in the next section, Sweeney told us he also called EAD Coleman, EAD Steinbach, and AD Priestap on September 28 regarding the Weiner laptop emails. We asked Comey if any of those officials or anyone else informed him at this time (late September) of Sweeney’s report that Midyear-related information had been discovered on the Weiner laptop. Comey responded, “Unless I’m having a stroke, no. I don’t remember any of that.” We also asked Comey if he would have expected someone on his leadership team other than McCabe to bring this to his attention. Comey stated that he would “not necessarily” have expected this if “they were assuming that the Deputy Director is briefing the Director.” He described the FBI as “a big chain of command place.”

D. Sweeney Calls Other FBI Executives on September 28

In addition to the phone call with McCabe detailed above, Sweeney told us that on September 28 he also called Criminal EAD Randy Coleman, National Security Branch EAD Mike Steinbach, and Counterintelligence AD Bill Priestap with

updates on the Weiner laptop. Sweeney stated that he told all three essentially the same thing that he told McCabe, that NYO had continued processing the laptop and the number of emails was now at 347,000.

1. Criminal EAD Coleman

Sweeney's phone records show several calls with EAD Coleman during the afternoon of September 28. Coleman said Sweeney told him that NYO had reviewed a computer belonging to Anthony Weiner and had found thousands of "emails that pertain to Clinton...[during] her time as the Secretary of State and to Huma that were connected with the Midyear investigation." Coleman stated that he told Sweeney to make sure "to let management and headquarters know" about this development.

Coleman drafted a "Memorandum for Record" on November 7, 2016, documenting his involvement in the discovery of Clinton emails on the Weiner laptop. Coleman's memorandum stated, in part:

On 09/28/2016, EAD Randall Coleman received for [sic] call from AD Bill Sweeney indicating team of Agents investigating Anthony Weiner sexting case had discovered emails relevant to Clinton email investigation. AD Sweeney advised team had halted further review and would be requesting guidance from FBIHQ. EAD Coleman agreed and advised he would notify FBI General Counsel James Baker and DD Andrew McCabe. The call was concluded. On 09/28/2016, immediately after call with AD Sweeney, Coleman telephonically contacted DD McCabe at his office number to advise him of the circumstance described by AD Sweeney. DD McCabe advised he had already been made aware of matter.

Coleman told us that he called McCabe immediately because he "considered this important." Coleman stated that McCabe's secretary answered his call and he told the secretary to get McCabe on the phone because Coleman "need[ed] to talk to him." Coleman described his conversation with McCabe as "very short." Coleman stated, "I said, hey listen, I just got called by Sweeney. Here is what he told me. And I think Andy is like, yeah, I already know. I got it." After his conversation with McCabe, Coleman told us, "[T]here was no doubt in my mind when we finished that conversation that [McCabe] understood the, the gravity of what the find was."

McCabe told us he did not recall receiving a phone call from Coleman. He told us Coleman's memorandum did not refresh his memory, but that he had no reason to doubt Coleman's account.

2. National Security EAD Steinbach

Steinbach stated that he believed the discovery of Midyear-related material on the Weiner laptop was first discussed at a meeting that he was unable to attend. Steinbach recalled receiving a phone call from Sweeney "just to give me a heads up saying, hey, you weren't here but just FYI we may have found something."

Steinbach told us this conversation may have occurred in late September. Steinbach said he could not recall specifics and stated that he did not think NYO "knew exactly what they had" at the time, but added that he received "some indication that there may be some Clinton domain emails."

3. Counterintelligence AD Priestap

On September 28, at 7:04 p.m., Priestap sent an email to Strzok, with the Lead Analyst and the NYO A/SAC copied, that stated, "I spoke to Sweeney. Our agent and analyst should call [the NYO A/SAC].... Sweeney said [the A/SAC] will get them access to what they need." At 9:26 p.m. on September 28, Sweeney sent the following email to Priestap, "Bill, The NYO POC for the sensitive email issue is A/SAC [] (cc'd). He can coordinate for your team. Have a quiet night. – Bill."

Priestap told us he could not recall if he heard about the discovery of Midyear-related material on the Weiner laptop during the September 28 AD SVTC. However, Priestap stated that he thought Sweeney "mentioned something to that effect in one of those" forums. Priestap told us that believed that he first learned of this issue in a phone call with Sweeney. Priestap described what information he was provided, stating:

When I first was told about it, if I'm recalling correctly, it was something to the effect of it's Anthony Weiner's laptop or computer.... His wife's emails are on it. And his wife has email communication with the former Secretary, or probably then Secretary. And that the time frame overlaps with some of the time frame we were interested in. In other words, it was explained like this is in...the Midyear lane. I don't remember getting into any volume then, although...one of my first questions, if not the first question is, I would ask is what's the volume.

Priestap told us that he "would have certainly talked" to his immediate supervisor, EAD Steinbach, about this information because "the bottom line is this was explosive." Priestap stated that he did not recall talking to McCabe directly, although he stated that he may have if Steinbach was out of the office that day. Priestap stated that either he or Steinbach would have advised McCabe of "something of this magnitude" very quickly. Priestap described the information he received from Sweeney about the Weiner laptop as "hot information" and stated, "[I]t's the type of thing where I don't need an appointment. I walk upstairs and just, I make sure they know that before they go home."

III. Initial Response of FBI Headquarters to Discovery of Midyear-Related Information on the Weiner Laptop

A. Phone Call between Sweeney and Priestap on September 29

On September 29 at 6:09 a.m., Sweeney sent the following email to Priestap, "Can you give me a call on the ride in? Not clear under what authorities we have. Thx." Sweeney told us that he conveyed to Priestap in the phone call that NYO did not have the legal authority to look at the Midyear-related material on

the Weiner laptop. Priestap told us he could not recall this specific conversation, but noted that it would be standard practice to examine what legal authority was needed. At 8:12 a.m., the A/SAC forwarded to Sweeney the 7:04 p.m. email from Priestap the night before. The A/SAC stated, "FYI There is no way that they can just look at the emails. I even went over the guidance from SDNY. Not happening unless they have some authority I am in the dark on. Let me know [sic] if you want to discuss."

At 9:02 a.m. on September 29, Sweeney forwarded Priestap the September 28 email from SDNY AUSA 1 (detailed above) advising the Weiner case agent on the limited scope of the Weiner search warrant and instructing him not to review any communication to which Abedin was a party. Priestap forwarded the email to FBI Attorney 1 and commented, "Per our conversation." Priestap described FBI Attorney 1 as someone he typically relies on when legal issues arise. FBI Attorney 1 confirmed that Priestap told her about the issue with the Weiner laptop and asked her "to follow up on it." We asked FBI Attorney 1 what she understood this to mean. FBI Attorney 1 told us that she believed there was a question of whether the Midyear team should go to New York and review the Weiner laptop. FBI Attorney 1 continued, "And, you know, we had over the course of the investigation, we would have various means of people saying, we have all of Clinton's emails. And so this was just to follow up on that. This obviously is more, a more solid lead than some of the other things we had, but it was just to find out really what were the details of this. Should we send a team up there."

B. Conference Call between NYO and Midyear Personnel on September 29

Early on September 29, the Midyear SSA called the NYO A/SAC supervising the Weiner investigation and, according to the A/SAC, informed the A/SAC that he was the supervisor of the Clinton email server investigation. The A/SAC and SSA both told us that they had a brief discussion about what NYO had found on the Weiner laptop. The A/SAC stated, "I'm sure I told him exactly what I'd been representing to others, that, look, there are a lot of emails. You may want to get a search warrant. We can't, we're not looking at anything. That's the normal stuff I would have said." The SSA stated that the A/SAC told him, "[W]e've got some Clinton emails here, explained what it was. And they weren't sure what to do with it in that it was outside the scope of what they were working on." The SSA stated that the A/SAC explained that NYO wanted to notify FBI Headquarters about what they had found and were also seeking "guidance on how to deal with this."

The A/SAC and SSA scheduled a conference call, also known as a Lync call, between NYO and Midyear personnel at 11:30 a.m. that morning. Nine people participated in this conference call. This included the NYO A/SAC, ASAC, and SSA supervising the Weiner investigation; a NYO SSA assigned to public corruption matters; and five members of the FBI Midyear team: the SSA, FBI Attorney 1, Agent 2, and two analysts. FBI Attorney 1 told us that she participated in the call at the request of Priestap. The Midyear SSA told us that he gave Strzok a "heads up" that the SSA was going to have a conference call with NYO about the Weiner laptop.

1. Testimony and Contemporaneous Notes from Call Participants

We interviewed all nine participants to the September 29 call and reviewed the contemporaneous notes taken by eight of them (one participant, the NYO SSA on the Weiner investigation, took no notes).

The NYO participants told us that they provided the Midyear team with an overview of what they had found on the Weiner laptop. This included the fact that the laptop contained “hundreds of thousands” of emails potentially relevant to the Midyear investigation. Both the ASAC and public corruption SSA recalled the number 141,000 being provided. Each of the NYO participants said that the connection to both Hillary Clinton and the Clinton email server investigation was made clear on the call. The ASAC and public corruption SSA told us that NYO reported that there were emails addresses that appeared to be “directly tied” to Abedin and Clinton. NYO personnel stated that they informed the Midyear team that the laptop was “still downloading.” The public corruption SSA’s notes from the call also included the notation “2007 present,” which he explained was the timeline for “the span of information that they had seen to date on the laptop.” Each of the NYO participants told us that the limited nature of Weiner search warrant was discussed. The ASAC stated, “I know that we said to them that the warrant didn’t authorize us to look at these particular emails.” He continued, “And [the Midyear personnel] understood that. There was no pushback from them on that.” NYO personnel told us that they were given no tasks to complete after the call. The ASAC explained, “I had the feeling like the ball is down in somebody else’s court. Because...we were done.”

The Midyear SSA stated that he “knew right off the bat” that NYO had emails from Clinton’s server and that they “appeared to be government in nature.” As for volume, the Midyear SSA recalled that “it wasn’t a one-off” and NYO had seen either “hundreds or thousands” of emails. Either way, the SSA described it as a “significant number.” The Midyear SSA also told us that “content-wise” NYO “had only seen a couple” of emails because “they couldn’t review content.” He said he understood that NYO had seen more of Abedin’s emails, but they had seen Clinton emails as well, including emails from the @clintonemail.com domain. The Midyear SSA told us that he asked NYO personnel why they thought these were Clinton’s emails and NYO responded, “Well, because they’re her initials”, indicating that they had seen something beyond the domain name. The Midyear SSA stated that Midyear personnel were informed that the Weiner search warrant had a very limited scope. He stated that Midyear personnel knew that they “were going to need to get a warrant to review this.” We asked the Midyear SSA if NYO had mentioned seeing BlackBerry domain emails on the Weiner laptop. The SSA responded, “Yeah.... [T]hey had looked from the forensic side, that they had determined that it appeared to be like an entire” file. The Midyear SSA described the conclusion of the call as follows:

Well, from my standpoint, I said we were going to, we were going to address whether we had enough for a warrant. And that we would run this up the chain on our side. And...they agreed especially that they

would go back to SDNY and see what the exact parameters of what they could and couldn't do, because they were not going to cross a line that would compromise their case.

Agent 2, Analyst 1, and Analyst 2 told us that NYO reported a large volume of emails on the laptop and noted that they were still processing the laptop. Notes for each of these three referenced "350k items," with Agent 2's notes also stating, "350k items in messages tab." All three told us that NYO reported the presence of emails related to Clinton. Analyst 1 stated that NYO reported that they had seen metadata showing "what they were characterizing as like [Hillary Clinton's] email addresses." Analyst 1 stated that the Midyear team was trying to determine if these were Clinton's or were from the clintonemail.com domain. Analyst 2 stated that she had only a vague recollection of the call, but told us that she recalled that NYO had seen a large volume of emails between Clinton and Abedin. Agent 2 stated that NYO reported seeing emails from the clintonemail.com domain. Analyst 1's notes referenced the following domains: state.gov, clinton.com, hillary@clinton.com, clintonfoundation, and clintonemail.com. Analyst 2's notes included a reference to "2007 dates on PC." Each of the three also said that NYO emphasized the limited nature of the Weiner search warrant and the fact that the Midyear team was "going to need to get a warrant to review this." Agent 2's notes included the following references: "SDNY advised to avoid emails" and "not looked @ any content." Analyst 2's notes included the following references: "SDNY—said put them aside" and "Huma has not waived marital [sic] priv." Analyst 2 described the limited nature of the Weiner search warrant as an "overarching theme" of the call.

FBI Attorney 1 provided a slightly different account of the call. She stated that NYO said on the call that it was still processing the evidence and they were not sure "whether or not it had anything to do with" Midyear. FBI Attorney 1 explained:

We didn't know if it was the right timeframe. So, you know, Huma we knew, Huma had...worked for [Clinton] for a long time. So we weren't sure of exactly, one, what, how much of the information on this was Huma's versus Weiner's. Because we thought it was his laptop. And then, two, whether it would have been relevant to the right timeframe. We were looking for Clinton's emails, not Huma's emails. We also knew Huma had a clintonemail address, so she could have been using that for her own personal activities, so we just didn't know the full extent of what was on there.

When asked about volume, FBI Attorney 1 told us that she "knew that it was a large amount of data" and FBI Attorney 1's notes from the call referenced "over 350k items." However, FBI Attorney 1 added:

We always got things that said the data was larger than, it always ended up getting narrowed down after we got more, got it processed more. It doesn't change for me though, even though the 350k that's what we think. Like, there was also all the talk about it hadn't been

fully processed. So, to me, that number was just sort of a preliminary number.

FBI Attorney 1 stated that NYO said it had seen either Clinton's emails or emails from the clintonemail.com domain. FBI Attorney 1 told us that NYO relayed that "SDNY was very concerned about staying within the scope of their warrant." FBI Attorney 1 stated that the Midyear team told NYO, "well when you get further clarity about what this laptop is, get back to us and let us know, and we'll try to figure out what to do from there." She told us that Midyear personnel specifically requested that NYO look for emails related to the clintonemail.com domain. When asked whether NYO was supposed to create an inventory or list for Midyear, FBI Attorney 1 stated that she "thought we talked about [the Weiner case agent] not being able to do that. Because of the instructions. I mean, because of how the warrant was drafted." FBI Attorney 1's notes were entitled "NYO Lync - MYE Emails" and included references to "image - not complete b/c so large," "SDNY told them to avoid emails," "over 350k items - including emails + IMs different addresses including state.gov Clinton.com," "not sure if they saw clintonemail.com," "WFO interest - @clintonemail.com @state.gov," and "2009-2013 time frame / early next week."

2. Post-Call NYO Communications

Shortly after the call concluded, at 11:52 a.m., the NYO ASAC forwarded to the Midyear SSA and FBI Attorney 1 the September 28 email from AUSA 1 to the Weiner case agent (detailed above) outlining the limited scope of the Weiner search warrant and providing instructions for the case agent's search of the laptop. The ASAC told us that he forwarded this email to make sure "they understood the directives that we had from [SDNY] in terms of limitations and really kind of under what circumstances we would be able to look at anything that was attached to an email." Witnesses in NYO and SDNY told us that the case agent was told not to affirmatively search the emails for information unrelated to the Weiner child exploitation investigation. At 12:42 p.m. on September 29, the A/SAC informed Sweeney by email: "Just had the lync call with HQ/WFO. They were misinformed about the accessibility. All good for now. We can discuss further if you like."

The NYO A/SAC and ASAC told us they did not recall any tasking of NYO related to the material on the Weiner laptop that was potentially relevant to the Midyear investigation. The A/SAC told us, "I fully expected [the Midyear team] to reach back out to ask me for certain things, and, and for assistance of some sort. I know that's what I'd do." The NYO A/SAC, ASAC, and SSA told us they had no further contact with FBI Headquarters about the Clinton email issue until late October. The SSA told us that he felt like NYO had done its job reporting the information to FBI Headquarters and he "assumed they were doing something."

3. Post-Call Midyear Team and FBI Headquarters Response

We asked members of the Midyear team what steps were taken immediately after the September 29 call. FBI Attorney 1 recalled discussing the September 29 call with both Strzok and Deputy General Counsel Trisha Anderson. FBI Attorney 1

stated that it was clear the Midyear team would need “additional process or consent” to be able to do anything with the laptop. Despite this, FBI Attorney 1 stated that she did not reach out to the AUSAs at SDNY at this time. FBI Attorney 1 explained, “[A]fter the SVTC, I thought, well I’m not sure we’re that far along, and I think I get what, where New York is. And so I didn’t feel the need to reach out to SDNY at that time.” We asked FBI Attorney 1 whether NYO was supposed to follow up with the Midyear team or the Midyear team was supposed to follow up with NYO after the call. FBI Attorney 1 stated, “I don’t have an answer to that. I don’t think it was very clear. I would have expected New York to follow up because they were the one that had to process the computer....” We asked FBI Attorney 1 what she expected NYO to do as a result the call. FBI Attorney 1 stated:

I would have expected that the computer would have been processed, New York would have been continuing their investigation, and to the extent that they saw more things that could have helped us—that would have been relevant to our case—they would have reached back out and told us like they did on [October] 26th or whatever that date was, on that Wednesday.... It just took three weeks to do that.

Strzok told us that either the Midyear SSA or FBI Attorney 1 briefed him on the call. In a 12:26 p.m. email to Strzok on September 29, the Midyear SSA stated, “No travel planned for tomorrow. [FBI Attorney 1] will brief you at 1 pm.” FBI Attorney 1 told us she recalled this discussion with Strzok. She stated:

...Bill [Priestap] was wondering if we were going to send a team to New York, to go with them and review this material with them. And based on the call, I didn’t think it was the right time yet. Obviously that’s not my decision as counsel, but I did explain to Pete, like, we didn’t know the volume. We didn’t know if it was related to our material. The search warrant was about Weiner’s activities, so there would be limited utility in sending a team to New York at this point.

Strzok’s notes from September 29 stated, “NY: SW – Saw some @clintonemail.com, @state.gov.” Strzok did not recall being briefed in any detail, but stated that he was told about the limited scope of the Weiner search warrant. Strzok told us his takeaway was:

[T]hat there is material there.... [T]he upshot of what I recall is, you know, we need to, we need to kind of go down this route. It isn’t a crank lead. It is something that we need to look into. There is work they’ve got to do. We’re not there yet, but it isn’t something we can just say, ah, let, there’s nothing relevant there.

Strzok said the next step was for NYO to process the laptop and for NYO to look for the type of data on the laptop that the Midyear team would need. Strzok continued:

[A]nd...when you’re done with that, you know, call us back and let us know. And again...there is no sense of this is going to be huge and

horrible and the election is a month away, and God, are we going to say something, do we need to say something to Congress? This is just, oh, good lead and, you know, we'll get to the end of the year, next year. We'll get to it as they process through it.

Anderson told us she vaguely recalled a "preliminary conversation" with FBI Attorney 1 on this issue. At 10:27 a.m. on September 29, FBI Attorney 1 sent a message to Anderson on the FBI's Lync system that stated, "Sorry I missed the 10:15. I was meeting with [Priestap] about a new development in MYE. I believe he also reached out to you, but you were in a meeting. I can bring you up to speed when you have a minute." Anderson said she recalled a "very skeletal" overview of the facts, including that some Abedin materials may have been found on a laptop obtained in an investigation of Weiner. Anderson said that she was informed that it was unclear what was on the laptop at this point and NYO was going "to try to figure out as much as they could" consistent with the terms of their search warrant. When asked if FBI Attorney 1 would have been responsible for following up with NYO after the call, Anderson stated, "[I]t wouldn't have been [FBI Attorney 1's] job to call New York and say, hey, where are you guys on this? You know, as a lawyer, that's not what she would have been doing." Anderson said she thought it would have been the job of "the Midyear investigative team" to reach out to NYO to find out "where things stood." Anderson did not recall hearing about the Weiner laptop issue again until approximately October 27.

Priestap's notes from September 29 contained the following entry: "Baker Voluntarily provided emails from 2007 on (347,000 emails) - state.gov, - foundation.gov." Priestap explained that the "Baker" notation meant that either Priestap received this information from FBI GC Baker or Priestap felt that he needed to tell Baker this information. As noted below, Baker recalled first learning about the Weiner laptop issue from EAD Coleman on October 3. Priestap provided the following interpretation of his notes, "[M]y guess, I'm not positive, is that this was an indication, you know, we thought the time frame was roughly 2007 on, there were roughly this many emails [347,000], and that it included both" State Department and Clinton Foundation business. Priestap told us that he met with the Lead Analyst, Strzok, and FBI Attorney 1 on a nearly daily basis during this period and the information in his notes may have been provided by one of those individuals.

McCabe told us he could not recall if he learned about the September 29 call before or after it occurred.¹⁶⁶ He stated that the call was the Midyear team's way "of following through with my direction to them to kind of get their hands around this thing and let us know what do we have." We asked McCabe if anyone informed him of the limited scope of the Weiner search warrant at this time and he stated that he did not recall being told that until later. McCabe stated if he had been told

¹⁶⁶ As noted in Chapter Eight, McCabe held a meeting on the afternoon of September 29 entitled "Mtg. w/DD RE Decision Points" that Rybicki, Anderson, Strzok, Page, FBI Attorney 1, Baker, and Priestap were invited to attend. Contemporaneous notes from the meeting reflected a discussion of congressional requests for materials from the Midyear investigation. The notes did not reference the NYO call.

about the limited scope of NYO's search warrant on September 29, "I would have said well what do we have to do to get another warrant if that's the route we need to take."

C. McCabe Call to NSD Leadership on October 3

NSD Principal Deputy Assistant Attorney General (DAAG) Mary McCord told us that on or about October 3, she received a phone call from McCabe. McCord stated that this was the first time she learned that there was a potential issue relating to emails in an iCloud account used by Abedin and Weiner. We found no evidence of any other contact between the FBI Midyear team and the Midyear prosecutors regarding any material obtained from Weiner until October 21, as discussed below.

McCord described their conversation as follows:

[W]hat he says to me is that there's this criminal case. New York is investigating Anthony Weiner. And his counsel...provided a copy of the content of his iCloud account. It includes a substantial number of emails from his wife's email account. And Andy [McCabe] said he was sending a Midyear agent up to look at what it is. You know, hopefully it's all duplicates and we don't have to, you know, worry about, about it. And at the time, he was, he was saying to me you may want to touch base with [SDNY U.S. Attorney] Preet [Bharara] to make sure he's not like charging ahead like doing some sort of process, like, that would bump up against the work of Midyear.

According to McCord, she and McCabe thought that these emails were likely duplicates given the "thorough scrub of everything" during Midyear. McCord told us that she did not think this was "a major thing," but agreed that they should "make sure that there's nothing new there."

McCord's notes from the call stated, "Andy McCabe. NY CRM investigating Anthony Weiner, his counsel provided copy of content of his i-cloud account – includes substantial # of emails from wife's email account. Andy sending mid-year agent up to look at what it is. Hopefully all duplicates. May want to touch base w/Preet to make sure doesn't charge ahead. Consent?" McCord stated that the "Consent?" entry was a thought about whether consent would have been "good enough" to allow a forensic review to determine if these were duplicate emails. After the conversation, McCord stated, "And then, honestly, I get busy with things. I don't really think much about this again until, and I did not call Preet. I just decided it wasn't" warranted at that time. McCord stated that she did not hear about the issue again until McCabe called a second time later in October. As we discuss below, we believe this call occurred on October 25.

McCabe only vaguely recalled a conversation with McCord. He told us that he believed that he contacted McCord, but he thought that the conversation occurred later in October.

NSD DAAG Toscas recalled being informed of McCabe's call to NSD in early October and stated that he thought it related to emails in an iCloud account used by Weiner and Abedin. Toscas did not remember the exact timing of the call and thought that McCabe called NSD AAG John Carlin instead of McCord. Nevertheless, the information provided by Toscas was similar to McCord's testimony. Toscas stated that he did not hear about this issue again until he received a phone call from SDNY Deputy U.S. Attorney Kim on October 21. We discuss that call below.

We also asked NSD AAG Carlin about an early October call between either McCabe and himself or McCabe and McCord related to the Weiner investigation. Carlin, who had announced on September 27, 2016, that he would resign as AAG effective October 15, 2016, told us he did not recall a conversation between McCabe and himself or McCabe and McCord.

D. FBI Headquarters Discussions on October 3 and 4

1. EAD Coleman October 3 Meeting with Baker and Bowdich

As noted previously, Coleman drafted a "Memorandum for Record" on November 7, 2016, documenting his involvement in the discovery of emails on the Weiner laptop that were potentially relevant to the Midyear investigation. The memorandum contained an entry for October 3 that stated, "On or about 10/03/2016, EAD Coleman verbally advised OGC Baker and Associate Deputy Director David Bowdich of the matter described by AD Sweeney in a 'sidebar' meeting after normal DD [Deputy Director] daily update meeting. OGC Baker advised he was not aware of the matter and would need to look into it further." Coleman told us that he believed McCabe was out of the office on October 3 and ADD Bowdich was leading the daily update meeting. McCabe was scheduled to travel to New York on October 3 to attend a symposium the following day.¹⁶⁷ Coleman told us that after a meeting on October 3, he informed Bowdich and Baker about the information he had received from Sweeney concerning the laptop. Bowdich told us that he did not "specifically remember" this discussion with Coleman, but had no reason to doubt the memorandum's accuracy.

We showed Baker the Coleman memorandum and Baker stated that Coleman's account "sounds about right." We asked Baker what he was told about the Weiner laptop. Baker stated:

Pretty basic, but along the lines of we have this laptop in this other, unrelated case. And somehow they figured out that there were some additional emails on there that were outside the scope of the warrant, if I recall correctly, that they were working on, and that they needed to do more work to get access to them, and they would be...working on it to try to get access to it.

¹⁶⁷ In McCabe's absence, Bowdich as ADD would run the daily update meeting.

Coleman's memorandum stated that Baker planned to look into the issue further. We asked Baker about that and he stated he did not recall specifics, but he believed he asked "somebody on the Midyear team" about the issue.

In the Coleman memorandum's next and final paragraph, which is undated, it stated, "It was determined by DD McCabe and EAD Steinbach that any follow on investigative activity concerning the emails located on Anthony Weiner's laptop would be reviewed by the MIDYEAR investigative team." Coleman said he did not recall why this entry was undated and was unsure at what point this occurred. He told us that he shared an office with Steinbach and that this could have been a dialogue between himself and Steinbach at some point later in October.

2. Email from Bowdich to Comey on October 3

On October 3, at 7:42 p.m., Bowdich sent an email to Comey and McCabe briefing them on items of interest from that day. Rybicki was cc'd on the email, which was entitled "Daily Report." After highlighting three unrelated items, Bowdich stated, "I asked Randy Coleman to stay behind tomorrow to quickly brief you on the Weiner matter which is growing more complicated, but it can wait until then." Bowdich told the OIG that he did not remember what was "growing more complicated" with the Weiner matter. Bowdich noted that when dealing with issues of this type he typically "would have pushed that up to Andy, and/or the Director, and Baker would have been right in the middle of it."

Comey told us he did not recall this email and also did not recall what was "growing more complicated" in the Weiner matter. Comey stated that he was "only dimly" aware of the Weiner child exploitation investigation at this point in time.

We also asked Rybicki about this email. Rybicki stated that he did not know what was meant by "the Weiner matter which is growing more complicated." Rybicki told us that he first recalled hearing about the issue of Clinton emails on the Weiner laptop on October "26th into the 27th." When asked if this email made Rybicki think that he and Comey were aware of the Weiner laptop issue earlier than he recalled, Rybicki responded, "I don't think so.... I remember on the 27th right when I heard about it thinking this is [unintelligible]. That would, that's my first recollection as well of hearing anything about it."

3. Meeting between Comey and Coleman on October 4

Comey's Outlook calendar for October 4 contains an entry for "Morning Briefs" from 8:15 a.m. to 9:00 a.m. that is immediately followed by an entry for "Meeting w/EAD Coleman" from 9:00 a.m. to 9:30 a.m. Coleman told us that he could not recall this briefing with Comey. Coleman stated that staying behind to brief Comey would be consistent with normal practice, but added that he did not recall this specific instance. Coleman told us that it would be unusual to have a one-on-one meeting with Comey and told us someone else would typically be present at these briefings, such as the DD or ADD. While not remembering this meeting, Coleman speculated that this may have been a one-on-one meeting with Comey to discuss Coleman's upcoming retirement from the FBI in December 2016.

Coleman told us that he kept regularly took notes in a journal. Coleman's notes from October 4 contained the following entry:

- (1) Anthony Wiener [sic]
- (2) [Unrelated]
- (3) Wiener [sic] – texting 15 yo – Sexually Explicit
 9/26 – Federal SW – iPhone/IPAD/Laptop
 Initial analysis of laptop – thousands emails
 Hillary Clinton & Foundation
 Crime Against Children

We asked Coleman about these notes and he told us that, given their placement in his notebook, the notes would most likely represent information he was briefed on first thing in the morning by his subordinates in the Criminal Investigative Division. Coleman stated that he may have passed this information to other FBI executives after the morning briefing with the Director, but he could not remember if that occurred here.

Comey told us that he did not recall the briefing by Coleman reflected in his calendar. We asked Comey if this briefing could have been the time in early October that he recalled being told about the connection between Midyear and the Weiner investigation. Comey stated:

It's possible, possible this is what is knocking around in the back of my head, but I really, see I know the frailty of memory from having done a lot of this work, at least in my memory it's much more of an informal than a meeting about it, but it's possible.

We showed Coleman's notes from October 4 to Comey. Comey did not recall being briefed on the information contained in the notes. When asked about Coleman, Comey said he "thought very highly of him" and described him as a "straight shooter."

We asked Comey if this information was something that he likely would have "put out of his mind" after being informed of it in early October. Comey responded, "I don't think so unless, unless the way it was passed to me was with some, you don't need to do anything. We're doing, we're running it down or something. Something that pushed it down on my priority list."

When asked if he recalled this meeting between Coleman and Comey, Rybicki stated that he did not. Bowdich told us that it is possible that he would have been at this meeting between Comey and Coleman, but he had no recollection of it. McCabe continued to be on travel and was not in Washington, D.C., on October 4.

IV. NYO Completes Processing of Weiner Laptop Around October 4

As noted previously, the Weiner case agent told us that he noticed on September 26 or 27 that the software program that he was using on the Weiner laptop was having trouble processing the data on it. The case agent told us that he reached out to a CART examiner for assistance and the CART examiner decided to process the laptop on the CART examiner's workstation. CART logs show that the CART examiner received the laptop on September 29 and imaged, or made an exact copy of, the laptop the same day. The CART examiner told us that he began using FBI software programs to analyze and categorize the contents of the laptop the next day and that was completed by around October 4. In total, there were approximately 675,000 emails on the laptop.

The CART examiner told us once the processing was completed he conducted a spot check of the results to ensure everything had processed completely. The CART examiner stated that the first file he clicked on was an image of a document marked "Sensitive But Unclassified" with the initials "HRC" written on it in a blue felt-tipped marker. The CART examiner stated that he immediately ceased his examination and reported this to the case agent and the CART supervisor. The case agent recalled the CART examiner showing him this document and told us that he commented, "We can't be looking at this."

V. FBI Headquarters Inaction and Explanations for the Delay

After October 4, we found no evidence that anyone associated with the Midyear investigation, including the entire leadership team at FBI Headquarters, took any action on the Weiner laptop issue until the week of October 24, and then did so only after SDNY raised concerns about the lack of action. In this section, we detail the explanations given to us by FBI Headquarters and Midyear personnel about the reasons for this inaction.

When we asked McCabe about this period from late September until late October and the lack of activity on the Weiner laptop, he stated:

During that period in between, you know, I expected that we were making progress on it. I probably met with some combination of the Midyear team every day of that month. Near to every single day on a whole kind of range of Midyear-related issues. And I would have expected that if they were having problems with that issue and not making progress on something that I had put on, on their radar as an important thing, that that would have come to my attention. And it didn't. So I don't, I can't sit here and tell you with perfect clarity why it didn't, whether they thought they had it under control but they didn't, or it was being ignored and not given the attention it, it needed, but it, it didn't come to me during that time.

McCabe stated that he was "absolutely" disappointed that the team had not found out more information about what was on the Weiner laptop during this period.

McCabe added, "So to find out that we didn't know the answers to any of those questions at the end of October was very concerning to me."

FBI Headquarters and Midyear personnel provided multiple explanations for the apparent inactivity on the Weiner laptop during this period. Explanations included claims of delay by NYO in processing the Weiner laptop, a lack of specific information about what had been discovered on the laptop, a focus on the Russia investigation, the fact that the Weiner laptop was not considered a priority during this period, and legal impediments to reviewing the materials on the laptop. We discuss each of these explanations below, recognizing that these explanations are interrelated and not mutually exclusive.

A. Delays in Processing the Weiner Laptop

Numerous witnesses cited delays in processing the Weiner laptop by NYO personnel as a primary reason for the apparent inaction by FBI Headquarters and Midyear personnel. Strzok told us that, after the September 29 call, he understood that NYO was going to continue processing the laptop and then when they were "done with that, you know, call us back and let us know." FBI Attorney 1 also stated that the Midyear team was waiting on NYO to finish processing the laptop. When asked why it would take so long, FBI Attorney 1 stated that this "is not that long of a period of time for the Bureau to take to get something done." Rybicki told us that he learned after the fact that NYO had "technical issues" with the laptop, but he did not know "why it took a month." Comey recalled being told after the fact of a "technical delay" or "something about a glitch with getting a mirror image of the Weiner laptop," which ultimately "had to be sent to the Operational Technology Division."

Page stated that NYO was "having trouble" processing the Weiner laptop and "that gap represents the time that New York is getting a workable image of the Weiner laptop because it is so large." She noted that there was "no particular urgency" on this issue, however. Page explained, "[N]ot to say it's not an important case, but it's not, there's no specific reason why like all hands on deck need to be helping New York CART sort of get this thing loaded or whatever else." Later in the interview, Page again reiterated that NYO did not really know what they had "until they finally sort of have it up and imaged, and start doing their...forensic review." She continued:

And the reality is, emails had been found lots of other places that ultimately weren't worth pursuing lots of other times. And so, until we understand that, that the volume of emails is not simply the volume with respect to Weiner, but that it represents Huma emails as well, you know, my understanding is, like, it's just not super-significant yet.

B. Prioritization of Weiner Laptop and Russia Investigation

Priestap told us that the Weiner laptop was not his top priority at this time due to his involvement in the Russia investigation. Priestap explained:

[I]f you're wondering, you know, hey, this is a really big deal, and why aren't you asking about it every, every minute of every day type thing, whatever, it was the, we went from this thing to the Russia thing. And the Russia thing took them as much as my time as this thing before. And I don't want to say distracted, but yeah. My focus wasn't on Midyear anymore, even with this new, yes, we've got to review it. Yes, it may contain evidence we didn't know, but I'd be shocked if it's evidence that's going to change the outcome of the case because, again...aside from this, did we see enough information previously in which I felt confident that we had gotten to the bottom of the, of the issue? I did. And so, again, I would have been shocked if it was information that, and so the bottom line is, as important as this was, it was, some ways it was water under the bridge. The issue of the day was what's, what's going to be done to possibly interfere with the election.

In written comments provided to the OIG after reviewing the draft report, Priestap further explained:

With respect to the criticism that the FBI should have placed a higher priority on obtaining legal authority to access and review the potentially relevant emails on [the Weiner] laptop, I maintain that we made the correct judgments. In this regard, our work on [Midyear] was extensive and included the review of tens of thousands of emails, (over 7 million email fragments), and interviews of more than 70 individuals. We amassed and analyzed an enormous volume of information, reaching the recommendation in July 2016 that no prosecution be initiated. I sincerely doubted that the emails identified on [the Weiner] laptop were likely to alter our informed view of the matter, and therefore did not prioritize the follow-on work over higher priority matters.

Regarding these higher priority matters, Priestap stated that in late September 2016 Comey had tasked the Counterintelligence Division with a multifaceted effort to protect the 2016 election from foreign interference. This tasking included the implementation of "a national supply chain risk management effort to identify vulnerabilities in voting infrastructure," engaging state election officials about potential threats, the investigation of "whether foreign adversaries were attempting to interfere with or improperly influence the" 2016 election, and the investigation of certain U.S. persons' contacts with foreign adversaries. Priestap told the OIG that, as the AD of the Counterintelligence Division, he was in charge of all of these efforts. Priestap stated:

In sum, I do not believe that the Bureau made a conscious decision to specifically assign a lower priority to the review of [the Weiner] laptop, but rather—given the other extremely significant matters being handled by the Counterintelligence Division and the time typically associated with obtaining legal authority and processing data—it was not viewed as a mission critical activity. My team was prepared to

pursue this matter in the normal course, recognizing that it might not be completed until after the presidential election.¹⁶⁸

Strzok echoed this notion that the Weiner laptop was not initially his highest priority. He stated:

This is just, you know a lead that likely is going to result in some investigation, maybe some data we're going to have to review, you know, January, February 2017, whenever it gets done. In my experience, it is not unusual at all for processing to crap out and have to get restarted, or to have problems with certain types of media.... This isn't a, a ticking terrorist bomb. This is a, you know, again, despite the high-profile nature of the client, a, and a very serious case, something where it goes in the queue and gets prioritized and they're going through it. So, if you were to ask me, you know, were there alarm bells going off in my head on October 15th that we haven't heard back? No, absolutely not. I didn't expect, it would not have surprised me to have heard back in early-November or to have heard back in early-December.

Strzok explained that he had no crystal ball that could have foreseen the events that ultimately occurred in late October and he thought it "a misplaced assumption and belief that there should have been some sense of urgency after September 29th, and we should have reprioritized everything we were doing to go after this. We did not know what was there." Strzok also cited his assignment to the Russia investigation as an explanation for why the Weiner laptop was not seen as his top priority. He stated:

We were consumed by these ever-increasing allegations of [Russian] contacts and coordination and trying to get operations up, and following people.... Doing a lot of stuff that was extraordinarily consuming and concerning. So this pops up, and it's like...another thing to worry about. And it's important, and we need to do it. Okay, get it handled. Come back to us, and then back to this, you know, is the government of Russia trying to get somebody elected here in the United States?"

Likewise, Page stated that she and other members of the Midyear team were "super-focused" on the Russia investigation at this point.

We also asked Comey whether the fact that key members of the Midyear team, including Strzok, were also assigned to the Russia investigation contributed to the delay in reviewing the Weiner laptop. Comey told us that he remembered

¹⁶⁸ Priestap further explained his thought process at the time, noting that he considered the Weiner laptop to be an important issue when first informed about it on September 28 and made sure it received his immediate attention. However, Priestap told us that once he was informed of potential legal and technical issues regarding the laptop, he believed from past experience that those issues would take time to resolve and therefore expected no immediate update.

being told that the team assigned to the Russia investigation was “overwhelmed.” Comey continued:

It was Russia, Russia, Russia all the time.... Well not just Russia, Russia, Russia. [It was also] Midyear Congress, Midyear Congress – because they had, somebody had to review the documents that were going up to Congress and there was a constant demand for documents and briefings on Midyear and Russia at the same time.

We asked Comey if, in retrospect, the team should have been bigger. Comey responded, “Yeah maybe, yeah.... I think that’s a reasonable question to ask and I’m sure in hindsight I needed another Strzok and maybe I needed two teams, and you always have in the Bureau, the challenge is the talent is not necessarily that deep when it comes to counterintelligence matters, people who can work this stuff.”

C. Lack of Specific Information

We were also told that FBI Headquarters and Midyear personnel were waiting on NYO to provide more specific information about what was on the Weiner laptop. FBI Attorney 1 explained:

And you also have to remember too, like, throughout this whole investigation, we would randomly occasionally get someone that said, oh, I know where all the emails are. So...this was more certain than that. But it wasn’t, it wasn’t like, oh, I think we have the smoking gun on this laptop. We better hurry up and make sure we get it processed. It was like let’s see what the process turns out to be. There may not be that much, you know, it may just be duplicative of what we already have.

When asked if she was receiving updates during this period, FBI Attorney 1 stated that she was not and did not know if anyone else was getting updates either. FBI Attorney 1’s supervisor, Anderson, also told us that her understanding was that NYO was processing the materials and trying to figure out what they had during this time period.

Strzok discussed this issue of a lack of information as well, stating that only when NYO reported “the scope and content” of what was on the laptop did it become a significant development. Specifically, Strzok cited the facts that the Weiner laptop contained “a variety of backups from Huma’s devices,” it contained information she forwarded to Weiner, and, most importantly, had BlackBerry backups from “the missing three months.”¹⁶⁹

¹⁶⁹ As noted in Chapter Five, the 30,490 emails provided by Clinton’s attorneys contained no emails sent or received by Clinton during the first two months of her tenure, January 21, 2009, through March 18, 2009, and the FBI investigative team was unable to locate the BlackBerry device she used during that time, although they were able to obtain some of the BlackBerry emails from other sources. Witnesses, including former Director Comey, told us that they believed these missing emails could contain important evidence regarding Clinton’s intent in setting up a private email server.

The Midyear SSA told us that he believed NYO was able to provide more information on the volume of emails on the laptop later in October. When asked if there was any additional information provided beyond volume, the Midyear SSA stated that there may have been "something more specific too" that he could not recall at the time of our interview. The Midyear SSA told us:

I remember walking away the first time thinking that...we probably had enough [probable cause to get a search warrant to review the emails]. But I understood why that discussion wanted to be made, is that, you know, well let's see what happens.... [T]hat lag in time was as a result of allowing [the Weiner] investigation to proceed. And then they contacted us when they felt that they had a lot more information that needed to be addressed by, by our team. And then we proceeded with moving forward.

The Midyear SSA stated that he did not seek an update from NYO in this period because it was "an [FBI] OGC [and] SDNY type thing."

D. Questions About Legal Authority

Another reason cited by McCabe, Baker, and Priestap for the inactivity during this period was the need to resolve questions about the legal authority. Priestap explained:

[W]hat is our legal basis by which we can conduct the review? And again...it's not the first time, and...I run into this all the, all the time with trying to cross the T's, dot the I's on the legal end before we take activity. Now, again, why it took so long, should it have took so long? I don't know. But I saw it as a, let's, we don't have, I don't have knowledge that we have the legal authority to say go.

Baker stated that he thought the Midyear team was "struggling with trying to figure out" a way to access the material on the Weiner laptop since "it was beyond the scope of the original search warrant." Baker told us he thought that the FBI and SDNY "were continuing to work on" overcoming these "legal complications."

FBI Attorney 1 did not share this view. She told us that "it had already been concluded" on the September 29 call that the Midyear team would not be able to use the Weiner search warrant to review the laptop and, instead, the Midyear team "would need additional process or consent if we needed to do anything." The Midyear SSA agreed with this assessment, stating that there was a "consensus" on the September 29 call that the only way they would be able to review the Clinton emails on the Weiner laptop was with a new warrant.

E. Strzok Timeline

We asked Strzok about a document he subsequently created entitled "Weiner timeline" and included in an email he sent to Page on November 3, 2016. The document contained the following entries for the period from September 26 through October 21:

- 09/26/2016 – NYO obtains [search warrant] for Weiner laptop
- 09/28/2016 – ADIC NY notes potential MYE-related material following weekly SAC SVTC
- 09/29/2016 – Conference call between NYO and MYE team
 - NYO notes processing is crashing system and not complete, but during troubleshooting observes material potentially related to MYE (clintonemail.com and state.gov domains) seen during course of review
 - No numbers/volume available
 - Discussion about ability to search for material determines such activity would be outside scope of warrant
 - Request to NYO to gather basic facts (numbers, domains, etc) based on their review
- Approx. 10/19/2016 – NYO completes carving
 - NYO observes [Sensitive But Unclassified] attachment
- 10/21/2016 – 6:00 PM DOJ/NSD advised MYE leadership that SDNY informed them of MYE-related media on Weiner media

We asked Strzok why he created this timeline on November 3, which was days after Comey sent his letter to Congress informing it that the FBI had discovered additional emails. Strzok stated:

Because I think the, the question was, okay, here we are. We're having to reopen and it's right in the middle of, you know, the last week of the election. You know, potentially we would need to do this. And that people are going to come afterwards and say either you delayed to help Hillary, you delayed to help Trump, whatever it was. Let's, while it is fresh or as fresh as possible, let's kind of document out. And I, you know, again, I don't know if the political hue and cry had already begun of, you know, conspiracy. But I think the sense was, okay, let's kind of write down and while it's still sort of fresh, yeah.

Strzok told us he could not remember if he was directed to put together the timeline. He stated that he sent the timeline to Page for "her and Baker" and FBI executive leadership "consumption."

As for the contents of the timeline, we asked Strzok about the September 29 entry of "[n]o numbers/volume available" and how that squared with his September 28 text message to Page that stated there were "hundreds of thousands of emails" on the laptop. Strzok replied:

Because this is specific to the Huma Midyear stuff. I think when they gave that volume, and I don't know what, again, I wasn't there, my

read of that text is that New York said they had in total hundreds of thousands of emails, Anthony's, Huma's, who-knows-who. But that the sum total were hundreds of thousands. And within that, there was more than the de minimis amount of Huma stuff. And that is a result of the conference call, they were able to say we don't know how many we have.

We also asked Strzok about the October 19 entry and why he wrote that it was approximately October 19 when NYO had completed "carving" the laptop.¹⁷⁰ As noted in Section 9.IV above, processing of the Weiner laptop was, in fact, completed by NYO around October 4 and the Sensitive But Unclassified attachment was observed by NYO around the same time. Strzok stated, "It was roughly that time table. And I don't know how I arrived at the 19th, if there was a notation that clearly indicated that on or prior to that date, something had come in."

We asked Strzok to respond to the accusation that this inaction on the Weiner laptop was a politically motivated attempt to bury information that could negatively impact the chances of Hillary Clinton in the election. Strzok responded:

No, I'd say quite the opposite.... I think every act was taken with an objective reason to say, okay, here is why we did it, and why it was prioritized the way it was.... [The Midyear SSA] and [FBI Attorney 1] were the ones engaging with New York. You had agents and AUSAs up in New York who were involved in pursuing it, that ultimately, you know, we sat there, and we decided when we found out what was there that we needed to get the case and reopen the case. And if you want to pitch in the conspiracy perspective, everything we pushed to do, the Clinton side is going to say, what you did absolutely killed my chances at the election. So, you know, pick it. Which is your conspiracy?... [I]t angers me because there is not, if there were bias, and there is not bias, if there were bias...it didn't result in actions which would be indicative of bias.

VI. Concerns of Weiner Case Agent and Conversation with SDNY AUSAs on October 19

As early as October 3, the case agent assigned to the Weiner investigation expressed concern that no action appeared to be occurring with regard to the Clinton emails discovered on the Weiner laptop. He began documenting these concerns in contemporaneous emails and also discussed his concerns with his supervisor and the SDNY AUSAs assigned to the Weiner investigation. In an October 3 email, the case agent stated that a "significant number" of the emails on the Weiner laptop "appeared to be between Huma Abedin and Hillary Clinton (the latter who appears to have used a number of different email addresses)." The case agent also noted in that email that he was "obviously" unable to "review any emails

¹⁷⁰ "Data carving" is typically the last phase of processing an electronic device and involves recovering files and data that have been either deleted or no longer contain complete metadata.

to which Anthony Weiner is not a party (such as emails between Ms. Abedin and Mrs. Clinton)." The October 3 email was serialized and inserted into the Weiner case file in Sentinel, the FBI's case management system, on October 5.

The case agent told the OIG that no one had contacted him about the laptop and, as the case agent, "the only person who has the authority to release that laptop's image is me." The case agent explained his growing concern by stating:

The crickets I was hearing was really making me uncomfortable because something was going to come crashing down.... And my understanding, which is uninformed because...I didn't work the Hillary Clinton matter. My understanding at the time was I am telling you people I have private Hillary Clinton emails, number one, and BlackBerry messages, number two. I'm telling you that we have potentially 10 times the volume that Director Comey said we had on the record. Why isn't anybody here? Like, if I'm the supervisor of any CI squad in Seattle and I hear about this, I'm getting on with headquarters and saying, hey, some agent working child porn here may have [Hillary Clinton] emails. Get your ass on the phone, call [the case agent], and get a copy of that drive, because that's how you should be. And that nobody reached out to me within, like, that night, I still to this day I don't understand what the hell went wrong.

The case agent told us that he scheduled a meeting on October 19 with the two SDNY AUSAs assigned to the Weiner investigation because he felt like he had nowhere else to turn. He described AUSA 1, the lead prosecutor, as a friend. He added, "I felt like if I went there and [AUSA 1] got the attention of Preet Bharara, maybe they'd kick some of these lazy FBI folks in the butt and get them moving." The case agent stated that he told the AUSAs in detail about the emails he had seen between Clinton and Abedin. He continued:

And I told her, I'm a little scared here. I don't know what to do because I'm not political. Like I don't care who wins this election, but this is going to make us look really, really horrible. And it could ruin this case, too. And...I said the thing that also bothers me is that Comey's testimony is inaccurate. And as a big admirer of the guy, and I think he's a straight shooter, I wanted to, I felt like he needed to know, like, we got this. And I didn't know if he did.

The AUSAs both told us that the case agent appeared to be very stressed and worried that somehow he would be blamed in the end if no action was taken. AUSA 1 stated that the case agent worried that the information relating to the Clinton emails had not been provided to the right people and AUSA 2 observed that the case agent "was getting, for lack of a better word, paranoid that, like, somebody was not acting appropriately, somebody was trying to bury this."

VII. SDNY Response to Weiner Case Agent Concerns

A. SDNY Internal Discussions on October 20

On October 20, 2016, the AUSAs met with their supervisors at SDNY and informed them of their conversation with the Weiner case agent. The AUSAs stated that they told their supervisors the substantive information reported by the case agent, the case agent's concerns that no one at the FBI had expressed interest in this information, and their concern that the case agent was stressed out and might act out in some way.

SDNY Deputy U.S. Attorney Joon Kim said that after being briefed on this issue and discussing it with U.S. Attorney Preet Bharara and other supervisors in the office, SDNY leadership made the decision to call the Office of the Deputy Attorney General (ODAG) about this information. As Kim told us, "I remember our discussing it and saying, look, it's not really our business. And, but maybe to be safe we should reach out and call."

Bharara also recalled being briefed on the case agent's concerns and being told that the discovery of the Clinton emails had been "reported up the chain of command at the FBI." He stated that SDNY recognized that they had no involvement in the Clinton email server case and "wanted to stay in our lane." Nevertheless, given the concerns and "agitation" of the case agent, Bharara said that he and the SDNY leadership team decided to contact ODAG in case "something had fallen through the cracks."

B. SDNY Calls to ODAG and NSD on October 21

The following day, October 21, Kim reached out to ODAG about this issue. Kim told us that he was unsure about whom to call because SDNY did not know which office had handled the Clinton email server investigation. Kim called the Associate Deputy Attorney General (ADAG) who was SDNY's primary point of contact in ODAG. Kim stated that the ADAG told him to contact DAAG George Toscas in NSD. The ADAG told us that she vaguely recalled a conversation where she put Kim and Toscas in touch with each other to discuss an issue arising out of the Weiner case. The ADAG stated that PADAG Axelrod "wanted me to make sure that SDNY and George from NSD connected directly so that whatever it was that SDNY was doing would be coordinated with whatever it was NSD was doing." The ADAG told us that Axelrod "check[ed] in with me a number of times" to ensure Kim and Toscas had connected. At 7:08 p.m. that evening, the ADAG emailed Axelrod, "One last FYI—I also spoke with George [Toscas] earlier to give heads up and then to Joon [Kim]. They have since connected and will take it from there." Axelrod recalled that SDNY contacted the ADAG about the presence of Clinton emails on the Weiner laptop. Axelrod told us that this call "set off alarm bells" and he wanted to make sure the information was immediately provided to Toscas and NSD.¹⁷¹

¹⁷¹ Axelrod also recalled hearing about the Weiner laptop issue at some point prior to this call. He told us that he thought SDNY had called the ADAG at an earlier point to inform ODAG that some of

Kim did not recall the specifics of his conversation with Toscas, but stated that he generally gave Toscas an overview of the Weiner investigation and told him he wanted to make sure those connected with the Clinton email server investigation were aware of the information the case agent had found. Toscas told us the information provided by Kim was much more substantive than the prior information that NSD had received from McCabe on October 3. Toscas described his call with Kim as "the first time that I actually got information like something you could actually think through and analyze." Toscas's notes from the call stated:

10/21/16, 3:50 p.m.: Anthony Weiner. N.C. 15 yr-old → asked her to send video/photos. Got his laptop/phone etc. + got SW for child exploitation → FBI following normal protocol (to/from images). Although its his laptop, his wife apparently used it. 100K's of her emails some to/from HRC.

Told [NSD Prosecutor 1] to tell Pete [Strzok] + DHL [Laufman] 10/21 4:05 p.m.

According to Toscas, his notes represent in essence the entirety of the information he received from Kim. In our interview, Toscas specifically commented on the fact that he was told by Kim that there were hundreds of thousands of Abedin's emails on this laptop, some of which were to and from Clinton. Toscas stated that he immediately called NSD Prosecutor 1 and told him to contact Strzok and Laufman. Toscas explained that he meant Prosecutor 1 should tell them "that there's this issue and we're going to be getting together to talk...and get more information on it."

At 4:04 p.m. on October 21, Kim emailed the SDNY prosecutors and leadership to inform them that he had just spoken with Toscas. AUSA 2 then called the Weiner case agent to let him know that SDNY had raised this issue with Main Justice. The case agent emailed AUSA 2 that evening, "Thanks for the call. I feel much better about it. Not to sound sappy, but I appreciate you guys understanding how uneasy I felt about the situation." The case agent also emailed his SSA and another agent at 5:51 p.m.:

Just got a call from SDNY. [The AUSAs] understood my concerns yesterday about the nature of the stuff I have on Weiner computer (ie, that I will be scapegoated if it comes out that the FBI had this stuff). They appreciated that I was in a tight spot and spoke to their chain of command who agreed.

So they called down to DOJ, who will apparently now make a decision on what to do. This is a good thing according to SDNY because it means we (FBI C20) went above and beyond to make known that the material was of potential concern. It is out of my hands now so now I know I did the right thing by speaking up.

Abedin's emails had been found on Weiner's laptop. Axelrod stated that this information "didn't trigger any alarm bells."

SDNY probably will talk to crim management at NYO to inform them that DOJ is aware and handling. I feel much better about this now. But I wanted you to have a heads up in case [the ASAC] called you.

At 4:41 p.m. that same day, Kim called the A/SAC to inform him of the call to ODAG. The A/SAC's notes stated, "Joon Kim – Weiner – looking at the computer – ton of emails related to Huma that we are not looking at. SDNY reached out to DOJ and advised there are a lot of emails between Huma and Hillary and others but that we are doing nothing and have no basis to do that." The A/SAC told us that he was "glad" that Kim had made the call, explaining that "I've been an agent for 21 years, so I knew that this was something I would try to get probable cause for."

C. SDNY Memo on October 21

On October 21, the SDNY Chief Counsel began drafting a memorandum summarizing SDNY's involvement with the issue of the Clinton emails on the Weiner laptop. Bharara told us that he instructed the Chief Counsel to write the memorandum in order to "put down, precisely, and with a hundred percent accuracy, you know, what we did, what the timeline was, and why we did what we did." Bharara told us that he decided to take this step because "things seemed unusual to" him and he anticipated that SDNY would be asked questions about this in the future. Kim provided a similar explanation for the memorandum, stating that SDNY leadership "concluded at this point that we should have something in the document, either email or memo, that laid out the chronology as, to make sure that if people did ask that, you know, we had it, we had it down on paper."

The memorandum was dated October 21, 2016, and the Chief Counsel emailed the memorandum to the relevant SDNY personnel on October 24. We have excerpted the portions most relevant to our review below:

...[The Weiner search warrant] did not provide authority to search for evidence of any other crimes [beyond the child exploitation offenses detailed above]. We advised the [Weiner] agents of the proper scope of the search warrant and they understood the scope.

...[The case agent's] search of emails stored on the computer apparently recovered in excess of 700,000 emails. In order to stay within the scope authorized by the warrant, [the case agent] sorted the emails recovered by sender. In performing that sort, we understand that header information for all of the emails was visible, and he noticed a very large number of emails that appear to be between Huma Abedin and Hillary Clinton. [The case agent] believes that, although Weiner's counsel provided the computer to us, the computer was used by both Anthony Weiner and Huma Abedin.

We understand that the FBI agents in our case will not be reviewing the contents of the Abedin-Clinton emails because it would not be appropriate to do so under the search warrant issued in support of our child exploitation investigation. The agents, however, have reported

the existence of the emails up their chain of command at FBI to enable other agents to take any action that is appropriate for their cases.

Because we understand that another component of DOJ may be conducting an investigation related to Hillary Clinton's emails, we have advised ODAG and George Toscas at NSD, who we're told is the most senior career prosecutor involved in investigations of Hillary Clinton and the Clinton Foundation, of the existence of the emails so that they can take any steps that may be appropriate in their investigation, including, if proper, making an application for the content of potentially hundreds of thousands of emails that are outside the scope of the warrant in our case, which authorized a search only for evidence of child exploitation crimes.¹⁷²

VIII. DOJ and FBI Response to SDNY Notification

As mentioned above, Toscas called Prosecutor 1 on October 21, after his phone call with Kim, and told Prosecutor 1 to notify Strzok and Laufman about the issue. Laufman stated that he could not recall the date he first heard about the Weiner laptop, but told us that he recalled Prosecutor 1 coming into his office and telling him that he had gotten a call from SDNY. Laufman said Prosecutor 1 stated that the prosecutors on the Weiner case told him that material on Weiner's laptop "appeared on its face potentially to relate to the Clinton investigation."

As discussed previously, until Prosecutor 1 called Strzok on October 21 to see if he was aware of the Weiner laptop issue, no one from the FBI had spoken with anyone from the Midyear prosecution team to inform them about the issue. The only contact that occurred prior to that regarding the laptop was the call previously described from McCabe to McCord on October 3.

A. Prosecutor 1-Strzok Call on October 21

At 5:41 p.m. on October 21, Prosecutor 1 sent an email to Strzok entitled "Call." The email stated, "Pete, George Toscas called me and wanted me to pass along some information to you as soon as I could. Let me know if you have a couple of minutes to talk. I left a message on your cell. I am about to head out and can be reached on my cell. Thanks."

Strzok and Page exchanged the following text messages on the evening of October 21. The sender of each text message is identified after the timestamp.

6:49 p.m., Strzok: "Also, work-wise, [Prosecutor 1] called b/c Toscas now aware NY has hrc-huma emails via weiner invest. Told he [sic] we knew. Wanted to know our thoughts on getting it. George

¹⁷² After reviewing a draft of the report, Toscas asked that the OIG clarify that he was not involved in the investigation of the Clinton Foundation.

[Toscas] wanted to ensure info got to Andy [McCabe]. I told Bill [Priestap]."

6:55 p.m., Page: "I'm sure Andy is aware, but whatever."

Strzok told us he had a conversation at some point with either Toscas or Prosecutor 1, and thought that the conversation with Prosecutor 1 referenced in the text message was likely that conversation. Strzok told us that he had not talked about the Weiner laptop issue with Prosecutor 1 previously and he believed this was his first discussion with the Midyear prosecutors about the Weiner laptop. Strzok stated that Prosecutor 1 asked if Strzok was aware of "the potential Huma stuff up in the Weiner laptop in New York." Strzok said that when he responded affirmatively, Prosecutor 1 asked, "And, you know, what are you doing about it, and, you know, kind of what do we need to do, and kind of the path forward on it." Page told us that she did not remember any of the specifics about this text message.

Prosecutor 1 stated that Toscas told him "the basic facts" about the Weiner laptop and told Prosecutor 1 to call Strzok. Prosecutor 1 stated that he did not "recall getting much detail" from Toscas. Prosecutor 1 told us that the October 21 phone call from Toscas was the first time he was informed of the potential presence of Midyear material on the Weiner laptop.

B. FBI Leadership Knowledge of SDNY Notification on October 21

We asked other FBI officials about the call by SDNY to ODAG. McCabe, Priestap, and Rybicki told us that they were unaware of the call. McCabe also said he did not recall any discussion with Page about the Weiner laptop at this time. We asked McCabe if he was aware of the fact that the Weiner case agent had expressed concern that nothing was happening with the Clinton emails discovered on the Weiner laptop. McCabe stated that he was not aware of that and told us he found it "disturbing."

Comey did not recall being briefed about either the SDNY call to ODAG or NSD contacting the FBI about the Weiner laptop issue. Comey told us, though, that the fact of these communications is not something that would necessarily need to be briefed to the Director. We asked Comey—looking only at the Strzok-Page text messages excerpted above—if he found it concerning that McCabe, Priestap, Strzok, Page, Toscas, and Prosecutor 1 were all apparently aware of the presence of "hrc-huma emails" on the Weiner laptop by October 21 and no one bothered to inform him. Comey replied:

[T]he fact that who these people are doesn't matter, but if there's something that I found hugely significant on the 27th, if I was in a position to know that before then, then I should have been informed earlier. And like I said, honest to God I can't remember being informed before that.

C. Toscas Asks McCabe About Weiner Laptop on October 24¹⁷³

McCabe told the OIG about a passing interaction with Toscas after a morning Attorney General briefing that he had “towards the end of October.” McCabe stated:

I wouldn’t even characterize it as a discussion, but a comment, I think, that I think that George Toscas mentioned to me on the tail end of a morning AG brief, like hey, whatever, whatever happened to that thing with the laptop in New York or whatever. And I remember thinking, like, I got to, oh, I don’t know. Let me find out. I’ve got to follow up on that.

McCabe also stated:

I think he thought, like...you should ask about this. You should take a look at this thing. Like, or what, what are you guys thinking you want to do with this kind of thing was, was how he asked about it. And so he was clearly bringing it to my attention because he wanted to make sure that I was tracking it, and weighing in on it.

McCabe stated that this interaction with Toscas caused him to follow up with the team on the Weiner laptop issue and also to call Mary McCord at NSD. McCabe stated that all of this occurred “right around the same time” and “maybe even the same day.” He stated that “this all is what compels me to talk to the Director and to tell him that we need to have a meeting about this.” We discuss McCabe’s call to McCord and his conversation with Comey in more detail below.

McCabe noted during our interview that briefings for the Attorney General were typically held three times a week on Mondays, Wednesdays, and Fridays. McCabe’s calendar contained entries for an “AG/OGA Brief” at 9 a.m. on both Monday, October 24 and Wednesday, October 26. As noted above, Kim’s call to Toscas occurred in the afternoon of Friday, October 21, and therefore after the usual time for the morning AG briefing. Also, as noted below, McCabe spoke to McCord on Tuesday, October 25. Based on this timing and McCabe’s testimony that he spoke with Toscas prior to calling McCord, we believe the conversation with Toscas occurred on Monday, October 24.¹⁷⁴

Toscas described this interaction as “just a passing comment at the end of our [Attorney General] briefing.” Toscas stated that either he or someone else

¹⁷³ The day before, Sunday, October 23, the Wall Street Journal published online its story about McCabe’s wife and her prior run for elective office in Virginia in 2015, including donations to her campaign by entities connected to then Governor McAuliffe. The story raised questions about McCabe’s participation in Clinton-related investigations, which we discuss in detail in Chapter Thirteen.

¹⁷⁴ According to both Comey and McCabe’s Outlook calendars, they met at 9:30 a.m. on Monday, October 24 for a “Weekly Update.” Rybicki was also scheduled to attend this meeting. Their calendars showed that this meeting occurred immediately after the Monday morning briefing for the Attorney General where we believe Toscas and McCabe spoke. Neither Comey nor McCabe said that they recalled any discussion of the Weiner laptop at this 9:30 a.m. meeting.

asked McCabe, "[H]ey, what's happening...what's the next step with respect to these, you know, what we learned about the stuff on the laptop." According to Toscas, McCabe stated that "the [Midyear] team was going to be either sent or had been sent or tasked with doing that."

Page also told us about this interaction between McCabe and Toscas. She said that Toscas's comment prompted McCabe to ask, "[H]ey, where are we on the Weiner stuff?" Page described this a catalyst for the Midyear team to reengage on the issue of the Weiner laptop.

Strzok's contemporaneous notes from October 25 included a reference to this conversation between Toscas and McCabe on October 24. The notes stated, "Toscas saw Andy: What's the Bureau doing? DD spoke w/Mary McCord." (Emphasis in original). We asked Strzok about these notes. Strzok stated:

[M]y recollection is that on this date, or whenever it was, at some point, Toscas runs into the Deputy and says, hey, there are, and I think this might have been, I heard there are potentially emails having to do with Clinton on the case up in New York. What are you guys doing? And then, so, and I don't know if the, if the Deputy then spoke to Mary [McCord] about it or not. But in any event, Toscas prompting Andy, then caused Andy to ask Bill [Priestap], hey, what's going on? Where are we with regard to that process? What are we, what do we need to do to look at it? Are you engaged, essentially? And get an update. And so Bill then brings that back down and relays that to me.

McCabe described himself as "concerned" when the Weiner laptop came to his attention again and said that he asked the team to explain why he had not been updated. McCabe stated:

Ultimately, when I got the feedback on the status, what I was told was that when the team went up the first time because of their legal limitations they, they really weren't able to dig into the thing, to make an assessment of what was there. And so therefore they couldn't recommend to us what we should do with it. And so that some, they had to go back to the district, either get a new search warrant or modify the previous search warrant, and that's essentially what had taken place over the intervening time.

McCabe said he would have expected the team to report this information to him directly rather than getting asked about it by Department personnel. We asked McCabe who was responsible for following up on the Weiner laptop. McCabe told us his understanding was that Strzok "was actually doing it" and Priestap would have had an oversight role. In fact, as discussed previously, nobody on the FBI Midyear team had taken any steps to follow up on the laptop, including steps to obtain legal authority to review its contents, after they learned about it in late September.

D. Call between McCabe, Sweeney, and NYO Criminal SAC on October 24

NYO ADIC Sweeney's Outlook calendar contained the following entry for October 24: "7:30 pm-7:45 pm Telcal w/DD and [the incoming NYO Criminal SAC]." At the time of the call, the SAC was transitioning from an FBI job in Washington, D.C. to the Criminal SAC job in NYO. Although not reflected in his calendar entry, Sweeney told us he was "pretty sure" that during this call he mentioned to McCabe that SDNY had called Main Justice about the Weiner matter. Sweeney stated that he did not recall McCabe's response to this information.

The SAC told us that Sweeney called him at some point during the week of October 24 while McCabe was giving him a ride home. The SAC told us that he almost immediately put Sweeney on speaker phone and the three discussed several topics. The SAC continued, "I don't remember specifics. But I do remember talking about, it did come up regarding the Weiner laptop." The SAC stated that he also believed that it "wasn't a first impression," meaning it did not seem like the first time Sweeney and McCabe had discussed the Weiner laptop.

McCabe told us that he had no recollection of this phone call.

IX. Reengagement of FBI Headquarters and the Midyear Team on the Weiner Laptop

Beginning on October 25, both McCabe and the FBI Midyear team took a renewed interest in the issue of the Weiner laptop. We discuss this renewed interest below, including conversations by McCabe with both the Department and Comey about the laptop, and reengagement by the Midyear team.

A. McCabe Phone Call with McCord on October 25

McCabe and McCord both told us that they discussed the Weiner laptop in a phone call in late October, though neither could recall the specific date. McCord provided contemporaneous notes from the call, but they were undated. Page also provided notes that referenced this call and her notes suggest the conversation occurred on October 25. Given the timeline of other events, we believe October 25 is the date on which this conversation occurred.

McCabe stated that he wanted to update McCord on the status of the Weiner laptop and tell her that "we have a problem here that we need to deal with." McCabe said he thought that he would have asked McCord about "scope of the warrant issues," although he told us he did not remember many details about the conversation.

Page's contemporaneous notes from October 25 included McCord's name and phone number, and stated: "Anthony Weiner — ADIC NY — where are we on this? □ Not sure we can legally look at the material — Mary McCord ~~needs to~~ will find out where it is, status of the request."

McCord stated that McCabe told her that NYO had found “many hundreds of thousands of emails from Huma Abedin to Secretary Clinton” on the laptop. According to McCord, McCabe stated that the Midyear team had planned to review, but SDNY told them to hold off while they examined the legality of doing that under the Weiner search warrant. McCord’s notes from the phone call included entries that stated, “mid-year team to try to determine if duplicative or new” and “Spoke to Sweeney last night.” McCord told us that the entry about Sweeney referred to a conversation McCabe stated that he had with Sweeney the prior night.

McCord told us that she spoke with Toscas after the call with McCabe. According to McCord, Toscas stated that “SDNY had not shopped a search warrant on the laptop” and that the Midyear team was “getting together tomorrow to decide whether they want to search it and if they have probable cause to get a warrant.” Toscas told us that he did not recall a conversation between McCabe and McCord, but added that “it seems like something that would be in the ordinary course of what happened and would not stand out to me.” We also showed McCord’s notes to Toscas. Toscas commented that he did not know what the word “shopped” could mean in this context.

B. Comey, McCabe, and Sweeney Discuss the Weiner Laptop on October 25

On October 25 from 2:30 p.m. to 4:30 p.m., numerous FBI executives participated in one of Director Comey’s Quarterly Strategy Review sessions. According to Sweeney, who participated in the session by phone, at the conclusion of the discussions, McCabe asked him to stay on the line. Sweeney told us that only he, McCabe, and Comey remained.¹⁷⁵

Sweeney’s notes from the October 25 discussion stated:

4:15 to 4:30 p.m. – SVTC – Short discussion w/D/DD/ADD following main SVTC re: [Clinton Foundation] matter. Follow-up following Strategy Briefing. Brief update re: Weiner investigation; overt legal process and ability to get fed SW for computer. DD – need to move forward and request action consistent with DOJ guidelines/election.

Sweeney described the discussion:

And then when the room clears, [McCabe] starts talking about the Weiner laptop.... [I]t goes into an explanation of who Weiner is, Huma Abedin’s husband. She’s the chief of staff. This is how these emails would likely be there. And that gets into a conversation about authority, like we can’t look at this stuff, and we’re not doing.

According to Sweeney, the conversation then turned to the NYO Clinton Foundation investigation.

¹⁷⁵ Sweeney told us that he did not recall Bowdich participating in this discussion despite the “ADD” notation in his calendar. Bowdich likewise told us he did not recall this discussion.

Sweeney stated that he did not remember McCabe going into detail about what had been discovered. For example, Sweeney said that he did not recall McCabe providing the total number of emails on the laptop, although Sweeney stated McCabe may have mentioned that a large volume of emails had been discovered. According to Sweeney, McCabe stated that the Midyear team was "going to look at" the laptop and "get a search warrant." We asked Sweeney about Comey's reaction to the discussion of the Weiner laptop. Sweeney described Comey as "just absorbing the information."

That evening, according to Sweeney's notes, he made calls to the NYO A/SAC, incoming NYO Criminal SAC, the Criminal Investigative Division AD, and Rybicki. The notes also included an entry for a follow-up call to McCabe. Each of these entries noted a discussion related to Sweeney's earlier call with Comey and McCabe and the Clinton Foundation investigation. The entries for the calls with Rybicki and the Criminal Investigative Division AD also mentioned the Weiner investigation.

McCabe told us that he did not recall the discussion with Comey and Sweeney about the Weiner laptop and Clinton Foundation investigation. With regard to the Weiner laptop discussion, McCabe stated, "[T]he only conversation I recollect with the Director, it probably took place on the 26th, was telling him you need to have a meeting on this tomorrow. And as I said before, I remember that as being a one-on-one in his office." Comey said that he did not recall the discussion with McCabe and Sweeney about the Weiner laptop and Clinton Foundation.

C. Midyear Team Emails on October 25

Strzok and FBI Attorney 1 exchanged the followings emails on October 25. The subject line of the email was "Weiner Material" and the sender of each email is identified after the timestamp.

2:55 p.m., Strzok: "Sorry to bother you, DoJ called [McCabe] looking for status of our potential review of the huma-hrc emails. Where/with who is that decision now? What would we need to do to get a decision? Thanks, Pete".

3:31 p.m., FBI Attorney 1: "Is this the NY search warrant issue? We were waiting for NYO to get back to us about the volume of Huma related emails on the devices."

3:35 p.m., Strzok: "Yes. I thought they said thousands? But I have no idea who I heard that from. Who at NYO is supposed to tell us?"

3:38 p.m., FBI Attorney 1: "I'miss [sic] not sure. [The Midyear SSA] was working with the NYO SSA. Thousands? I hadn't heard any numbers."

3:45 p.m., Strzok: "OK I'll ask [the Midyear SSA]".

This exchange is immediately followed by an email exchange between Strzok, FBI Attorney 1, and the Midyear SSA entitled "Weiner emails." Again, the sender of each email is identified after the timestamp.

3:47 p.m., Strzok: "[H]ave you gotten an idea how many Huma-HRC emails are in the Weiner stuff? Has popped up on people's radars again".

4:34 p.m., Midyear SSA: "NY did not have an estimate of the number of emails during our lync call on 9/29/2016. I have not heard back from NY but can contact [the A/SAC] or ASAC...if needed for an update. [FBI Attorney 1] – do you know the status of the SW and whether we can review the emails?"

4:58 p.m., FBI Attorney 1: "They never did send me the actual SW, but based on they're [sic] representations, we won't be able to review the emails without additional process or consent."

5:00 p.m., Strzok: "Yes please contact NY for #s. Thanks".

We asked Strzok, FBI Attorney 1, and the SSA about this exchange. We told Strzok that this exchange suggested that nothing had happened since the September 29 call. Strzok replied, "That's right. That's my assumption I believe. Yep." FBI Attorney 1 stated that Strzok's email was the first time she recalled hearing about the Weiner laptop issue since September 29. The Midyear SSA agreed that this was probably his first contact about the issue since September 29.

We asked Strzok whether any action would have occurred without the Department notification to McCabe. Strzok stated:

Probably not. I mean, at some point, yes. At some point, there would have been a, God, what happened to that follow-up.... [T]his caused that to happen. There certainly would have been action. Whether that was the 25th or November 8th, or whenever, I'm not sure when that would have occurred.

However, Strzok emphasized that, at this point, there "was no indication on anybody's radar that this was going to result in a notification to Congress." Instead, Strzok stated that this was something the Midyear team would have to pursue, but he did not think it had any relevance to the election.

The Midyear SSA told us that the reason this was "coming on people's radar again" was because NYO "was saying, hey, once again, we've got this stuff. What do you want us to do with it?" The Midyear SSA stated that he reached out to NYO after receiving this email. He recalled that "New York was somewhat frustrated."

X. Events Leading to the Decision to Seek a Search Warrant

In this section, we discuss the meetings, discussions, and emails that preceded the October 27 briefing where Comey authorized the Midyear team to seek a search warrant for the Weiner laptop.

A. Midyear-NYO-SDNY Call on October 26

At 2:30 p.m. on October 26, Midyear FBI personnel, Midyear prosecutors, NYO, and SDNY participated in a conference call about the Weiner laptop. The highest ranking participants for each group on the call were Strzok, Toscas, the NYO A/SAC, and Kim.

The NYO A/SAC, ASAC, SSA, and Weiner case agent all participated in the call. This was the first time that the Weiner case agent had spoken directly with anyone associated with the Midyear investigation. The case agent told us that he felt he was asked questions about information that he had already reported up the chain of command in September. He stated:

They were asking questions that I had already repeatedly answered in other calls. In other words, people were asking what domains are you seeing? How many emails are you seeing? What do you think you're seeing? Who are they to, who are they from? What are the domains? Oh, we have that domain? What years? Like, questions that we, I had been asked and either had answered preliminarily, and then we became uncomfortable legally searching for those answers. But these were things that were known to me and had been made known above me for weeks.

The Weiner case agent stated that "the only thing that was new" was that others on the call asked him to speculate on what he had seen. According to the case agent, he stated, "Based on the number of emails, we could have every email that Huma and Hillary ever sent each other. It's possible, given the pure volume, it's possible."

The NYO SSA described the call as "just basically discussions and information about...potentially what...was there, which we still didn't know because we hadn't looked at anything." The A/SAC thought the call was "matter-of-fact" and said it was the first time they were questioned by an NSD lawyer. According to the A/SAC's notes, NYO briefed that there were 675,000 emails on the laptop spanning a time period from 2006 to 2016, and stated that there "appears to be blackberry messages" on the laptop.

The FBI's Midyear team told us that they learned important new information on the call.¹⁷⁶ Strzok described it as "the triggering event" and FBI Attorney 1 stated that this was the "call where it was crystallized to me what was on the laptop." Strzok, FBI Attorney 1, and the Lead Analyst each cited two important pieces of information provided by NYO on the call.¹⁷⁷ First, the presence of a large

¹⁷⁶ Except for the September 29 call with NYO, the Midyear case agents and analysts had limited knowledge of and involvement with the Weiner laptop until after Comey's October 28 letter to Congress. Our references to the "FBI Midyear team" in this Chapter generally refer to the leadership of the team, including Strzok, the Midyear SSA, and FBI Attorney 1.

¹⁷⁷ In comments provided to the OIG after reviewing a draft of this report, the Lead Analyst stated that he believed the October 26 call "was the first time [he] had ever personally heard the details related to the" Weiner laptop.

volume of emails on the Weiner laptop, particularly the potential for a large number of @clintonemail.com emails. Second, the indication that the "missing emails," meaning emails from Clinton's first three months as Secretary of State, could be present on the laptop. Strzok explained that this was the most important factor and he did not believe that the Midyear team knew about the potential presence of the BlackBerry data earlier. Strzok added, "We need[ed] to try and get this because this is, potentially would alter, would change our understanding of the investigative conclusions that we arrived at in July."

We asked Strzok what he was specifically told about the BlackBerry backups and if he thought these might be Blackberry backups for Clinton. Strzok stated:

[I]t wasn't Clinton's backups. It was the sense that it was Huma's backups, and that Huma was frequently used, my recollection, as kind of a proxy for the, for Secretary Clinton. So if people wanted to get something to Clinton, they'd email it to Huma and say please print for the Secretary. And she would, she was a gatekeeper in that way. And, you know, would print it out and then take it to the Secretary.

I don't, my recollection is that we certainly saw the domain. And that, the domain, because I think it was, and again, I'm, if I'm wrong forgive me. Att.Blackberry.net I think was that domain they used for the first three months, and we saw that on there. I don't know if we had the granularity of detail to say Huma's account on that domain in that time frame. I don't know if we had that granularity. But I do know we had, I think, that domain in the span, coupling with the kind of overall volume that we thought there was a reasonable likelihood that, that it would be in there.

When asked how this information differed from the information presented on the September 29 call, Strzok, who did not participate in the September 29 call, stated that his understanding from the Midyear SSA and FBI Attorney 1, who were on that call, was that NYO did not have "the numbers" or "the volume of domains." Strzok said that he also thought that NYO had only provided preliminary data on the September call and "they weren't quite sure what they had yet." Strzok added that he knew NYO "couldn't review it because it was outside the scope of their warrant."

FBI Attorney 1 told us, "I don't...even think they discussed any of that stuff [on the September 29 call]. They certainly said there was some clintonemail.com, but again, like I said, that we were finding, people had clintonemail.com emails all over the place. There was nothing with this sort of certainty that this is what was on there." The Midyear SSA stated that NYO provided "numbers" on this call, which he believed had not been provided previously.

Page told us that as a result of the conference call "we now understand that the Huma emails are of a volume that it could be meaningful and that there could be meaningfully new evidence that we have not previously seen in other materials we had reviewed." She added that the "volume of emails" coupled with the

presence of a "BlackBerry backup" were the two most important new facts that came out of this call. Page's notes from the call were entitled "Good news, in a bad news way (MYE)." She explained this heading by stating:

[M]y good news in a bad news way is a reflection of like, well, more evidence is always good news. It might either change our decision or outcome or further substantiate the outcome we reached. In a bad news way because, like, I cannot believe we are, we are here. We are doing this again on October 26th. Like, oh, my goodness.

FBI Attorney 1 told us that the decision to obtain a search warrant was made either on the call or shortly after it. FBI Attorney 1 noted that Toscas was on the call and "seemed to be on board" with the idea that the Midyear team needed to get the Weiner laptop. FBI Attorney 1 added that she was "surprised" that the Department left the call "talking about getting a search warrant." She explained that she was surprised because it "definitely was...more aggressive than they had been before," but thought this may have been due to "the time pressure."

Prosecutor 2 told us that this call was when she first learned about the Weiner laptop. Prosecutor 2 stated that the prosecutors asked numerous questions to NYO and SDNY personnel "to try to figure out what they knew about the emails and, and about the devices, so we knew what the scope of like what we could look at." Toscas stated that the information he learned in late October about the Weiner laptop, including information provided on this call, was markedly different than what he had been told McCabe had informed NSD about in early October. Toscas described the information provided earlier in October as "totally off base" and he told us that he attributed this discrepancy to a "garble," or miscommunication.

B. Briefing of McCabe on October 26

Page told us that the team briefed McCabe about the information from the conference call on the evening of October 26. Page stated that McCabe indicated that "we're going to need to reopen. This, this is significant. Or we're going to need to at least seek a search warrant to sort of look at this material." Page stated, "We informed the Deputy Director, and he says, yeah, we've got to get this in front of the Director tomorrow. And so that gets scheduled for the next day...[to] tell him what we found and what the team thinks, which is certainly we need to go get a warrant for this information." On the morning of October 27, at 6:10 a.m., Baker sent Page an email entitled "Follow up" and asked her if she had talked to McCabe yet and whether "[McCabe] talked to [Comey]?" Page replied at 6:19 a.m., stating, "Yes I did talk to Andy, but he did not connect with [Comey]. Andy sent him an email this morning asking that he get a briefing from the MYE team." We describe McCabe's email and the events of October 27 below.

Strzok said that he thought that he and possibly the Lead Analyst and FBI Attorney 1 briefed McCabe after the conference call. Strzok stated that he explained the scope of what NYO possessed, why that was important, and why the Midyear team thought they should review the material. FBI Attorney 1 said that

she recalled briefing "the executives" about what they had learned on the conference call and the need to "look into this" using process.

Priestap told us that he did not recall this briefing with McCabe, but stated that he would normally be present for such a briefing. Priestap stated, "Very rarely would my team be there if I wasn't there."

McCabe told us that he could not recall who informed him of the substance of the conference call with SDNY and NYO, but stated it would have been some combination of Strzok, Priestap, the Lead Analyst, Page, and FBI Attorney 1. When asked what he was told, McCabe stated:

The only thing I remember is like we had at that point confirmed that, yes, there is no doubt what appears to be relevant email for us on this laptop. So the question then becomes like do we go full-bore into another round of exploitation along the lines of what we had already done in Midyear? How do we handle this thing? And then the implications of like notification and, and everything that they ended up struggling with the next day.

McCabe said that he did not recall any mention of seeing domains or emails associated with a BlackBerry device. We asked McCabe what was relayed that was not known in late September. McCabe replied:

I think they had looked a little bit deeper than just the tos and froms and could actually say, like, you know, I seem to remember in the kind of legally restricted view it was just kind of a snapshot having looking, you know, at stuff and then determined they couldn't look further. That's how they had a sense of what was there. Now, at this point, we had done some sort of more extensive review to say, okay, yeah, it's like this number between these people, that sort of thing.

McCabe stated that he could not remember who had conducted this "more extensive review" and "was surprised" to learn that no one from the Midyear team reviewed the laptop until October 30. McCabe told us that he assumed someone on the Midyear team had reviewed the laptop "[b]ecause that's what I initially asked for." We asked McCabe if the fact that no one from Midyear had reviewed the laptop was an important fact that the team should have been brought to his attention. McCabe stated:

I know that I asked them to go up there and look at it. And they had a...SVTC with the team I think the following day. I think at some point I learned that they had a SVTC early on in this. In this process rather than traveling up there. But I certainly expected that our folks would be in New York looking at what we had on that laptop.

We asked McCabe why this issue was coming back to the forefront on October 26 instead of sometime earlier. McCabe stated that it was "[b]ecause I started asking questions about it probably." We also asked McCabe what would have occurred if SDNY had not contacted ODAG and Toscas had not mentioned the

Weiner laptop to McCabe after the morning briefing. McCabe said he could not speculate on what would have happened if the facts were different, but stated that "it certainly is a good thing that George Toscas brought it to my attention." McCabe added, "Is it something that I should have been getting briefed upon as the month went on? Absolutely." McCabe told us that he had no idea why the topic of the Weiner laptop "wasn't making its way into the agenda for those regular meetings and interactions with [Page], [Strzok], Steinbach, the Director."

We also asked Baker why the Weiner laptop issue reemerged at this time. Baker stated:

[M]y understanding, it was simply that senior managers thought that they had delegated this to the right people and that the issue was being worked. And that they would come back with a proposal about what to do, and that we took the, took our collective eyes off the ball, didn't pay attention to it, and when it came back and we were informed that it was not resolved, then it became a crisis. That's the best I can reconstruct for you.

C. McCabe Recollection of Discussion with Comey on October 26

McCabe told us that he remembered mentioning the issue of the Weiner laptop to Comey twice. The first, as we described previously, McCabe stated was shortly after he learned of the laptop in late September. The second time McCabe stated was toward "the end of October"—McCabe estimated it was on October 26—when he sat down with Comey "one-on-one" in Comey's office. McCabe stated:

I told him we need to have a meeting on this because now we have some, you know, some clarity on, on what's in this laptop. I specifically remember telling him, this is about that laptop we discussed a couple of weeks ago. I don't know if he remembered it.

McCabe stated that he did not remember Comey asking him about the Weiner laptop during the period between the two meetings. McCabe told us that he believed that second meeting with Comey "was truly the second time that we discussed it."

We asked McCabe to describe Comey's reaction to this second conversation about the Weiner laptop. McCabe stated:

The best of my recollection it was just kind of an acknowledgement that, like, this was a very complicated issue that had a lot of problematic, you know, kind of downstream, there are all kinds of decision and issues that were related to this. It would be complicated and, and we need to figure it out.

McCabe said that he did not recall Comey mentioning the issue of congressional notification during this conversation.

As mentioned earlier, Comey told us that he dimly recalled being informed about the Weiner laptop in the "beginning of October." Comey stated that he did not remember hearing of the Weiner laptop again until McCabe emailed him on the morning of October 27.

D. McCabe Email to Comey on October 27

On October 27, at 5:20 a.m., McCabe sent an email to Comey entitled "MYR." Rybicki, Bowdich, and Page were cc'd on the email. It stated, "Boss, The MYR team has come across some additional actions they believe they need to take. I think we should probably gather today to discuss implications if you have any space on your calendar. I am happy to join by phone. Will push to Lisa and Jim to coordinate if you are good." At 7:13 a.m., Comey responded, "Copy."

McCabe told us that he felt the situation was "absolutely urgent" and that is why he proposed an October 27 meeting with Comey even though McCabe knew he would be out of town that day. When asked why it was urgent, McCabe stated that the situation was urgent because "it's been sitting around for three weeks," "it's important," and "it's getting closer to" the election. We questioned McCabe about the tone of the email, pointing out that phrases such as "we should probably gather today" and "if you have any space on your calendar" did not suggest urgency. McCabe disagreed, stating, "I mean, by me saying I think we should probably gather today, that's me saying this can't wait until tomorrow." McCabe told us that he assumed his second conversation with Comey, which he estimated was on October 26, "predated this email" and the email was simply the notification to Comey to set up the meeting.

We also asked Comey about the tone of McCabe's email and whether the phrasing suggested a lack of urgency. Comey replied:

No, I didn't take it that way since he's emailing me at 5:20 a.m. I mean I took this, and the reason I remember it that way is, you don't send the Director a dawn email about it would be nice to get together to talk about how we're going to celebrate Arbor Day. I mean this is, the Midyear team has come across some additional actions they believe they need to take. And so I took it as, I believe what it intended is, we need to speak to you.

We asked Comey if knew what this email was about when he received it. He stated:

I don't think so. I don't remember—when I got this, I don't remember, because my recollection is as I told you, is walking into the conference room with this grin on my face because they're all sitting in the same seats and sitting down and saying something like the band is back together, what's going on? And seeing these sort of dark faces, so I don't—at least to my recollection, this is the first time that this dawn email from Andy is we need to speak to you because the Midyear team has some additional actions they need to take and it didn't, I

don't remember this resonating context, resonating from this like, okay, let's do it.

Comey also told us that he did not initially recall that he had been previously notified about the Weiner laptop. He explained:

October 27th, Andy...sent me an email early in the morning saying that the Midyear Team needs to meet with you today. And I responded, of course. And I actually don't—I've thought about it since, I remember now, but I didn't focus on it at the time. I was aware sometime in the first week or two of October that there was a laptop that a criminal squad had seized from Anthony Weiner in New York and someone said to me...kind of in passing, they're trying to figure out whether it has any connection to the Midyear investigation.... And it's funny, when I was first reminded, I didn't even remember—by my staff saying, remember this is the laptop they mentioned to you. And I said, I don't remember being told about a laptop, but it definitely was sometime in early October.

E. Midyear Team Communications Preceding Comey Briefing on October 27

On October 27, at 6:49 a.m., Page sent an email entitled "MYE" to Bowdich, Rybicki, Baker, Anderson, FBI Attorney 1, Strzok, the Lead Analyst, Priestap, McCabe, and Comey's administrative assistant. The email stated, "Team, The Deputy has asked that we convene today to inform the Director about what we know regarding the laptop in NY. Time is TBD, but I just wanted to alert you all now."

Strzok sent an email to the Lead Analyst a few minutes later about the briefing, stating, "I've got this. Will grab you and run down brief. Promise to make at least one sponsorship plug for William and Mary and one gratuitous yuck yuck joke about de-duping or getting the band back together." We asked Strzok about the tone of the email and his state of mind at the time. Strzok stated that it was a "here we go again" moment, meaning that he was thinking that "we've got to get the team back together and make sure all the systems are set up and figure out how we're going to get CART to do it." Strzok added that he was not thinking about a letter to Congress at this point. Strzok told us that the first time the issue of congressional notification came up is during the briefing with Comey.

At 6:55 a.m., Strzok sent an email to the Midyear SSA and FBI Attorney 1 asking "Would you please find out when NY got the [Weiner] laptop?" and to provide "a rough date [for] when you initially talked to them about their warrant." FBI Attorney 1 responded:

[The Midyear SSA] and I had a conference call with NYO on Sept 29. I believe they got the devices several days prior to that, but I'm sure [the Midyear SSA] can find the exact date. At the time of the call, due to the volume, the system doing the imaging had just crashed so they thought it would take into the next week to find out any specifics

about the volume or email domains. We also discussed the fact that we received this via SW, not consent, so we really couldn't look at the other emails without additional process or consent. But we wanted to find out more about what was on the device before deciding what to do next....

F. Comey Briefing on October 27

At 10:00 a.m. on October 27, the Midyear team briefed Comey on what NYO had discovered on the Weiner laptop. The following individuals were present for the briefing: Comey, Rybicki, Bowdich, Baker, Steinbach, Priestap, Strzok, Anderson, Page, FBI Attorney 1, and the Lead Analyst. McCabe was out of the office on October 27, but phoned in at the start of the briefing. However, shortly after phoning in, Comey asked McCabe to "drop off" the call, stating, "I don't need you on this call." Comey told us that he asked McCabe to leave the call because of the Wall Street Journal article on October 23 about then Governor McAuliffe's contributions to McCabe's wife's campaign in 2015. (The circumstances leading up to Comey's decision to exclude McCabe from this call and ultimately to McCabe's recusal are discussed in detail in Chapter Thirteen of this report.) Comey told us that from that point forward McCabe had no involvement in the Midyear investigation. Page also left the meeting once Comey asked McCabe to "drop off" the call.

Comey stated that he was told during the briefing:

[T]hat the criminal squad had gotten this laptop from—through a search warrant in New York. They had obtained it in some odd way from like Anthony Weiner's lawyers or something, but it came from Anthony Weiner who had been married to Huma Abedin for a number of years. And that the criminal squad had a search warrant, the scope of which they obviously were going to abide carefully, but that they had alerted—sometime in the previous couple of weeks, they had alerted the Midyear team that from the metadata they could see, there may be materials that the Midyear team would want to look at. And then they told me they had engaged in some sort of process where they got—I don't know what it was, but somehow technically they got the stuff transferred down here and figured out how they could—what they could look at properly without a warrant and had been able to look at an image of that computer and what they saw led them to believe that they needed to go get a search warrant.

And I said, well tell me what you see. And they said, we see evidence of many, many, many, thousands and thousands of emails from the period of Secretary Clinton's tenure as Secretary of State that—I forget how they said it, but basically that involved the Clinton email address domain. And they said that's one. Two, we see Verizon.Blackberry.net email metadata. We don't know what the content is, from the period of time when Secretary Clinton was using a Blackberry, Verizon.Blackberry.net account at the beginning of her

tenure as Secretary of State. And I remember them telling me this specifically, we think this may be the missing three months of emails. And as we talked about earlier, the reason that would be so important is that could be germane to an evaluation of her intent which is a central part of our investigation. They said we think we may have found the missing emails. We see thousands and thousands of others and so we're highly confident that there are Secretary Clinton emails on there. Logic tells us that there will be classified emails on there because even if it's a duplicate of what she had elsewhere, those classified emails would be there and we think it may be the missing emails and so we have—we feel compelled to go get a search warrant.

Comey reiterated that “the volume of emails” and the presence of the BlackBerry emails were “two highly significant facts” and that the presence of the BlackBerry emails in particular “weighed very heavily on me.”

Comey told us that the decision to authorize the Midyear team to seek a search warrant for the Weiner laptop “was an easy decision” and that there was no controversy over this decision. He noted that the Department agreed with the decision to seek the search warrant. Comey stated that “the harder decision [was] going to be what obligation do we have in the wake of that.” We describe these discussions, which led to the October 28 letter to Congress, in more detail in Chapter Ten.

Others present for the briefing provided a similar account. Priestap told us that he recalled Comey asking if the Midyear team needed to review the Weiner laptop to be satisfied that they have “turned over the necessary stones” and “be comfortable with the decision we made.” Priestap continued:

And I remember telling him, yes. We don't know with certainty what's in there. It could be information that we've not seen, you know, thus far, and so yes...in effect it's dereliction of duty to not, you know this thing is out here to pass it over. So yes, we've got to, we have to do it.

Strzok stated that Comey agreed “fairly quickly” with the team's suggestion to seek a search warrant. Strzok continued, “And then it very quickly turns to a, okay, so do we need to tell Congress? And that, I think, in my mind, my recollection the first time that kind of comes up....”

Anderson told us that Comey asked Strzok and the Lead Analyst:

[I]f we ignore this pool of material, you know, can we still stand behind the assertion that we've done everything that, that, that we should have done? And the answer that, you know, that Pete and [the Lead Analyst] gave...these are not quotes or anything like that. But this is sort of like generally the sense, was that, no, we have to pursue this material, because, you know, we, we would do it in any other case. And it is, you know, a pool of evidence that hypothetically, now understandably it's very speculative, but there is that possibility that it

could change our outcome, because of that, you know, that possibility that it could contain something about intent.

Strzok also cited the missing emails, stating that if data from “that first three months” was present on the laptop it could be “substantively different from what we have recovered” to date.

Priestap provided a different perspective on the potential impact of the material on the Weiner laptop. He told us that he thought the review of the Weiner laptop was necessary even though he “would have been shocked” if they found anything on the laptop that changed the outcome of the Midyear investigation. Priestap explained:

I felt that we had reviewed so much stuff that even if this was all stuff we hadn’t reviewed, the chances that it was going to be some smoking gun in this subset of communications that didn’t come up in all of this other stuff, again, would have been, would have shocked me. Could it have been possible? Absolutely. That’s why we had to review it. But again, we had just done so much work and learned and seen so much else that to think there is going to be a sliver of, you know, information on nefarious activity that we weren’t seeing other places, I, I just doubt it.

XI. Analysis

A. Failure of the FBI to Take Earlier Action on the Weiner Laptop

In this section we analyze the failure of the FBI to take any significant action to obtain access to the contents of the Weiner laptop for purposes of the Midyear investigation between late September, when NYO communicated the essential facts about the laptop to the Midyear team, and late October, when the FBI finally obtained a search warrant and began the accelerated process of analyzing the laptop’s contents. As detailed below, we found most of the explanations offered for this delay to be unconvincing. Faster action could and should have been taken to review the laptop’s emails.

By no later than September 29, the FBI had learned virtually every fact that was cited by the FBI in late October as justification for obtaining the search warrant for the Weiner laptop, including that the laptop contained:

- Over 340,000 emails, some of which were from domains associated with Clinton, including state.gov, clintonfoundation.org, clintonemail.com, and hillaryclinton.com;
- Numerous emails between Hillary Clinton and Huma Abedin;
- An unknown number of BlackBerry communications on the laptop, including one or more messages between Abedin and Clinton,

indicating the possibility that the laptop contained communications from the early months of Clinton's tenure;¹⁷⁸ and

- Emails dated beginning in 2007 and covering the entire period of Clinton's tenure as Secretary of State.

Much if not all of this information was communicated to FBI Headquarters and to the FBI Midyear team before the end of September. NYO ADIC Sweeney described facts about the laptop to senior headquarters personnel on a September 28 video teleconference. Testimony and documents show that Sweeney also briefed McCabe, Coleman, Steinbach, and Priestap individually on September 28. Of equal significance, NYO briefed the FBI Midyear team about the Weiner laptop in another conference call on September 29, including providing information that NYO lacked legal authority to review emails between Abedin and former Secretary Clinton under the existing search warrant. Witness interviews and contemporaneous notes show that most or all of the above information was known to the FBI Midyear team by late September.

The explanations given to the OIG for the FBI's failure to take immediate action on the Weiner laptop fell into four general categories:

1. The FBI Midyear team was waiting for additional information about the contents of the laptop from NYO, which was not provided until late October.
2. The FBI Midyear team could not review the emails without additional legal authority, such as consent or a new search warrant.
3. The FBI Midyear team and senior FBI officials did not believe that the information on the laptop was likely to be significant.
4. Key members of the FBI Midyear team had been reassigned to the investigation of Russian interference in the U.S. election, which was a higher priority.

We examine each of these explanations in turn below.

The FBI Midyear Team was awaiting further information from NYO:

Several members of the Midyear team offered this explanation, which we found unpersuasive. To begin with, all participants in the September 29 conference call knew that no one in the FBI could examine the contents of the emails of interest to the Midyear investigation without first obtaining either consent or a new search warrant, because the scope of the existing search warrant issued in the Anthony Weiner investigation was strictly limited. In addition, Sweeney informed Priestap of this fact on September 29. Although NYO was still processing the laptop as of

¹⁷⁸ Although Comey identified this fact as critical to his assessment of the potential significance of the emails on the Weiner laptop, the information was not included in the October 30 search warrant application for the Weiner laptop.

September 29, the completion of this task would not eliminate the need to obtain proper search authority. It was up to the Midyear team and the NSD prosecutors to obtain authority to review the emails, not NYO or SDNY. Yet the FBI Midyear team took no action to inform the prosecutors about the laptop or to obtain authority to search it.¹⁷⁹

Even if the FBI Midyear team somehow misapprehended the intentions and ability of NYO to provide more information about the emails, no one from the Midyear team followed up when NYO provided no update in the weeks following the September 29 call. Had the Midyear team inquired, they would have learned that NYO completed processing the laptop by around October 4, but was taking no further actions to review any information, including emails, unrelated to the Weiner child exploitation investigation—a fact that had previously been briefed to the FBI Midyear team.

The FBI Midyear Team needed legal authority to review the emails:

This explanation for the absence of action, which was given by several witnesses, is illogical. As described above, the lack of legal authority to search the laptop related to the investigative interests of the FBI Midyear team, not to those of the NYO Weiner team. Thus, the factual information necessary to establish probable cause to obtain a search warrant for the information that the Midyear team was seeking resided with the FBI Midyear team, not the NYO Weiner investigation team. Moreover, this lack of authority to review emails between Abedin and former Secretary Clinton was known to the FBI Midyear team by September 29. If anything, this explanation should have served as a rationale for the FBI Midyear team to take affirmative steps to obtain a new search warrant that provided them with authority to review the emails between Abedin and Clinton on the Weiner laptop. Instead, the FBI Midyear team took no action at all to solve this problem. Indeed, they did not even tell the Midyear prosecutors, who would have to be involved in any search warrant application process (as they were in late October), about the NYO discovery on the laptop.

The FBI Midyear Team did not believe the laptop evidence was likely to be significant: Strzok described his view of the Weiner laptop in late September as simply “a lead that likely is going to result in some investigation.” Strzok stated that the suggestion that the matter should have been treated with more urgency was “misplaced” because “[w]e did not know what was there.” He stated the team would have reviewed the emails at some point, perhaps in January or February 2017. Page also told us that the emails were not yet considered significant at that time because “emails had been found lots of other places that ultimately weren’t worth pursuing lots of other times.” Priestap similarly stated

¹⁷⁹ We found that McCabe called NSD Principal DAAG McCord on October 3 and flagged the issue of emails in an iCloud account shared by Abedin and Weiner. However, McCord told us, and her contemporaneous notes indicated, that McCabe provided minimal information about this issue, and did not mention the potential presence of emails between Abedin and Clinton on Weiner’s laptop. We identified no other FBI Headquarters or Midyear personnel communications with the Department about the Weiner investigation—and no communications about the presence of Midyear-related emails on the Weiner laptop—until October 21.

that he did not expect any new information discovered on the laptop to “change the outcome of the case” because the team had seen enough information previously to make him “confident we had gotten to the bottom of the...issue.” While the FBI ultimately concluded, after obtaining a search warrant and reviewing the Clinton-Abedin emails, that the Weiner laptop contained no significant new evidence, Comey had a very different view of its potential importance after being briefed on it on October 27.

The view that the Weiner laptop was unlikely to contain significant evidence arguably accorded with the FBI’s investigative strategy in this matter, although this approach was inconsistent with what witnesses told us was a “leave no stone unturned” approach to the investigation. As detailed in Chapter Five, the FBI Midyear team had decided to obtain or exploit only those personal devices directly associated with Clinton or the servers hosting clintonemail.com. The FBI sought no personal devices used by any other individual to conduct State Department work, including Mills, Abedin, and Sullivan. This included a decision not to seek the devices and culled work-related emails in the possession of Abedin’s attorney. Witnesses told us that the team’s focus was on Clinton’s conduct as opposed to the conduct of others, including Clinton’s senior aides, and the team assessed that Clinton’s devices and the laptops used to cull her emails were the most likely places to find the complete collection of emails from her tenure or evidence of Clinton’s intent. In addition, witnesses told us that the Midyear team deemed Abedin’s emails to be less likely to contain classified information given her role and the nature of her communications with Clinton.

We found the belief that the Weiner laptop was unlikely to contain significant evidence to be an insufficient justification for neglecting to take action on the Weiner laptop immediately after September 29. Unlike the personal devices that the FBI had previously decided not to attempt to acquire, the Weiner laptop was already in the FBI’s custody and known to contain potentially relevant emails. Even those FBI officials who told us they did not expect to find new evidence agreed that it was a logical investigative step to seek to obtain a search warrant so that they could review the contents of the potentially relevant emails. In addition, and as we note below, the FBI developed little additional information about what was on the Weiner laptop between September 29 and October 27. However, Comey’s reaction to the information he was presented on October 27—which was substantially similar to what FBI Midyear and Headquarters personnel knew on September 29—suggests that the Weiner laptop should have been viewed as a more significant discovery.

We hasten to add that not every witness described the Weiner laptop as being unlikely to contain significant evidence. In particular, McCabe said he thought that the discovery of the emails on the Weiner laptop was a “big deal” and that he understood that the FBI Midyear team was proceeding with obtaining authority to review the laptop contents during the period immediately after September 29. Yet McCabe took no action for weeks to obtain a progress report or otherwise ensure completion of the analysis and when he did finally do so it was in response to Toscas mentioning the laptop issue to him on October 24. McCabe also did not convey a much-needed sense of urgency about this matter to Comey. Instead, he told us he gave Comey a “fly-by” briefing about the discovery shortly

after hearing about it on September 28. Comey told us he vaguely recalled hearing about the Weiner laptop around this time, but did not recall learning at that time any of the details that later caused him to announce the reactivation of the investigation on October 28. As the Deputy Director who was overseeing the Midyear investigation and who had been briefed by NYO on September 28 on the Weiner laptop discovery, McCabe should have demanded a progress report from the Midyear team and should have provided a full briefing to Comey well before October 27.¹⁸⁰

The Russia investigation was a higher priority: On July 31, 2016, just weeks after the conclusion of the Midyear investigation, the FBI opened its investigation of Russian interference in the ongoing presidential election. Strzok and several others from the Midyear investigation were assigned to the Russia investigation, which we were told was extremely active during this September and October time period.¹⁸¹ Several witnesses, including Priestap, Strzok, and Page,

¹⁸⁰ After reviewing a draft of the report, McCabe's counsel submitted a written response stating that McCabe shared all of the information he knew about the Weiner laptop with Comey soon after he first learned about it, and that any claim that McCabe "failed to fully inform Director Comey of what he initially knew about the Weiner laptop is inaccurate."

The submission also asserts that "[t]he OIG places inordinate weight on Mr. McCabe's apparent reference during his OIG interview to a 'fly by' briefing of Director Comey in late September or early October." However, as noted above, our primary concern was with McCabe's failure to take any action in the weeks prior to October 24, and then doing so only in response to Toscas mentioning the laptop issue to him on October 24.

McCabe also asserts in his written response that the "importance of exploring this collection of emails [on the Weiner laptop] was not immediately obvious" because the FBI had learned about various collections of allegedly relevant emails throughout the Midyear investigation, most of which turned out to be duplicative of previously examined emails or of marginal significance—a statement that we note is at odds with his description of the emails to us during his testimony as a "big deal." McCabe stated that it was "unfair and misleading" to place the blame squarely on him for failing to follow up on the Weiner laptop with sufficient urgency, "even though many people in both FBI Headquarters and the New York Office were responsible for pushing the matter forward and failed to do so." McCabe described the delays in reviewing the Weiner laptop as a "failure with many fathers, including many other FBI executives, and not a shortcoming attributable to Mr. McCabe alone." McCabe added, "And, while the OIG holds Mr. McCabe responsible for failing to demand progress reports, it is undeniable that Director Comey could have asked for updates based on what he had been told by Mr. McCabe, and he did not.... The OIG's exercise of hindsight that leads it to place blame on Mr. McCabe—and only Mr. McCabe—for the failure to more promptly 'demand a progress report,'...ignores the other FBI managers and executives who dropped the ball."

¹⁸¹ We were surprised to learn that FBI leadership decided to assign many of the key members of the Midyear team, immediately after determining that no charges should be brought against then candidate Clinton, to the Russia investigation, which touched upon the campaign of then candidate Trump. This is particularly so given the questions being raised by candidate Trump and his supporters regarding the declination decision in the Midyear investigation. While we recognize that staffing decisions are for management to make, we question the judgment of assigning agents who had just determined that one candidate running in an election should not be prosecuted to an investigation that relates to the campaign of the other candidate in the election. The appearance problems created by such a staffing decision were exacerbated here due to the text messages expressing political opinions that we discuss later in this report. Surely, the FBI's Counterintelligence Division had talented agents who were not involved in the Midyear investigation who could have fully staffed the Russia investigation. Such a decision also would have eliminated the excuse we were

stated that the Russia investigation was a higher priority in October than reviewing the Weiner laptop. Priestap, in particular, provided convincing justifications for the prioritization decisions he made in light of his management responsibilities, including that Comey had tasked him with overseeing the FBI's multifaceted efforts to protect the 2016 election from foreign interference.

Nevertheless, from an institutional perspective, we found this explanation unpersuasive and concerning. Strzok and the other Midyear personnel reassigned to the Russia investigation were not the only agents in the FBI. Had the FBI considered the Weiner laptop significant, additional personnel could have been assigned to handle it. Moreover, not all of the Midyear personnel were assigned to Russia. This was a staffing choice, not an excuse for inaction.

This is even more evident when contrasted with the attention that the FBI gave to other activities in connection with the Midyear investigation during the same period. As detailed in Chapter Eight, these activities included the preparation of Comey's speech at the FBI's SAC Conference on October 12—a speech designed to help equip SACs to “bat down” misinformation about the July 5 declination decision; the preparation and distribution of detailed talking points to FBI SACs in mid-October in order, again, “to equip people who are going to be talking about it anyway with the actual facts and [the FBI's] actual perspective on [the declination]”; and a briefing for retired FBI agents conducted on October 21 for the purpose of describing the investigative decisions made during Midyear so as to arm former employees with facts so that they, too, might counter “falsehoods and exaggerations.” Some of these discretionary activities required significant efforts by members of the Midyear team. Moreover, some of the claims made in those talking points and presentations concerning the thoroughness of the investigation were at odds with the approach that these Midyear team members were taking with regard to the Weiner laptop.

In assessing the decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop, we considered the text messages that Strzok exchanged with Page expressing hostility for then candidate Trump and preference for a Clinton victory. We were particularly concerned about text messages sent by Strzok and Page that potentially indicated or created the appearance that investigative decisions they made were impacted by bias or improper considerations. Most of the text messages raising such questions pertained to the Russia investigation, and the implication in some of these text messages, particularly Strzok's August 8 text message (“we'll stop” candidate Trump from being elected), was that Strzok might be willing to take official action to impact a presidential candidate's electoral prospects. Under these circumstances, we did not have confidence that Strzok's decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop was free from bias.

given here about the Russia investigation impacting the ability of agents to address the Weiner laptop issue.

We searched for evidence that the Weiner laptop was deliberately placed on the back-burner by others in the FBI to protect Clinton, but found no evidence in emails, text messages, instant messages, or documents that suggested an improper purpose. We also took note of the fact that numerous other FBI executives—including the approximately 39 who participated in the September 28 SVTC—were briefed on the potential existence of Midyear-related emails on the Weiner laptop. We also noted that the Russia investigation was under the supervision of Priestap—for whom we found no evidence of bias and who himself was aware of the Weiner laptop issue by September 29. However, we also did not identify a consistent or persuasive explanation for the FBI's failure to act for almost a month after learning of potential Midyear-related emails on the Weiner laptop.

In sum, we concluded that the explanations given for the failure of the FBI to take action on the Weiner laptop between September 29 and the end of October were unpersuasive. The FBI had all the information it needed on September 29 to obtain the search warrant that it did not seek until more than a month later. The FBI's neglect had potentially far-reaching consequences. Comey told the OIG that, had he known about the laptop in the beginning of October and thought the email review could have been completed before the election, it may have affected his decision to notify Congress. Comey told the OIG, "I don't know [if] it would have put us in a different place, but I would have wanted to have the opportunity."

B. Decision to Seek Search Warrant on October 27

Several FBI witnesses told us that the reason the FBI decided to seek a search warrant on October 27 was because the Midyear team learned important new information about the contents of the Weiner laptop at around that time. We concluded, however, that this decision resulted not from the discovery of dramatic new information about the Weiner laptop, but rather as a result of inquiries from the Weiner case agent and prosecutors from the U.S. Attorney's Office for SDNY on October 21.

We begin by noting that every fact that would ultimately be included in the October 30 search warrant that the Midyear team obtained to review the Weiner laptop was known to the FBI in late September. As we discuss in Chapter Eleven, the October 30 search warrant included limited factual information about what the Weiner case agent had seen during his review of the laptop. The search warrant stated that the FBI had "information indicating that there are thousands of Abedin's emails on the [Weiner laptop] – including emails, during and around Abedin's tenure at the State Department, from Abedin's @clintonemail.com account as well as a Yahoo! Account appearing to belong to Abedin." As detailed above, these facts were not only known to FBI NYO, but had been communicated to FBI Headquarters and FBI Midyear personnel on multiple occasions in late September.

Moreover, the information known to the Midyear team on October 27 when it briefed Comey about the laptop was substantially similar to the information that NYO had made known to FBI leadership and the FBI Midyear team on September 28 and 29. This information is summarized in the bullet points in the prior section. There was a conference call on October 26 between NYO and the FBI Midyear team

which involved some participants who had not participated in the September 29 conference call, including Strzok and the Weiner case agent. However, apart from an update on the total number of emails on the laptop, we found no evidence the October 26 call involved the communication of significantly more specific information about the nature of the messages on the laptop.

Witnesses, including Comey, cited two pieces of information from the October 26 call that they described as new and of particular importance in triggering the decision to reactivate the investigation. The first involved the total volume of emails on the Weiner laptop. Contemporaneous notes show that during the September 29 call NYO reported that there were approximately 350,000 emails on the Weiner laptop, that these included emails between Huma Abedin and former Secretary Clinton using various Clinton-related domain names, and that the laptop was still being processed. On the October 26 call, NYO reported approximately 675,000 emails were on the laptop. We found that the increased volume of emails on the Weiner laptop—from 350,000 to 675,000—to have little or no significance in the absence of additional information about the content or metadata of the emails.

The second piece of new information cited by witnesses was the presence of BlackBerry backups on the laptop. However, this information was not new. One of the first messages the Weiner case agent saw on the laptop in late September was a BlackBerry message between Clinton and Abedin. And the Midyear SSA told us that the presence of BlackBerry information on the laptop was mentioned during the September 29 call between Midyear and NYO personnel.

While Comey and other witnesses gave much significance to the BlackBerry data (the former describing them as the “golden emails”), very little specific information was known about those messages as of October 27. No specific information had been developed or provided regarding the volume or date range of the BlackBerry data. We found no evidence that NYO provided any more specific information about the BlackBerry data in late October than they had previously provided in late September. Indeed, this seems even more apparent given the fact that NYO was legally prohibited under the scope of the Weiner search warrant from reviewing any information unrelated to their child exploitation investigation.

We found that what changed between September 29 and October 27 that finally prompted the FBI to take action was not new information about what was on the Weiner laptop but rather the inquiries from the SDNY prosecutors and then from the Department. The only thing of significance that had changed was the calendar and the fact that people outside of the FBI were inquiring about the status of the Weiner laptop.

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CHAPTER TEN: THE DECISION TO NOTIFY CONGRESS ON OCTOBER 28

In this Chapter we address Comey's decision to send a letter to Congress on October 28, 2016, about the emails discovered on the Weiner laptop. Comey made the decision to send the letter on October 27, following the briefing he received from the Midyear team that morning.

In Section I of this Chapter, we address various factors that Comey and others in the FBI said they considered with respect to the decision to make the disclosure. In Section II we compare the decision to notify Congress about the Midyear investigation with the way in which the Russia and Clinton Foundation investigations were handled. In Section III we discuss certain internal FBI messages about the decision that we discovered in the course of our review. In Section IV we address the process by which the FBI announced Comey's decision to the Department and how Department leadership reacted to his decision. In Section V we discuss how the October 28 letter was drafted, edited, and finalized. In Section VI we provide our analysis of Comey's decision.

I. Factors Considered as Part of Comey's Decision to Notify Congress

The question of whether to notify Congress of the Midyear team's discovery of emails on the Weiner laptop was first raised during the briefing to Comey on the morning of October 27. FBI personnel involved in the decision told us that over the next 24 hours, numerous discussions occurred about whether to notify Congress of this development. Below we address the various factors relevant to this decision that Comey and others in the FBI told us they considered.

A. Belief That Failure to Disclose Would Be an Act of Concealment

Two broad categories of longstanding Department and FBI policies, norms, and practices were potentially relevant to the decision to announce the reactivation of Midyear. First, the Department and the FBI regularly decline to comment publicly or to Congress regarding ongoing criminal investigative activity. Comey endorsed this principle in general, stating, "I believe very strongly that our rule should be, we don't comment on pending investigations."

Second, the Department has a longstanding practice of avoiding actions that could impact an imminent election, which Comey described as a "very important norm." Comey stated:

I said to [the team] here's the way I think about it. I've lived my entire career in the Department of Justice under the norm, the principle, that we, if at all possible, avoid taking any action in the run up to an election, avoid taking any action that could have some impact, even if unknown, on an election whether that's a dogcatcher election or president of the United States....

Comey told us that the circumstances surrounding the discovery of emails on the Weiner laptop did not permit him to conform to these policies and norms, and that, in particular, remaining silent did not appear to be an option. Comey explained:

I couldn't see a door—I said to the people inside the organization—I can't see a door labeled, no action here. I can only see two doors and both were actions. One is speak, the other is conceal. Because having testified about this multiple, multiple times, like working backwards in September, July and having spoken about it on July 5th, and told Congress, the American people, a material fact which is, this is done and there is no there there. To now restart and not just in a marginal way, in a way where we may have found the missing emails, that to not speak about that would be, in my view, an affirmative act of concealment. And so I said okay, those are the doors. One says speak, the other says conceal. Let's see what's behind the speak door. It's really bad. We're 11 days from a presidential election. Given the norm I've long operated under, that's really bad. That will bring such a storm. Okay, close that one, really bad. Open the second one. Catastrophic. And again this is something reasonable people can disagree about, but my view was to conceal at that point given all I had said would be catastrophic. Not just to the Bureau, but beyond the Bureau and that as between catastrophic and really bad, that's actually not that hard a choice. I'll take really bad over catastrophic any day. And so I said to the team, welcome to the world of really bad.

Comey testified before the Senate Judiciary Committee on May 3, 2017, and spoke at length about the Midyear investigation. When talking about the October 28 letter, Comey testified:

[W]hen the Anthony Weiner thing landed on me on October 27 and there was a huge—this is what people forget—new step to be taken, we may be finding the golden missing emails that would change this case. If I were not to speak about that, it would be a disastrous, catastrophic concealment.

B. Perceived Obligation to Update Congress

Comey told us that he felt he had an obligation to update Congress that the FBI was seeking a search warrant for the Weiner laptop in the Midyear investigation because the email discovery was potentially very significant and that made Comey's prior testimony no longer true. Comey stated:

I don't think the obligation was rooted in my having promised to come back to them if I learned new evidence. I have read some of that in the open source; people saying the reason he did it is he had made a promise to Congress that he would supplement the record. No. I mean maybe I did in some form, but that's not how I thought about it.

I thought my obligation to Congress is—I testified under oath for 10 hours and said there's no there there; we're done.... And now that is materially untrue and that's the obligation I felt.

Comey stated that his July 5 statement was "actually irrelevant" to this obligation. Comey told us that the Department could never have closed the Midyear investigation with a "no comment." Instead, he said that, in the absence of his July 5 statement, the Department would have had to state that it conducted a "fair, honest, and independent" investigation and that the investigation was now closed. Comey stated that once that statement was made—in whatever form it came—"the decision that came in October [was] inevitable because all of a sudden that's not true."

In his testimony to the Senate Judiciary Committee, Comey stated, "I've got to tell Congress that we're restarting this, not in some frivolous way, in a hugely significant way." Comey added that "everyone on my team agreed we have to tell Congress that we are restarting this in a hugely significant way."

Comey added that the significance of the potential evidence on the Weiner laptop was a factor in assessing his obligation to notify Congress and the public. He stated:

Yeah, so I'm sitting there. It's October 27th and there's a reasonable likelihood that we are going to find material—one possibility—that will change our view of the Hillary Clinton case. Two, even if it doesn't, that we know something that is materially different than what the rest of the world knows and has relied upon since I spoke about this.... The FBI is done. There is no there there and that to conceal that, in my view, would be—subject the FBI and the Justice Department, frankly more broadly...to a corrosive doubt that you had engineered a cover up to protect a particular political candidate. And that especially given your pledges of transparency, not—I don't actually put much stock in the notion that I promised to get back to Congress, but that I had said to everybody, the credibility of the Justice enterprise is enhanced by maximal credibility, maximal transparency. I offer that transparency, and then I know something that materially changes that picture and I hide it, I think the results would be generations-long damage to the credibility of the FBI and the Justice Department. That's what I think about it.

Comey told us to put aside any hindsight bias about what was actually found on the laptop and "sit with me on October 28th and make this decision. And where you have a reasonable prospect of something that is world changing with respect to that investigation, then decide whether you speak about it or not." Comey emphasized that this was "not just any investigative step, again you have reason to believe that there are hundreds of thousands of germane emails, including which is a very important fact to me, potentially the missing BlackBerry...emails from early in her tenure." He continued, "[S]o this isn't a frolic and detour, this is, it's the

reason the Department thought we had to get a search warrant, there's potentially highly significant information there."

We asked other FBI personnel about the nature of this obligation to update Congress. Rybicki told us that Comey felt he had an obligation "to basically supplement [the] record" with Congress because he had testified that the investigation was complete. Bowdich told us that he thought the obligation grew out of Comey's July 5 press conference. Bowdich stated, "The Director felt like, hey, if we don't notify them, after the July 5th notification, we could potentially be accused of concealing information. I remember him using that, that word."

Steinbach described Comey's decision and his obligation by stating:

[T]he overriding question was say nothing and get accused, worst case scenario, of covering up. Or be transparent and say we have something, we just don't know what it is, and let that course play out. And I, you know, again, I, I describe the Director as a very transparent, communicative...person. And I want to say that that transparent piece probably weighed on him more than the not saying anything piece. And also I think his, his belief that he had somehow made that pledge to Congress.

The Lead Analyst stated that at one of the meetings during this period, Comey asked everyone in the room their opinion on whether the FBI had an obligation to notify Congress. When it was his turn, the Lead Analyst told us:

I will never forget what I told him. I said, sir, every instinct in my body tells me we shouldn't do it, but I understand your argument that you have to make a, a factual representation, a factual correction to Congress to amend essentially what you told them, that otherwise, because I think that was really where he had coalesced or the discussion had, that he had made this statement to Congress, and that doing things like serving process is contrary to what he had told Congress. So he felt like he had to correct that record.

FBI Attorney 1 told us that an OGC attorney was tasked with researching whether Comey had a legal obligation to correct the record with Congress. FBI Attorney 1 stated, "I think what we decided was that he did not make a promise to come back to them. But that [the] implication was that the investigation was over." We asked FBI Attorney 1 to explain her understanding of Comey's obligation. She stated:

I think [Baker] and the Director just believed that, yes...the letter of what he said did not say I will come back to you. But they believed that he had an obligation to do so under...just general standards of candor...that we had finished the investigation. It was not finished.... I just think he felt that what he had said, the impression he had left, because he was the one testifying, was that he would come back to

them. And [Baker] thought that, and [Baker] agreed with that part, definitely.

Baker told us that he believed that he was the person who first raised the issue of Comey's obligation to update Congress. Baker stated that this obligation arose because Comey had "told Congress repeatedly this thing is closed" and had now authorized "a significant step forward in the investigation." Baker stated that this obligation had nothing to do with the July 5 statement and was instead related to Comey's testimony to Congress. Baker stated that even if Comey had not done the July 5 statement, eventually "[Comey] would have had to go to Congress, talk about the FBI's investigation, talk about our conclusions. Say that we agreed or disagreed with the Department's decision. And then, having done that, he would have been in the soup in the same way at the end of October." Baker told the OIG that he believed that the perceived need to notify Congress was the overriding factor that drove the decisionmaking.

Anderson told us that she believed Comey needed to supplement his testimony to Congress because it "was such a significant issue" that "it would have been misleading by omission." Anderson stated that even though Comey did not explicitly tell Congress he would update them, it was "implied" in "his testimony overall."

C. Avoiding the Perception that the FBI Concealed the New Information to Help Clinton Win the Election

Comey told us that he was concerned that if the FBI failed to disclose the new information, it could be accused of attempting to help Clinton get elected. He stated that "to conceal that, in my view, would be—subject the FBI and the Justice Department, frankly more broadly...to a corrosive doubt that you had engineered a cover up to protect a particular political candidate."

Baker also expressed this concern. He stated:

[N]ot to notify Congress is...an action because it also potentially could have an impact on the election...so for example, [imagine] we don't say anything. We push past the election, and then we announce that, well, by the way, we've authorized a search warrant, and we found all these emails. Let's imagine, right? Because we don't know what the facts are.

We find all these emails. You guys have probably heard this story, but I'll just say it again. And it turns out that, oh, my God, there were more classified emails of a different type, or there's clear evidence that she knew what she was doing. It kind of pushes us from the probable cause thing up to the beyond a reasonable doubt. And now we're going to change our view about charging her.... If she's been elected president of the United States, then Donald Trump would say, oh my God, these people knew this beforehand and didn't say anything. This is a rigged system. This is, this, these people intentionally hid that

until after the election so that they could get her elected and, and thwart me.

Steinbach also stated a similar concern. He stated:

I think weighing on everyone's mind is if, if we get through this and a week after the general election we find relevant material, the Congress and the American public will never allow the FBI to live that down. You clearly hid this from the American public. And you knew you had something, yet you waited until after, until after she became president before you disclosed that you found something relevant. That was one course of action. The other course of action is we, we state it and get accused of influencing the election beforehand.

Steinbach continued:

We felt that, again, the, the Congress, the American people, would never be able to say FBI, you withheld this. The last thing we wanted to have happen was, hey, I wouldn't have voted for her if I had known this. And so that was weighing on our minds. We wanted there to be transparency, both in November as well as in, in July. Hey, here is the set of facts. Here is the good and the bad. You, and again, I think that's, there's somebody, many feel that's not your job, but I think the discussion items were, lay out the facts and let people decide for themselves. And that, and maybe not in those exact words, that was a theme through the course of this.

Steinbach told us he did not recall if Comey "said it in exactly these words, but, in the totality, that's what he conveyed to us." Steinbach added that Comey "wanted to be transparent."

1. Protecting the Reputation of the FBI

Several witnesses articulated a concern that failing to disclose the decision to seek the search warrant would injure the reputation of the FBI—a concern that, as discussed above, was closely related to avoiding the perception that the FBI was hiding the information to help Clinton.

Bowdich stated, "I know [Comey] really felt hung out there with Congress, and he was so worried about the institution getting hurt. He didn't, he knew it was a bad situation. But the institution getting hurt by thoughts of us concealing this information."

FBI Attorney 1 told us that the team "certainly considered" what would happen if the FBI chose not to disclose this information to Congress and the information became known after the election. She stated that would have had "a much more significant impact on the reputation of the FBI" because the FBI would have been accused of "somehow hiding" that information from Congress. We pointed out to FBI Attorney 1 that the FBI's standard practice is not to release

information on investigations and asked her if not sending the letter would have simply been consistent with standard practice. She responded:

It would be, except we had already released information. And that's what I said about, maybe I would have done something differently on the July 5th [statement]. We had already released all of the information and said this is what we're doing. This is what we've decided. And then to then go back to the same stuff and...leave everybody with the impression that that's what we've decided, and then a week later, everybody finds out that we, we had reopened this investigation. I think that would have been much more detrimental. To the FBI's reputation and to the, the Justice Department's reputation.

2. Protecting the Legitimacy of a Clinton Presidency

Comey told us that he was concerned about the perceived illegitimacy of a Clinton presidency that would follow from a failure to make the October 28 disclosure. Comey stated:

I don't remember thinking this explicitly, but I'm sure I was operating in an environment where she was going to be the next president, and I was in a position to have her be an illegitimate president the moment she was elected because I would have concealed a material development in her investigation. And the moment she took office, the FBI is dead, the Department of Justice is dead and she's dead as president....

FBI Attorney 1 expressed similar concerns to us, but said she did not express them at the time. FBI Attorney 1 stated:

I also think it would have been detrimental.... I was careful not to discuss this. But in my mind, it was detrimental...if Secretary Clinton was elected president, then...it would have come out. It would have definitely come out that we had done the search warrant. And then, then it would have been an illegitimate, like it would have been grounds for, you know, you couldn't have elected her. She was under investigation. All of those sorts of things that would have...had more of an impact if you didn't say anything.

D. Concerns about the Electoral Impact of the Announcement

Comey told us that he decided at the time that he would not consider who would be helped or hurt by making public the reactivation of the Midyear investigation. Comey stated:

I will not engage in the exercise of figuring out who will be helped/who will be hurt, which way this will cut, who will play it, because then I'm starting to make judgments based on a political calculation. Instead, I should think about what is the right thing to do given the circumstance

which we find ourselves. Where I've...made material representations and what is the best thing for the Justice institution to do given that, without regard to what may happen, so consciously I did not.

Comey described the debate within the FBI about the congressional notification as a "family conversation," where everyone was free to state their opinions and concerns. Comey specifically told us of a concern expressed by Anderson during this conversation. Comey stated:

[O]ne important part of the family conversation about whether to send the October 28th letter was Jim Baker knew from his conversations with Trisha Anderson that one of her concerns was how should we think about the fact that this might hurt Hillary Clinton and help elect another candidate, that kind of thing, and Baker said we should raise it with the Director and that's the kind of stuff he wants you to raise and I gather he thought she might not raise it. So at our next family discussion that evening, he said let me ask you a contrarian question. You know how do you think about this? And then I think she spoke herself and said, how do you think about the fact that you might be helping elect Donald Trump? And I said, I cannot consider that at all. Down that path lies the death of the FBI because if I ever start thinking about whose political ox will be gored by this or that, who will be hurt or helped, then we are done as an independent force in American life and so I appreciate you raising it, I cannot consider it. And I was very glad she raised it because it was probably a question that was looming in lots of people's minds and I think my answer was the right answer....

Anderson stated that she did not remember exactly what she articulated in the discussions about the letter, but she told us that she had a conversation with Baker prior to the final meeting with Comey on the morning of October 28. Anderson stated:

I do remember saying more explicitly to Jim Baker that I was worried that what we were doing was going to have an impact on the election. Was that appropriate for the Bureau? Was that, you know, did, I was concerned about that for, you know, for us as a, as an institution. And, and at least that that was how we were going to be perceived. The FBI was going to be perceived as having impacted the outcome of the election. And, you know, and sort of tied to that...had we reached the threshold, you know, that it was essential that we send this letter? And this is where, you know my, you know, my concerns about materiality and sort of fairness to the former Secretary, you know, played in. You know, in light of the fact that we're going to be perceived to be affecting the outcome of the election, is there really enough here to warrant us doing that?

Anderson stated that Baker first raised Anderson's concerns to Comey during the October 28 morning meeting and "kind of put [Anderson] on the hot seat."

Anderson stated that she articulated her views to Comey and told him, "I'm not so certain that this is the right thing to do." Anderson told us that a robust discussion ensued. Anderson stated that she did not recall either candidate being mentioned by name in this discussion and said any discussion of impact on the election "certainly would not have been couched in terms of" helping or hurting either candidate. Anderson added that "it would have been highly inappropriate for there to be any partisan you know, motive or interest in influencing the outcome of the election." Anderson stated, "I don't know that I walked away from the meeting feeling, you know, totally convinced that it was the right thing to do, but I also understood why the other options were worse."

After reviewing a draft of this report, Anderson clarified her testimony to the OIG. Anderson added:

While I do not remember the specific words that I used, I recall very clearly that I did not couch my concerns in terms of the FBI's actions helping or hurting any particular presidential candidate. Rather, I asked [Comey] whether we should take into account that sending the letter might have an impact on the outcome of the election, or could be perceived as having such an impact. I stated that I had concerns about our actions having such an impact particularly given that it was unclear—and perhaps even unlikely—that the emails would be material to the investigation. I also recall raising a concern about it being unfair to the former Secretary—in a sort of due process sense—because no matter how carefully we wrote such a letter, the importance of the emails would be overinflated and misunderstood. So, in my mind, and what I believe I argued in the meeting, was that we were about to do something that could have a very significant impact on the outside world even though what we had might not be material, yet people would very likely view it as such.

We asked Baker about Anderson's concerns. Baker told us that Anderson came to him the morning of October 28 and stated:

I've thought about this overnight. I have serious reservations about going down this road. I'm very concerned about this, Jim. Why? Well, because I'm concerned that we are going to interject ourselves into this process. We're going to interject ourselves into the election in a way that's, that potentially or almost certainly will change the outcome. And I am, I, Trisha, am quite concerned about that. And I'm concerned about us being responsible for getting Donald Trump elected.

Baker stated that Anderson was worried about "putting the thumb on the scale" in a way that is "going to hurt one candidate and benefit another one right before the election." Baker told us that he asked Anderson if she wanted to bring this up with Comey, but Baker stated that "she was reticent" to do so. Baker said that he brought the issue up with Comey during the meeting that morning in order to make sure Anderson's concern was brought to Comey's attention without attributing it to

her. Baker stated that Anderson then "chimed in" and "elaborated" on her concerns once he raised the issue. Baker told us that Comey responded "[a]long the lines of like we can't think that way. We just can't think that way."

FBI Attorney 1 told us that she recalled others expressing "concern about what impact this would have on the election." Specifically, FBI Attorney 1 stated that she spoke directly with Anderson about these concerns, which they both shared. She said that Anderson spoke to Baker about this concern and Baker raised it at one of the group meetings. FBI Attorney 1 stated:

As I was going through this, I was thinking I should not be bringing politics into this. And so I was trying to be careful about thinking about this in an apolitical way and not raising the concern as who is going to get elected, because that actually is not something that I thought we should be considering as the Bureau. I brought that up with Trisha, because she and I, you know, we're close and we talked about it. But I did not, no one, I don't think anyone brought up the outcome on the election. We talked about the policy, about, you know, that, making announcements so close in time to the election. But we didn't bring up the fact that if you do this, Trump will get elected sort of question, because I, I don't know that anyone thought it was appropriate to bring that up.

FBI Attorney 1 told us that this issue was raised with Comey in the context of having an undue influence on the election, rather the potential impact of the decision in an electoral sense. FBI Attorney 1 stated that Comey recognized the concern, but Comey framed the issue in terms of "what was our obligation...to Congress and to the people to do the right thing." FBI Attorney 1 reiterated that although the issue was discussed in terms of the proximity to the election, "we did not discuss, but if you say this, then Trump will get elected. Like, we did not in any way talk about it in those stark of terms. And so at least not in the, you know, as the group decision."

We asked other participants in the discussion about Anderson's comments. Rybicki stated that Anderson raised a concern that the notification to Congress "could help elect candidate Trump at that point." Strzok told us that someone commented that the letter "might influence the ultimate outcome of the election." Bowdich stated that Anderson made an argument against the letter, but he told us that he could not recall what that argument was.

E. Expectation that Clinton Would Be Elected President

Comey told us that "like the rest of the world [he] assumed that Hillary Clinton was going to be elected president." When asked whether this had an impact in his decision to notify Congress, he stated:

I think none and I tried very hard to both be that and maybe convinced myself of that.... I've often asked myself, so were you influenced in any way by the knowledge what the polls were showing? Not consciously, and in fact I tried to be very conscious about saying I

don't give a rip. I don't care. But you know if anything, I suppose like if it's unconscious, I may have been consoled that it wasn't going to make any difference anyway. I don't remember thinking that consciously, but the environment which I was operating—well I don't want to psychoanalyze myself too much more—not consciously is the honest answer.

When asked if his decision would have been the same if Clinton was expected to lose by 20 points, he stated:

[T]hat's a reasonable question.... I think I would have said still, if you conceal something, maybe the matter wouldn't have been of such intense interest if she was down 20 points all summer long or something. But a matter of intense public interest and debate that and people have relied upon your credible investigation and your word here, even if it was foreordained that she was going to lose the election, I think to hide that would have subjected this institution to justifiable withering criticism.

In a subsequent OIG interview, Comey stated: "I am sure I was influenced by the tacit assumption that Hillary Clinton was sure to be the next President."

We asked Baker if anyone raised the issue of Clinton being up in the polls and likely to win the election no matter what the FBI did. Baker said that this issue "definitely came up" and "somebody said something along those lines." Baker stated:

There was some discussion about if she, if we do this and she wins, then nobody can allege that it was a rigged system and things had been hidden to try to benefit her. Somebody may have said in that context, well, she's ahead in the polls anyway and that's probably what's going to happen, and, and so on. So I think, yes, I think that aspect of it came up in that way. But it was more like, you know, if we do this and she gets elected, then she should be thanking us.

Baker told us that he could not remember who made this comment and added, "It could have been the Director, but I don't specifically remember."

F. Belief that Email Review Could Not Be Completed Before the Election

Each of the participants in the FBI discussions to seek the search warrant told us that no one expected the review of the Weiner laptop to be completed prior to the election. Comey told us that this fact—that the Midyear team did not expect to finish the review of the Weiner laptop prior to the election—"was a really important fact for me" in making the decision whether to make the October 28 announcement.

Comey stated that he asked the Midyear team directly during these discussions if they could "finish the review before the election." Comey said that the team told him, "There's absolutely no way we'll get that done before the

election. It will be long after the election.” When asked why he did not just assign 30,000 people to review the laptop, Comey stated:

Yeah, I could have, but I actually raised this and their answer was, the review has to be done by people that understand the context. If we bring in a class out of Quantico it doesn’t do us any good because the quality of the work will be such that we can’t rely on. It’s not like searching a field for a bullet fragment...we have to put eyes on them to understand this.

We asked Comey if his decision to notify Congress would have been different if the team told him they could finish the review prior to the election. Comey stated:

Maybe, yeah. If they could tell me with you know high confidence that this is something we can knock out in a week, maybe, yeah, maybe. But I do think it was an important consideration that we’re about to undertake something of indefinite duration and so I think—maybe—I’m not certain that would make it differently, but I would have waited probably differently. If it was October 3rd and they said, we think there may be something here and we can knock it out in the next six days; I might have. Then—it’s interesting—I hadn’t thought about this—but then I might have been on to considering the prospect of a leak you know because I might have said, not going to do it, but what would be the effect on the Department if there’s a leak about the search warrant, yeah.

Comey later added that the ultimate impact on his decision would have depended “upon how high a confidence read they could give to me that it’ll be finished far enough in advance of the election to responsibly report a result.” Comey reiterated:

[I]f I had known the information or even a reasonable facsimile of the information that I was given on the 27th, three weeks earlier, I’m highly confident I would have said, let’s get a search warrant and then we would have had a conversation about how soon can you finish and whether there [was] a prospect of finishing this before the election. I still would have had a very hard decision to make, but I would have been making it three weeks earlier. I don’t know whether it would have led to a different place—but I certainly would have wanted to have the option to be there and to consider whether...let’s make it up, three weeks’ of time, does that make me think differently about the choice between speak or conceal? Is there a reasonable prospect I could run this out and have a conclusion far enough in advance of the election that if it changes the FBI’s view, I could still, well you’d have to go through all that decision tree. But I don’t know it would have put us in a different place, but I would have wanted to have the opportunity.

G. Fear that the Information Would Be Leaked

We asked the FBI personnel involved in these discussions if a fear of leaks impacted the decision to notify Congress. Comey told us that he "didn't make this decision because [he] thought it would leak otherwise." Comey stated that he thought "that would be a cowardly way to make a decision." Nevertheless, Comey told us, "I kind of consoled myself, this was a hard call and you're going to get the crap beat out of you for it, but it would have come out anyway." He reiterated, however, "I [don't] want to leave you with the impression that I sent the letter to Congress because I thought it was going to leak otherwise."

Others, however, had a different recollection. Rybicki told us that, while not remembering the context, he recalled the issue of leaks being raised during these discussions. Strzok stated that the fear of leaks played a role in the ultimate decision. Strzok explained that the decision to seek a search warrant for the Weiner laptop was known to many people beyond the Midyear team and this raised a concern that the information could leak. Draft talking points that were circulated to FBI senior management on October 31 regarding the decision to send the letter to Congress, which incorporated comments by Strzok, the Lead Analyst, and Page, included the following bullet point: "It's important to note the [sic] I notified Congress before moving forward with additional investigative steps in this investigation, because of my commitment to transparency and because I wanted Congress [sic] to hear it from me first." (Emphasis in original). Page told us that her "personal belief" was that there was "a substantial and legitimate fear that when we went to seek the warrant in order to get access to the Weiner laptop, that the fact of that would leak." Page said that this concern related to the suspicion that NYO personnel had been leaking negative Clinton Foundation stories. Bowdich, Anderson, and FBI Attorney 1 told us that they did not recall a discussion of leaks during the debates about notifying Congress.

Baker told us that a concern about leaks played a role in the decision to send the letter to Congress. Baker stated:

We were quite confident that...somebody is going to leak this fact. That we have all these emails. That, if we don't put out a letter, somebody is going to leak it. That definitely was discussed.... [If] we don't do a letter. It's either going to be leaked before or after the election, and we either find something or we don't. And either way, there's going to be claims that we tried to play games with the election, and we tried to steer it in a certain way to help Hillary Clinton and hurt Donald Trump. We're not about that. We don't, we're not making decisions on the basis of which candidate we like or don't like. We're not going to do that. And so we are just going to have to ignore all that and do what, again, what we think is right, consistent with our obligations to Congress.

Baker told us that "the discussion was somebody in New York will leak this." Baker continued, "[W]hat we discussed was the possibility that if we go forward with the search warrant and take that step, that's a step being taken in the Hillary Clinton

investigation. And that's what will leak." Baker explained, "[T]he sense was that that this significant of a step is not going to go unnoticed. And if we don't put something out, somebody will leak it. That's just what we talked about."

II. Comparison to Other Ongoing Investigations

In this section we address the Russia and Clinton Foundation investigations, both of which were ongoing in October 2016. Comey and other witnesses told us that these investigations were not discussed during deliberations regarding whether to announce to Congress the reactivation of the Midyear investigation.

A. The Differential Treatment of the Russia Investigation

On March 20, 2017, Comey testified before Congress that the FBI began an investigation in late July 2016 into "the Russian government's efforts to interfere in the 2016 presidential election," including "investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts."

Despite the existence of this investigation into individuals associated with the Trump campaign in the fall of 2016, none of the participants in the FBI's internal discussions about the October 28 notification to Congress recalled any mention of the Russia investigation.

We asked Comey whether the existence of investigations into individuals affiliated with the Trump campaign impacted his consideration as to whether to send the October 28 notification to Congress regarding Clinton. Comey told us that "you've got to look at each case individually" and stated that comparing those investigations is "a calculation you shouldn't engage in because then you're starting to weigh political impacts of your work—who's hurt by this, who's hurt by that." Comey explained:

Well I don't think—I shouldn't think of them in relation to each other. I should look at a case involving a John Smith and given our norms and rules around that, I don't see and I don't think the Department sees, a reason for treating those cases as exceptions the way we did the Hillary Clinton case. In part, among the considerations [in] the Hillary Clinton case, the whole world knew we were doing it, right? The candidate and her campaign themselves had talked about the review, the security inquiry. We know the government is working on this. The referral had been public, so all of that to my mind puts this in a different position. And counterintelligence investigations are very different—and for all reasons you can imagine, we are very, very careful about—because we don't want the adversary who's not necessarily the subject, but is the nation-state to know what we're doing or who we may have thought of to focus on, so there it would take even more to be the exception to the rule as I just look at—I

wouldn't look at them in relation to each other, but if I found another case where I and the Department thought that made sense to make an exception, we would.

Comey was asked during testimony before the Senate Judiciary Committee on May 3, 2017, if it was "appropriate" for Comey to comment on the Midyear investigation repeatedly and "not say anything" about the investigation involving "the Trump campaign's connections to" Russia. Comey replied, "I think I treated both investigations consistently under the same principles. People forget that we would not confirm the existence of the Hillary Clinton email investigation until three months after it began, even though it began with a public referral and the candidate herself talked about it."

Whether to make the public aware of the more general issue of Russian interference in the U.S. presidential election also arose in the fall of 2016. On October 6, the Department of Homeland Security and Office of the Director of National Intelligence issued a joint statement about election security. This statement was not drafted in connection with the FBI's Russia investigation, but Comey's reaction to it is highly relevant. The statement began, "The U.S. Intelligence Community (USIC) is confident that the Russian Government directed the recent compromises of emails from US persons and institutions, including from US political organizations." The statement then described the nature of these compromises and urged "state and local election officials to be vigilant."

As a member of the USIC, the FBI was consulted on this statement. Comey told us that he decided the FBI should not be included in the statement because he felt that it conflicted with the longstanding Department of Justice norm "that we, if at all possible, avoid taking any action in the run up to an election, avoid taking any action that could have some impact, even if unknown, on an election." Comey continued:

It was actually that norm that drove me to say the FBI should not be putting out a statement earlier in October about the Russian hacking, that I had advocated inside the U.S. government. In fact, I drafted an op-ed from my own name in August to call out the Russians, to say here's what they are doing in our election. And our awesome interagency system, kicked that around, kicked that around, and then come October, there is then discussion about making a public statement about the Russians. And I said my view is...that the goal of a public statement is to inoculate the American people against what the Russians are doing. I think the inoculate goals have been by and large achieved because of all the press reporting on it. You had legislators talking about it. I said so there's only a marginal increase in the inoculation by an official statement from the FBI. And given that we are now a month from a presidential election—from an election, I think we can reasonably avoid that action.... And so I said, I don't think the FBI should put out such a statement; it's too late. That if we need to do it, we should have done it then and I said that's just how I've long operated.

In an October 5, 2016 email, Comey explained his position on the statement to Central Intelligence Agency Director John Brennan and Director of National Intelligence James Clapper. Comey stated, in part:

I think the window has closed on the opportunity for an official statement, with 4 weeks until a presidential election. I think the marginal incremental disruption/inoculation impact of the statement would be hugely outweighed by the damage to the [Intelligence Community's] reputation for independence.

I could be wrong (and frequently am) but Americans already "know" the Russians are monkeying around on behalf of one candidate. Our "confirming" it (1) adds little to the public mix, (2) begs difficult questions about both how we know that and what we are going to do about it, and (3) exposes us to serious accusations of launching our own "October surprise." That last bit is utterly untrue, but a reality in our poisonous atmosphere.

B. The Differential Treatment of the Clinton Foundation Investigation

In 2016, the FBI had an open investigation into the Clinton Foundation. Comey refused to confirm the existence of the investigation on July 7, 2016, in testimony before the House Oversight and Government Reform Committee because the investigation was not public.

In addition, numerous witnesses told us that agents involved in the Clinton Foundation investigation were instructed to take no overt investigative steps prior to the election. We asked Yates about this instruction. Yates stated, "[Y]eah, I think there was discussion about look, if [agents on the Clinton Foundation investigation] want to go do record stuff and stuff that you can do covertly, fine. But not overtly.... And the sort of thought being we'll address that again at the end after the election was over." Yates explained that this instruction was explicit because the Department does "everything [it] can to avoid having an impact on an election." Yates continued:

[Y]ou have to be cognizant of the fact that the actions that we take at DOJ can have an unintended impact on an election. And so that you do everything you can to avoid that.... Like if somebody wants to send you a criminal referral we generally don't initiate an investigation until after the election.... So it's, you know, sort of basic DOJ practice that I don't think anybody would dispute that you do everything you can to avoid having an impact on an election....

And the Bureau never pushed back on that concept. This actually came up with, in the connection with Paul Manafort. And they had an investigation on Manafort and I had a lengthy discussion with [McCabe], at least one, maybe more, about how important it was at that time that our investigation not be overt. And what they were, what the Bureau was doing with respect to Manafort because that

could impact Trump even though he was no longer his campaign manager. That unless there was something they really needed to do, because they were getting records and doing that kind of, unless there was something they needed, really needed to do overt they really needed to stay under the radar screen.... Because it's not fair to impact [an election].

Axelrod echoed this point, stating that "DOJ's policy, procedure, and tradition" is to avoid overt investigative steps in "the run up to [an] election." Axelrod continued, "And [this policy] had actually been cited to the Bureau on other investigations during this election cycle," including the Clinton Foundation and Manafort investigations.

We asked Comey about the different instructions given to the Midyear investigation and the Clinton Foundation investigation. Comey told us, "The principle is take no action if it can reasonably be avoided and there was nothing about the Clinton Foundation investigation that was time sensitive." Comey continued:

The challenge of the discovery of the emails on the Weiner thing was, given the context that we had told the world, we the Justice Department and the FBI, that there was nothing there...to now be presented with all these emails that are...highly significant to that investigation, how is, where is the door labeled no action, that you either speak or you conceal. And so either one's an action, so which action should we take. So it was very different, given the context, a very different posture than the Clinton Foundation. And my worry was, I have to be careful that people in New York aren't by virtue of political enthusiasm, trying to take action that will generate noise that will have an impact on the election. No time sensitivity whatsoever to that....

III. Internal FBI Discussions Regarding the Decision to Notify Congress

A. McCabe, Strzok, and Page Text Messages on October 27

We reviewed text messages from Strzok, Page, and McCabe that indicated their disagreement with Comey's decision to notify Congress on October 28. At 4:03 p.m. on October 27, Page sent a text message to Strzok that stated, "Please, let's figure out what it is we HAVE first. What if we can't make out [probable cause]? Then we have no further investigative step." Strzok replied, "Agreed." At 9:57 p.m. on October 27, McCabe sent a text message to Page that stated, in part, "[Baker] says his meetings were mostly about the notification and statement which the boss wants to send tomorrow. I do not agree with the timing but he is insistent." Page responded, "Fwiw, I also wildly disagree that we need to notify before we even know what the plan is. If we can't get in, then no investigative step has been taken. Whatever. I hope you can get some rest tonight."

We asked Strzok about his text message exchange with Page. Strzok stated that there was a “vigorous, healthy debate” within the FBI about whether the notification to Congress was a good idea and Strzok told us that he thought the concerns expressed in Page’s text message were part of that debate. Strzok told us that he ultimately agreed with Comey’s decision to send the letter to Congress.

Page told us that she could not remember the context of the text messages with Strzok. Page agreed with the content of the message and stated that she did not support Comey’s decision to notify Congress. Page added, “We just didn’t know what we had yet. It just felt premature to me.” Page also stated that there was “no guarantee” that the FBI would be able to make out probable cause for the search warrant and she felt it was “presumptuous of us to sort of say we’re reopening and we’re doing this before we have even a search warrant in hand.” However, Page told us that she was not involved in the discussions about the letter due to McCabe’s recusal.¹⁸²

We asked McCabe about this text message exchange with Page. McCabe stated that Baker told him during a phone call that Comey planned to send a letter to Congress. McCabe told us that from his perspective—as someone who had not participated in the discussions about the letter—“it just seemed like we should have a better understanding of what we had before we made a notification.”

We also showed these text messages to Comey. Comey stated he did not recall discussing the issue of congressional notification with McCabe. Comey told us that he did not remember hearing Page express these concerns during the debate over the letter, adding, “I think I would remember that.”

B. Strzok Call with Midyear SSA, Agent 1, and Agent 2 on October 28

At 5:21 a.m. on October 28, Page sent a text message to Strzok that stated, “Any plan to tell the case agents? You know, since so much of this has hinged on the credibility of ‘the team.’ ☺.” At 5:59 a.m., Strzok sent an email to the Midyear SSA and Agents 1 and 2, stating, “Would like to talk to the three of you on a conference call at 645. Sorry for late notice.”

Strzok stated that he reached out to the agents and the SSA on his own and not at Comey’s suggestion. Strzok told us that he wanted to make sure the agents and the SSA knew what was happening and he wanted their input. Strzok stated:

I think it was, hey look, we went, we briefed [Comey]. Our sense is they want us to reopen the case, and we need to get a warrant and go after it. And they’re going to send a letter to Congress. What do you think about that? Are you, are you good? Are you, objections, are we horribly off-base? Are we not thinking about something?

¹⁸² As discussed in Chapter Thirteen, Comey asked McCabe to drop out of the discussion about this topic on October 27, and Page left the discussion as well. McCabe formally recused himself from Clinton-related matters on November 1.

The Midyear SSA told us that Strzok called to inform him of Comey's decision to send the letter and wanted to make sure "the case agents were informed" as well. The Midyear SSA, Agent 1, and Agent 2 told us that they each ultimately agreed with the decisions to seek the search warrant and send the letter. As noted previously, Agent 2 was on the September 29 phone call with NYO about the Weiner laptop. Agent 2 told us that around this time was the first he had heard about the Weiner laptop since September 29.

C. Agent 1's Instant Messages on October 28

After the letter was sent by the FBI to Congress on October 28, Agent 1 sent a series of instant messages to other FBI employees about the reactivation of the Midyear investigation.

Beginning at 1:46 p.m., Agent 1 exchanged the following messages with Agent 5. The sender of each message is identified after the timestamp.

1:46 p.m., Agent 5: "jesus christ... Trump: Glad FBI is fixing 'horrible mistake' on clinton emails... for fuck's sake."

1:47 p.m., Agent 5: "the fuck's sake part was me, the rest was Trump."

1:49 p.m., Agent 1: "Not sure if Trump or the fifth floor is worse..."

1:49 p.m., Agent 5: "I'm so sick of both..."

1:50 p.m., Agent 5: "+o(TRUMP"

1:50 p.m., Agent 5: "+o(Fifth floor"

1:50 p.m., Agent 5: "+o(FBI"

1:50 p.m., Agent 5: "+o(Average American public"

We asked both Agent 1 and Agent 5 about these messages. Agent 1 and Agent 5 both stated the reference to "fifth floor" referred to the location of the FBI WFO's Counterintelligence Division. Agent 1 continued, "Again, you know, I think a general, general theme in a lot of this is some personal comment, or, you know, complaining about common topics and leadership and, and venting." Agent 5 also described this as general complaining to Agent 1 and also as an example of her being "very tired of working" these types of cases.

Agent 1 also sent two instant messages about the Weiner laptop to FBI employees not involved in the Midyear investigation. At 2:16 p.m., Agent 1 messaged, "Yes. Its more email found through a separate matter. Not sure if they are even unique yet, but we have to make sure." At 2:25 p.m., Agent 1 messaged, "emails found through separate matter. Due diligence—my best guess—probably uniques, maybe classified uniques, with none being any different tha[n] what we've already seen." We asked Agent 1 about these instant messages. Agent 1 stated that, as of October 28, any information he had about the contents of the Weiner laptop would have come from discussions with the Midyear SSA. Agent 1 told us he did not recall precisely what he meant by these messages, but that given the

seemingly small numbers of Abedin-Clinton emails the Midyear team had previously found, "I thought there was a chance that we would see more emails that we hadn't seen before." We asked Agent 1 to explain his comment about "none being any different [than] what we've already seen" and whether that indicated Agent 1 did not expect to find emails substantively different than what the Midyear team had previously reviewed. Agent 1 responded, "Maybe. That, right, right. The classified email was in a similar vein that we saw, similar activities and similar talking around. Yeah."

IV. The FBI Informs DOJ Leadership About Comey's Decision

Department personnel were informed of Comey's decision to notify Congress around mid-day on October 27. Various discussions between FBI and Department personnel occurred over the next 24 hours. These discussions were at both the Midyear-team level and between Rybicki and Axelrod. Notably, Comey never spoke directly with either Lynch or Yates about the notification. We describe these interactions between the Department and the FBI below.

A. FBI and DOJ Midyear Team Discussions

Strzok stated that FBI personnel assigned to Midyear "had a variety of robust discussions with" Department personnel about the letter to Congress. One such discussion occurred on October 27 after Comey had decided that the FBI should seek to review the emails on the Weiner laptop, and that Congress should be notified. According to Prosecutor 2's notes, Strzok, FBI Attorney 1 and the Midyear SSA from the FBI, and Toscas, Laufman, Prosecutor 1, and Prosecutor 2 from the Department participated in this discussion. The notes reflect that there was a discussion of whether the decision to review the Abedin emails on the Weiner laptop was inconsistent with the Midyear team's investigative approach during the investigation. For example, the notes indicate that Laufman asked, "What distinguishes this from other devices we chose not to obtain? When think of [Abedin's] email, her emails were of less probative significance." The notes reflect that Strzok responded, "Volume – 500k emails – specifically domains of interest – gap period (1st 3 months)." Strzok also stated, according to the notes, that "it is relevant that [the Weiner laptop] is in our possession." Toscas agreed that possession of the laptop was a relevant factor, stating that if the Midyear team had possessed the laptop during the investigation, it "seems like we would've looked at it." Toscas went on to state, according to the notes, "[W]ill beg the question of why we're not going to ask for all these folks' devices?" According to the notes, Prosecutors 1 and 2 pointed out that the investigative team did not previously seek to obtain devices from Clinton's senior aides. Regarding a public announcement, the notes reflect that Laufman stated, "[P]ublic announcement disproportionate to importance of what we're doing." According to the notes, when Laufman asked whether the Department would be shown a copy of the FBI's announcement in advance, Strzok responded, "I don't know."

We asked Department personnel involved in the Midyear investigation about these discussions. The Department personnel we interviewed told us they

disagreed with Comey's decision to notify Congress and that they communicated that disagreement to the FBI. We summarize their concerns below.

Laufman stated that the entire CES team found the notification "highly objectionable." Laufman told us his concerns, stating:

(A) We had a very low expectation that, that the substance of what this [the laptop] might include would be anything novel or consequential that would occasion reassessing, let alone altering the findings and analysis and recommendations we had already made.

(B) [T]o the extent that investigative action was necessary to review the data, it's not uncommon for the Bureau to have to nail down something that arises at the end of an investigation. And we ordinarily would forgo public comment about that unless and until it's appropriate to say something about the results of that activity. In many instances, it might not be appropriate to say anything publicly about it at all....

(C) This is October 28th. We're about a, a week away from our presidential election. And it particularly struck us as exceptionally inappropriate to make a statement that unmistakably would be construed as the Bureau's having reopened this investigation in that close a proximity to the day of the election.

We asked Laufman what he meant when he said there was a "low expectation" that this evidence would alter the outcome of the Midyear investigation. Laufman stated:

[W]e had seen through our investigation, the types of emails that Huma Abedin had been party to. And they were just not the kinds of emails that really went to the core issues that were under legal analysis, meaning they had to do with sort of scheduling, and...I mean, as important as she is in a personal, confidential assistant manner to the former Secretary, she wasn't as substantively engaged in, in some matters that would have occasioned access to classified information or dealing with classified issues. So...we had seen quite a bit up to that point. And with respect to her, we hadn't seen her engaged via email with anybody on the types of things that were material to our legal analysis. So, assuming that what was going to be reviewed from this new dataset was consistent with that, it seemed improbable to us that it was going to, to change anything. And of course as we know now, it was a giant nothing-burger.

Prosecutor 1 stated that the notification to Congress "didn't make any sense." Prosecutor 1 told us that given Abedin's role and the evidence they had previously reviewed there was little "likelihood of finding anything of import in there." Instead of doing a public announcement, Prosecutor 1 stated, "We should just investigate it and do it as quickly as we could." We asked Prosecutor 1 about the potential presence of BlackBerry emails from early in Clinton's tenure.

Prosecutor 1 stated that the FBI mentioned that "there could be information that covered that BlackBerry period from the period at the front end of the tenure," but added:

I felt like a lot of the analysis was based upon what, what could be in there and the opportunity cost of sort of missing out on that. Of course, to me that's a different analysis than making an announcement about it. We didn't want to be seen to be in favor of forgoing the effort entirely.

Prosecutor 1 stated that the FBI seemed "very concerned about transparency with the public" and "had already kind of decided what they were going to do" prior to consulting with the Department.

Prosecutor 2 told us that the Department was "shocked" that the FBI was even considering notifying Congress about this development. Prosecutor 2 said that she did not necessarily view the Weiner laptop as a significant development in the Midyear investigation. Prosecutor 2 stated:

Because over the course of this investigation, we haven't sought out personal devices of anybody other than Hillary Clinton. So we haven't asked, for example, for like Huma's personal laptops, her personal BlackBerries. We have her state.gov stuff, but that's like, that of Huma's is all we've searched.

So, there's a threshold question in my mind of whether, like, this is even something that needs to be searched. And based on the, the iffy-ness on that threshold question, and then the likely significance of this device, it seems totally nuts to me that they would make an announcement having no idea what is on this device, having not looked at it. And in, and in terms of like the impact that this announcement could have.

And I remember being on the phone call like, how are you, asking like how on earth are you going to word this announcement so it's accurate and doesn't, doesn't like, you know, open a much bigger can of worms than is really the significance of this recent finding. I mean at this point...we have no idea.... We just know that like some of Huma's emails are in FBI's custody. Like, of course Huma has other emails. Like, how is this a game changer?

Prosecutor 2 also told us that she believed the FBI would not listen to any of the arguments they put forth. She stated, "[T]here's a defeated feeling at this point that like [Strzok] was given the task of like pretend to DOJ that you're hearing them out. And he was going to, you know, humor us by having this conference call, but like that nothing we said mattered on that call."

Recalling a discussion with Strzok in this time period, Toscas stated, "I was really upset and I basically said, you know this is BS. We don't talk about our stuff publicly. We don't announce things. We do things quietly." Toscas told us that the justification provided by the FBI for why it needed to notify Congress was what he

called “the Comey Rule,” meaning a duty to correct the record with Congress because Comey testified to “one thing” and circumstances have now changed. Toscas told us that, in his opinion, the October 28 letter demonstrates that “as soon as you deviate from normal practice” once—meaning the July 5 statement—“you’re going to have to adjust to deviations all along.” Toscas explained:

One of the things that I tell people all the time, after having been in the Department for almost 24 years now, is I stress to people and people who work at all levels, the institution has principles and there’s always an urge when something important or different pops up to say, we should do it differently or those principles or those protocols you know we should—we might want to deviate because this is so different. But the comfort that we get as people, as lawyers, as representatives, as employees and as an institution, the comfort we get from those institutional policies, protocols, has, is an unbelievable thing through whatever storm, you know whatever storm hits us, when you are within the norm of the way the institution behaves, you can weather any of it because you stand on the principle.

And once you deviate, even in a minor way, and you’re always going to want to deviate. It’s always going to be something important and some big deal that makes you think, oh let’s do this a little differently. But once you do that, you have removed yourself from the comfort of saying this institution has a way of doing things and then every decision is another ad hoc decision that may be informed by our policy and our protocol and principles, but it’s never going to be squarely within them.

McCord was Acting AAG for the National Security Division at this time and she told us that she thought the notification was “a bad idea.” McCord stated, “I believe there were conversations between [Toscas] and ODAG and the Bureau expressing our view that we should at least get a handle first on whether these are just duplicates because it could be a big nothing.”

B. Department and FBI Leadership Discussions

After deciding on October 27 that he needed to notify Congress, Comey told us that he instructed Rybicki to reach out to the Department about the notification. Comey stated that he told Rybicki, “I want you to tell DOJ that I think I need to inform Congress of this step. And please tell the DAG and the AG I’m happy to speak to them, but that’s what I’m thinking. I welcome their feedback.” Comey stated that he did not remember his specific directions to Rybicki, “but the substance would have been something like, call [Axelrod], tell him where we are and that I think we have an obligation to notify” Congress “that we’re taking this step.”

We asked Comey why he decided to seek the Department’s advice in October, but not in July. Comey stated:

I'm not sure, I think given Loretta's position, I thought the July decision I had to do it given where Loretta had landed and that it was the decision best calculated to protect the Department.... In this circumstance, I wasn't positive I was right, making a very hard decision, I thought if they want to get involved in this, it's not necessarily a bad thing. I thought it would be a very bad thing if I was...because Loretta might well say, don't do that, don't do that in July. Here, I guess I thought about it slightly differently. I thought it was a hard call and if they wanted to weigh in on it, offer their view, say we'll take the decision, that maybe it was a little less courageous frankly than in July, I'm just thinking out loud here, maybe it was a product of having gotten the pain after July, but I'm not sure, I'll think more about that. I'm not sure. Yeah, that's my reaction to it.

Comey told us that he did not have any concerns about potential bias when consulting with Lynch on this decision. We asked Comey why that was the case given the concerns about Lynch that led to his July 5 statement. Comey replied, "Probably because I saw that reasonable people could see the framing differently than I, in the way I didn't feel that way with her refusal to step out, the semi-recusal, I think."

1. Comey's Decision Not to Engage Directly with Lynch or Yates

We asked Comey why he delegated communication with the Department to Rybicki instead of talking to Yates and Lynch directly. Comey stated:

I think because of the way, the distance they've been taking on the whole thing I wanted to offer them the opportunity to honestly to step away from it. That I wanted to offer them the opportunity—I didn't want to jam them and I wanted to offer them the opportunity to think about and decide whether they wanted to be engaged on it.

Comey emphasized that the reason he had Rybicki reach out to the Department was because he "wanted to offer them the opportunity to take this decision."

2. Phone Calls between Rybicki and Axelrod

Rybicki stated that he spoke with Axelrod on the afternoon of October 27. Rybicki told us his conversation with Axelrod was "twofold" and explained,

To let him know that the Director had decided to, the Director had decided to authorize the seeking of the search warrant. And there was no real reaction to that from [Axelrod]. I think he, I think he perhaps knew that was coming, or, he didn't seem surprised in any way. And then two was the second part that the Director felt he had the obligation to supplement the record.... [Axelrod had a] very strong reaction. You know, you know, no, we just don't do that. Right? We, you know, we don't do that.

Rybicki stated that he and Axelrod had "a series of phone calls" the rest of the day. After the initial call to Axelrod, Rybicki told us that his understanding was that Axelrod was speaking for both Yates and Lynch in their subsequent calls. We asked Rybicki why Comey and Yates did not speak directly. Rybicki stated that he "had asked whether they wanted to speak to the Director, and, and [Axelrod] said no."

Rybicki told us that he asked Axelrod to provide the FBI with any Department policy or guidance dealing with investigative activity near an election. Rybicki stated that Axelrod did not believe the congressional notification would technically violate Department policy, but was outside of "the normal course." Rybicki told us that he explained Comey's thinking to Axelrod, stating that Comey "felt strongly" and "felt he had the obligation" to notify Congress.

Axelrod stated that he received a call from Rybicki on October 27 and Rybicki informed him "that the Director was intending to send a letter to Congress notifying them" of the decision to examine the Midyear-related emails on the Weiner laptop. Axelrod described his reaction as "surprise, concern, dismay" and stated:

I told [Rybicki] like in that initial call look, obviously I'll have to talk to folks here and, you know, call you back. But I said, but I will give you my initial reaction which is that...[this] would be [a] very bad idea. Contrary to...Department policies and procedures, both about, you know, taking overt investigative steps so close to an election and talking to the Hill about, you know, investigations.... It just struck me as incredibly problematic.

Axelrod told us that he and Rybicki "talked it through a little bit" and Rybicki asked Axelrod to send him the relevant Department policies. Axelrod told us that contacted Ray Hulser, then Section Chief of the Department's Public Integrity Section, to get information on the relevant policies.

Axelrod stated that Rybicki told him "that the Director believes he has an obligation to correct a misimpression that Congress has" that the Midyear investigation is concluded. Axelrod told us that this was "the key part" of their conversation. Axelrod stated that he asked Rybicki where Comey had promised to update Congress and Rybicki replied that it related more to the "overall tenor" of Comey's testimony to Congress. Axelrod told us that he tried to convince Rybicki that Comey and the FBI would be better served following Department policies and procedures. Axelrod continued:

[Rybicki] never said look, I don't think that's the policy or I don't think that's the procedure or I don't understand.... [H]e was all like yeah, I get all that but this is different. This is separate. The Director has testified. The Director believes that Congress has, now has a misimpression and so it's the Director's you know, butt on the line. And he needs to do this. And you know, and if he doesn't, you know, the concern [is] it's not survivable for him.

We asked Axelrod what he understood Rybicki to mean by the comment that this would not be survivable for Comey. Axelrod stated:

I understood that to mean that they thought that the heat the Director would get from the Hill, right, so that if this doesn't, you know, he doesn't surface it and then...afterwards when it comes out that [the] Bureau had this information but kept it quiet that there would be calls for his resignation that he wouldn't be able to survive.

Axelrod stated that Rybicki told him that the FBI was also concerned that the information would leak if no notification was made.

We asked Rybicki if he told Axelrod that failing to notify Congress would not be survivable for Comey. Rybicki told us that he did not "remember using that language." Rybicki stated, "I certainly conveyed how seriously Director Comey felt about it. But I, I don't recall, you know, the survivability of it. I just, sitting here I don't." We also asked Rybicki if he more generally conveyed that there would be "political heat and a call to resign" if Congress was not notified. Rybicki replied, "[N]ot that I can recall. I remember telling him the Director felt strongly. But I don't remember sort of political heat, calls to resign, just that he felt strongly and that he, he himself felt he had the obligation."

We asked Comey if he expressed concerns at the time about not being able to survive as the FBI Director if Congress discovered post-election that he had not notified them of this development in the Midyear investigation. As previously noted, Comey stated that it would cause "catastrophic damage" to the FBI, the Department, and to a Clinton presidency. He said that he did not remember expressing his concerns in terms of survivability, but added, "I'm sure I said something like, if I chose conceal over speak, I ought to be fired, I ought to be hung out, I would be run out of town because of the damage it will have brought to this. I'm sure I said things like that."

We asked others in FBI leadership if they heard Comey state that failing to notify Congress would not be survivable. Bowdich stated he did not recall Comey making that comment, but did remember Comey saying:

I am going to take a huge hit on this, but it's the right thing to do. And I remember him, it struck me that not only was the organization going to take a hit, but he even, I remember him pointing and saying I am going to suffer personally from this as well. But he felt it was the right decision to make.

Anderson stated that Comey viewed sending the letter to Congress as the option that "would do the least damage to the Bureau's long-term credibility and integrity as an institution."

Baker stated, "I think [Comey] may have said like I could be impeached" or "something along those lines." We asked Baker to explain the context for that remark. Baker stated:

It may have been during the meeting, one of the two meetings on the 28th [or] 27th.... Some of the stuff that gets talked about at those meetings...he and I talked about separately later and kind of repeated it. But at some point in time, he raised, I don't remember the context exactly. He raised the issue of, you know, potentially he could get impeached for this if he doesn't tell them this.

Baker told us that because Comey "had testified under oath, and now that something different has happened, people are going to react to this big-time" if it was leaked or the FBI told Congress "after the election or whatever."

3. Internal Department Discussions

Axelrod told us that he discussed the congressional notification with both Yates and Lynch. Yates stated that Axelrod told her that "he got a call from Rybicki about the Director writing a letter" to Congress. Yates stated:

[Rybicki told Axelrod] that the Director feels like he has a personal ethical obligation. Because he had told them that the investigation was closed. Because we had these new emails. And we agreed we should get a search warrant for the emails, by the way. I thought we should. We need to find out what's on there. But that because he had told them that it was a closed investigation he had a personal obligation to tell them that it was, an ethical obligation to tell them that they were now reviewing these new emails.

Yates also told us that she remembered "being told that FBI doesn't think it's survivable for the Director for him not to" notify Congress. Yates stated that one of the reasons that the FBI "gave for why they felt like [Comey] had to go to Congress is that they felt confident that the New York Field Office would leak it and that it would come out regardless of whether he advised Congress or not."

Lynch stated that she was told that Axelrod "had gotten a call" that the Weiner laptop "had potentially relevant emails on it" and Comey "felt that because of his prior testimony over the summer, that he had an obligation to notify Congress of it." Lynch told us that it was presented to her as the FBI was notifying the Department that Comey felt he needed to and had an obligation to make this notification. Lynch stated that this obligation was described to her as "an ethical obligation both based on testimony, but also as a matter of ethics to notify Congress of new information in this investigation." Lynch told us that she did not recall the FBI asking for the Department's feedback. Lynch continued:

And then at one point, I think [Axelrod] relayed information again from Rybicki saying that the Director's view was that he had to provide this information to Congress, that he was concerned about the information being leaked from the New York office in even more negative ways, that he was concerned about, he was very concerned about that. He expressed that to the FBI and Rybicki shared that. And that he also was concerned that if, in fact he did not provide this

information to Congress, and either it was leaked or later on we discussed it in some Department-approved way, that it was not survivable. And that was the phrase that was given to us. And both the DAG and I said, I think we both repeated the same, you know, what do you mean not survivable, one of those chorus things. And [Axelrod] said that was just the phrase that Rybicki had used. It was not survivable.... [W]e certainly took it as coming from the Director. It would not be survivable in his, in his view for either him or the FBI. I didn't think that he was thinking of the Department at large at that point, so we never got, and [Axelrod] said he did, when he heard that he said the exact same question that anybody would have, for whom? But he just got it wouldn't be survivable.

Lynch stated that Rybicki's call started a conversation within the Department about the Department's response. Lynch told us that Axelrod examined Comey's prior testimony and Department personnel discussed whether or not that created an obligation. Lynch stated:

And my view was, look, you can, you can read it any way you want, but if he's looking at it and saying it does, that's his view. You're not going to change his mind by saying here's another interpretation of this particular statement. That's not the issue. The issue is should this happen...should this be done regardless of, of what's been testified to prior or what's happened.

Lynch told us that her view was "let's find out what's on this computer before you start talking about it at all." Lynch added, "Even if you view it as I need to say something to Congress, you don't have anything to say" at this point.

Yates stated that the Department began "almost nonstop" discussion on how to respond to the FBI. Yates told us that, among the factors discussed, were the Department's policies, the lack of knowledge about what was actually on the Weiner laptop, and the fact that the Department had not yet obtained a search warrant. Yates stated that the FBI did not dispute the Department's policies. Instead, Yates stated, "It all kept coming back to, and it was always framed as this is a personal ethical obligation that Jim Comey has. Not a Department strategic decision. Not a Department even policy decision. But a personal ethical obligation that he has."

4. Decision Not to Order Comey to Stand Down

Lynch described the Department's decision-making process to us. She stated, "[W]e had a discussion about, well, we need to make sure that at least it's conveyed that we don't want this letter to go out. We think, we think it's not only against policy but it's harmful given the calendar, meaning the timing of the election." Lynch stated that there was also "some discussion about whether either the DAG or I should call directly to the Director and whether or not that was a good idea." Lynch told us that "the staff's view" was a direct call from either of them "was not going to change anything based upon the discussions that [Axelrod] was having with Rybicki." Lynch continued:

And ultimately what we decided to do was to, was to continue to have the staff discussions and have [Axelrod] convey the strong view that neither the DAG nor I felt this letter should go out. And that we thought that it was going to cause serious problems. The response we got back was essentially the Director heard us, took that into consideration. Also took into consideration whoever he was speaking with...at the FBI, and was going to send the letter in any event.

We asked Lynch why she did not directly order Comey to stand down and not send the letter to Congress. Lynch told us:

I thought about it. I went back and forth on it. And we did in the room. We went back and forth on it. And ultimately, I did have a concern, and we had discussed this in the, in the small group also about the perception of Department leadership trying to somehow prevent information damaging to a candidate from coming out and that also being a political problem, because we also had the, we talked about it from the sense of, you know, you talk about reopening an investigation into either candidate, you know, whether we had, for example, said something about, you know, the, the Russian stuff at that point in time. We wouldn't have done that.

[B]ut the concern of appearing to put a thumb on the scale for a particular candidate was something we were wrestling with. And that's what I was wrestling with, was if in fact someone comes to you and says I have a legal, moral, and ethical obligation to do something, this is what I think is right, and then you say well you can't do it because of this policy and don't do it, then are you in fact then sort of doing the same thing only on the other side. And I will tell you, we went back and forth. Certainly I went back and forth in my mind over what to do, as to whether or not I should call him directly or have the DAG call him directly first, then have me call him. Either way, should there be a direct call to him?

We asked Lynch to respond to the criticism that she essentially abdicated her responsibility by not ordering Comey to stand down. Lynch responded:

I would say I was trying to get him to do the right thing. And I was hoping he would do the right thing. And I would say that you can have that criticism of me if you, if you would like. But I really felt that, that, frankly, when I say he didn't need me to tell him, I don't mean to say that I had no role in it at all. But this shouldn't have come up. This shouldn't have been an issue. This, this should not have been something that was being considered.

Lynch told us that she "went back and forth" on whether to order Comey to stand down, but she "thought at that point...it could lead to greater damage," meaning that Comey would disobey and send the letter anyway.

We also asked Yates why she or Lynch did not directly order Comey to stand down and not send the letter to Congress. Yates stated:

I certainly discussed it with Loretta.... [W]e looked at this and thought, all right. It was not presented to us as, again, you know, [Comey's] kind of thinking about this and he's wanting to know what you guys, and I don't mean to be sarcastic here at all. But this was really important how this was framed. It wasn't a he's seeking your view on this or he's torn and wants to know.... It was framed as he feels obligated ethically to do this. And it was like a notification. He feels obligated to do it. That's a difficult situation because, yes, either one of us had the authority to order him not to do it. But you got to play out what happens after that....

[L]et's imagine a scenario here where we order him not to do it. We're then ordering him not to do something he says he feels like he's ethically obligated to do. There are a couple options. He can say...I'm sorry that you're saying that but I feel ethically obligated and I'm going to do it anyway. So then we're in a scenario where he notifies Congress. He's been telling us it's going to come out. Because on top of this I'm ethically obligated to do it paired with that was it's going to leak out. It's going to come out and if I don't tell Congress that's going to put me in a very bad position because they're going to find out anyway and they're going to find out that I didn't tell them when I could have. So we're in a scenario where he says he's ethically obligated to do it.... [W]e weren't at all convinced that he would follow such an order not to do it. If he didn't follow the order and he did it anyway and then it comes out we were ordering him not to do it that's a very bad position for the Department of Justice. Because we're then telling the Director of the FBI not to do something he feels like he's ethically obligated to do. And it takes a bad situation and it makes it even worse because then you add what would be the perception of a concealment on top of this that we thought would be even worse for DOJ.

There's another option there which is he, we order him not to do it and he resigns. And then it comes out that that's why he's resigning. That seemed like a very real possibility to us, particularly against the backdrop of the situation with John Ashcroft in the hospital room where he had the resignation letter drafted. That wasn't even an ethical obligation. That was something where he disagreed with them about the statutory authority there. So we thought it was a very real possibility that he could resign and then it's, of course it's going to come out. And so that then is a bad situation for DOJ because it's got the concealment there as well.

So we couldn't figure out a scenario that was not going to, again, take a bad situation and make it even worse when we ordered him to do it when it had been framed as his personal ethical obligation. And we looked at it from every conceivable angle.

Axelrod stated that he participated in discussions with both Yates and Lynch about how to respond to the proposed congressional notification. Axelrod told us that he did not remember anyone advocating that Lynch order Comey not to notify Congress. Axelrod stated that there were "three possible outcomes, all of which [were] really bad" should Lynch order Comey not to send to the letter. First, Axelrod told us that Comey could obey the order and that "tees up an obstruction of Congress investigation" of Lynch because she has forbidden Comey from correcting a misimpression to Congress. Second, Axelrod stated that Comey could ignore the order and send the letter anyway, and then "you're in the same spot except the FBI Director has disobeyed a direct order from the AG so then you have to fire him." Third, Comey could resign. Axelrod told us, "[N]one of those [are] good for the institutions. None of those [are] good for the policies and the procedures or the, sort of the goals of keeping DOJ and FBI out of politics. None of those good for the AG personally."

5. Decision Not to Engage Directly with Comey

We asked Lynch why she or Yates did not contact Comey directly. Lynch stated, "I didn't get the impression that a private conversation was going to get me any more information than we were being given before." Lynch stated that she was "surprised" that Comey did not contact her or Yates directly and noted that he had spoken directly to both of them in July. Lynch also stated that Comey "set the terms of" the conversation by starting it at the Rybicki-Axelrod level.

We asked Yates why she or Lynch did not contact Comey directly. Yates stated that the FBI decided to have Rybicki reach out to Axelrod initially and "[i]t was just a notification to" Axelrod. Yates continued:

So we went through the thought process of is there a viable way to order him not to do it and we concluded we didn't think that there was without it blowing up in a much worse way than we were already in.... So the second step in the analysis thing is okay, if we're not going to order him should Loretta get on the phone with him? Should I get on the phone with him and talk about it? And we went through that analysis as well and we came out the same place for these reasons.

Again, he's not saying this is a strategic or policy question he has. He feels ethically obligated. Both of us have the authority to order him not to do it. So if we call him up I can't have a conversation with him about this without telling him I think it's a huge mistake for him to do this. The feeling was is that that would be portrayed as strong-arming him when you have the authority to be able to tell him not to do it and you have this conversation with him saying, I really don't think you should do this....

Yates told us that she felt this concern about "strong-arming" was later borne out in Comey's description of the meeting with Lynch in September 2015 about whether to call the investigation a matter or investigation. Yates continued:

And then you layer on top of that this. Strategically based on my interaction with [Comey] over all of this time I felt like our best chance at being able to convince him not to do this was going to be from his own, his discussions with his own people. That I had seen in too many meetings, and understand this, that if I had raised an objection to something FBI was doing that [Comey] understandably was very defensive of his agency and he would push back hard. I didn't think there was any way in the world he was going to go back to his people and say, I just got off the phone with the AG or I just got off the phone with the DAG and they convinced me that I really don't have this personal ethical obligation I've told all of you that I have. I felt like strategically the best way to convince him not to do it was going to be to convince his people that he shouldn't do it. And he in discussions with them could come to that conclusion because he could change his mind internally. I didn't think he would change his mind through a discussion with either one of us.

Yates told us that she considered Rybicki to be his "confidant" and the person that the Department needed to convince to change Comey's mind in this situation.

We asked Axelrod why Lynch did not contact Comey directly. Axelrod stated a direct conversation on the phone could lead to "a misunderstanding" or the impression that Lynch "was leaning on" Comey. Axelrod specifically highlighted the matter/investigation meeting between Comey and Lynch in September 2015 as an example of such a misunderstanding. Axelrod also stated that everyone understood Rybicki to be "a proxy for the Director." Axelrod added:

I thought about this a lot in the aftermath, right. And I've thought...if the reaction from [Rybicki] or the FBI had ever been oh, we didn't know you guys felt that way. We didn't know what your guys' view was...then I would have both been really disappointed in myself but also wondered like oh, well if only, right, something got garbled somewhere. If only, you know, the, one of the principals had been able to speak directly to the Director we could have conveyed the message more clearly. I've never heard that...and I don't think that's the case. I was quite clear with [Rybicki] as to what our building's view.... It was clear that was not just Matt Axelrod's view but the Department's view was that the Director should not do this.... I'm sure that was his takeaway. What I put is this, doing this violates our policies and procedures and traditions.... I said repeatedly this is, you know, this is not only a really bad idea but it, it's contrary to how we do business. And actually, I used those exact words as well. It was contrary to how we do business.

6. Comey's Reaction to the Department's Response

Comey stated that Rybicki reported that the Department "didn't wish to speak to me, but that their advice would be not to do it and that they didn't think it was necessary." Comey added that Rybicki told him that the Department

"recommend[ed] against" the congressional notification and thought it was "a bad idea."

We asked Comey why he asked for the Department's feedback and then ignored the feedback that he received. Comey told us, "I thought the better view of it was that we had to. They were leaving it to me essentially and I took it, I knew that I was alone at that point in time, but my view was, as between these two options, I disagree." Comey emphasized that neither Yates nor Lynch gave him a direct order. Comey continued, "I would not have sent it if they had told me not to. Instead I got this, we recommend against it. We don't think it's consistent with our policy. But it's up to him was the message conveyed to me." Comey told us that he felt that he gave Lynch and Yates "the chance to engage," but "they didn't wish to participate, it's up to you, basically I took that as, it's up to you. We don't think it's a good idea. We advise against it. I honestly thought they were taking kind of a cowardly way out."¹⁸³

We asked Comey if anything short of a direct order would have prevented the notification. He stated:

I don't know what, I don't know is the answer. I don't, because I don't know what argument that I haven't thought of or that hasn't been made or that we didn't make in discussing this they would've made, so I don't know, but, so in the absence of that, if they directed me not to do it, I would not have done it.

Comey stated that he also thought the October 28 congressional notification was consistent with Department policy. He stated, "Well Department policy is we don't comment on investigations unless there's a, you know whatever the exact language is, overriding public interest. In my view there was a powerful public interest in that division between speaking and concealing, between really bad and catastrophic."

We asked Comey how Lynch or Yates could have ordered him not to send the letter if they understood it to be his personal or ethical obligation to Congress. Comey stated:

Of course they could. They could say, I mean circumstances where a Department lawyer thinks that they need to disclose something in a particular case and their supervisor says, no we don't, we don't do that, and so you have to decide then, do you believe it's reasonable and consistent with the obligations of the lawyer for the United States or do you believe that your supervisor is doing something unethical and then you have to decide what to do about it.

¹⁸³ In his book, Comey stated that after he received the Department's feedback, "I briefly toyed with the idea of communicating to them that I had decided not to tell Congress, just to see what they would do if I shifted the responsibility entirely to them, but decided that would be cowardly and stupid. Once again it became my responsibility to take the hit." COMEY, *supra*, at 197.

V. Finalizing the FBI's October 28, 2016 Letter to Congress

After Comey decided to notify Congress, the FBI began discussing internally how that notification should occur. Anderson told us that because the "animating rationale" behind the notification was to update Comey's prior testimony to Congress, the FBI decided that "a letter to Congress was the right way to go about it." The letter was transmitted on October 28.

In this section we discuss the drafting of the letter along with several key edits made during the drafting process. We also describe discussions with the Department about the letter and Comey's email to all FBI employees.

A. October 28, 2016 Letter to Congress

At approximately 11:50 a.m. on October 28, the FBI transmitted the following letter to Congress, which we also provide as Attachment E:

In previous congressional testimony, I referred to the fact that the Federal Bureau of Investigation (FBI) had completed its investigation of former Secretary Clinton's personal email server. Due to recent developments, I am writing to supplement my previous testimony.

In connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation.

Although the FBI cannot yet assess whether or not this material may be significant, and I cannot predict how long it will take us to complete this additional work, I believe it is important to update your Committees about our efforts in light of my previous testimony.

Later that day, after the letter was made public, Clinton's lawyer, David Kendall, contacted Baker to ask about the letter. According to Baker's email to Comey and the Midyear team, during the call Kendall complained that Comey's "letter was 'tantalizingly ambiguous' and made statements that were 'inchoate and highly ominous' such that what we had done was worse than transparency because it allows people to make whatever they want out of the letter to the prejudice of Secretary Clinton." In the email, Baker stated that he told Kendall "that I could not respond to his requests at this time."

B. Drafting the Letter and Key Edits

Comey described the drafting of the letter in the following terms:

Our goal was to make the disclosure to Congress accurate, fair and as non-misleading as humanly possible. So we spent a lot of time that night [of October 27] on the wordsmithing of that language to give fair

notice that we were taking this action, but not to put us in a position where it's wildly overinterpreted one way or the other. And so the next day, the next morning, I had finally approved the language.

Comey continued:

[W]e struggled with the language of it. Everyone talks about my vague letter. Maybe it's vague, but it was structured with great care not to overstate what might be there or understate what might be there because—I think I said this in the letter, I haven't looked at it in a while—we don't know, but feel an obligation to say that we're undertaking these new investigative steps. And I think part of the public misconception about it is, and I don't know how I would have fixed this, is people have the sense that it was some sort of marginal lead, that it was a frolic and detour kind of deal. And I don't know how we could have done that, but maybe we would've been better off if there was some way to convey, yeah there could be a real deal here, but that then would be unfair because you would be overinterpreting the evidence.

In his book, Comey discussed the "carefully" chosen wording of the October 28 letter and why it contained limited content. Comey explained, "Because we didn't know what we had and what we might find, any further public statement would be inherently limited and misleading and only add confusion and damage to the FBI."¹⁸⁴

FBI Attorney 1 told us that she and Strzok began drafts of the letter to Congress after leaving the initial meeting with Comey on October 27. FBI Attorney 1 stated that she and Strzok combined their drafts and presented the joint draft to Baker. FBI Attorney 1 continued, "We talked to [Baker], I remember handwritten edits that [Baker] put in, which were wordsmithing a lot of. And then it moved to email so that people could circulate it."

We identified two significant phrases in the letter that were discussed during the editing process. We discuss each below.

1. "Appear to be Pertinent"

The letter sent to Congress stated that "the FBI has learned of the existence of emails that *appear to be pertinent* to the investigation" and noted that "the FBI cannot yet assess whether or not this material may be significant". (Emphasis added). FBI Attorney 1's first draft stated that the emails "may be relevant" and noted that "[a]t this time, it is impossible to determine if the emails are new or duplicative." Strzok's first draft stated that the emails were "related to the FBI's prior investigation" of the Clinton email server and noted that "the FBI cannot assess at this time the significance of this material." Various formulations similar to

¹⁸⁴ COMEY, *supra*, at 200-01.

these were discussed before deciding upon the language ultimately used in the letter.

FBI Attorney 1 told us that two competing considerations resulted in the language used. On the one hand, FBI Attorney 1 stated that the FBI did not want to undermine the probable cause needed to obtain the search warrant, "[s]o we couldn't say it may be relevant when we, we needed to have probable cause to actually look at" the emails. On the other hand, FBI Attorney 1 stated that the FBI did not want to overstate what was on the Weiner laptop and the FBI wanted "to make it clear that even though we were getting a search warrant, that did not mean there was a smoking gun there." Anderson echoed this stating, "I was concerned that...saying that they were relevant or were pertinent wasn't supported by where we were in the process. In other words, we hadn't put any eyes on any of the emails, so we really didn't know whether what we were going to find, you know, was or wasn't relevant."

Baker stated that he found "may be pertinent" or similar formulations to be "too vague" and "too wishy-washy." Indeed, Baker stated in an email, on October 27 at 9:51 p.m., to the FBI officials involved in drafting the letter:

If everyone wants "may be pertinent" then fine. All I am saying is that even if they are all copies of what we already have, they are still pertinent because they are copies and indicate where else the material went and who may have had access to it. And if they only may be pertinent why are we bothering with them and putting out this public statement which we know will be a big deal.

Baker told us that because the FBI was seeking a search warrant for these emails it was "saying there is probable cause to believe this is evidence of a crime, therefore they are pertinent and we should be willing to make that statement." Baker said there was some "pushback" on this suggestion as others said "we're not 100% confident" that the emails are pertinent. Baker stated that he came up with the "appear to be pertinent" phrasing and "that seemed to thread the needle and make everybody happy."

2. "Briefed Me On This Yesterday"

The letter sent to Congress also stated that "[d]ue to recent developments, I am writing to supplement my previous testimony" and "I am writing to inform you that the investigative team briefed me on this yesterday." FBI Attorney 1's first draft stated that the FBI "has recently retrieved emails" and "today, the FBI decided to conduct additional investigative steps." Strzok's first draft stated that the FBI "recently learned of the potential existence of emails" and "earlier today, I decided the FBI will take investigative action." The joint draft submitted by FBI Attorney 1 and Strzok to the others stated that the FBI "recently learned of the existence of emails" and Comey decided "earlier today" to take investigative action on these emails.

In providing comments and edits to the draft letter, Baker stated in an email on the night of October 27, "[T]he institution has known about these for a while

(albeit not long) but not 'yesterday.' What happened today was the Director's decision." Baker recommended the letter state that "I decided yesterday." We asked Baker about this recommendation. Baker stated that he could not recall the discussion about this change and also did not remember knowing at the time that Comey had been previously briefed about the Weiner laptop.

3. Discussions About Letter With the Department

The FBI did not share a copy of the draft letter with the Department, but rather read the proposed text of the letter to Axelrod and Toscas during a telephone call. We found that, during the call, Axelrod provided feedback regarding the letter, but we did not identify any evidence showing that the FBI accepted his proposed edits.

Comey told us that he recalled telling Rybicki "to share the text of the letter with [the Department], ask for feedback." Comey further stated that it was his understanding the Department provided "a lot" of edits to the draft that were accepted. Comey said, "Yeah I think Matt Axelrod added real value, yeah, is my recollection, shaping it in a different way, shortening it at different parts."

Rybicki told us that he discussed the proposed letter with Axelrod and Toscas on the telephone "and we read it to them, and they provided some feedback."

Axelrod told us that the FBI never provided the Department with a copy of the proposed letter, but stated that he did discuss the contents of the letter with the FBI. Axelrod stated that Baker and Rybicki read portions of the letter to Axelrod and Toscas over the phone, and that he (Axelrod) suggested edits to the letter that the FBI did not accept. Axelrod stated:

So, on that phone call when they read the first sentence I said to them, to Rybicki and Baker is my memory of who was on the phone.... If that's how you start the letter the headline is going to be case reopened. We all agree that's not what we're doing. We're not reopening the case, right? Agreement voiced on the phone by FBI. Agreement voiced by [Toscas]. If that's your opening sentence that's going to be the headline, case reopened. And what you need to, what you ought to do is you're telling us that you need to send this letter because the Director believes that he's left a misimpression. But remember when I pointed you to the transcript what he said was if new information comes to light I will bring it, I will, we will take a look at it.

You, why don't you reference that? Explain why you're, what you're doing. Don't just make it seem like, you know, you're emailing them out of nowhere. Say, I previously testified. I told you that if new information came to light we would, you know, take a look at it. Some new information has come to light. We're doing exactly what I said. So that was one suggestion we made to them on the phone, which they ignored.

And a second suggestion we made to them on the phone was that they include some context about what the device was. In other words, that it wasn't a Hillary Clinton device but that it was...the husband of a former aide or former senior aide, right? Because, and that was important for context because...if you don't put that context in there could be a notion that something was hidden from the investigators that only recently came to light instead of something that came in sideways. But they rejected that suggestion as well.

Because I think what we, our pitch to them on the call was like, you say you need to send this letter to avoid, to correct the misimpression Congress has. You got to make damn sure that by sending the letter you don't just create a different misimpression. They ignored our two substantive suggestions. Those are the two I remember. And they sent the letter I think basically the way they had, and I didn't see the full text beforehand but basically it was, you know, what sort of, at least the parts Baker had read to us on the phone it was consistent with, it didn't, I don't think they changed a word.

Toscas said that the entire discussion about the contents of the letter was "awkward" since the Department "oppose[d] every aspect of this." Toscas stated, "But I do remember like at some point on our side feeling like...if you're going to say it, there's a way to just sort of lay it out a little bit more clearly that takes off some of the natural suspicions that are going to be created by less clear, less specific, and more ambiguous language." Toscas told us that he did not recall if the FBI accepted any of the suggested edits provided by the Department.

4. Comey Email to All FBI Employees

At 3:08 p.m. on October 28, after news of the letter to Congress had been publicly reported, Comey sent the following message to all FBI employees:

This morning I sent a letter to Congress in connection with the Secretary Clinton email investigation. Yesterday, the investigative team briefed me on their recommendation with respect to seeking access to emails that have recently been found in an unrelated case. Because those emails appear to be pertinent to our investigation, I agreed that we should take appropriate steps to obtain and review them.

Of course, we don't ordinarily tell Congress about ongoing investigations, but here I feel an obligation to do so given that I testified repeatedly in recent months that our investigation was completed. I also think it would be misleading to the American people were we not to supplement the record. At the same time, however, given that we don't know the significance of this newly discovered collection of emails, I don't want to create a misleading impression. In trying to strike a balance, in a brief letter and in the middle of an election season, there is significant risk of being misunderstood, but I wanted you to hear directly from me about it.

VI. Analysis of the Decision to Send the October 28 Letter

We found no evidence that Comey's decision to send the October 28 letter was influenced by political preferences. Instead, we found that his decision was the result of several interrelated factors that were connected to his concern that failing to send the letter would harm the FBI and his ability to lead it, and his view that candidate Clinton was going to win the presidency and that she would be perceived to be an illegitimate president if the public first learned of the information after the election. Although Comey told us that he "didn't make this decision because [he] thought it would leak otherwise," several FBI officials, including Baker and Strzok, told us that the concern about leaks played a role in the decision. We concluded that, in considering his choices, Comey failed to give adequate consideration to long-established Department and FBI norms, policies, and expectations that he applied in other cases. Although we acknowledge that Comey faced a difficult situation with unattractive choices, in proceeding as he did on October 28, Comey made a serious error of judgment.

Much like with his July 5 announcement, Comey engaged in ad hoc decisionmaking based on his personal views even if it meant rejecting longstanding Department policy or practice. For example, we found unpersuasive Comey's explanation as to why transparency was more important than Department policy and practice with regard to the reactivated Midyear investigation while, by contrast, Department policy and practice was more important to follow with regard to the Clinton Foundation and Russia investigations.

A. Substantive Assessment of Comey's Decision

1. FBI and Department Norms and Policies

Comey had ample guidance in longstanding Department and FBI policies and norms regarding making public statements about pending investigations and taking actions that might affect elections.

To start, the Department and the FBI consistently decline to comment publicly or to Congress regarding ongoing investigative activity. The "stay silent" principle exists to protect the privacy and reputational interests of the subjects of the investigation, the right to a fair trial for those subsequently accused of crimes, the integrity of an ongoing investigation or pending litigation, and the Department's ability to effectively administer justice without political or other undue outside influences. Comey endorsed this principle in general, stating, "I believe very strongly that our rule should be, we don't comment on pending investigations." This principle is embodied in several regulations and policies set forth in Chapter Two, including in policies regarding communications with Congress. USAM 1-8.030; Eric Holder, Attorney General, U.S. Department of Justice, memorandum for Heads of Department Components and all U.S. Attorneys, Communications with Congress, August 17, 2009; Robert Raben, Assistant Attorney General, U.S. Department of Justice, letter to Congressman John Linder, January 1, 2000. ("Although Congress has a clearly legitimate interest in determining how the Department enforces statutes, Congressional inquiries during the pendency of a matter pose an inherent

threat to the integrity of the Department's law enforcement and litigation functions."').¹⁸⁵ This principle is also reflected in 28 C.F.R. § 50.2, which provides, with respect to the release of information to the news media, that "where information relating to the circumstances of...an investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public." 28 C.F.R. § 50.2(b)(3)(iv).¹⁸⁶ See also USAM 1-7.530, 9-11.130, 9-16.500, 9-27.760; FBI Media Policy Guide 3.1.

In addition, the Department and the FBI have long observed a norm against taking an action during the run-up to an election that could impact an election. Although there is no codified "60-day rule," Comey acknowledged that he has consistently adhered to this "take no action" norm in the past: "I've lived my entire career in the Department of Justice under the norm, the principle, that we, if at all possible, avoid taking any action in the run up to an election, avoid taking any action that could have some impact, even if unknown, on an election whether that's a dogcatcher election or President of the United States." Given the lack of a written policy, we recommend that the Department consider providing guidance to agents and prosecutors concerning the taking of overt investigative steps, indictments, public announcements, or other actions that could impact an election.

These policies and norms formed the fundamental backdrop for Comey's decision on October 28. Because of them, Comey's description of his choice as being between "two doors," one labeled "speak" and one labeled "conceal," was a false dichotomy. The two doors were actually labeled "follow policy/practice" and "depart from policy/practice." His task was not to conduct an ad hoc comparison of case-specific outcomes and risks. Rather, the burden was on him to justify an extraordinary departure from these established norms, policies, and precedent.

2. Comey's Justification for Departing

Comey's justification for departing from established norms was that because he had previously told Congress and the public that the case was over, staying silent would be misleading. But it is hardly unique for the FBI to receive new information that might cause it to reactivate a previously closed or dormant investigation. To our knowledge, the FBI has not generally identified this circumstance as nullifying the stay silent principle.

Comey admitted that he had made no explicit promise to make a further announcement if new evidence were discovered. He stated, instead, that he had

¹⁸⁵ Current Department policy regarding communications with Congress continues to honor this principle. See Jefferson B. Sessions, Attorney General, U.S. Department of Justice, Memorandum for All Heads of Department Components, Communications with Congress, May 2, 2018.

¹⁸⁶ 28 C.F.R. § 50.2 is directed largely at preventing the prejudice to defendants or subjects from media publicity that might influence the outcome of a trial. However, it states that the guidelines it contains—including "stay silent"—are effective "from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise." 28 C.F.R. § 50.2(b)(1). An unfair trial is obviously not the only form of prejudice that may arise from media disclosures, especially in an investigation that does not result in a trial.

previously offered “maximal transparency” because that “enhances the credibility of the Justice enterprise,” and that maintaining that transparency required him to update his July statement in October.

If so, the problem originated with Comey’s elevation of “maximal transparency” as a value overriding, for this case only, the principles of “stay silent” and “take no action” that the FBI has consistently applied to other cases. The Department and the FBI do not practice “maximal transparency” in criminal investigations. It is not a value reflected in the regulations, policies, or customs guiding FBI actions in pending criminal investigations. To the contrary, the guidance to agents and prosecutors is precisely the opposite—no transparency except in rare and exceptional circumstances due to the potential harm to both the investigation and to the reputation of anyone under investigation.

Comey told us that the potentially great evidentiary significance of the newly discovered emails would have made it particularly misleading to stay silent. But we found that the FBI’s basis for believing, as of October 28, that the contents of the Weiner laptop would be significant to the Clinton email investigation was overestimated. Comey and others stated that they believed the Weiner laptop might contain the “missing three months” of Clinton’s emails from the beginning of her tenure when she used a BlackBerry domain, and that these “golden emails” would be particularly probative of intent, because they were close in time to when she set up her server. However, at the time of the October 28 letter, the FBI had limited information about the BlackBerry data that was on the laptop. The case agent assigned to the Weiner investigation stated only that he saw at least one BlackBerry PIN message between Clinton and Abedin. As of October 28, no one with any knowledge of the Midyear investigation had viewed a single email message, and the Midyear team was uncertain they would even be able to establish sufficient probable cause to obtain a search warrant. Even the description of the emails in the October 28 letter is at odds with Comey’s emphasis on the importance of the discovery. The letter was edited to state that the emails “appear to be pertinent,” because several members of the team objected to the words “are pertinent” as an unsupportable overstatement.

Moreover, the Midyear team did not treat the BlackBerry emails as if they were critical to completing a thorough investigation prior to October. Rather, the team decided during the investigation not to obtain personal devices that Clinton’s senior aides used for State Department work, because, among other reasons, they did not believe obtaining those devices was necessary for a thorough investigation. Indeed, the Midyear team did not ask Abedin’s attorneys to turn over Abedin’s personal BlackBerry or laptop that she used during her employment at the State Department, even though Abedin told the FBI that she had given those devices to her attorneys so that they could produce her work-related emails to the State Department.

Before October 28, Comey lauded the thoroughness of the investigation and stated that declining prosecution was not a close call.¹⁸⁷ If the vague and general information known about the laptop contents was sufficient to “create a reasonable likelihood...that will change our view” of the case, then it is difficult to see how the investigation could have been as thorough as Comey represented given the FBI’s decision not to obtain similar devices from Clinton’s senior aides prior to July 5. Nor could the declination decision have been such an easy call if unseen emails to and from one of Clinton’s aides could have resulted in a change in the Department’s prosecution assessment.

In fact, as detailed in Chapter Nine, every pertinent fact that the FBI knew about the laptop in October was already known in late September. Yet none of the Midyear investigators thought these were “golden emails” then—a factor that contributed to the FBI’s delay in acting on the information, as discussed in Chapter Nine. In short, far too little was known about these emails in October 2016 to justify departing from Department norms, policies, and precedent.

3. Comey’s Comparison of Risks and Outcomes

Instead of referring to and being guided by longstanding Department and FBI policies and precedent, Comey conducted an ad hoc comparison of the risks and outcomes associated with each option. He described the potential consequences “concealing” the existence of the emails as “catastrophic” to the FBI and the Department, because it would subject the FBI and the Department to allegations that they had acted for political reasons to protect Hillary Clinton. Instead, Comey said he chose the option that he assessed as being just “really bad.”

Even within the flawed analytical construct that Comey set up, he did not assess risks evenhandedly. He assigned paramount significance to avoiding the reputational risk of staying silent: that he and the FBI would be unfairly accused of hiding the emails to protect candidate Clinton. But he appears to have placed no comparable value on the corresponding risk from making the public statement: that he and the FBI would not only be accused of violating long-standing Department and FBI policy and practice, but that he also would be unfairly accused of hyping the emails in a manner that hurt candidate Clinton. We believe that Comey’s unequal assessment of these risks was the product of his belief that Clinton was going to win the election. Comey told us, “I am sure I was influenced by the tacit assumption that Hillary Clinton was sure to be the next President.” This expectation likely led him to focus too heavily on what he perceived to be the consequences of not revealing the new information, namely undermining the legitimacy of Clinton’s presidency and harming the reputation of the FBI. Ironically, in his effort to avoid the FBI or himself being seen as political, Comey based his decision, in part, on his assessment of the likely outcome of the political process.

¹⁸⁷ In his book, Comey stated, with respect to the July declination, that “[n]o fair-minded person with any experience in the counterespionage world (where ‘spills’ of classified information are investigated and prosecuted) could think this was a case the career prosecutors at the Department of Justice might pursue. There was literally zero chance of that.” COMEY, *supra*, at 185.

In our view, assumptions about the outcome of an election should not affect how the FBI or the Department applies longstanding policies and norms.

We believe that Comey underestimated his own ability to address the unfair criticism that he feared would ensue if he stayed silent. Comey acknowledged to us, "I've lived my entire career in the Department of Justice under the norm, the principle, that we...avoid taking any action that could have some impact, even if unknown, on an election...." Thus, if Comey had chosen to have the FBI seek the search warrant but not send the October 28 letter, he would have had a principled response if he was asked about his decision: "This is the way we always do it, for the following good reasons." And he could have stated, accurately and in good conscience, that he applied this principle evenhandedly with respect to the Clinton email investigation and other pending FBI investigations. The FBI never commented publicly on the Russia investigation until after the election, and he refused to comment publicly about the Clinton Foundation investigation. And, earlier in October 2016, Comey declined on behalf of the FBI to participate in a U.S. Intelligence Community statement warning about Russian interference because "it exposes us to accusations of launching our own 'October surprise.'" Had he observed the same principle with respect to the Clinton email investigation, the evenhandedness of his decisions would have been apparent. Indeed, much of the criticism that Comey received for not revealing before the election information about the Russia and Clinton Foundation investigations was due to the perceived lack of evenhandedness given the disclosure he made on October 28 in the Clinton email investigation.

In reaching our conclusion about the October 28 letter, we found the testimony of Deputy Assistant Attorney General George Toscas to be on point:

One of the things that I tell people all the time, after having been in the Department for almost 24 years now, is I stress to people and people who work at all levels, the institution has principles and there's always an urge when something important or different pops up to say, we should do it differently or those principles or those protocols you know we should—we might want to deviate because this is so different. But the comfort that we get as people, as lawyers, as representatives, as employees and as an institution, the comfort we get from those institutional policies, protocols, has, is an unbelievable thing through whatever storm, you know whatever storm hits us, when you are within the norm of the way the institution behaves, you can weather any of it because you stand on the principle.

And once you deviate, even in a minor way, and you're always going to want to deviate. It's always going to be something important and some big deal that makes you think, oh let's do this a little differently. But once you do that, you have removed yourself from the comfort of saying this institution has a way of doing things and then every decision is another ad hoc decision that may be informed by our policy and our protocol and principles, but it's never going to be squarely within them.

4. Fear of Leaks

Comey denied that a fear of leaks influenced his decision to send the October 28 letter to Congress. However, other witnesses told us that a concern about leaks played a role in the decision. As Baker stated, “We were quite confident that.... [I]f we don’t put out a letter, somebody is going to leak it. That definitely was discussed....” Numerous witnesses connected this concern about leaks specifically to NYO and told us that FBI leadership suspected that FBI personnel in NYO were responsible for leaks of information in other matters. Even accepting Comey’s assertion that leaks played no role in his decision, we found that, at a minimum, a fear of leaks influenced the thinking of those who were advising him.

We also note that these discussions on October 27 and 28 were occurring at almost the same time that FBI leadership was focused on how the Midyear investigation was being publicly portrayed. As detailed in Chapter Eight, the FBI was devoting significant time and attention in October 2016 responding to both public and private criticism of the Midyear investigation. That included sending talking points to FBI SACs on October 21 for their use in responding to such criticism. Comey told us that these efforts were necessary to “protect the credibility of the [FBI] in American life.” As a result, at the time Comey was deciding whether to send the October 28 letter to Congress, the FBI had just one week earlier empowered its officials to speak publicly about the FBI’s handling of the Midyear investigation. In our view, this confluence of events inevitably increased the risk of leaks.

B. Lack of Communication Between Comey and Department Leadership

As we describe above, on October 27 and 28, Comey and Lynch decided not to speak to one another, in person or by phone, about the decision to notify Congress. Instead, Comey directed Rybicki to contact Axelrod, and the Department decided to communicate its response entirely through Axelrod. Comey explained that he decided to ask Rybicki to contact Axelrod rather than speaking directly to Lynch or Yates because “...I didn’t want to jam them and I wanted to offer them the opportunity to think about and decide whether they wanted to be engaged on it.”

We asked Lynch and Yates why they did not call Comey or ask to meet with him after Rybicki’s initial notification to Axelrod. Both Lynch and Yates told the OIG that they made an intentional strategic decision to handle discussions about the letter to Congress through Axelrod and Rybicki. Both Lynch and Yates explained that they were concerned that any direct discussion with Comey—particularly any discussion in which they told him not to send the letter—would be perceived as an attempt to prevent him from fulfilling his “personal ethical obligation” to notify Congress. Both stated that they were concerned that the fact of any such direct discussions would leak and would be portrayed as Department leadership attempting to “prevent information damaging to a candidate from coming out” (Lynch) or “strong-arming” Comey (Yates).

Lynch and Yates also told the OIG that a significant factor in their decision to handle communications through Rybicki and Axelrod was that direct discussions likely would have been ineffective. Lynch said the fact that Comey did not call her directly indicated that he did not want a real discussion and had already made up his mind to send a letter, because he would call her to discuss other issues that were not resolved. Yates stated that, based on her experience with Comey, he was likely to “push back hard” against input from Lynch or her, especially if accepting their input meant that he had to go back to his staff and explain that he was reversing his decision based on their input. She told us that she believed strategically the best way to convince him not to send the letter was to allow him to come to that conclusion through discussions with his own staff, including Rybicki. Yates told us that she considered Rybicki to be his “confidant” and the person that the Department needed to convince to change Comey’s mind in this situation.

Comey’s reaction to the input he received as the result of Rybicki’s discussions with Axelrod suggests that these concerns were well-founded. While Comey stated that he “welcome[d]” the Department’s feedback, he did not take their feedback into account when Rybicki told him that the Department “recommend[ed] against” the letter and thought it was “a bad idea.” When asked why he essentially ignored the advice of Department leadership, Comey told us, “I thought the better view of it was that we had to [send the letter]. They were leaving it to me essentially and I took it, I knew that I was alone at that point in time, but my view was, as between these two options, I disagree.” Comey added that he felt that he gave Lynch and Yates “the chance to engage,” but “they didn’t wish to participate, it’s up to you, basically I took that as, it’s up to you. We don’t think it’s a good idea. We advise against it. I honestly thought they were taking kind of a cowardly way out.”

Although Comey told us that he would not have sent the October 28 letter had Lynch or Yates ordered him not to do it, we found no evidence that he or Rybicki ever conveyed this to Department leadership. Both Lynch and Yates cited Comey’s description of his “personal ethical obligation” to notify Congress and his concerns about the “survivability” of failing to do so as reasons that they believed a direct order would be ineffective. As described above, Axelrod told the OIG that they considered three possible negative outcomes should Lynch order Comey not to send to the letter: Comey could obey the order and Lynch would be accused of obstructing Congress; Comey could ignore the order and send the letter anyway, and Department leadership would have to fire him; and Comey could resign. Axelrod told us, “[N]one of those [are] good for the institutions. None of those [are] good for the policies and the procedures or the, sort of the goals of keeping DOJ and FBI out of politics. None of those [are] good for the AG personally.”

We acknowledge that Comey, Lynch, and Yates faced difficult choices in late October 2016. However, we found it extraordinary that Comey assessed that it was best that the FBI Director not speak directly with the Attorney General and Deputy Attorney General about how to best navigate this most important decision and mitigate the resulting harms, and that Comey’s decision resulted in the Attorney General and Deputy Attorney General concluding that it would be counterproductive to speak directly with the FBI Director. We believe that open and candid

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communication among leaders in the Department and its components is essential for the effective functioning of the Department.

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CHAPTER ELEVEN: COMPLETION OF THE INVESTIGATION

I. The October 30, 2016 Search Warrant

The FBI obtained a search warrant for the Midyear-related material on the Weiner laptop on October 30, 2016. The search warrant authorized the FBI to search for four categories of information on the laptop:

1. Data and information associated with the operation, use, maintenance, backup, auditing, and security functions of the Subject Laptop...;
2. Data and information electronically stored on the Subject Laptop related to communications with email accounts used by former Secretary of State Hillary Clinton during her tenure as Secretary of State;
3. Data and information on the Subject Laptop that might identify the person or persons who accessed classified information present on the Subject Laptop...; and
4. Data and information on the Subject Laptop that might identify activity related to a computer intrusion....

We discuss the Midyear team's decision to seek a search warrant rather than using consent to review the laptop below. We also discuss the narrow factual basis for the search warrant that the Midyear team included in the application and compare the Weiner laptop with the treatment of other devices during the main part of the Midyear investigation.

A. Decision Not to Seek Consent from Abedin and Weiner before Seeking a Warrant

Prosecutor 1 told us that there was "some discussion" of getting consent from Weiner and Abedin to search the laptop. However, Prosecutor 1 stated that consent from both was needed and, at that point, the Midyear team's understanding was that Weiner was inaccessible because he was at a location where he did not have access to electronic devices. Prosecutor 1 continued:

And...there was some concern about [Weiner's] attorney gladly providing consent but wanting something from SDNY for it. And our horse trading on conduct that was egregious and doing something for purposes of our case didn't seem to make much sense. I think the decision was made not to seek consent from either attorney and to get a warrant.

Prosecutor 1 told us that he believed both FBI and the Department agreed with the decision to seek a search warrant rather than consent to access the Weiner laptop.

Baker agreed that they did not want to try to deal with Weiner or his attorney, but also provided an additional explanation for not seeking consent. Baker stated:

I think we were concerned about that being too prolonged and dragged [out]. I think that reflects some of our frustration with what had happened previously in the investigation. We're trying to get consent, and those kinds of discussions were long and drawn out. And we were just like, screw it, we're not going to deal with that. We're just going to get a damn search warrant. We're just not going to, we're not going to let DOJ take us down that road. We're just going to get a search warrant.... [A]nd in this case, we've got SDNY, and we think they'll be aggressive and they'll go get it.

After reviewing a draft of this report, Toscas and other prosecutors noted that SDNY played no substantive role in the October 30 search warrant.

B. Factual Basis of the October 30 Search Warrant Application

The factual basis for the October 30 search warrant application, which was prepared by the Midyear team, contained limited information about what the NYO case agent had seen on the Weiner laptop and the importance of that information to the Midyear investigation. The entirety of the search warrant application that discussed what had been seen on the Weiner laptop stated:

In executing the search of the laptop computer (the Subject Laptop) pursuant to the search warrant issued on September 26, 2016, FBI agents sorted the emails on the Subject Laptop to segregate emails within the scope of the warrant from those outside of it. As a result, the FBI reviewed non-content header information for emails on the Subject Laptop to facilitate its search. In so doing, the FBI observed non-content header information indicating that thousands of emails of Weiner's then wife, Huma Abedin (Abedin), resided on the Subject Laptop. Because Abedin's emails were outside the scope of the September 26 search warrant, the FBI did not review the content of those emails.

...The non-content header information that FBI agents reviewed on the Subject Laptop indicates that the emails on the Subject Laptop include emails sent and/or received by Abedin at her @clintonemail.com account and at a Yahoo! email account appearing to belong to Abedin, as well as correspondence between one or both of these accounts and State Department email accounts during and around Abedin's tenure at the State Department. The FBI's investigation of the improper transmission and storage of classified information on unclassified email systems and servers has established that emails containing classified information were transmitted through multiple email accounts used by Abedin, including her @clintonemail.com and Yahoo! email accounts.

The FBI's investigation determined that Abedin, using her various email accounts, typically communicated with Clinton's @clintonemail.com account on a daily basis. Analysis of emails in the FBI's possession revealed more than 4,000 work-related emails between Abedin and Clinton from 2009 to 2013.

The FBI's investigation established that 27 email chains containing classified information, as determined by the relevant original classification authorities, have been transmitted through Abedin's @clintonemail and/or Yahoo! accounts. Out of the 27 email chains, six email chains contained information that was classified at the Secret level at the time the emails were sent, and information in four of those email chains remains classified at that level now, while two email chains contain information that is currently classified at the Confidential level. Information in the remaining 21 email chains was classified at the Confidential level at the time the emails were sent, and of those 21 email chains, information in 16 of them remains classified as Confidential.

Given the information indicating that there are thousands of Abedin's emails located on the Subject Laptop – including emails, during and around Abedin's tenure at the State Department, from Abedin's @clintonemail.com account as well as a Yahoo! account appearing to belong to Abedin – and the regular email correspondence between Abedin and Clinton, there is probable cause to believe that the Subject Laptop contains correspondence between Abedin and Clinton during their time at the State Department. Because it has been determined by relevant original classification authorities that many emails were exchanged between Abedin, using her @clintonemail.com and/or Yahoo! accounts, and Clinton that contain classified information, there is also probable cause to believe that the correspondence between them located on the Subject Laptop contains classified information....

Noticeably absent from the search warrant application prepared by the Midyear team is both any mention that the NYO agent had seen Clinton's emails on the laptop and any mention of the potential presence of BlackBerry emails from early in Clinton's tenure. In explaining the absence of this information, Strzok stated:

I think what we were trying to do was establish as tightly as we could the fact that we believed, because I think the basis of the probable cause was that there was classified information on there.... I think it as that narrative was not designed to tell the whole story. That narrative was to, designed to demonstrate to the magistrate that we have probable cause that there was evidence of a crime on there.

We also asked Prosecutor 1 about the factual statement of probable cause outlined in the search warrant. Prosecutor 1 stated:

[T]he [probable cause] was basically that Huma Abedin had an email account. That email account communicated with email accounts where classified information was there. Classified information made it into Huma's email accounts. We believe information from those email accounts is on this computer belonging to her husband based upon whatever we could describe about what that agent saw, which we had to characterize very carefully, and so that what tethered it to the computer was basically what an agent saw doing a search warrant from another case. That's the [probable cause].

We asked Prosecutor 1 if there was any discussion of putting in information relating to the BlackBerry emails from early in Clinton's tenure. Prosecutor 1 stated:

I don't think so. If it would have helped the probable cause, I would have put it in. I don't think we had...strong enough basis to do that, or I would have put it in I'm sure. Because it, I mean we would have, anything that we could have put in there that was true and would have bolstered the probable cause, we would have put in.

We also reviewed the factual basis of the October 30 search warrant application with the NYO case agent for the Weiner investigation. The case agent told us that each of the facts related to the Weiner laptop that were included in the search warrant application were known to him "within a day or two" of September 26.

We asked Comey for his reaction to the statement that "[e]very fact in [the October 30] search warrant was known to the FBI at the highest levels—at least to the Deputy Director level—on September 28th." Comey responded, "My reaction is it likely should have moved faster and I'd want to know, to answer this I'm asking, but what would their motive be to delay?"

C. Difference in Approach to Devices during Main Investigation

As noted previously, Comey's decision on October 27 to have the FBI seek a search warrant for the Weiner laptop generated discussion among the Midyear team about how that approach differed from the approach that the Midyear team agreed upon and took during the investigation, namely to only seek Clinton's personal electronic devices and not to seek the personal electronic devices of any of her aides. In addition, in drafting the search warrant application for the Weiner laptop, a discussion occurred regarding the scope of the requested search warrant and whether it should be limited to emails between Clinton and Abedin, or whether it should include all of Abedin's emails.

Emails from the night of October 29 show that Baker expressed concerns that the draft search warrant request was too narrow. Specifically, in an email at 9:13 p.m. to FBI Attorney 1, Strzok, and Anderson, Baker stated, "The main question I [sic] have right now is why we are only seeking access to emails between Huma and Clinton. Based on the facts set forth about Huma mishandling classified information on all of her accounts, it seems to me there is [probable

cause] to look at all of her emails no matter who is the other party. Am I misreading the scope of the warrant or the strength of the [probable cause]?" Strzok responded to Baker's email at 9:28 p.m., stating:

I think the primary deficiency in trying to go after Huma's own communications is that Huma's role and expertise was far more administrative in nature than that of the other close aides to [Clinton]. That is, when it came to classified information, she was primarily a conduit to/from others to Clinton, not a generator of such information/discussion on her own. Whereas Sullivan or Mills had substantive (and sometimes classified) discussions on their own absent [Clinton's] participation, Abedin's were largely as an administrative conduit to the Sec'y. Thus, it's more challenging to articulate an expectation at the level of [probable cause] that we'd expect to find classified in her discussions not involving [Clinton]. We can't exclude it, but it's challenging.

FBI Attorney 1 responded to Strzok's email at 9:55 p.m., stating, "That's right, Pete. Plus, we can't say she mishandled on all of her accounts. Of the 27 classified emails, 26 were on her @clintonemail.com account and one was Yahoo. We also cannot say for certain that the 27 classified emails are on this particular device, which also weakens our argument generally." In response, Baker sent an email at 10:18 p.m., stating, "There is [probable cause] to believe that Huma used her email accounts to mishandle classified information. I just don't understand why that [i]s not enough to look at all her emails.... Would you please discuss with DOJ?" Baker told us that he believed the FBI should seek the authority to review all of Abedin's emails on the laptop, instead of just emails between Abedin and Clinton.

FBI Attorney 1 told us that she recalled Baker "wanting the search warrant to be broader" and in an email on October 29 FBI Attorney 1 stated that Baker's "point is there could be relevant emails that are not between Huma and HRC—particularly regarding intent." At 11:06 p.m. on October 29, FBI Attorney 1 sent Prosecutor 1 and Prosecutor 2 an email informing them of Baker's concern and adding, "I understand that the scope of our consensual searches has been limited to emails with [Clinton], but the purpose of our investigation was to look for classified information that transited the server, which would include Huma's @clintonemail. I honestly can't remember how we treated those when we got consent for the second server, and I don't [have] the letter in front of me." Prosecutor 1 responded at 11:12 p.m., "[W]e did not look through all of Huma's emails before (we searched for Clinton's addresses but did not go through all of her emails). We can discuss but that seems like a pretty big push (we only use examples of comm[unication]s with Clinton [to] establish [probable cause] for 793 offenses)." Five minutes later, at 11:17 p.m., FBI Attorney 1 responded, "I honestly couldn't remember how we treated Huma @clintonemail emails before given [sic]. Sounds like limiting the search to [Clinton] communications is consistent."

FBI Attorney 1 told the OIG that the Department "didn't believe that we had the [probable cause] to, to be broader than that." Baker stated that someone at

either the Department or SDNY “pushed back and said no, we don’t have [probable cause] for that.”¹⁸⁸

We asked the prosecutors about this issue. Prosecutor 1 told us that he felt “we need[ed] to treat Huma like we treated her earlier on in the investigation.” Prosecutor 1 told us that it did not make sense to “expand the bounds” of what they had done before when reviewing the Weiner laptop. Prosecutor 2 also noted this, stating:

And then there is also the issue of like we didn’t look at everyone’s emails over the course of this investigation. We had Huma’s, some of like Huma’s clintonemail.com emails on the server. And we never got consent or a search warrant to look through Huma’s email on the server because, you know, the judgment was made that like that was not so significant to the investigation. So, I think from the DOJ perspective, we were kind of confused why this was such a significant development.

During this debate with FBI on October 29, Prosecutor 1 sent an email to Toscas stating, “Worried that Baker and higher ups over there (or people in the chain) are going to say DOJ was standing in their way. It just seems to me that they are pushing the bounds here all of a sudden (when they didn’t do so before).” We asked Prosecutor 1 about this email. Prosecutor 1 stated that part of his concern was frustration at the FBI for requesting the search warrant be completed immediately, yet trying to suggest major changes after it was substantially completed. Prosecutor 1 stated that he also felt “it didn’t make a lot of sense” for the purpose of probable cause “to talk about hypothetical conversations that could have” occurred “in order to expand the bounds of what we’re trying to do with the search warrant.”¹⁸⁹

II. Lynch-Comey Meeting on October 31

On Monday, October 31, Lynch requested a private conversation with Comey after the regularly scheduled Monday morning meeting between the Department and the FBI. Yates told us that she and Lynch had talked about this meeting beforehand and that Lynch told Yates that Lynch planned to make two points to Comey: (1) the October 28th letter “was a blunder,” and (2) that Comey and the FBI needed to process the Weiner laptop “as fast as you can.”

¹⁸⁸ As noted above, after reviewing a draft of this report, Toscas and others noted that SDNY played no substantive role in the October 30 search warrant.

¹⁸⁹ In comments provided to the OIG after reviewing a draft of this report, Baker stated that he “had not played a significant role, if any, in scoping the prior consent agreements or legal process used to obtain other emails in the investigation.” Baker continued, “Given the intense focus on the Weiner laptop, [Baker said he] looked more closely at this warrant application and asked what [he] thought were logical questions.” Ultimately, Baker stated that he “deferred to DOJ on whether there was probable cause to support the seizure of additional emails.”

We asked Comey about this meeting. Comey stated:

So the two of us went into the AG's private office...and I went over to sit in a chair and she closed the door and turned around and started walking at me with her head down and her arms out and came up to me because I'm so ridiculously tall and pressed her head, her face against my solar plexus and wrapped her arms around me and hugged me and then I kind of awkwardly—I'm not a hugger because I'm a giraffe—and so I kind of patted the Attorney General's back and then the embrace—she broke the embrace and then said, "I just wanted to give you a hug."

And she went over and sat down. And then...she said, "How are you doing?" I said, "I'm doing okay." I said, "Look this is really bad, but the alternative is worse." And then she said, "Yeah would they feel better if it had leaked on November 6th?" And I just said, "Exactly Loretta." Because I hadn't made the disclosure to Congress because of the leaks—the prospect of leaks, but it actually consoled me because really you're not that important because even if you hadn't sent a letter to Congress, which was the right thing to do, it probably would have leaked anyway that you were going for a search warrant on this stuff and she obviously saw it the same way and said, "Right, would they feel better if it had leaked on November 6th?" I think she said. And I said, "Exactly."

And then she said a nice thing, "I hope you're holding up." And then she said—so we get up and start walking to the door. She's in front of me and then she turns around and says, "Try to look beat up." And so then she opens the door, we walk out, her staff is all out in the hallway and I walk out.

And then somebody puts it out within moments that the Attorney General had taken me aside to give me a woodshedding or something; it was in the media, I think, that morning. So she and I never spoke about that again, but I reasonably understood that. Her saying you did the right thing, and even if you hadn't sent the letter, it would have come out anyway and that would've been even worse and so that's—I think that's the end of the story.

We also asked Lynch about this meeting. Lynch told us that the reason she called the one-on-one meeting with Comey was primarily because she "wanted to talk to him about" leaks and she was concerned that Comey "didn't want to talk about it in front of a larger group." Lynch stated:

We went into a smaller room.... And I recall, we were both sitting down. And I recall saying we have to talk about this letter and the aftermath of it.... I don't recall my exact words, but I remember saying, you know, I know that you were aware that I did not think you should do this. But, it is done now, and we have to deal with the aftermath of it.... And I said...this has not followed what was at least

conveyed to me you thought you were going to do. And...I made the point that it was immediately described as the investigation was reopened, the full investigation was reopened.

And he said, you know, I was very clear...I was very careful not to say that. And I had heard over the weekend that he had been surprised or disappointed, or perhaps both, that the letter was being characterized in that way. Because that was not what he wanted to say, not what he intended to say. And I said, I understand that that wasn't your intention, but that's how it was taken.... I said, in many ways, it's the exact opposite of what you wanted to have happen. And I said, and I think it's caused a huge problem for the Department because we have this perception now that we are essentially trying to harm one of the candidates....

And I raised the possibility. I said I think you ought to think about sending another letter, a clarifying letter. You've already done this now. You have created a misimpression as to what is going on.... You need to clarify this and say that essentially you want to make it clear that this is not a reopening of the investigation. That should be conveyed in there somewhere.

And he said, how would you phrase that? And I said, you know, I have not put pen to paper. I have not wordsmithed this. And I said, and I don't think it should come from me. It needs to come from you because you gave the initial letter. I said if it comes from me, then we are essentially talking about internal DOJ fights and disagreements and everything. And that's throwing more into the public arena that shouldn't be there. He said, I agree with you on that. He said I'll think about that. I'll think about that.

...[A]t some point, I said it's clear to me that, that we're going to have to do some statement at the end of the forensic analysis. It could be part of that. Or you could do it today. I said, but I really think you need to clarify this. And he said, I hear you, I hear you. Which is a phrase that Comey uses a lot, I hear you. And he said, I will give that a great deal of thought. And he said, my concern is, and again, I don't recall the exact words, but he said I have a concern that it would do more harm than good at this point. And I said, okay, well let's think about what it would look like.

The other issue I raised with him was...I said, look, I've known you for a long time. You and I have been in the Department a long time. I said, my view is you would never have done something like this if you didn't feel tremendous pressure to do it. And I said, and I don't understand that pressure. I said, but, it was conveyed to me that you were very concerned about leaks, specifically. And I said, I can only assume that you were thinking of leaks that would have been of this information in a much, much worse way. And he said, you're right. You're exactly right about that.

Now, I knew that the laptop had been handled in a case out of New York. And so I said, you know, we have to talk about the New York office...and the concern that both you and I have expressed about leaks in the past. And I said, do you think that this was the right way to deal with the issue, the concern about leaks?... He didn't have much of a response. But we were having a conversation.... And I said, you know, I've talked, you and I have talked about that before.... [McCabe] and I have talked about them before....

And then I said, now, we've got to talk about the New York office in general. And he said yes. And I said we both work with them. We both know them. We both, you know, think highly of them. I said, but this has become a problem. And he said, and he said to me that it had become clear to him, he didn't say over the course of what investigation or whatever, he said it's clear to me that there is a cadre of senior people in New York who have a deep and visceral hatred of Secretary Clinton. And he said it is, it is deep. It's, and he said, he said it was surprising to him or stunning to him.

You know, I didn't get the impression he was agreeing with it at all, by the way. But he was saying it did exist, and it was hard to manage because these were agents that were very, very senior, or had even had timed out and were staying on, and therefore did not really feel under pressure from headquarters or anything to that effect. And I said, you know, I'm aware of that.... I said, I wasn't aware it was to this level and this depth that you're talking about, but I said I'm sad to say that that does not surprise me.

And he made a comment about, you know, you understand that. A lot of people don't understand that. You, you get that issue. I said, I get that issue. I said I'm, I'm just troubled that this issue, meaning the, the New York agent issue and leaks, I am just troubled that this issue has put us where we are today with respect to this laptop.

And he said again I hear you, I hear you. I will think about that. I will consider what to do. He said, but he said again, I'm concerned that another letter right now that isn't tied to a resolution of the forensics would just be pouring more, he didn't say more fuel on the fire, but that was the phraseology, something like that that he used. And I said, all right. I said, well, let me know what you decide about whether to do something else or not, particularly as we go through the process of finding things out.

Lynch told us that she was "sure" she "asked [Comey] if he was okay" and that she may have hugged him because she "often did." Lynch also stated that as they departed the room she joked with Comey and said "something like of course you're going to look like I beat you up." Overall, Lynch described the conversation as a "friendly" but "tough conversation" given the "serious and significant issues" involved.

Lynch's Chief of Staff stated that Lynch told her about the conversation with Comey afterwards. Lynch's Chief of Staff stated:

[Lynch] said the Director had expressed that he needed to send the letter because he was very concerned about leaks, that it was going to leak out anyway that they had found these emails in relation to the Weiner investigation. She may have told me something else, but I don't remember. I remember that being the big thing that he had focused on.

We also reviewed McCord's notes of a meeting she attended with Lynch on October 31, after Lynch's meeting with Comey, in which the Midyear investigation was discussed. The notes reflect that Lynch stated the following:

...good vehicle for more clarifying stmt.

need to correct misimpressions out there

Told Director this morning [and] he wanted to think about it

—could recap where we were at end of last week [and] talk about process w/out details of what we're finding

—will cont. our review [and] take approp. inv. steps

—should come from Comey to clarify what he said Friday....

III. FBI Review of Weiner Laptop Emails

Midyear agents obtained a copy of the Weiner laptop from NYO immediately after the search warrant was signed on October 30. The laptop was taken directly to Quantico where the FBI's Operational Technology Division (OTD) began processing the laptop. The Lead Analyst told us that given the volume of emails on the laptop and the difficulty with de-duplicating the emails that "at least for the first few days, the scale of what we're doing seem[ed] really, really big." Strzok told us that OTD was able "to do some amazing things" to "rapidly de-duplicate" the emails on the laptop, which significantly lowered the number of emails that the Midyear team would have to individually review. Strzok stated that only after that technological breakthrough did he begin to think it was "possible we might wrap up before the election."

FBI leadership, including Comey, was briefed on an almost daily basis during the review process. The Lead Analyst told us that he recalled briefing Comey on Friday, November 4, stating:

I told [Comey], I said...I think there's a possibility we may be able to get through this before the end of the weekend. So he said if you think you can do it, you should try to. So that's what we did. We brought in, we basically put all hands on deck for [that Saturday].

The Midyear team flagged all potentially work-related emails encountered during the review process and compared those to emails that they had previously reviewed in other datasets. Any work-related emails that were unique, meaning that they did not appear in any other dataset, were individually reviewed by the Lead Analyst, Strzok, and FBI Attorney 1 for evidentiary value.

Analysts on the Midyear team subsequently drafted a document summarizing the review of the Weiner laptop entitled, "Anthony Weiner Laptop Review for Communications Pertinent to Midyear Exam." This document, dated November 15, 2016, showed that the full image of the laptop contained approximately 1,355,980 items, or files. According to the document, FBI OTD initially extracted approximately 350,000 emails from the laptop and then approximately 344,000 BlackBerry backup files.¹⁹⁰ The FBI determined that 4 of the 13 BlackBerry backups "were assessed to belong to Abedin." The remaining 9 BlackBerry backups were associated with Weiner. The FBI only reviewed emails to or from Clinton during the period in which she was Secretary of State, and not emails from Abedin to other parties or emails outside that period. Analyst 1 stated, "I had very strict instructions that all I was allowed to do within the case was look for Hillary Clinton emails, because that was the scope of our work." Utilizing various searches targeting Clinton's emails, the FBI reviewed in full "approximately 48,982" items on the Weiner laptop.

The FBI ultimately "identified 13 confirmed classified email chains, the content of which was duplicative of emails previously recovered during the investigation." None of these emails were marked classified, but 4 of the 13 were classified as Secret at the time sent and 9 were classified Confidential at the time sent. The FBI determined that Abedin forwarded two of the confirmed classified emails to Weiner.¹⁹¹ The FBI reviewed 6,827 emails that were either to or from Clinton and assessed 3,077 of those emails to be "potentially work-related." The FBI analysis of the review noted that "[b]ecause metadata was largely absent, the emails could not be completely, automatically de-duplicated or evaluated against prior emails recovered during the investigation" and therefore the FBI could not determine how many of the potentially work-related emails were duplicative of emails previously obtained in the Midyear investigation.

¹⁹⁰ A BlackBerry backup is a file, typically found on a personal computer, containing data from a BlackBerry handheld device. The BlackBerry backup can include data from the handheld device's address book, calendar, browser, email, SMS and MMS messages, phone call logs and history, as well as pictures and other media stored on the on-board media storage. At the time the backup is created, the user can configure the specific items to be saved. As a result, not all of the above items may be found in every backup.

¹⁹¹ The FBI did not determine exactly how Abedin's emails came to reside on Weiner's laptop. Analyst 2 told us that it appeared that Abedin's personal devices had been backed up on the laptop at various points in time. Documents we reviewed indicated that Abedin told the FBI that she did not know how or why this occurred.

IV. Agent 1 Instant Messages from November 1

On November 1, Agent 1 and an FBI agent uninvolved in the Midyear investigation exchanged the following instant messages on the FBI's computer network. The sender of each message is identified after the timestamp.

8:31 a.m., Uninvolved Agent: "A horrible shit sandwich. Still no [grand jury] I imagine. So, you find Huma lied; BFD. No one at DoJ is going to prosecute."

8:33 a.m., Agent 1: "Rog – noone is going to pros[ecute] even if we find unique classified. [Grand jury] story was inaccurate – 50+ GJ subpoenas and 2703d issued,"

8:37 a.m., Agent 1: "...We only had several warrants and alot of consent searches on media. I would have liked to use warrants for all because the consent agreements had limited scope. Reasonable scope, but I don't like to stand on the lawn and have the occupants throw out the evidence to us."

We asked Agent 1 about these messages. Agent 1 told us that this was another example of a friend reaching out to him about the status of the Midyear investigation. Agent 1 continued:

I think that similar to what I've said before, I think this is me venting or complaining in a vein of, you know, but I have, I have nothing to substantiate. I don't have a statement. I don't have a, I don't have an action that someone wouldn't prosecute it if, if we found it.

We asked Agent 1 about his expectation at the time of what would be found on the Weiner laptop and how that could impact the Midyear investigation. Agent 1 stated:

I think my feeling at the time was there was a really good chance we'd find emails we hadn't seen before.... That there might not be something that could potentially be classified...but...would it be so much different than what we had already seen? I, my impression would probably be no.

V. Comey Letter to Congress on November 6

On the afternoon of November 3, the FBI began drafting what ultimately became Comey's letter to Congress announcing that the FBI had completed its review of the emails to or from Clinton that were on the Weiner laptop. That work was completed very early on November 6. Later that same day, Comey sent his second letter to Congress, which we provide as Attachment F. This letter stated:

I write to supplement my October 28, 2016 letter that notified you the FBI would be taking additional investigative steps with respect to former Secretary of State Clinton's use of a personal email server. Since my letter, the FBI investigative team has been working around

the clock to process and review a large volume of emails from a device obtained in connection with an unrelated criminal investigation. During that process, we reviewed all of the communications that were to or from Hillary Clinton while she was Secretary of State.

Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton.

I am very grateful to the professionals at the FBI for doing an extraordinary amount of high-quality work in a short period of time.

Comey told us that he met with the Midyear team after they had finished the review of the emails on the Weiner laptop and "went through what they had done, what they had found, and their conclusion was, it does not change our view with respect to Hillary Clinton." Comey stated that there was "more work to be done with respect to" Abedin and Weiner to understand how the emails ended up on Weiner's computer, but that the review was complete with respect to Clinton. Comey continued, "And then I said, okay, you know, basically convince me you've done it well." Once convinced, Comey stated, "I said, okay now we're done, we should notify Congress that we are done. And then we set to work on that."

Comey stated that Steinbach opposed the idea of a second letter. Comey explained:

And [Steinbach's] view was, I just think it's too late that, as I recall it...but that we've created a storm and if you try to undo the storm now, you'll simply feed the storm more or something—so words to that effect. I said, look I respect that view, but I think you're wrong. I think having spoken, that led to us having to speak, having spoken we need to, in fairness, say that we're done. You've done it well, you've been able to do it in time. So then we shared that also with DOJ, got feedback and then sent that letter. And again the goal there was to be as fair as possible while still accomplishing the goal of telling them that we've finished with respect to her.

Steinbach told us that he could not recall the specifics of the debate about the November 6 letter, but stated, "I think maybe the November 6th one I was thinking look, it's already done. Just let it, let it go, let it die. I can't remember."

The Lead Analyst told us that he raised objections to the November 6 letter during discussions with Comey. The Lead Analyst stated:

I said I, I could understand the first statement because we were reopening an investigation. We were correcting the record. But I said I don't agree that, that this time we have any obligation to do that because the investigation isn't done. We have additional investigative steps that are going to happen. We're not closed in the sense of being closed. We may have, we may have come to a, a position of understanding about what's on this laptop. But to me, that same

obligation, which is to me what drove us to make the first statement, does not exist now.

The Lead Analyst told us that the further investigative steps needed to complete the investigation included at least a "malware analysis" to examine the laptop for intrusion and a re-interview of Abedin. Abedin was in fact re-interviewed by the FBI on January 6, 2017. With regard to the malware analysis, the Lead Analyst explained:

[T]he way I explain this in my thinking is, again, from my [counterintelligence] perspective, one of the key questions you're trying to answer to any of these circumstances, especially when you've been confirmed that classified information is resident on a device that it shouldn't be, is did that device get compromised by anyone. That's a part of the equation of was this of significant or negative impact to U.S. national security. If it's simply on Weiner's laptop and that's where it ended, then that's one thing. It's another thing if through this, their actions that got on Weiner's laptop and a foreign power obtained those classified, that's a separate question. So to me that's not a, that's not an insignificant aspect of this that was still completely unresolved at the time.

The Lead Analyst stated, "Then ultimately, the Director looked at me, and...he thanked me and thanked everybody for our candor, as always. And he said, but I have decided we're going to do it. And we're going to make it, you know, the statement and, that's kind of it."

At 7:52 p.m. on November 5, Page sent a text message to Strzok that stated, "I don't want to make a statement anymore." Strzok responded at 7:58 p.m., stating, in part, "Yeah I don't either. We're kind of out of the news cycle, let's leave it that way." At 8:11 a.m. on November 6, Page sent another text message to Strzok that stated, "I still don't know that we should make this statement." Strzok immediately responded, "I don't either. Imsg?"

After being shown these text messages, Strzok stated that he thought the decision to send the November 6 letter was "easier" than the decision about the October 28 letter. However, Strzok stated that he was concerned that every time the FBI acted it "invigorate[d] the news cycle." We also asked Strzok and Page about their use of iMessage, a built-in instant message service on Apple devices. As described in more detail in Chapter Twelve, Strzok and Page told us that they mostly used iMessage and personal email for personal use. However, Strzok told us could not exclude the possibility that he sent work-related information over iMessage. Similarly, Page told us that references to these other forums reflected "mostly personal use" as opposed to using them for work purposes. However, she stated that she and Strzok sometimes used these forums for work-related discussions due to the technical limitations of FBI-issued phones.

Unlike the October 28 letter, the FBI sent a draft copy of the November 6 letter to the Department and the Department participated meaningfully in the

drafting process. Axelrod stated that he "insisted" upon seeing the letter and he, along with Toscas and Associate Deputy Attorney General Scott Schools, provided comments and edits.

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CHAPTER TWELVE: TEXT MESSAGES, INSTANT MESSAGES, USE OF PERSONAL EMAIL, AND ALLEGED IMPROPER DISCLOSURES OF NON-PUBLIC INFORMATION

This Chapter discusses text messages from FBI-issued mobile devices and instant messages exchanged on FBI systems that raised concerns of potential bias. We describe key text messages and instant messages we identified during our review, as well as explanations for these messages that the involved employees offered during their OIG interviews. We also identified instances where FBI employees, including Comey and Strzok, used personal email accounts to conduct official government business. Lastly, we discuss allegations that Department and FBI employees improperly disclosed non-public information.

I. Text Messages and Instant Messages

During the course of our review, we requested and received text messages from FBI-issued mobile devices and instant messages exchanged on the FBI Net and SCINet Lync applications for FBI personnel involved in the Midyear investigation.¹⁹² We also requested text messages for Department personnel involved in the Midyear investigation, but were informed that the Department does not retain text messages for more than 5 to 7 days.¹⁹³ The OIG previously expressed concerns in a 2015 report about the text message retention practices of the Department's four law enforcement components, and we recommend that ODAG consider taking steps to improve the retention and monitoring of text messages Department-wide.¹⁹⁴

After receiving FBI text messages and instant messages responsive to keywords we provided to the FBI, we identified messages for certain FBI personnel

¹⁹² FBI Net is the FBI's computer system for information classified at the Secret level, while its SCINet system handles Top Secret and compartmented information.

¹⁹³ After reviewing a draft of this report, the Midyear prosecutors told the OIG that they did not use text messages, and that the only text messages they received were from the Midyear agents about logistical arrangements.

¹⁹⁴ In March 2015, the OIG issued a report pertaining to the handling of sexual harassment allegations by the Department's four law enforcement components, the FBI, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the U.S. Marshal's Service (USMS). In that report, we noted that all four components had weaknesses detecting sexually explicit text messages and images, and that two components did not archive text messages sent and received by its employees. We therefore recommended that all four law enforcement components, in coordination with ODAG, should (1) acquire and implement technology and establish procedures to effectively preserve text messages and images for a reasonable period of time, and should make that information available to misconduct investigators and for discovery purposes; and (2) take concrete steps to acquire and implement technology to proactively monitor text message and image data for potential misconduct. See U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Evaluation and Inspections Division Report 15-04 (March 2016), <https://go.usa.gov/xQGz4> (accessed May 9, 2018).

that raised concerns about potential bias. We then obtained all text messages and instant messages for those FBI personnel for the entire period of the Midyear investigation through July 1, 2017, to capture post-election discussions. We identified communications from five different FBI employees that we discuss in this section.¹⁹⁵

First, we identified text messages exchanged between DAD Peter Strzok and Lisa Page, Special Counsel to former Deputy Director Andrew McCabe, on their FBI-issued cell phones. These text messages included political opinions about candidates and issues involved in the 2016 presidential election, including statements of hostility toward then candidate Trump and statements of support for candidate Clinton. Several of their text messages also appeared to mix political opinions with discussions about the Midyear and Russia investigations, raising a question as to whether Strzok's and Page's political opinions may have affected investigative decisions. In addition to being involved in the Midyear and Russia investigations, both Page and Strzok were also briefly assigned to the investigation conducted by Special Counsel Robert Mueller III.

Next, we identified instant messages exchanged on FBINet involving Agent 1 and Agent 5. As noted previously, Agent 1 was assigned to the Midyear investigative team and was one of the four case agents. Agent 5 was assigned to the Midyear filter team. We discussed in Chapter Five a number of Agent 1's instant messages that expressed opinions that were critical of the conduct and quality of the Midyear investigation. In addition to those messages, we identified two instant message exchanges involving Agent 1 that appeared to combine a discussion of politics with a discussion of the Midyear investigation. We also identified instant messages between Agent 1 and Agent 5 that expressed support for candidate Clinton and hostility toward first candidate and then President Trump.

Finally, we identified instant messages sent on FBINet by FBI Attorney 2. FBI Attorney 2 was assigned to the Midyear investigation, the Russia investigation, and the Special Counsel investigation. We found instant messages in which FBI Attorney 2 discussed political issues, including three instant message exchanges that raised concerns of potential bias.

In this section, we describe key text messages and instant messages we identified during our review, as well as explanations for these messages that the employees offered during their OIG interviews.

A. Text Messages between Lisa Page and Peter Strzok

Peter Strzok is an experienced counterintelligence agent who was promoted to Deputy Assistant Director (DAD) of the Espionage Section in September 2016.

¹⁹⁵ We identified other text messages and instant messages in which FBI employees involved in the Midyear investigation discussed political issues and candidates. This Chapter does not include a discussion of every political text message or instant message that we identified. Instead, we discuss only those messages that we found raised the most significant questions of potential bias or improper motivation based on their content, timing, or the individuals involved.

As described in the previous chapters, Strzok was assigned to the Midyear investigation in August 2015 and was responsible for supervising the investigation on a daily basis. Page was named counsel to then Deputy Director Andrew McCabe in February 2016, and served as his liaison to the Midyear investigative team from February 2016 forward.

In addition to their roles in the Midyear investigation, both Page and Strzok were involved in the FBI investigation into the Russian government's efforts to interfere in the 2016 presidential election.¹⁹⁶ Strzok was assigned to lead the Russia investigation in late July 2016.¹⁹⁷ Page also worked on the Russia investigation, and told us that she served the same liaison function as she did in the Midyear investigation. Both Page and Strzok accepted invitations to work on the Special Counsel staff in 2017. Page told the OIG that she accepted a 45-day temporary duty assignment but returned to work in the Deputy Director's office at the FBI on or around July 15, 2017. Strzok was removed from the Special Counsel's investigation on approximately July 28, 2017, and returned to the FBI in another position, after the OIG informed the DAG and Special Counsel of the text messages discussed in this report on July 27, 2017.

As noted above, after finding responsive text messages between Page and Strzok that appeared to intermingle political comments with discussions of the Midyear investigation, the OIG obtained from the FBI all text messages between Strzok and Page from their FBI-issued phones for the entire period of the Clinton email server investigation as well as the period of the Russia investigation during which Strzok and Page worked on it. The OIG received more than 40,000 unique text messages between Strzok and Page in response to these requests.¹⁹⁸ The FBI did not provide any text messages for the period from December 15, 2016, to May 17, 2017, because of issues with the data collection and preservation software used on the FBI's Samsung S5 mobile devices. However, OIG forensic agents obtained the phones used by Strzok and Page, and recovered a large number of the text

¹⁹⁶ On March 20, 2017, then Director Comey testified before Congress that the FBI began an investigation in late July 2016 into "the Russian government's efforts to interfere in the 2016 presidential election," including "investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts."

¹⁹⁷ Supervision of the Russia investigation was briefly transitioned from Strzok to another Counterintelligence Division DAD in early 2017. However, AD Priestap told us that FBI leadership decided to keep Strzok involved in the Russia investigation and he was therefore reassigned back to it.

¹⁹⁸ The FBI produced 73,900 text messages between Strzok and Page from the period June 30, 2015, to December 1, 2016; 1,368 text messages from the period December 1 to December 14, 2016; and 2,054 text messages from the period May 18 to July 1, 2017. However, these included significant numbers of duplicates. We estimate that the number of unique text messages exchanged between Strzok and Page exceeded 40,000. The FBI pulled the majority of these text messages from Page's archives, as Strzok's text messages were not consistently preserved due to compatibility problems between the FBI's text message preservation software and the Samsung S5 cell phones used by the FBI. Issues related to the preservation of text messages affected a large number of FBI employees, and OIG forensic agents determined that the failure to preserve Strzok's text messages resulted from this compatibility issue, not from the actions of any FBI employee, including Strzok. Text message preservation resumed in May 2017, after Page received a Samsung S7 phone.

messages from this “gap” period. For the gap period, the OIG recovered 9,311 text messages from Strzok’s phone and 10,760 text messages from Page’s phone, some of which were duplicates or text messages exchanged with other people. Although the number and frequency of text messages is generally consistent with previous time periods, we cannot definitively say that our forensic recovery captured every text message exchanged between Page and Strzok during the gap period.¹⁹⁹

The text messages between Page and Strzok covered a wide range of topics. For example, we identified a large number of routine work-related communications. Many of the text messages were of a personal nature, including discussions about their families, medical issues, and daily events, and reflected that Strzok and Page were communicating on their FBI-issued phones as part of an extramarital affair. We found that this relationship was relevant to the frequency and candid nature of the text messages and their use of FBI-issued phones to communicate. Some of these text messages expressed political opinions about candidates and issues involved in the 2016 presidential election, including statements of hostility toward candidate Trump and statements of support for candidate Clinton.

We identified three categories of text messages that raised concerns about potential bias in FBI investigations. The first were text messages of a political nature commenting on Trump and Clinton. We specifically highlight these text messages because Strzok and Page played important roles in investigations involving both Trump and Clinton, and the exchange of these text messages on an FBI-issued device potentially created an appearance of bias. The second category we identified were text messages that combined expressions of political sentiments with a discussion of the Midyear investigation, potentially indicating or creating the appearance that investigative decisions were impacted by bias or improper considerations. The third category raised similar questions with respect to the Russia investigation. We also include a fourth category of text messages that have received significant public attention. These messages are included to provide context and further explanation as to their meaning, and do not necessarily implicate potential bias in either the Midyear or Russia investigations. Examples of these four categories of text messages are discussed below.²⁰⁰ We also include

¹⁹⁹ The OIG is preparing a separate report on its text message recovery efforts and findings.

²⁰⁰ This Chapter includes the text messages we found most relevant to our review. However, Page and Strzok sent other text messages about candidates and issues involved in the 2016 presidential election, unrelated to the Midyear or Russia investigations, and also sent numerous text messages, both positive and negative, about other public and government officials from both political parties. These included former Maryland Governor Martin O’Malley (“And Martin O’Malley’s a douche,” October 14, 2015), Congressman Paul Ryan (“And I hope Paul Ryan fails and crashes in a blaze of glory,” November 1, 2015), Ohio Governor John Kasich (“Poor Kasich. He’s the only sensible man up there,” “Exactly re Kasich. And he has ZERO appeal,” March 4, 2016), former Attorney General Eric Holder (“Oh God, Holder! Turn [the television] off turn it off turn it off!!!!” “Yeah, I saw him yesterday and booed at the tv,” July 27, 2016), and others. Page and Strzok told us that these additional text messages were relevant because they reflected that Trump was not singled out by them for criticism or criticized for partisan reasons.

explanations provided by Page and Strzok during their OIG interviews about these text messages.

1. Text Messages Commenting on Trump or Clinton

In this section, we highlight examples of text messages of a political nature commenting on Trump and Clinton. We include explanations provided by Page and Strzok about their use of FBI-issued phones in general and their use of FBI-issued phones for political discussions. The sender of each text message is identified after the date.

- August 16, 2015, Strzok: "[Bernie Sanders is] an idiot like Trump. Figure they cancel each other out."²⁰¹
- February 12, 2016, Page: "I'm no prude, but I'm really appalled by this. So you don't have to go looking (in case you hadn't heard), Trump called him the p-word. The man has no dignity or class. He simply cannot be president. With a Slur for Ted Cruz, Donald Trump Further Splits Voters <http://nyti.ms/1XoICkO>."
- February 12, 2016, Strzok: "Oh, [Trump's] abysmal. I keep hoping the charade will end and people will just dump him. The problem, then, is Rubio will likely lose to Cruz. The Republican party is in utter shambles. When was the last competitive ticket they offered?"
- March 3, 2016, Page: "God trump is a loathsome human."
- March 3, 2016, Strzok: "Omg [Trump's] an idiot."
- March 3, 2016, Page: "He's awful."
- March 3, 2016, Strzok: "God Hillary should win 100,000,000-0."
- March 3, 2016, Page: "Also did you hear [Trump] make a comment about the size of his d*ck earlier? This man cannot be president."
- March 12, 2016: Page forwarded an article about a "far right" candidate in Texas, stating, "[W]hat the f is wrong with people?" Strzok replied, "That Texas article is depressing as hell. But answers how we could end up with President trump."
- March 16, 2016, Page: "I cannot believe Donald Trump is likely to be an actual, serious candidate for president."
- June 11, 2016, Strzok: "They fully deserve to go, and demonstrate the absolute bigoted nonsense of Trump."
- July 18, 2016, Page: "...Donald Trump is an enormous d*uche."

²⁰¹ All text messages produced to the OIG reflected Greenwich Mean Time. As a result, some text messages sent late at night bore the wrong date. We have corrected times and, where necessary, dates in this report to reflect the Eastern Time Zone. In addition, some text messages used emojis and other formatting symbols, which we omitted unless they affected the meaning of the text message. We also excluded other intervening text messages that did not contribute to understanding the highlighted text messages.

- July 19, 2016, Page: "Trump barely spoke, but the first thing out of his mouth was 'we're going to win soooo big.' The whole thing is like living in a bad dream."
- July 21, 2016, Strzok: "Trump is a disaster. I have no idea how destabilizing his Presidency would be."
- August 26, 2016, Strzok: "Just went to a southern Virginia Walmart. I could SMELL the Trump support...."
- September 26, 2016, Page: Page sent an article to Strzok entitled, "Why Donald Trump Should Not Be President," stating, "Did you read this? It's scathing. And I'm scared."
- October 19, 2016, Strzok: "I am riled up. Trump is a fucking idiot, is unable to provide a coherent answer."
- November 3, 2016, Page: "The nyt probability numbers are dropping every day. I'm scared for our organization."
- November 3, 2016, Strzok: "[Jill] Stein and moron [Gary] Johnson are F'ing everything up, too."
- November 7, 2016, Strzok: Referencing an article entitled "A victory by Mr. Trump remains possible," Strzok stated, "OMG THIS IS F*CKING TERRIFYING."
- November 13, 2016, Page: "I bought all the president's men. Figure I needed to brush up on watergate."²⁰²

Both Strzok and Page agreed to multiple voluntary interviews with the OIG regarding, among other things, their text messages. The OIG asked Strzok and Page each to comment in general on the text messages. Strzok explained that the text messages reflected his "personal opinion talking to a friend." He stated that ingrained in FBI culture was a "bright and inviolable line between what you think personally and belief and the conduct of your official business," and that the political opinions he expressed in the text messages "never transited into the official realm. In any way. Not in discussions, not in acts." Strzok acknowledged that "it was dumb to do that all on a government device," but distinguished his private exchanges with Page from a more public forum where expressing such views might call into question the integrity of an FBI investigation. When questioned about the possibility that exchanges on his government device could be hacked, obtained by the media, or otherwise exposed to the public, he acknowledged that "I can envision a number of scenarios" where it could impact an investigation.

Strzok stated most people would have no idea of his partisan affiliation and that "[i]t was a point of pride on Midyear that we absolutely conducted that

²⁰² Among the text messages forensically recovered by the OIG in May 2018 was another exchange about "All the President's Men." On March 14, 2017, Page texted, "Finally two pages away from finishing atpm. Did you know the president resigns in the end?! ☺" Strzok replied, "What?!?! God, that we should be so lucky."

investigation and pursued the truth in a manner that was protected from bias or influence and was simply apolitical.” He further stated, “I did not either in Midyear or any other case act in a vacuum.... I had subordinates, I had peers, I had supervisors,” and that none of these people would say that he had acted in a biased manner in carrying out his official duties.

Page told us that these text messages reflected her personal opinions regarding candidate Trump’s fitness to be president and her preference for Clinton, but that she did not allow her political views to impact investigative steps on the Midyear investigation. She stated, “Because I was on the Clinton investigation, I actually felt extremely constrained from talking to anyone about politics at all.... And so, Pete being a good friend, it was in a way a, like a safe place to sort of have a conversation about what was...the normal sort of news of the day because...we both knew that we weren’t, it wasn’t impacting anything that we were doing.” She pointed out that many of the text messages in question were sent after the Midyear investigation was effectively concluded on July 5, 2016, at which point she said she personally felt less constrained to express an opinion. Page stated that she was “responsible for no single decision at all with respect to the case,” but that her role was rather to communicate information between FBI executive leadership and the investigative team. She also said she was not the sole source of information to executive leadership.

When asked about using her FBI-issued phone for these exchanges, Page told us, “[T]he predominant reason that we communicated on our work phones was because we were trying to keep our affair a secret from our spouses.” Page also said, “I guess I didn’t feel like I was doing anything wrong. I’m an American. We have the First Amendment. I’m entitled to an opinion.... I saw it as, I still see it as so separate from the investigative activity we were taking in the, in Midyear that I didn’t, didn’t really think about it, to be honest with you.”

2. Text Messages Discussing Political Sentiments and the Midyear Investigation

In this section, we highlight examples of text messages that appear to combine expressions of political sentiments with discussion of the Midyear investigation. We provide background and context where possible to assist in understanding the text messages. We also include the explanations provided by Page and Strzok about these text messages.

February 24, 2016: In connection with a discussion about how many people from the FBI and Department should be present during a potential interview of former Secretary Clinton, Page stated in a February 24, 2016 text message to Strzok, “One more thing: she might be our next president. The last thing you need us going in there loaded for bear. You think she’s going to remember or care that it was more doj than fbi?” Strzok replied, “Agreed....” Page sent similar text messages to McCabe and another FBI employee around the same time, adding that having a larger number in the room “is not operationally necessary” and that “[t]his is as much about reputational protection as anything.” These text messages occurred at almost the midpoint of the Midyear investigation, before Clinton’s

interview was formally scheduled. Ultimately, Clinton was interviewed on July 2, 2016, and there were three FBI and five Department officials in the room. Page did not attend the interview.

Both Page and Strzok told the OIG that these messages did not reflect that the FBI took into account the likelihood that former Secretary Clinton would be president when conducting her interview. Page told us that her text message was advocating that the FBI should “follow the practice we always, always follow” with respect to who would attend Clinton’s interview, “and not do something that might otherwise negatively impact [Clinton’s] thinking or her feeling about the FBI in general.” She stated that having fewer people present in an interview is generally better for building rapport and ensuring that the right people are asking the questions, and that by “loaded for bear” she meant having a large number of interviewers in the room, which might look “like we’re trying to intimidate” Clinton. Strzok told us he did not interpret Page’s text message to suggest that the FBI should treat Clinton differently “because she might be the next president,” and he stated that he was certain he “made no decision based on anything [Clinton] might be or become or have done.”

July 26, 2016: Strzok and Page exchanged a series of text messages on July 26, 2016, while they appeared to be watching television coverage of the Democratic National Convention. In the course of this exchange, Page texted, “Yeah, it is pretty cool. [Clinton] just has to win now. I’m not going to lie, I got a flash of nervousness yesterday about trump. The sandernistas have the potential to make a very big mistake here....” Strzok responded, “I’m not worried about them. I’m worried about the anarchist Assanges who will take fed information and disclose it to disrupt. We’ve gotta get the memo and brief and case filing done.”

Strzok told us that “the memo” he was referring to was the closing Letterhead Memorandum (LHM) summarizing the Clinton email server investigation. Strzok said he was not certain what the “brief and case filing” referred to, but speculated these could have related to a FOIA filing. When asked if his text message meant that the LHM needed to be completed because he was worried about Trump and wanted Clinton to win, Strzok said, “No, not at all.” He described this exchange as a “discussion that is purely in that private, personal realm about beliefs and opinions that are personal opinions intermixed [with discussion of work tasks] because, as a work colleague, there are a lot of things going on, and they do get intermixed.” Strzok stated that mixing work and personal communications in the same text message exchange, on the same device, was “dumb” and acknowledged that it could create a perception issue. He again emphasized that he never took any investigative step designed to help or hurt Clinton or Trump.

Page told us that she was not sure what the “memo and brief and case filing” referred to but that it might have been a related classified issue. She stated that she did not read Strzok’s text message to connect the need to “get the memo and brief and case filing done” with his political preferences. Rather, Page stated that she thought that the use of “fed” in the text message may have been an erroneous auto-correction of an unclassified acronym of a codename and that Strzok was

referring to concerns about leaks by actors like Assange (Wikileaks) "who will leak classified information."

3. Text Messages Discussing Political Sentiments and the Russia Investigation

In this section, we highlight examples of text messages that appear to combine expressions of political sentiments with discussion of the Russia investigation. We provide background and context where possible to assist in understanding the text messages. We also include the explanations provided by Page and Strzok about these text messages.

July 31, 2016: In connection with formal opening of the FBI's Russia investigation, Strzok texted Page: "And damn this feels momentous. Because this matters. The other one did, too, but that was to ensure we didn't F something up. This matters because this MATTERS. So super glad to be on this voyage with you."

Strzok told us the "other one" referred to in the text message was the Midyear investigation. He said his text message was comparing and contrasting the Midyear investigation with the Russia investigation, and reflected his view that "if there is criminal activity there [in Midyear], it is comparatively limited, versus allegations [in the Russia investigation] which are of the most extraordinarily, potentially grave conduct." He said that his assessment of the significance of the Russia investigation was not affected by his personal feelings toward Trump and that it would be the same if another campaign were involved.

August 6, 2016: In an exchange on August 6, 2016, Page forwarded Strzok a news article relating to Trump's criticism of the Khans (the Gold Star family who appeared at the Democratic National Convention) and stated, "Jesus. You should read this. And Trump should go f himself." Strzok responded favorably to the article and added, "And F Trump." Page replied, "So. This is not to take away from the unfairness of it all, but we are both deeply fortunate people." She then sent another text message, "And maybe you're meant to stay where you are because you're meant to protect the country from that menace. To that end, read this:" and forwarded a David Brooks column from the New York Times about Trump "enablers" in the Republican Party who had not opposed Trump. Strzok responded, "Thanks. It's absolutely true that we're both very fortunate. And of course I'll try and approach it that way. I just know it will be tough at times. I can protect our country at many levels, not sure if that helps...."

When asked to explain what she meant by "you're meant to protect the country from that menace," Page began by stating, "I was totally appalled that the President would insult the father of a dead service member.... And just find that unconscionable and disgusting and cruel." She also stated that the "menace" was "the potential threat to national security that Trump or his people pose if [the] predication [for the Russia investigation] is true." Strzok told us that he did not interpret Page's reference to "protect the country from that menace" to refer to Trump. He stated, "I take menace a little differently. I take, I take the menace as, again, I view any foreign interference with our electoral process to be a threat, to

be a violation of law.... So when I see menace, I, you know, is that Trump, is that Russian interference, is it the combination of the two?"

August 8, 2016: In a text message on August 8, 2016, Page stated, "[Trump's] not ever going to become president, right? Right?" Strzok responded, "No. No he's not. We'll stop it."²⁰³

When asked about this text message, Strzok stated that he did not specifically recall sending it, but that he believed that it was intended to reassure Page that Trump would not be elected, not to suggest that he would do something to impact the investigation. Strzok told the OIG that he did not take any steps to try to affect the outcome of the presidential election, in either the Midyear investigation or the Russia investigation. Strzok stated that had he—or the FBI in general—actually wanted to prevent Trump from being elected, they would not have maintained the confidentiality of the investigation into alleged collusion between Russia and members of the Trump campaign in the months before the election. Page similarly stated that, although she could not speak to what Strzok meant by that text message, the FBI's decision to keep the Russia investigation confidential before the election shows that they did not take steps to impact the outcome of the election.

August 15, 2016: In a text message exchange on August 15, 2016, Strzok told Page, "I want to believe the path you threw out for consideration in Andy's office—that there's no way he gets elected—but I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before you're 40...." The "Andy" referred to in the text message appears to be FBI Deputy Director Andrew McCabe. McCabe was not a party to this text message, and we did not find evidence that he received it.

In an interview with the OIG, McCabe was shown the text message and he told us that he did not know what Strzok was referring to in the message and recalled no such conversation. Page likewise told us she did not know what that text message meant, but that the team had discussions about whether the FBI would have the authority to continue the Russia investigation if Trump was elected. Page testified that she did not find a reference in her notes to a meeting in McCabe's office at that time.

Strzok provided a lengthy explanation for this text message. In substance, Strzok told us that he did not remember the specific conversation, but that it likely was part of a discussion about how to handle a variety of allegations of "collusion between members of the Trump campaign and the government of Russia." As part of this discussion, the team debated how aggressive to be and whether to use overt investigative methods. Given that Clinton was the "prohibitive favorite" to win,

²⁰³ Although we received Page's August 8 text message to Strzok from the FBI as part of its production of text messages in 2017, Strzok's response to Page was not among those preserved by the FBI's text message preservation software, and therefore was not produced to us. The OIG's Cyber Investigations Office recovered this text message, along with others, in May 2018 through forensic analysis of a folder found on Page's and Strzok's Samsung S5 devices.

Strzok said that they discussed whether it made sense to compromise sensitive sources and methods to “bring things to some sort of precipitative conclusion and understanding.” Strzok said the reference in his text message to an “insurance policy” reflected his conclusion that the FBI should investigate the allegations thoroughly right away, as if Trump were going to win. Strzok stated that Clinton’s position in the polls did not ultimately impact the investigative decisions that were made in the Russia matter.

May 18, 2017: Mueller was appointed Special Counsel on May 17, 2017. The next day Strzok and Page exchanged text messages in a discussion of whether Strzok should join the Special Counsel’s investigation. Strzok wrote: “For me, and this case, I personally have a sense of unfinished business. I unleashed it with MYE. Now I need to fix it and finish it.” Later in the same exchange, Strzok, apparently while weighing his career options, made this comparison: “Who gives a f*ck, one more A[ssistant] D[irector]...[versus] [a]n investigation leading to impeachment?”²⁰⁴ Later in this exchange, Strzok stated, “you and I both know the odds are nothing. If I thought it was likely I’d be there no question. I hesitate in part because of my gut sense and concern there’s no big there there.”

Strzok acknowledged that his text messages could be read to suggest that Strzok held himself responsible for Trump’s victory and Clinton’s defeat because of the Midyear investigation and that he viewed the Russia investigation as providing him an opportunity to “fix” this result by working on an investigation that could result in the impeachment of President Trump. However, Strzok said he strongly disagreed with this interpretation and provided a lengthy explanation for these statements. Strzok said that he wanted to “finish” the Russia investigation rather than be reassigned midway through and lose the institutional knowledge of issues being investigated by the Special Counsel. He further stated that he was referring to Russia’s use of the Midyear investigation in its election interference efforts. Strzok explained, “[I]t wasn’t so much the investigation about Midyear, but then how it played into, how it was being portrayed in the political environment, how it was being leveraged by the government of Russia and all the social media disseminations.... [W]e then came to see all this kind of overlap and replaying of events with regard to the involvement of Russia, and certainly the back-and-forth with some elements of the Trump campaign.” When asked what he wanted “to fix,” Strzok identified the misperception that “Russia wasn’t involved,” given that “Russia did interfere with our elections.”

²⁰⁴ Strzok expressed similar sentiments in an email to Page using his FBI UNET (unclassified) account. On May 22, 2017, at a time when Page was working for the Special Counsel but Strzok had not yet joined the Special Counsel investigation, Page forwarded Strzok a Washington Post article entitled, “Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence.” Strzok responded saying, “Yup. Assuming you/team will do it via Mueller?” When Page confirmed this, Strzok responded, “God I suddenly want on this. You know why.” Page replied that she would leave the Special Counsel investigation and “happily” return to her work at the FBI if Strzok really wanted to join the investigation. Strzok responded, “I’m torn I think – know – I’m more replaceable than you are in this. I’m the best for it, but there are others who can do OK You are different and more unique This is yours. Plus, leaving a S[pecial] C[ounsel] (having been an SC) resulting in an impeachment as an attorney is VERY different than leaving as an investigator .”

When asked to explain his comment about working on an investigation “leading to impeachment?” Strzok denied that he had already prejudged the Russia investigation. He described himself as a person:

[W]ho has had access to the information about the, all of these cases and all of the ins and outs of what the allegations [in the Russia investigation] are. And that he has both, as it matters as a public servant, he has a professional concern about the allegations.... And he is concerned on the impact of the national security of the United States. He finds that he has an expertise and a competence in this line of work, and he feels compelled and driven to pursue that and pursue those facts where they lay.

He stated further that his professional actions, including on the staff of the Special Counsel, were not affected by political bias.

We also asked Strzok about his “no big there there” message.” Strzok stated:

As I looked at the predicated information, as I looked at the facts as we understood them from...the allegations that Russia had these emails, and offered to members of the Trump campaign to release them. As we looked at the various actors, the question [was,...] was that part of a broad, coordinated effort, or was that simply a bunch of opportunists seeking to advance their own or individual agendas...which of that is it?

...My question [was] about whether or not this represented a large, coordinated conspiracy or not. And from that, as I looked at what would give me professional fulfillment, what I thought would be the best use of my skills and talents for the FBI and for the United States, whether to take, which path to take.

Page stated that she understood Strzok’s reference to “unfinished business” that he had “unleashed” and needed “to fix and finish” to be “a reflection of our Director having been fired,” and “the purported reason for why the Director was fired was his mishandling of the Midyear investigation, and the work force was, you know, in mutiny, and it was all about Midyear.” She disagreed with the suggestion that Strzok felt responsible for Clinton’s defeat in the election. She said she interpreted Strzok’s reference to impeachment to mean he wanted to be involved in the Russia investigation because it was so important “it *might* lead to impeachment,” not because “it *will* lead to impeachment.”²⁰⁵ (Emphasis added). In response to the OIG’s question as to whether Strzok’s text messages made it appear that he was biased against Trump from the beginning of the Special Counsel investigation, Page acknowledged that the text messages could be read that way,

²⁰⁵ Strzok gave a similar explanation for the email he sent to Page referencing a Special Counsel investigation “resulting in an impeachment.” He stated, “[W]hile it says that, I think my sense was very much, you know, where it could result in an impeachment. I am, again, was not, am not convinced or certain that it will.. ”

but stated, "[T]hat's just not how I read it." She stated, "He wants to finish the Russia investigation to do, right, this President fired the Director. This President's team is being investigated for potentially colluding with the Russians in the 2016 election. So, [he] want[s] to finish [his] involvement."

4. Other Notable Text Messages

In this section, we briefly discuss other text message exchanges between Page and Strzok that have received significant public attention.

April 1, 2016: On April 1, 2016, Page sent the following text message to Strzok: "So look, you say we text on that phone when we talk about hillary because it can't be traced, you were just venting bc you feel bad that you're gone so much but it can't be helped right now." Page told us that this was an example of why she and Strzok used their work phones to conceal their affair from their spouses. Page stated, "[T]hat [text message] follows us communicating personally on our personal phones, and his wife inquiring what it is he was doing. And so my saying, tell her we're talking about Hillary is not in fact because we were talking about Hillary, but coming up with an explanation for him to provide his wife with respect to why we were on that phone."

June 30, 2016: On June 30, 2016, Strzok sent the following text message to Page: "...Just left Bill.... He changed President to 'another senior government official.'" Based on context, Strzok told us "Bill" referred to Priestap. Strzok stated:

My recollection is that the early Comey speech drafts included references to emails that Secretary Clinton had with President Obama and I think there was some conversation about, well do we want to be that specific? Is there some, out of deference to executive communications, do we want to do that? And I remember that discussion occurring. I remember the decision was made to take it out. I know I was not the person who did it.

Strzok told us that he saw no indication that this decision was done "to curry favor or to influence anything." Page told us that she could not remember the discussion referenced in this text message. We also discuss this change to Comey's July 5 statement in Chapter Six.

July 24, 2016: On July 24, 2016, before the Russia investigation was formally opened, Page and Strzok exchanged numerous text messages in which they discuss U.S. District Court Judge Rudolph "Rudy" Contreras. Judge Contreras is also a current member of the Foreign Intelligence Surveillance Court (FISC). They discuss, among other things, Strzok hosting a social gathering and inviting Contreras. They also discuss whether Contreras would "have to recuse himself" on "espionage FISA" cases given "his friend oversees them." We asked Strzok about this exchange and his relationship with Contreras. Strzok stated that he considered Contreras a friend and explained that they met years ago when their children attended the same elementary school. Strzok stated that this text message

exchange reflected that "it had been a while since he had seen" Contreras and he was telling Page that it would nice to see Contreras and find out how he was doing. Strzok continued:

What it was not, and I will say this in response to, again, a lot of the speculation I've seen. At no time did I ever with Judge Contreras think of or in actuality reach out for the purpose of discussing any case or trying to get any decision, provide any information, or otherwise influence him with regard to any investigative matter that I or others were involved with.

Strzok told us that Judge Contreras "knew that [Strzok] worked or may have worked national security matters for the FBI," but knew nothing about the specifics of Strzok's job or any of the cases he worked. Strzok stated that he never discussed specifics of any investigation with Judge Contreras. Strzok also told us that the social gathering discussed in this text message exchange never occurred.

We also asked Strzok about the recusal discussion reflected in the text messages. Strzok stated:

[This] came up in the context of now that he was on the FISC and that we did have a relationship, the question about, from an ethical perspective and doing the right thing from an ethical perspective, where the lines of either notifying the court and/or either his recusal or my recusal with regard to matters that might bring us in contact with each other on the professional side.

And so the discussion which then came up...was, whether in the context of being the head of the Counterespionage Section, were there, noticing the court or at a minimum noticing [the Department's National Security Division Office of Intelligence] of that personal relationship to allow the court to make the appropriate decision, or, you know, the, the conglomeration of all of us to make the appropriate ethical decision of whether or not to do was the substance of this discussion. But all of this discussion is a consideration of doing the right, appropriate, ethical thing. It is the polar opposite of what is being suggested by some. This is, this is the flip side of that saying we want to make sure we're absolutely doing the right thing. And by the way...Judge Contreras is thoughtful and extraordinarily conscientious about ethics and doing the right thing. So this is, if anything, and what is particularly personally aggravating to me is this speaks highly to him as a person, to us as the way we were thinking about it. And it's being absolutely twisted in the, the complete opposite direction.

Strzok told us that this text message exchange was not about any particular case and represented a more general concern of what he should do.

September 2, 2016: On September 2, 2016, Page and Strzok exchanged the following text messages. The sender of each message is identified after the timestamp.

09:41:30, Strzok: "Checkout my 9:30 mtg on the 7th"
 09:42:40, Page: "I can tell you why you're having that meeting."
 09:42:46, Page: "It's not what you think."
 09:49:39, Strzok: "TPs for D?"
 09:50:29, Page: "Yes, bc potus wants to know everything we are doing."
 09:55:21, Strzok: "I'm sure an honest answer will come out of that meeting...."

This text message exchange occurred during the period in which Midyear was effectively closed—after Comey's July 5 announcement and prior to the discovery of Midyear-related emails on the Weiner laptop in late September. Strzok told us that these text messages referenced a request by the White House to get a "comprehensive idea across the U.S. Intelligence Community" about the scope of Russian interference activities and details of what Russia was doing. Strzok stated that this was "strictly limited to Russian actors" and he did not believe any investigations of U.S. persons were part of this request. Page stated that this exchange had "nothing to do with the Clinton email investigation."

November 9, 2016: The day after the presidential election, on November 9, 2016, Page sent the following text message to Strzok: "Are you even going to give out your calendars? Seems kind of depressing. Maybe it should just be the first meeting of the secret society." We asked Page about this message. Page stated that the "calendars" referenced in this text message were "funny and snarky" calendars of Russian President Vladimir Putin in different poses, such as "holding a kitten." Page told us that Strzok had previously purchased these calendars as "dark gallows humor." Page stated that the reference to the "secret society" was also a "dark sort of" humor about Trump winning the election and concerns she and Strzok had about Trump. Page continued:

And so, we somewhat with dark humor, but also somewhat, you know, with real concern as, of course, our Director actually gets fired, talk about, like, well, when he shuts down the, when he finds out about the investigation and shuts down the FBI, you know, we'll form a secret society so we can like continue the investigation. So that's just, that's obviously not real. I mean, that's just us being, you know, sort of snarky. But that's a, that's a joke. I mean, a reflection of that sort of joke.

Strzok stated that he "took and certainly believed [this text message] to be a joke." Strzok explained:

I had gotten a bunch of Putin 2017 calendars where he is in various, glorious displays of Russian patriotism for each month. And we were going to give it out to the, kind of the, the closer senior members of the [Russia investigation] team, just to, you know, hey, we made it to, to Election Day just as like, you know, thanks for your hard work because people, you know, had been truly working very hard....

To give that out and, you know, and Lisa, you know, saying, God, you know, and the thought was, you know, give it out like right around the election. And then my, my take of Lisa's, and I think the everyman, commonsense take of this is that it's like, God, you know, is that something you would want to, you know, want to do right now? And, you know, the secret society is entirely in jest.

B. Instant Messages between Agent 1 and Agent 5

Agent 1 is an experienced counterintelligence agent and was assigned to the Midyear investigative team from August 2015 through the conclusion of the investigation. Agent 1 was one of four agents responsible for the day-to-day activities of the Midyear investigation. Agent 1's duties included conducting witness interviews and Agent 1 was one of the two agents who interviewed former Secretary Clinton on July 2. Agent 5 is also an experienced counterintelligence agent and was a member of the Midyear filter team. As a member of the filter team, Agent 5 was responsible for identifying privileged communications among the materials obtained by the FBI to ensure that they were not reviewed by the investigative team. Neither Agent 1 nor Agent 5 was assigned to the FBI's Russia investigation or the Special Counsel investigation.

As noted previously, we identified instant messages sent by Agent 1, often to Agent 5, that expressed opinions critical of the conduct and quality of the Midyear investigation. We discussed these message in Chapter Five. In addition to those messages, we identified two instant message exchanges that appeared to combine a discussion of politics with a discussion of the Midyear investigation. We also identified instant messages between Agent 1 and Agent 5 that expressed support for Clinton and hostility toward Trump. We discuss these messages in this section, along with explanations provided by Agent 1 and Agent 5. Because it is relevant to their explanations, we note that Agent 1 and Agent 5, who are now married, were in a personal relationship that predated their assignment to the Midyear investigation.

1. Instant Messages Referencing the Midyear Investigation

On July 6, 2016, the day after Comey's Midyear declination announcement, Agent 1 and an FBI employee not involved with Midyear exchanged messages about the investigation. During the course of this discussion, Agent 1 described the prior weekend's activities, which included the interview of Clinton. A portion of this

instant message exchange follows. The sender of each message is noted after the timestamp.²⁰⁶

15:07:41, Agent 1: "...I'm done interviewing the President – then type the 302. 18 hour day...."

15:13:32, FBI Employee: "you interviewed the president?"

15:17:09, Agent 1: "you know – HRC" [Hillary Rodham Clinton]

15:17:18, Agent 1: "future pres"

15:17:22, Agent 1: "Trump cant win"

15:17:31, Agent 1: "demographics dont line up"

15:17:37, Agent 1: "America has changed"

We asked Agent 1 if he thought of Clinton as the next president while conducting the Midyear investigation. Agent 1 stated, "I think my impression going into the election in that personal realm is that all of the polls were favoring Hillary Clinton." We asked Agent 1 if he treated Clinton differently because of this assumption. Agent 1 stated, "Absolutely not. I think the message they said that our leadership told us and our actions were to find whatever was there and whatever, whatever that means is what it means."

Comey sent the first letter to Congress about the Weiner laptop discovery on October 28, 2016. Agent 1 and Agent 5 exchanged instant messages about the letter and Trump's reaction to it later that day. The sender of each messages is noted after the timestamp.

13:46:48, Agent 5: "Jesus christ Trump: Glad FBI is fixing 'horrible mistake' on clinton emails for fuck's sake."

13:47:27, Agent 5: "the fuck's sake part was me, the rest was Trump."

13:49:07, Agent 1: "Not sure if Trump or the fifth floor is worse "

13:49:22, Agent 5: "I'm so sick of both . "

13:50:25, Agent 5: "+o(TRUMP"²⁰⁷

13:50:30, Agent 5: "+o(Fifth floor"

13:50:34, Agent 5: "+o(FBI"

13:50:44, Agent 5: "+o(Average American public"

²⁰⁶ All instant messages produced to the OIG reflected Greenwich Mean Time. We have corrected times to the Eastern Time Zone as a result. In addition, some instant messages contained emojis, which we omitted unless they affected the meaning of the message. We also do not include other intervening instant messages unless they contribute to understanding the highlighted messages.

²⁰⁷ The symbol used in these messages is a "sick face" emoticon. See IM Emoticons, at <http://sheet.shiar.nl/emoji> (last accessed April 28, 2018).

We asked both Agent 1 and Agent 5 about these messages. Agent 1 and Agent 5 both stated the reference to "fifth floor" referred to the location of the FBI WFO's Counterintelligence Division. Agent 1 continued: "Again, you know, I think a general, general theme in a lot of this is some personal comment, or, you know, complaining about common topics and leadership and, and venting." Agent 5 also described this as general complaining to Agent 1 and also as an example of her being "very tired of working" these types of cases. Agent 5 also noted that she was not involved in the review of the Weiner laptop.

2. Instant Messages Commenting on Trump or Clinton

On August 29, 2016, Agent 1 and Agent 5 exchanged the following instant messages as part of a discussion about their jobs. The sender of each message is noted after the timestamp.

10:39:49, Agent 1: "I find anyone who enjoys [this job] an absolute fucking idiot. If you dont think so, ask them one more question. Who are you voting for? I guarantee you it will be Donald Drumpf."

10:40:13, Agent 5: "i forgot about drumpf . "

10:40:27, Agent 5: "that's so sad and pathetic if they want to vote for him."

10:40:43, Agent 5: "someone who can't answer a question"

10:40:51, Agent 5: "someone who can't be professional for even a second"

On September 9, 2016, Agent 1 and Agent 5 exchanged the following instant messages.

08:56:43, Agent 5: "i'm trying to think of a 'would i rather' instead of spending time with those people"

08:56:54, Agent 1: "stick your tongue in a fan??"

08:56:58, Agent 5: "i would rather have brunch with trump"

08:57:03, Agent 1: "ha"

08:57:15, Agent 1: "french toast with drumpf"

08:57:19, Agent 5: "i would rather have brunch with trump and a bunch of his supporters like the ones from ohio that are retarded"

08:57:23, Agent 5: " :) "

Agent 5 told the OIG these instant messages "referenced TV programming and commentary that Agent 1 and Agent 5 had recently viewed together." Agent 5 continued, "The reference was not a general statement about a particular part of the country, rather it was in jest and pertained to individuals' inability to articulate any reason why they so strongly favored one candidate over another."

On Election Day on November 8, 2016, Agent 1 and Agent 5 exchanged the following instant messages.

14:21:10, Agent 1: "You think HRC is gonna win right? You think we should get nails and some boards in case she doesn't"

14:21:56, Agent 5: "she better win otherwise i'm gonna be walking around with both of my guns."

14:22:05, Agent 5: "and likely quitting on the spot"

14:28:43, Agent 1: "You should know; .."

14:28:45, Agent 1: "that"

14:28:50, Agent 1: "I'm. .."

14:28:56, Agent 1: "with her."

14:28:58, Agent 1: "ooooooooooooooooooooo"

14:29:02, Agent 1: "show me the money"

14:29:03, Agent 5: "<:o)"

14:29:14, Agent 5: "screw you trump"

14:19:18, Agent 5: "wheeeeeeeeeeeeeeeeeeeeeeeeeee!"

14:29:32, Agent 5: "go baby, go! let's give her Virginia"

14:30:03, Agent 1: "not to my country. You just can't get up and try to appeal to all the worst things in humans and fool my country ."

14:30:12, Agent 1: "Just 49% of us....."

14:30:25, Agent 5: "let's hope it's 49% or less "

14:30:31, Agent 5: "we'll find out "

In a December 6, 2016 exchange, Agent 5 complained to Agent 1 about being required to be on call on the day of the presidential inauguration. In the middle of expressing displeasure about this, Agent 5 sent a message to Agent 1 that stated, "fuck trump." On February 9, 2017, in the context of an FBI employee receiving a presidential award for public service, Agent 5 messaged, "...I think now that trump is the president, i'd refuse it. it would be an insult to even be considered for it."

We asked Agent 1 and Agent 5 about their use of instant messaging generally and about these messages in particular. As mentioned in Chapter Five, Agent 1 told us that he believed that instant messages were not retained by the FBI and therefore used less caution with those communications than he would have with other types of communications, such as email or text messages.²⁰⁸ Agent 5

²⁰⁸ Agent 1 explained the reason for his belief that the instant messages were not retained, stating, "So my understanding of [instant messaging] in the FBI is that it was implemented about four or five years ago, roughly. Because I did internal investigations, at the time I was on the espionage

also made this point, stating that she considered these exchanges as a private "outlet" to Agent 1. Both Agent 1 and Agent 5 apologized for their use of instant messaging in this manner and told us that they were embarrassed.

We asked Agent 1 whether he believed these political discussions raised questions about the integrity or reliability of the Midyear investigation. Agent 1 stated:

I don't based on knowing my actions. I guess I would kind of repeat what I said before. Yes, I, I have personal, a personal life, private opinions, private views. I think what happened here is that I used instant message and chat like it was my home.

...I like the job of fact-finding and having it lead you where you go. I don't start any day with an endgame in mind of let it, let it go to, go to that. That's the way I think I act, that's how I think I've acted over my whole career. That's how I, that's how I know I acted in, in this case.

Yeah, I think that, I understand your question because it's an FBI system. I just unfortunately did not view it that way and did not use it that way. I used it as, as, you know, some of my worst hits here, as a, a way to relieve stress, as a way to be jocular, as a way to exaggerate, as a way to blow off steam, as a, you know, potentially get sympathy from, and then, you know, it was compounded by frustrations from other people coming to me for answers for why certain people got elected, and is it our fault, and, so I think there was a, kind of a cocktail of, of stress in this case that came out on this system like it was a conversation.

So I, I don't, I don't think so based on knowing my actions and what I did knowing the actions of the people around me.

We also asked Agent 1 whether his personal beliefs impacted his investigative actions in Midyear. Agent 1 responded:

[I]n no way do I think it, it impacted my view. I guess the best way is almost like a, it's almost like you switch on your, when, when we did our morning meetings, it was what do we have and where do we go next? It, it was just like almost, you know, like there's a, there's the professional side, the do your job side, and there's a personal side. And I think a lot of this falls into the personal side.

squad, my awareness was that it was not logged by the FBI because I tried to get those records for internal investigations." Agent 5 stated the she also had requested instant messages in prior internal investigations and been told that they were not preserved. Agents 1 and 5 told the OIG that they learned in April 2017 that the FBI had retained instant messages since February 2015, as the result of receiving a memorandum about preservation and criminal discovery obligations stemming from the FBI's instant messaging system. The FBI email distributing this memorandum advised employees that the FBI began preserving instant messages in February 2015 and stated, "Lync should not be used for substantive communications."

...It was only to try to do the right thing.... That's, that's the only thing, the only thought process in my head when I was, when I was doing my job.

We asked Agent 5 how she would respond to someone who read these messages and concluded the opinions expressed in them impacted the Midyear investigation. Agent 5 stated:

Well, I can see someone who doesn't know us at all saying the same, wondering, I guess, if [our political beliefs] could have impacted [the Midyear investigation]. I can tell you in no way did my political or what I understand of [Agent 1], no political anything is going to interfere with us doing our job as professionals.

I can see me going into these rants. I can see me ranting in some of these, and, you know, again, I think all of these are very personal, off-the-cuff...these are personal, private messages. I mean, you could probably even see the difference between, if you've seen anything in my [career] that I put to the file...for, you know, case-related things. I am very thorough, methodical, and I think through everything when I'm typing it. I don't even cut corners with acronyms. I, I treat that extremely seriously in my [career], and even before I became an agent.

So I, I would tell that person that part of being a professional, part of the oath that I swore here to work, I...uphold it. And I upheld it at this point. I, I do have personal beliefs and personal opinions. You know, I expressed some of those. Some of them come out in frustration. Some of them come out in jokes. I can see us quoting things kind of just to make us smile, you know, make us feel better, you know, after sometimes tough days. And...I would say in, in no way has it ever or would it ever affect the way I, I handle any investigation, any case, any professional work that I, that I put forward.

C. FBI Attorney 2 Instant Messages

FBI Attorney 2 was assigned to the Midyear investigation early in 2016. FBI Attorney 2 was not the lead FBI attorney assigned to Midyear and he told us he provided support to the investigation as needed. FBI Attorney 2 told us that he was also assigned to the investigation into Russian election interference and was the primary FBI attorney assigned to that investigation beginning in early 2017. FBI Attorney 2 told us that he was then assigned to the Special Counsel investigation once it began. FBI Attorney 2 left the Special Counsel's investigation and returned to the FBI in late February 2018, shortly after the OIG provided the Special Counsel with some of the instant messages discussed in this section.

We identified instant messages on FBINet involving FBI Attorney 2 that discussed political issues. Most of these exchanges appeared to be jokes or attempts at humor, often involving Trump. We asked FBI Attorney 2 in general

about the use of FBI instant messaging in this manner. FBI Attorney 2 told us that, in general, he regretted his use of instant messaging in this manner and noted "it's not something that I did routinely." He described these messages as "commentary" on recent political events and not connected to decisions or activities in investigations. FBI Attorney 2 stated that almost all of these messages were sent to co-workers he "considered to be" friends and he "was talking to them in that capacity," and "[n]ot in a professional capacity." FBI Attorney 2 reiterated that these messages or views had "absolutely" no impact on his work on investigations. He stated:

I, like most people, have particular views on, on politics. I'm a bit of a news junkie when it comes to government. It's one of the main reasons I, I joined the federal workforce is because I've always found it so fascinating and interesting.

But when it came to doing my work, I never injected this, this type of, of color commentary or this type of water cooler type talk into that. I, I maintained impartiality and just tried to work through the issues individually as they came through. So if they needed some assistance on a warrant or some assistance on, you know, potentially pursuing contacts with another government agency or something like that, like, I just, I assisted with the process more like, kind of like an XO type role I guess.

Among the general discussion of political issues by FBI Attorney 2, we identified three instant message exchanges that raised concerns of potential bias. The first of these exchanges was on October 28, 2016, shortly after Comey's October 28 letter to Congress that effectively announced the reopening of the Midyear investigation. FBI Attorney 2 sent similar messages to four different FBI employees. The timestamps of these messages are included below. The messages stated:

13:44:42, to FBI Employee 1: "I mean, I never really liked the Republic anyway."

13:44:52, to FBI Employee 2: "I mean, I never really liked the Republic anyway."

14:01:52, to FBI Employee 3: "As I have initiated the destruction of the republic.... Would you be so kind as to have a coffee with me this afternoon?"

15:28:50, to FBI Employee 4: "I'm clinging to small pockets of happiness in the dark time of the Republic's destruction"

FBI Attorney 2 described these messages as reflecting his surprise and frustration that the FBI "was essentially walking into a landmine in terms of injecting itself [into the election] at that late in the process." FBI Attorney 2 continued:

I think that, that there is some distinguishment between my frustration at the way that the Bureau is operating itself in October in

terms of, of wading into the process at that point.... But, I think that there is a distinguishment between having reservations about the way that we were operating and just expressing the frustration about, about us coming into the process. It's like, in terms of, of, you know, what's not in here too is like, you know, we, at that point we had investigation, the Russia investigation was ongoing as well. And that information was obviously kept close hold and was not released until March. So, you know, it, it was just kind of frustration that we weren't handling both of them the same way with, with that level I guess.

FBI Attorney 2 described the "destruction" language as "hyperbolic" and "off-the-cuff commentary to friends."

The second exchange we identified occurred on November 9, 2016, the day after the presidential election. FBI Attorney 2 and another FBI employee who was not involved in the Midyear investigation exchanged the following instant messages. Note that the sender of the instant message is identified after the timestamp and intervening messages that did not contribute to the understanding of this exchange are not included.

09:38:14, FBI Attorney 2: "I am numb."

09:55:35, FBI Employee: "I can't stop crying."

10:00:13, FBI Attorney 2: "That makes me even more sad."

10:43:20, FBI Employee: "Like, what happened?"

10:43:37, FBI Employee: "You promised me this wouldn't happen. YOU PROMISED."

10:43:43, FBI Employee: Okay, that might have been a lie "

10:43:46, FBI Employee: "I'm very upset."

10:43:47, FBI Employee: "haha"

10:51:48, FBI Attorney 2: "I am so stressed about what I could have done differently."

10:54:29, FBI Employee: "Don't stress. None of that mattered."

10:54:31, FBI Employee: "The FBI's influence."

10:59:36, FBI Attorney 2: "I don't know. We broke the momentum."

11:00:03, FBI Employee: "That is not so."

11:02:22, FBI Employee: "All the people who were initially voting for her would not, and were not, swayed by any decision the FBI put out. Trump's supporters are all poor to middle class, uneducated, lazy POS that think he will magically grant them jobs for doing nothing. They probably didn't watch the debates, aren't fully educated on his policies, and are stupidly wrapped up in his unmerited enthusiasm."

11:11:43, FBI Attorney 2: "I'm just devastated. I can't wait until I can leave today and just shut off the world for the next four days."

11:12:06, FBI Employee: "Why are you devastated?"

11:12:18, FBI Employee: "Yes, I'm not watching tv for four years."

11:14:16, FBI Attorney 2: "I just can't imagine the systematic disassembly of the progress we made over the last 8 years. ACA is gone. Who knows if the rhetoric about deporting people, walls, and crap is true. I honestly feel like there is going to be a lot more gun issues, too, the crazies won finally. This is the tea party on steroids. And the GOP is going to be lost, they have to deal with an incumbent in 4 years. We have to fight this again. Also Pence is stupid."

11:14:58, FBI Employee: "Yes that's all true."

11:15:01, FBI Attorney 2: "And it's just hard not to feel like the FBI caused some of this. It was razor thin in some states."

11:15:09, FBI Employee: "Yes it was very thin."

11:15:23, FBI Attorney 2: "Plus, my god damned name is all over the legal documents investigating his staff."

11:15:24, FBI Employee: "But no I absolutely do not believe the FBI had any part."

11:15:33, FBI Attorney 2: "So, who knows if that breaks to him what he is going to do."

We asked FBI Attorney 2 about this exchange. FBI Attorney 2 stated, "I'd say that we're just discussing our personal feelings on [the outcome of the election] between friends, yeah." When asked about the FBI employee meant by "[y]ou promised me this wouldn't happen," FBI Attorney 2 told us that he "did not promise [the employee] anything," and stated, "I think, again, it's just kind of the way that [the employee] and I converse. We tend to exaggerate some statements back and forth to one another." We also asked FBI Attorney 2 what he meant by "I am so stressed about what I could have done differently." FBI Attorney 2 replied:

That was a, that was a reference to, again, just in terms of the way that we opened or how long it took us to open [in October]. You know, with the, with the knowledge that the information was there [on the Weiner laptop], why we didn't work on it to, to gain access sooner, as opposed to later because it was a, a bit of a, of a gap between us learning of the information in New York and, and officially getting the case reopened again....

Just in terms of like what I could have done to, to either have accelerated the process or to, like how I expressed to [FBI Attorney 1] that I didn't know if this was the correct way for the Bureau to be doing this notification, et cetera. Whether, you know, I could have said something differently to her that would have resonated in, or, or

would have been part of the discussion. But I wasn't anywhere near the, the room deciding on these factors....

It was just kind of like a discussion on how I could have either moved the process along more quickly or more efficiently at a, at a more, at an earlier time, or whatnot.

When asked if he thought earlier action on the Weiner laptop would have alleviated the need to send the letter to Congress, FBI Attorney 2 stated:

Well, not, not, I don't think that that would have alleviated the need for the letter in the Director's eyes. But if we would have opened a few weeks earlier, as opposed to at that time, two weeks before the election, I think it, you know, it would have given more time for the FBI's actions and, and required and, and necessary investigation to, to occur to allow the, the public a chance to make their own decision-making.

FBI Attorney 2 again reiterated that his "personal political feelings or beliefs...in no way impacted" his work on the Midyear or Russia investigations.

The third exchange we identified was on November 22, 2016. FBI Attorney 2 sent an instant message to FBI Attorney 1 commenting on the amount of money the subject of an FBI investigation had been paid while working on the Trump campaign. FBI Attorney 1 responded, "Is it making you rethink your commitment to the Trump administration?" FBI Attorney 2 replied, "Hell no." and then added, "Viva le resistance." FBI Attorney 1 responded that Trump was "going to eliminate all of our pensions in order to pay for people like" the person discussed in the instant message exchange, and FBI Attorney 1 and FBI Attorney 2 then began a discussion of federal pension and retirement issues.

We asked both FBI Attorney 2 and FBI Attorney 1 about this exchange. FBI Attorney 2 stated:

So, this is in reference to an ongoing subject. And then following that, like I interpreted [FBI Attorney 1's] comment to me as being, you know, just her and I socially and as friends discussing our particular political views, to which I see that as more of a joking inquiry from her. It's not something along the lines of where I'm not committed to the U.S. Government. I obviously am and, you know, work to do my job very well and to continue to, to work in that capacity. It's just the, the lines bled through here just in terms of, of my personal, political view in terms of, of what particular preference I have. But, but that doesn't have any, any leaning on the way that I, I maintain myself as a professional in the FBI.

We asked FBI Attorney 2 if "Viva le resistance" signaled he was going to fight back against President Trump. FBI Attorney 2 responded:

That's not what I was doing.... I just, again, like that, that's just like the entire, it's just my political view in terms of, of my preference. It wasn't something along the lines of, you know, we're taking certain actions in order to, you know, combat that or, or do anything like that. Like that, that was not the intent of that. That was more or less just like, you know, commentary between me and [FBI Attorney 1] in a personal friendship capacity where she is just making a joke, and I'm responding. Like, it's not something that, that I personally believe in that instance.

FBI Attorney 2 acknowledged that both he and FBI Attorney 1 were assigned to the Russia investigation at this point in time and he "can understand the, the perception issues that come from" this exchange.

FBI Attorney 1 stated that she and FBI Attorney 2 were friends and often had discussions unrelated to work. She acknowledged that that this was "not the right place to make those kind of comments." We asked FBI Attorney 1 what she meant by the message, "Is it making you rethink your commitment to the Trump administration?" She stated, "I think what I meant was are you going to leave the government and start working to get more money." We also asked FBI Attorney 1 what she understood FBI Attorney 2 to mean when he messaged, "Viva le resistance." FBI Attorney 1 told us, "I think it was a joke obviously. But I think it was intended to say that, you know, he was committed to continuing to work for the Bureau, for these cases." FBI Attorney 1 stated that nothing about this exchange affected her work on the Russia investigation.

D. Analysis

The conduct of the five FBI employees described in sections A, B, and C of this Chapter has brought discredit to themselves, sowed doubt about the FBI's handling of the Midyear investigation, and impacted the reputation of the FBI. As described in Chapter Five, our review did not find documentary or testimonial evidence directly connecting the political views these employees expressed in their text messages and instant messages to the specific investigative decisions we reviewed in Chapter Five. Nonetheless, the conduct by these employees cast a cloud over the FBI Midyear investigation and sowed doubt the FBI's work on, and its handling of, the Midyear investigation. Moreover, the damage caused by their actions extends far beyond the scope of the Midyear investigation and goes to the heart of the FBI's reputation for neutral factfinding and political independence.

We were deeply troubled by text messages sent by Strzok and Page that potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. Most of the text messages raising such questions pertained to the Russia investigation, which was not a part of this review. Nonetheless, when one senior FBI official, Strzok, who was helping to lead the Russia investigation at the time, conveys in a text message to another senior FBI official, Page, that "we'll stop" candidate Trump from being elected—after other extensive text messages between the two disparaging candidate Trump—it is not only indicative of a biased state of mind but, even more seriously, implies a

willingness to take official action to impact the presidential candidate's electoral prospects. This is antithetical to the core values of the FBI and the Department of Justice. Moreover, as we describe in Chapter Nine, in assessing Strzok's decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop in October 2016, these text messages led us to conclude that we did not have confidence that Strzok's decision was free from bias.

Each of the five employees expressed remorse about using FBI devices and systems for these discussions, and each also stated that they intended these messages to be private conversations. Several of the employees also expressed the belief that their messages would not be preserved or would be exempt from public disclosure under FOIA. We found this reliance on the "private" nature of these messages to be misplaced. Because these messages were exchanged on government systems and devices, they were never "private." Every Department employee sees a notice each time he or she logs onto the Department's network informing him or her that there is no reasonable expectation of privacy in communications exchanged on government systems.²⁰⁹ We recommend that the FBI add a similar warning banner to all of the FBI's mobile phones and devices.

Indeed, rather than being "private" communications, these messages were at all times potentially subject to being reviewed by others (including the OIG) and to being disclosed to the public. This point seems even more obvious in light of the significant congressional and public interest generated by the Midyear and Russia investigations. The employees exchanging text messages and instant messages are trained law enforcement agents or attorneys, and should have known that these messages were potentially subject to release in response to FOIA requests, subject to disclosure in civil litigation, or discoverable as impeachment evidence even in the absence of the OIG investigation.²¹⁰ We note that these messages also

²⁰⁹ After reviewing a draft of the report, Page told the OIG that the Samsung phones used by the FBI do not include any such warning banner. The OIG confirmed with the FBI that this is accurate. However, the notice on the FBI's computer system applies to "all devices [or] storage media attached to this network or to a computer on this network," and alerts users that they "have no reasonable expectation of privacy regarding any communication transmitted through or data stored on this information system. At any time the government may monitor, intercept, search and/or seize data transmitted through or data stored on this information system." In addition, a recent Department training stated, "DOJ systems are not your personal systems. That means you have no reasonable expectation of privacy about maintaining any personal information, data, or applications on Department systems, networks, or devices." Department of Justice, Office of the Chief Information Officer, 2018 Annual DOJ Cybersecurity Awareness Training, at 14.

²¹⁰ For example, FBI Records Management Training warns FBI employees to be careful about what they say in emails and text messages

Remember, that emails and texts messages should be treated the same way as paper correspondence. So be aware of what you write. It may be released through FOIA, and be made widely available one day.

Of course, many of our records also end up in court. In civil cases, the FBI must turn over all relevant evidence, including emails and text messages. While all documents are viewed for privilege and redacted prior to release, there is no claim of privilege covering inappropriate or embarrassing statements. Such as, the governor is a block

potentially implicate the FBI's or prosecutors' disclosure obligations in any prosecutions resulting from the investigations at issue.²¹¹

We do not question that the FBI employees who sent these messages are entitled to their own political views. Indeed, federal statutes and regulations explicitly protect the right of federal employees to "express...opinion[s] on political subjects and candidates" and to "exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation"—provided such expression "does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed."²¹² While these employees did not give up their First Amendment rights when they became employed by the FBI, Supreme Court decisions make clear that the FBI retains the authority—particularly as a law enforcement agency—to impose

head. Although what we turn over in criminal cases can be more targeted, such as witness statements and exculpatory and impeachment evidence. Just as in civil cases, emails and text messages that fit into one of these categories must be turned over regardless whether they are embarrassing or worded inappropriately....

Even though it's a casual medium, we can't take a casual attitude towards email. All email, even a text or a PIN message, can be instantly copied, archived, filed, and disseminated. Just like a memo or a 302, emails reflect on the professionalism of the employee, and potentially the FBI as a whole. Inappropriate, offensive language, ill-advised humor, off-color references, and poorly thought out remarks have no place in any FBI communication. And it doesn't matter if that communication was intended as a record or a non-record.

²¹¹ See USAM § 9-5.001, Policy Regarding Disclosure of Exculpatory and Impeachment Information, *see also United States v. Johnson*, 14-CR-00412-TEH, 2015 WL 2125132, at 3-4 (N.D. Cal. May 6, 2015) (ordering the disclosure of racist text message(s) sent or received by a police officer involved in maintaining a crime scene), *Linetsky v. City of Solon*, Case No. 1:16-CV-52, 2016 WL 5402615 (N.D. Ohio Sept. 28, 2016) (ordering an assistant prosecutor to produce in discovery all text messages between the prosecutor and law enforcement personnel pertaining to the plaintiff's prior criminal case), *United States v. Marcus Mumford*, Case No. 3:17-CR-0008-JCC, 2017 WL 652448, at 2-3 (D. Ore. Feb. 16, 2017) (finding, during prosecution of Ammon Bundy's attorney in connection with a scuffle with U.S. Deputy Marshals, that "the Marshals' government issued cell phones are subject to discovery and should any texts reveal hostility towards Defendant or in any way casts doubt on their credibility, they must be produced.").

²¹² 5 U.S.C. §§ 7321, 7323(c), 5 C.F.R. § 734.402. FBI policy similarly provides that FBI employees retain the right to participate in various specified political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office. The list of political activities includes the right of an FBI employee to "[e]xpress his or her opinion as an individual privately and publicly on political subjects and candidates," and to "otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed." FBI Office of Integrity and Compliance, FBI Ethics and Integrity Program Policy Directive and Policy Guide, § 7 4 2 (Feb. 2, 2015).

certain restrictions on its employees' speech in the interest of providing effective and efficient government.²¹³

We believe the messages discussed in this chapter—particularly the messages that intermix work-related discussions with political commentary—potentially implicate provisions in the FBI's Offense Code and Penalty Guidelines, which provides general categories of misconduct for which FBI employees may be disciplined. This includes the provisions relating to Offense Codes 1.7 (Investigative Deficiency – Misconduct Related to Judicial Proceedings), 3.6 (Misuse of Government Computer(s)), 3.11 (Misuse of Government Property, Other), 5.21 (Unprofessional Conduct – Off Duty), and 5.22 (Unprofessional Conduct – On Duty).²¹⁴ However, we did not identify any prior FBI misconduct investigations under these provisions that involved a similar fact pattern or similar issues.²¹⁵

At a minimum, we found that the employees' use of FBI systems and devices to send the identified messages demonstrated extremely poor judgment and a gross lack of professionalism. This is not just because of the nature of the messages, but also because many of the messages commented on individuals (Clinton and Trump) who were inextricably connected to the Midyear and Russia investigations. The FBI is charged with the investigation of many important and sensitive matters, including some that generate intense public interest and debate. It is essential that the public have confidence that the work of the FBI is done without bias or appearance of partiality, and that those engaged in it follow the

²¹³ The Supreme Court has held that public employees do not forfeit their right to freedom of speech by virtue of their public employment. See *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). However, when a citizen enters government service, he accepts certain limitations on his First Amendment rights. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). In *Pickering*, the Supreme Court recognized that a public employer has an interest in regulating the speech of its employees. The Court strove to "arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer in promoting the efficiency of the public services it performs through its employees." To strike this balance, the Supreme Court has set forth a two-step inquiry to determine whether a public employee's speech is entitled to protection. See *Lane v. Franks*, 134 S.Ct. 2369, 2378 (2014). First, the court must determine the threshold question of whether the employee spoke as a private citizen on a matter of public concern. See *Garcetti*, 547 U.S. at 418. If not, the employee has no First Amendment claim. If so, the second step is to establish "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public." *Id.*

²¹⁴ These messages may also implicate other Department-wide Rules, such as Department of Justice Information Technology Security Rules of Behavior for General Users Version 10 (January 1, 2017).

²¹⁵ In 2012, "racy texts" exchanged between two FBI agents and an FBI informant were used to impeach the agents in the prosecutions of several defendants for violations of the Foreign Corrupt Practices Act. According to a Washington Post article about the case, which ended without convictions, the foreman of the jury stated that the "texts were one of many things that point[ed] to an absolutely amateurish operation" by the government. See Del Quentin Wilbur, *Racy Texts Hurt Justice's Largest Sting Operation Targeting Foreign Bribery*, WASH. POST, Feb. 13, 2013. This case and the Washington Post article about the impact of the text messages are used in the Department's training on electronic discovery as an example of what not to say in text messages. However, the OIG learned that the agents involved in that case were not investigated or disciplined for misconduct, and that their text messages were handled as a performance issue. Both agents remain employed by the FBI.

facts and law wherever they may lead and without any agenda or desired result other than to see that justice is done.

Although we found no documentary or testimonial evidence directly connecting the political views these employees expressed in their text messages and instant messages to the specific Midyear investigative decisions we reviewed in Chapter Five, the messages cast a cloud over the FBI investigations to which these employees were assigned. Ultimately, the consequences of these actions impact not only the senders of these messages but also others who worked on these investigations and, indeed, the entire FBI.

We therefore refer this information to the FBI for its handling and consideration of whether the messages sent by the five employees listed above violates the FBI's Offense Code of Conduct.

Additionally, we recommend that the FBI (1) assess whether it has provided adequate training to employees about the proper use of text messages and instant messages, including any related discovery obligations, and (2) consider whether to provide additional guidance about the allowable uses of FBI devices for any non-governmental purpose, including guidance about the use of FBI devices for political conversations.

II. Use of Personal Email

As mentioned above, we identified several instances in which Comey and Strzok used personal email accounts for official government business. When questioned, Page also told us she used personal email for work-related matters at times. We briefly discuss these issues below.

On September 21, 2016, the Department issued a Policy Statement detailing the records retention policy for email communications. The Policy Statement contained the following guidance for the use of personal email accounts:

In general, DOJ email users should not create or send record emails or attachments using non-official email accounts. However, should exigent circumstances require the use of a personal account to conduct DOJ business, the DOJ email user must ensure that the communicated information is fully captured in a DOJ recordkeeping system within 20 days. If sending the email from a non-official account, the email user must copy his or her DOJ email address as a recipient. If receiving a DOJ business-related email on a non-official account, the DOJ email user must forward the business-related email to his or her DOJ email account. Once the user has ensured the capture of the email information in the DOJ account, the DOJ email should be removed from the non-official account.

See DOJ Policy Statement, Electronic Mail and Electronic Messaging Records Retention (approved on September 21, 2016).

A. Comey

We identified numerous instances in which Comey used a personal email account (a Gmail account) to conduct FBI business. We cite five examples of such use in this section and include information provided by Comey and Rybicki about Comey's use of a personal email account.

On November 8, 2016, Comey forwarded to his personal email account from his unclassified FBI account a proposed post-election message for all FBI employees that was entitled "Midyear thoughts." This document summarized Comey's reasoning for notifying Congress about the reactivation of the Midyear investigation. In late December 2016, Comey forwarded to his personal email account from his unclassified FBI account multiple drafts of a proposed year-end message to FBI employees. On December 30, 2016, Comey forwarded to his personal email account from his unclassified FBI account proposed responses to two requests for information from the Office of Special Counsel.²¹⁶ The forwarded email included two attachments: (1) a certification for Comey to sign; and (2) a list of FBI employees with information responsive to this request, including their titles, office, appointment status, contact information, and duty hours. On January 6, 2017, Comey forwarded to his personal email account from his unclassified FBI account an email from Rybicki to Kortan highlighting language that needed to be corrected in a Wall Street Journal article. In mid-March 2017, Comey sent from his personal email account to his own and Rybicki's unclassified FBI accounts multiple drafts of Comey's proposed opening statement for his March 20, 2017 testimony to the House Intelligence Committee.

We asked Comey about his use of personal email for FBI business and showed him the November 8, 2016 email with Rybicki as an example. Comey stated:

I did not have an unclass[ified] FBI connection at home that worked. And I didn't bother to fix it, whole 'nother story, but I would either use my BlackBerry, must have been or Samsung...my phone, I had two phones—a personal phone and a government phone. Or if I needed to write something longer, I would type it on my personal laptop and then send it to Rybicki, usually I copied my own address.... Yeah. And so I would use, for unclassified work, I would use my personal laptop for word processing and then send it into the FBI.

We asked Comey if he had any concerns about conducting FBI business on his personal laptop or personal email. Comey stated that he did not and explained:

Because it was incidental and I was always making sure that the work got forwarded to the government account to either my own account or Rybicki, so I wasn't worried from a record-keeping perspective and it

²¹⁶ This refers to the federal agency responsible for investigating violations of the Hatch Act, not to Special Counsel Robert Mueller III.

was, because there will always be a copy of it in the FBI system and I wasn't doing classified work there, so I wasn't concerned about that.

Comey stated that he did not use his personal email or laptop for classified or sensitive information, such as grand jury information. Comey told us that he only used his personal email and laptop "when I needed to word process an unclassified [document] that was going to be disseminated broadly, [such as a] public speech or public email to the whole organization." We asked Comey if the use of personal email in this manner was in accordance with FBI regulations. Comey replied, "I don't know. I think so, but I don't know. I remember talking to Jim [Rybicki] about it at one time, and I had the sense that it was okay."

We also asked Rybicki about Comey's use of a personal email account. In response to the OIG's questions and in consultation with Comey, Rybicki sent the OIG an email on April 20, 2017, that stated:

In rare circumstances during his tenure, Director Comey sends unclassified emails from his official FBI.gov email account address to [his Gmail account]. This permits him to open attachments and use his personal laptop to then work on a speech or other content intended for wide dissemination. He then sends drafts or the completed text to his official FBI.gov email account or to another FBI.gov email account from [his Gmail account]. He opened this personal account at about the time he became Director....

To ensure a high level of cybersecurity, Director Comey routinely deletes all emails from his [Gmail] account each day, and then clears the deleted messages folder. He began this practice about two years ago.

The Director does not recall receiving and/or seeking advice concerning the use of these accounts.

We found that, given the absence of exigent circumstances and the frequency with which the use of personal email occurred, Comey's use of a personal email account on multiple occasions for unclassified FBI business to be inconsistent with the DOJ Policy Statement.

B. Strzok and Page

During our review, we identified several instances where Strzok used his personal email account for government business. Examples included an email chain forwarded to Strzok's personal email account on December 10, 2016, discussing a draft congressional response, and draft versions of emails on his personal email account that Strzok eventually sent to other FBI employees using his government account. Most troubling, on October 29, 2016, Strzok forwarded from his FBI account to his personal email account an email about the proposed search warrant the Midyear team was seeking on the Weiner laptop. This email included a draft of the search warrant affidavit, which contained information from the Weiner investigation that appears to have been under seal at the time in the Southern

District of New York and information obtained pursuant to a grand jury subpoena issued in the Eastern District of Virginia in the Midyear investigation.²¹⁷

We asked Strzok about these emails and his use of personal email account for FBI business. Strzok stated:

My general practice was not to use personal email for FBI business. The times that I did it was when it wasn't possible or there, there were problems with the FBI systems. In the case of I think the one issue that came out was...the one about the draft affidavit for the Weiner laptop.

Our phones at the time had significant limitations specifically to that. You couldn't view redlines. And so, and, but yet you could on an iPhone. So I remember in the case of that search warrant forwarding it over so I could see what DOJ changed and their comment bubbles in regard to that. There were some other times where I was either out of the office. I think a lot of those were either I was on travel or certainly over the weekends. It is very cumbersome on the old iPhones, or on the old Samsungs of the Bureau because of the way they autocorrect spelling and the nature of the...keyboard, it is difficult to write anything of length whatsoever. So there were times that, I mean, I think there's one where I was very aggravated with a set of circumstances that had unfolded. I was going to tell my boss about it, and I remember talking with Lisa [Page] saying, hey look, did I hit the right tone in this because I wanted to, you know, just be respectful, but at the same time convey my frustration.

I wrote that on my home computer, because it's easier to type it out. I think there was one that might be a holiday greeting that I sent to Bill [Priestap]. But, again, the sort of thing that, you know, for, for convenience, but because on the one hand it was bulky to, our technology was crappy, and it was impossible on the rare occasion I would write these things. And then send them to, you know, my account and forward it on. So it got incorporated and picked up into the FBI system.

Strzok told us that his understanding was that FBI policy discouraged the use of personal email and devices, but "there are allowances made" where "it is not practical or possible to use your [FBI] device." Strzok stated that he would double delete any work-related emails in his personal account.²¹⁸

²¹⁷ The OIG previously notified the respective U.S. Attorney's Offices about Strzok's actions

²¹⁸ We requested access to Strzok's personal email account. Strzok agreed to produce copies of work-related emails in his personal account but declined to produce copies of his personal emails. Strzok subsequently told the OIG that he had reviewed the emails residing in his personal mailboxes and found no work-related communications. We determined that we lacked legal authority to obtain the contents of Strzok's personal email account from his email provider, which requires an Electronic Communications Privacy Act (ECPA) search warrant to produce email contents. Strzok's email

We also identified numerous references in text messages between Page and Strzok about using "iMessage" (or "Imsg") or a personal email account. A number of these messages reference work-related discussions on those forums. We asked Strzok and Page about this. Strzok stated, "Typically, we would iMessage personal things." We asked Strzok if he and Page ever exchanged work-related information on iMessage. Strzok told us, "I do not recall that. I can't exclude it ever, ever happening, but I don't recall ever sending work-related stuff on, on iMessage."

Page told us that references to these other forums reflected "mostly personal use" as opposed to using them for work purposes. However, she stated that she and Strzok sometimes used these forums for work-related discussions due to the technical limitations of FBI-issued phones. Page explained:

[I]n particular, the autocorrect function is the bane of literally every agent of the FBI's existence because those of us who care about spelling and punctuation, which I realize is a nerdy thing to do, makes us crazy because it takes legitimate words that are spelled correctly and autocorrects them into gobbledygook. And so, it is not uncommon for either one of us to just either switch to our personal phones or, or in this case, where it was going to be a, a fairly substantive thing that he was writing, to just save ourselves the trouble of not doing it on our Samsungs. Because they are horrible and super-frustrating.

Page also noted that she and Strzok would often use personal email accounts to send news articles to one another.

We refer to the FBI the issue of whether Strzok's use of personal email accounts violated FBI and Department policies. As noted above, Page left the Department on May 4, 2018.

III. Allegations that Department and FBI Employees Improperly Disclosed Non-Public Information

Among the issues we reviewed were allegations that Department and FBI employees improperly disclosed non-public information. We found that Department and FBI officials raised considerable concerns about alleged leaks of information, particularly in October 2016, regarding the Midyear investigation and the Clinton Foundation investigation.

provider's policy applies to opened emails and emails stored for more than 180 days, which ECPA otherwise permits the government to obtain using a subpoena and prior notice to the subscriber. See 18 U.S.C. § 2703(a), (b)(1)(B)(i), COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION, U.S. DEPARTMENT OF JUSTICE, SEARCHING AND SEIZING COMPUTERS AND OBTAINING ELECTRONIC EVIDENCE IN CRIMINAL INVESTIGATIONS at 129-30 (2009). In addition, although we learned that a non-FBI family member had access to Strzok's personal email account in 2017, Strzok told the OIG that no one else had access to his personal email account during the period in question (*i.e.*, late October 2016).

As we describe in Chapter Eleven of this report, Lynch and Comey discussed their concerns about leaks on October 31, 2016. Additionally, on October 26, 2016, Lynch raised her concerns about leaks with McCabe and the head of the FBI New York Field Office (NYO), with specific focus on leaks regarding the FBI's high-profile investigation into the death of Eric Garner, as we detailed in our February 2018 misconduct report concerning McCabe.²¹⁹ McCabe told us that he "never heard [Lynch] use more forceful language." The head of FBI NYO confirmed that the participants got "ripped by the AG on leaks." These widespread concerns about leaks led Comey, following the 2016 election, to instruct the FBI's Inspection Division (INSD) to investigate whether confidential information was being improperly disclosed by any FBI employees.²²⁰

Concerns about the impact of possible leaks on the Midyear investigation, particularly in the October 2016 time period, are described in Chapters Ten and Eleven. Several FBI officials told us that their concerns about potential leaks were a factor that influenced them in the discussions about the possibility of sending a notification letter to Congress on October 28, 2016, regarding the FBI's discovery of Clinton-related emails on the Weiner laptop. As then FBI General Counsel Baker starkly characterized that decision to us, "[I]f we don't put out a letter, somebody is going to leak it."

Against this backdrop, and as noted at the time the OIG announced this review, we examined allegations that Department and FBI employees improperly disclosed non-public information. We focused, in particular, on the April/May and October 2016 time periods. We have profound concerns about the volume and extent of unauthorized media contacts by FBI personnel that we have uncovered during our review.

Our ability to identify individuals who have improperly disclosed non-public information is often hampered by two significant factors. First, we frequently find that the universe of Department and FBI employees who had access to sensitive information that has been leaked is substantial, often involving dozens, and in some instances, more than 100 people. We recognize that this is a challenging issue, because keeping information too closely held can harm an investigation and the supervision of it. Nevertheless, we think the Department and the FBI need to consider whether there is a better way to appropriately control the dissemination of sensitive information.

²¹⁹ U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, Oversight & Review Report (February 2018), <https://oig.justice.gov/reports/2018/o20180413.pdf> (accessed May 14, 2018).

²²⁰ One of those investigations led to INSD raising questions about McCabe's conduct and resulted in the OIG taking over the matter from INSD. Ultimately, the OIG found that McCabe himself had authorized others in the FBI to disclose information regarding the FBI's Clinton Foundation investigation just days prior to the election.

Second, although FBI policy strictly limits the employees who are authorized to speak to the media, we found that this policy appeared to be widely ignored during the period we reviewed.²²¹ We identified numerous FBI employees, at all levels of the organization and with no official reason to be in contact with the media, who were nevertheless in frequent contact with reporters. The large number of FBI employees who were in contact with journalists during this time period impacted our ability to identify the sources of leaks. For example, during the periods we reviewed, we identified dozens of FBI employees that had contact with members of the media. Attached to this report as Attachments G and H are link charts that reflects the volume of communications that we identified between FBI employees and media representatives in April/May and October 2016.²²²

In addition to the significant number of communications between FBI employees and journalists, we identified social interactions between FBI employees and journalists that were, at a minimum, inconsistent with FBI policy and Department ethics rules. For example, we identified instances where FBI employees received tickets to sporting events from journalists, went on golfing outings with media representatives, were treated to drinks and meals after work by reporters, and were the guests of journalists at nonpublic social events. We will separately report on those investigations as they are concluded, consistent with the Inspector General (IG) Act, other applicable federal statutes, and OIG policy.

The harm caused by leaks, fear of potential leaks, and a culture of unauthorized media contacts is illustrated in Chapters Ten and Eleven, where we detail the fact that these issues influenced FBI officials who were advising then Director Comey on consequential investigative decisions in October 2016. The FBI updated its media policy in November 2017, restating its strict guidelines concerning media contacts, and identifying who is required to obtain authority before engaging members of the media, and when and where to report media contact. We do not believe the problem is with the FBI's policy, which we found to be clear and unambiguous. Rather, we concluded that these leaks highlight the need to change what appears to be a cultural attitude. Accordingly, we recommend that the FBI evaluate whether (a) it is sufficiently educating its employees about both its media contact policy and the Department's ethics rules, and (b) its disciplinary penalties are sufficient to deter such improper conduct.

²²¹ The Media Policy in effect both at the time of these events and currently authorizes only four employees at FBI Headquarters to speak directly to the media without prior authorization. This list includes the Director, Deputy Director, Associate Deputy Director, and the Assistant Director of the Office of Public Affairs (OPA). All other headquarters employees are required to coordinate with OPA prior to any contact with the media. In FBI Field Offices (FO), only the head of the FO and a designated Public Affairs Officer are authorized to speak to the media. The policies require these authorized FO officials to coordinate with OPA on stories with national interest.

²²² These charts do not reflect communications that occurred between media representatives and FBI employees who were working in a public affairs capacity or were otherwise authorized to speak directly to the media.

CHAPTER THIRTEEN: WHETHER FORMER DEPUTY DIRECTOR ANDREW MCCABE SHOULD HAVE RECUSED FROM CERTAIN MATTERS

I. Introduction

In this chapter we address whether former FBI Deputy Director Andrew McCabe should have recuse himself from the Clinton email server and Clinton Foundation investigations prior to November 1, 2016.²²³ We also address whether McCabe violated his recusal obligations after he recused himself from those investigations on November 1, 2016.²²⁴

II. Timeline of Key Events

Aug 10, 2014	Andrew McCabe becomes Assistant Director in Charge of the FBI Washington Field Office (WFO).
Feb 25, 2015	McCabe's wife, Dr. Jill McCabe, receives a call from the Virginia Lieutenant Governor's office asking her to consider a state senate run.
Mar 7, 2015	McCabe accompanies Dr. McCabe to Richmond and the two meet with Governor McAuliffe to discuss her potential run for state senate.
Mar 9-13, 2015	McCabe contacts Director Comey's Chief of Staff and Deputy Director Giuliano to discuss Dr. McCabe's potential run.
Mar 11, 2015	McCabe obtains advice from FBI ethics official Patrick Kelley and FBI General Counsel Baker.
Mar 12, 2015	Dr. McCabe announces candidacy for state senate.
April 29, 2015	McCabe documents his recusal from all Virginia public corruption cases.

²²³ This chapter has been written to avoid reference to Law Enforcement Sensitive (LES) information. Attached to this report at Appendix Two is a non-public LES appendix containing the complete, unmodified version of Chapter Thirteen.

²²⁴ The OIG's review focused on McCabe's conflict of interest obligations. Other allegations against McCabe arising from his wife's 2015 campaign for state senate were not within the OIG's jurisdiction and therefore not within the scope of this review. Specifically, in a December 1, 2017, letter to Deputy Attorney General Rosenstein, Senator Charles Grassley expressed concern that McCabe may have violated the Hatch Act. See The Honorable Charles Grassley, letter to Rod Rosenstein, Deputy Attorney General, U.S. Department of Justice, December 1, 2017. The Hatch Act generally governs the political activity of federal employees to protect the federal workforce from partisan political influence. The law's restrictions on political activity are codified at 5 U.S.C. §§ 7321-7326. The U.S. Office of Special Counsel (OSC) has jurisdiction over potential Hatch Act violations.

July 10, 2015	FBI opens the Clinton email investigation.
Fall 2015	Dr. McCabe's campaign committee (McCabe for Senate) receives a combined total of ~ \$675,000 from a Political Action Committee controlled by McAuliffe (\$467,500 in monetary contributions) and from Virginia Democratic Party (\$207,788 in in-kind contributions). McCabe states he was not aware of these contributions until October 2016.
Sep 6, 2015	McCabe leaves WFO and becomes Associate Deputy Director for the FBI.
Nov 3, 2015	Dr. McCabe defeated in state senate election.
January 2016	FBI opens Clinton Foundation investigations.
Feb 1, 2016	McCabe becomes Deputy Director for the FBI.
Oct 23, 2016	The <i>Wall Street Journal</i> publishes article disclosing McAuliffe contributions to Dr. McCabe's campaign, triggering discussions with Director Comey about whether McCabe should be recused from Clinton-related investigations.
Nov 1, 2016	McCabe formally recuses himself from participating in Clinton-related investigations, but the decision is not announced externally and only to a limited group internally.

III. Relevant Standards and Procedures

In this section we summarize the statutes, regulations, and FBI policies relevant to the conflict of interest and recusal issues.

A. Financial Conflict of Interest Statute

18 U.S.C. § 208 is the criminal conflict of interest statute addressing financial interest conflicts. It prohibits an executive branch employee from "participating personally and substantially" in a particular matter in which the employee knows he (or other persons whose interests are imputed to him, including the employee's spouse) have a disqualifying financial interest. The particular matter must also have "a direct and predictable effect" on the financial interest. 5 C.F.R. § 2635.402. Direct and predicable effect is defined by regulations to include "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest." 5 C.F.R. § 2635.402(b)(1). However, a particular matter does not have a direct effect on a financial interest, "if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter." *Id.*

B. Executive Branch Regulations Addressing Appearance Concerns and Impartiality in Performing Official Duties

The Office of Government Ethics (OGE) promulgates the *Standards of Ethical Conduct for Employees of the Executive Branch* (Standards of Ethical Conduct or OGE regulations). See 5 C.F.R. Chapter XVI, Subchapter B., Part 2635. 5 C.F.R. § 2635.101 identifies general principles applying to all executive branch employees. One principle addresses appearance concerns and states that: “[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.”²²⁵ 5 C.F.R. § 2635.101(b)(14). See also Executive Order 12674 (as modified by Executive Order 12731) on Principles of Ethical Conduct for Government Officers and Employees, section 101(n).

Conflicts of interest for federal employees are addressed in the OGE regulations at 5 C.F.R. §§ 2635.401 – 2635.403 and 2635.501 – 2635.503. Section 502(a), relating to “Personal and business relationships,” provides:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

5 C.F.R. § 2635.502(a).

Section 502(a) thus identifies two categories of circumstances creating conflicts of interest that require recusal. The first is where an employee knows that a “particular matter involving specific parties is likely to have a direct and predicable effect on the financial interest of a member of his household.” Section 402(b)(1) defines “direct and predicable effect,” as described above in connection with 18 U.S.C. § 208.

The second category of conflict requiring recusal occurs if the employee knows that a person with whom the employee has a “covered relationship” is or represents a party to the “particular matter.” Section 502(b) defines “covered relationships” to include, among other things, persons who are members of the employee’s household, persons who are relatives with whom the employee has a

²²⁵ 5 C.F.R. § 2635 101(b)(8) is the general principle which states that “[e]mployees shall act impartially and not give preferential treatment to any private organization or individual.” In this chapter we address McCabe’s recusal obligations and do not discuss whether McCabe’s conduct demonstrated that he acted with bias or partiality.

"close personal relationship," and persons with whom the employee has certain financial relationships. 5 C.F.R. § 2635.502(b).

Where either of these two circumstances is present and the employee determines that these circumstances "would cause a reasonable person with knowledge of the relevant facts to question [the employee's] impartiality in the matter, the employee should not participate in the matter" unless he or she has obtained authorization to do so from a designated agency ethics official. 5 C.F.R. § 2635.502(a). Thus, the "reasonable person" test is the standard for determining whether the circumstances could raise a fair question about an employee's impartiality thereby creating an appearance concern.²²⁶ Section 502 encourages the employee to seek the assistance of his supervisor, an agency ethics official, or the agency designee in making a recusal determination. 5 C.F.R. § 2635.502(a)(1). Section 502 also empowers the employee's supervisor to request the agency designee to make a determination about whether recusal is required. 5 C.F.R. § 2635.502(c). The agency designee may also make such a determination on his or her own initiative. *Id.*

In addition to the specific circumstances described above, section 502(a)(2) contains a catchall provision that addresses impartiality concerns in any "other circumstances." It states:

An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

Section 502(a)(2) gives the employee the option to invoke the section 502 process (i.e., seeking a recusal determination or waiver from the agency designee) for these "other circumstances." See *also* 5 C.F.R. § 2635.501(a). For example, where the unique circumstances of "a personal friendship, or a professional, social, political or other association not specifically treated as a covered relationship" raise an appearance question, the employee may elect to use the section 502 process. Office of Government Ethics (OGE) 99 x 8, Memorandum to Designated Agency Ethics Officials Regarding Recusal Obligation and Screening Arrangements, April 26, 1999 at 2.

The OGE has made clear that while employees are "encouraged" to use the process provided by section 502 (a)(2), "[t]he election not to use that process should not be characterized, however, as an 'ethical lapse.'" OGE 94 x 10(1), Letter to a Departmental Acting Secretary, March 30, 1994; see *also*, OGE 01 x 8 Letter to a Designated Agency Ethics Official, August 23, 2001. Further, a note in section 502 states that "[n]othing in this section

²²⁶ The "reasonable person" standard is also the test for the general appearance principle in section 101 referenced above. 5 C.F.R. § 2635.101(b)(14) ("Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.")

shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.”

A recused employee is prohibited from participating in the matter unless authorized by the agency designee based on a determination that the Government’s interest “in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The authorization could allow for partial participation by adjusting the employee’s duties to “reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.” 5 C.F.R. § 2635.502(d)(6).

C. Department of Justice Regulation Requiring Disqualification Arising from Personal or Political Relationships

28 C.F.R. § 45.2 is a Department of Justice regulation which addresses recusal arising from a Department employee’s personal or political relationships.²²⁷ Section 45.2(a) states that no Department employee “shall participate in a criminal investigation or prosecution if he has a personal or political relationship with” any person or organization that is the subject of the investigation or prosecution or with any person or organization that the employee “knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.”

Section 45.2(c)(1) defines “political relationship” to mean:

[A] close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof.

In an April 2017 memorandum, the FBI’s then-chief ethics official, while acknowledging that the syntax of this definition is not “crystal clear,” wrote that section 45.2(c)(1) appears to require that in order to have a “close identification” with an elected official or candidate, the “employee must be or have been a ‘principal adviser’ to the official or candidate.”²²⁸

Section 45(c)(2) defines “personal relationship” in part to mean “a close and substantial connection of the type normally viewed as likely to induce partiality.” It presumes an employee has a personal relationship with a parent, sibling, child, or spouse, and states that whether an employee’s relationships are “‘personal’ must

²²⁷ 28 C.F.R. § 45.2 implements 28 U.S.C. § 528, which states that the Attorney General shall promulgate rules and regulations which require the disqualification of Department Employees “from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interests, or the appearance thereof.”

²²⁸ Patrick W. Kelley, Deputy Designated Agency Ethics Official & Assistant Director, Office of Integrity and Compliance, FBI, memorandum for the FBI Deputy Director, Recusal, April 11, 2017 (Kelley retired from the FBI on February 28, 2018).

be judged on an individual basis with due regard given to the subjective opinion of the employee.”

Unlike other ethics provisions that contain language imputing to the employee a relative or spouse’s conflicts of interest, section 45.2 does not have language imputing to the Department employee a relative or spouse’s political or personal relationships.

Section 45.2(b) requires an employee “who believes that his participation may be prohibited by paragraph (a) of this section” to report the matter to his supervisor. If the supervisor determines that the employee has a personal or political relationship as described in paragraph (a), “he shall relieve the employee from participation” unless he determines that the relationship will not render the employee’s “service less than fully impartial and professional,” and the “participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.”

D. What Constitutes “Participation” Under the Regulations

18 U.S.C. § 208 prohibits an employee from participating “personally and substantially” in a matter in which he has a disqualifying financial interest. *See also* 18 U.S.C § 207(a)(1). The OGE regulations define “personal and substantial” and states in part: “[t]o participate substantially means that the employee’s involvement is of significance to the matter.. it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.” 5 C.F.R. § 2635.402(b)(4).

In contrast, 5 C.F.R. § 2635.502 and 28 C.F.R. § 45.2 both use the term “participate” without qualification and neither the OGE nor DOJ regulations contain definitions describing the type of “participation” to be avoided by recused employees. Section 502(e) states that “[d]isqualification is accomplished by not participating in the matter.” The OGE has provided general guidance on the scope of an employee’s recusal obligations and stated that a proper recusal requires “that an employee avoid any official involvement in a covered matter.” OGE 99 x 8 at 2. The OGE has offered the following advice to ethics officials to share with employees who “may not fully appreciate the meaning of the term ‘recuse’”:

An employee should refrain, abstain, refuse, relinquish, forebear, forgo, hold off, keep away, give up, decline, desist, discontinue, end, cancel, close, quit, terminate, stop, halt, cease, drop, stay away, shun, avoid participation in the matter before him or her. In other words, just don’t do it.

Id. at n.2.

E. FBI Procedures and Ethics Officials

The Department’s ethics program is administered by the Designated Agency Ethics Official (DAEO), the Assistant Attorney General for Administration, and the Departmental Ethics Office. *See* DOJ Order 1200.1, part 11, chapter 11-1, B.1, 4.

The Deputy Designated Agency Ethics Official (Deputy DAEO) is the person to whom the DAEO delegates the responsibility and authority for the management of the ethics program within each Department component. *Id.* at B.3. Patrick W. Kelley was the FBI's Deputy DAEO and Assistant Director for the FBI's Office of Integrity and Compliance during the time period of our review.

The FBI Director's authority as the FBI's Agency Designee has been delegated to the FBI's Deputy DAEO. See James B. Comey, Director, Federal Bureau of Investigation, memorandum for Lee J. Lofthus, Assistant Attorney General for Administration, Department of Justice, November 12, 2013 at 2. Consequently, for FBI employees—including the Deputy Director of the FBI—the FBI's Deputy DAEO may make ethics determinations on his own, without approval or consultation with the Department's DAEO, the Departmental Ethics Office, or the FBI Director.²²⁹

Within the FBI, all Chief Division Counsel (CDC) and other employees designated by the Deputy DAEO may act as "ethics counselors." FBI Ethics and Integrity Program Policy Guide, 2.2.3(a). Ethics counselors' duties include providing advice regarding the standards of ethical conduct to employees in their offices, channeling questions requiring formal ethics determinations to the Deputy DAEO and forwarding any written advice to the Deputy DAEO. *Id.* at 2.2.3(b). Employees with ethics questions are directed to contact the ethics counselors designated in their respective offices. *Id.* at 2.3(b). FBI policy states that disciplinary action is generally not taken against an employee who engaged in conduct relying in good faith on the advice of an ethics counselor. *Id.* at 2.3(c)

IV. Factual Findings

A. Background Facts

1. Andrew McCabe

McCabe began his career with the FBI in 1996 as a Special Agent in the New York Field Office. McCabe served in a variety of leadership positions in the FBI during his career, including as Assistant Director for the Counterterrorism Division and Executive Assistant Director for the National Security Branch. He served as Assistant Director in Charge (ADIC) of the FBI's Washington Field Office (WFO) from August 2014 until September 2015. On September 6, 2015, McCabe became Associate Deputy Director of the FBI, responsible for the FBI's non-operational divisions. On February 1, 2016, McCabe became Deputy Director of the FBI, overseeing all FBI domestic and international investigative and intelligence activities. McCabe became Acting Director of the FBI on May 9, 2017, when FBI Director James Comey was fired. McCabe served as Acting Director until August 2, 2017, when Christopher Wray became the new FBI Director. At that time, McCabe

²²⁹ Ethics determinations for the Director are made by the Deputy Attorney General. See DOJ Order 1200.1 at part 11, chapter 11-1, C2 1.

resumed his duties as Deputy Director, a position he held until January 29, 2018, at which point he went on annual leave but remained an FBI employee. In February 2018, the OIG issued a misconduct report regarding McCabe to the FBI.²³⁰ On March 16, 2018, Attorney General Sessions terminated McCabe's employment with the FBI.

2. FBI Clinton Investigations

The FBI opened the Clinton server email investigation when McCabe was the ADIC of WFO and opened the Clinton Foundation investigations after McCabe became FBI Associate Director.

3. Dr. McCabe Meets Governor McAuliffe in February 2014

In February 2014, then-Governor Terry McAuliffe visited the hospital where Dr. Jill McCabe practiced to advocate for expansion of Medicaid coverage in Virginia. McCabe told us that, by coincidence, his wife, Dr. McCabe, was working at the hospital that day and was present at the time of Governor McAuliffe's visit. McCabe told the OIG that Dr. McCabe had not previously met Governor McAuliffe until his visit to her hospital that day.

4. Recruitment to Run for Virginia State Senate in February 2015

A year later, on February 25, 2015, Dr. McCabe received a phone call from an aide to then-Virginia Lieutenant Governor Ralph Northam. That day, Dr. McCabe emailed her husband and said the aide had asked if she would consider running for Virginia State Senate against the incumbent in District 13. McCabe told us that Dr. McCabe had not previously met Lieutenant Governor Northam.

McCabe said that Dr. McCabe was subsequently invited to, and agreed to attend, a Democratic caucus meeting in Richmond on March 7, 2015, which would provide an opportunity for her to discuss a potential run with other elected officials. According to McCabe, a Virginia State Senator told Dr. McCabe that Governor McAuliffe was scheduled to speak at the meeting and they might have an opportunity to speak to him as well, although it was "not a guarantee" that they would talk with the Governor.

5. The McCabes' Meeting with Governor McAuliffe in March 2015

McCabe accompanied Dr. McCabe on her trip to Richmond on March 7.

²³⁰ See U S Department of Justice (DOJ) Office of the Inspector General (OIG), *A Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, Oversight and Review Division (February 2018).

a. Conversation with Richmond Special Agent in Charge (SAC) on March 6

McCabe said the day before the March 7 trip he spoke to the Special Agent in Charge of the FBI's Richmond Field Division (Richmond-SAC), to let him know he would be in Richmond with Dr. McCabe because she was considering a state senate run and they were going to a meeting "to talk with more people about this prospect." McCabe also said he talked to Richmond-SAC to get his impressions on Richmond and the state legislature and that Richmond-SAC "was very positive about it." McCabe told the OIG that Richmond-SAC was the first FBI employee with whom he discussed the March 7 trip.

Richmond-SAC told us that McCabe called to tell him he would be coming to Richmond with his wife to meet with the Governor as she was considering a run for office. Richmond-SAC said McCabe asked if he would "get in the way of anything" by going to meet with state legislators. Richmond-SAC said he did not have any investigative concerns with him meeting the Governor or state legislators, although he warned McCabe that if McCabe met with Governor McAuliffe, he would "be tethered to the Clintons" forever, and this could impact McCabe's future in government.

b. The McCabes' Meeting with McAuliffe on March 7

McCabe told us that on March 7 he and Dr. McCabe drove to Richmond for the Democratic caucus meeting where they met with a Virginia State Senator. According to McCabe, the State Senator told them "there's been a change of plans" and that Governor McAuliffe wanted to speak to Dr. McCabe at the Governor's mansion. The three then drove to the mansion in the McCabes' car.

McCabe said they met with Governor McAuliffe at the mansion for 30 to 45 minutes. He said the Governor made it very clear that his number one priority was expanding Medicaid, and that "they" (from the context, apparently referring to the Virginia Democratic Party and himself) planned to target a few state senate seats. McCabe said the Governor explained why they thought Dr. McCabe would be a good candidate and that he said she could expect to spend a lot of time fundraising. According to McCabe, Governor McAuliffe said that he and the Democratic Party would support Dr. McCabe's candidacy. However, McCabe told us to the best of his recollection they did not discuss financial support nor did they say they would support Dr. McCabe "in the form of financial backing." McCabe also said there was no mention of the Governor's Political Action Committee (PAC), the Clintons, or Clintons' associates providing financial assistance. McCabe said that Dr. McCabe asked McAuliffe questions about the nature, demands, and logistics of the legislative session and the amount of time she would have to spend in Richmond because she "had no intention ever of leaving her medical profession." McCabe said the Governor asked him about his occupation and McCabe told him he worked for the FBI but that they did not discuss McCabe's work or any FBI business.

According to McCabe, after the meeting at the Governor's mansion, he and Dr. McCabe rode with the Governor to a hotel, where the Governor delivered his

speech. McCabe said they were at the hotel for 20 to 25 minutes, standing in the audience listening to the speech and returned with the Governor to the mansion where the McCabes had left their car. McCabe said they stayed for another 20 to 30 minutes at the mansion for an unrelated event before returning home in their car.²³¹ McCabe told us the March 7 meeting was the first and only time he had ever met McAuliffe.

c. Follow-up Conversation with Richmond SAC on March 8

Richmond-SAC told us that McCabe called him probably the following day (March 8) and described the meeting with Governor McAuliffe. According to Richmond-SAC, McCabe said it was a “surreal meeting” with the Governor at the mansion. Richmond-SAC said McCabe told him that from the mansion they were whisked away to a function at a hotel and that the Governor, without Dr. McCabe having committed to a run, introduced her as someone that they believed could unseat the incumbent senator in District 13. Richmond-SAC said McCabe told him that he would address any ethics issues.

6. Dr. McCabe’s Campaign

Dr. McCabe announced her run for the Virginia State Senate on March 12, 2015. In FBI responses to Congressional inquiries in December 2016, the FBI stated that, to the best of McCabe’s recollection, his role in Dr. McCabe’s campaign “included providing transportation to his spouse in their personal vehicle on two occasions to public events; attending one public debate as a spectator; and appearing in a family photo which was used in a campaign mailer.”²³²

Dr. McCabe’s campaign committee, McCabe for Senate, received substantial monetary contributions in 2015 from Common Good VA, a PAC controlled by then-Governor McAuliffe, as well as in-kind contributions from the Virginia Democratic Party. According to state campaign finance records, Common Good VA donated a total of \$467,500 to McCabe for Senate, the vast majority of which was contributed in October 2015. The Virginia Democratic Party provided a total of \$207,788 in the form of campaign mail production in September and October 2015. The combined total of \$675,288 from the Governor’s PAC and the party represents approximately 40 percent of the total contributions raised by Dr. McCabe for her state senate campaign during the 2015 election cycle, according to the records.

On June 26, 2015, Hillary Clinton was the featured speaker at a fundraiser in Fairfax, Virginia hosted by the Virginia Democratic Party and attended by Governor McAuliffe. News accounts at the time indicated that the party raised more than

²³¹ McCabe said he did not remember what the unrelated event was about.

²³² The FBI also stated in the letter that McCabe’s campaign activities were permissible under the Hatch Act. We discuss the FBI’s Congressional responses in further detail below.

\$1,000,000 at the fundraiser.²³³ McCabe told us he was not aware of the June 2015 fundraiser until the October 2016 news accounts and that neither he nor his wife attended the event.²³⁴

McCabe told us that during his wife's campaign he was generally unaware of the nature and source of donations to her campaign, including the contributions from Governor McAuliffe's PAC and the Virginia Democratic Party. According to McCabe, he learned of these details for the first time from the October 23, 2016, *Wall Street Journal* article, discussed below. He told us he was not aware of the Clintons or anyone on their behalf ever contributing to Dr. McCabe's campaign.

B. McCabe Discusses Wife's Candidacy with FBI Officials, Seeks Ethics Advice, and Recuses from Various FBI Investigations

1. Meeting with Comey's Chief of Staff; Extent of Director Comey's Knowledge or Approval

McCabe said that the week following the March 7 meeting with Governor McAuliffe, he spoke to Chuck Rosenberg, Director Comey's then-Chief of Staff. He said he told Rosenberg that his wife was considering a state senate run and that they had traveled to Richmond and met with Governor McAuliffe. McCabe said they had a "fulsome discussion about everything that was involved," and that he described the information they had gathered, although he could not recall whether he flagged for Rosenberg the fact that his wife's campaign could receive financial support from the Democratic Party or other sources influenced by McAuliffe. McCabe said he told Rosenberg that his wife would not run if the Director had "any concerns about it reflecting negatively" on the FBI or McCabe. McCabe said that Rosenberg called him back a few hours later and said he had spoken to the Director "and he's totally comfortable with it." McCabe told us the ethics issues were foremost on his mind and that he believed he talked to Rosenberg about the efforts he (McCabe) would take with the FBI's chief ethics official, Patrick Kelley, to address conflict of interest and recusal issues. McCabe said he believed that the Director's approval would have been with the understanding that McCabe would address all conflict and recusal issues as required.

Rosenberg told us that he recollected one brief in-person conversation in his office with McCabe at the time his wife was considering a run for the state senate. Rosenberg said that McCabe told him that his wife was considering a run and asked whether Rosenberg thought that would be problematic. Rosenberg said he told

²³³ See Jim Nolan, *Clinton Rouses Virginia Democrats at Party Fundraiser at GMU*, RICHMOND TIMES-DISPATCH, Jun. 27, 2015, 2015 WLNR 19664828; Patrick Wilson, *Clinton Makes Her First Campaign Appearance in Virginia*, THE VIRGINIAN-PILOT, Jun. 27, 2015, 2015 WLNR 18860380; Rachel Weiner, *At George Mason Arena, Clinton Goes on the Attack*, WASH. POST, Jun. 28, 2015, 2015 WLNR 18937709.

²³⁴ Clinton also appeared with Governor McAuliffe at a campaign rally in Alexandria, Virginia on October 23, 2015. Laura Vozzella, *Clinton Stirs Up Crowd in Alexandria, Va., at Afternoon Rally*, WASH. POST, Oct. 23, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/10/23/clinton-stirs-up-crowd-in-alexandria-va-at-afternoon-rally> (accessed March 27, 2018). McCabe also told us that neither he nor his wife attended this event.

McCabe he did not believe there would be any issues with it, but that McCabe should talk to Kelley. He told us he probably also said to McCabe that he would think about it further and let McCabe know if something ended up concerning him about the situation. Rosenberg said he told McCabe that his wife was a private citizen and so long as her campaign does not interfere with his FBI work, he did not see why there would be an issue. Rosenberg said he did not recall a subsequent conversation with Director Comey about this issue, but he believed McCabe's recollection that Rosenberg called McCabe back and said the Director had no issue with it was correct because that sounded like what he would have done.

Rosenberg said the conversation with McCabe was at "a fairly abstract level" and he assumed that that the ethics questions would be addressed with Kelley. Rosenberg said he told McCabe as long as "he was careful about recusals" and talked to Kelley it seemed okay to him.

Comey told us he did not recall Rosenberg having asked him whether he had any concerns with a potential run for office by ADIC McCabe's wife at the time she was considering a run. Comey said he believes he learned for the first time that Dr. McCabe had run for office in a causal conversation with her at an event in July 2016 (about 8 months after she lost the election), and that he recalled being surprised about that fact. Comey told us that assuming McCabe's recollection was accurate, then it is likely that Rosenberg described the issue in passing to him and said he had "checked it out and it's all good" and Comey said "ok, no sweat."

2. Conversation with Deputy Director Giuliano

McCabe told us he also spoke about his wife's potential run with his direct supervisor, then-Deputy Director Mark Giuliano, on March 9, the Monday after their visit to Richmond. McCabe said he described the "whole situation" to Giuliano in a "robust conversation" in which he described why his wife was interested in a possible run and the "sensitivities" of her run relative to his position, and that he identified WFO's public corruption program. He said Giuliano responded by directing him to talk to Kelley to identify a "clear path forward" that avoided any Hatch Act or recusal problems. McCabe said Giuliano did not express any reservations and that Giuliano said "good for her.. she's getting involved and trying to do the right thing."

By contrast, Giuliano told us that he advised McCabe, when McCabe told him that his wife was planning to run, that it was a "bad idea." According to Giuliano, McCabe responded by saying, "she's supported me for all these years; I need to support her; what do I need to do?" Giuliano said he told McCabe to consult Kelley and FBI attorneys, and that he believes McCabe ultimately "dotted every 'I' and crossed every 'T' that he needed to" on the issue. Giuliano also told us that he ensured that McCabe was recused from appropriate WFO investigations.

3. Meeting with Acting Chief Division Counsel on March 10

McCabe and WFO's Acting Chief Division Counsel (A-CDC), met on March 10, 2015, the day before a meeting McCabe scheduled with Kelley. McCabe said he

had an in-depth conversation with A-CDC when they met and that he asked her to attend the meeting with Kelley.

A-CDC confirmed that she and McCabe had a conversation on March 10 in which McCabe described to her many details, including that he and his wife had met that weekend with McAuliffe at the governor's mansion. A-CDC told us, and her contemporaneous notes corroborate, that McCabe identified public corruption investigations and other areas of potential conflicts. She said that he wanted her to identify the conflict parameters he would work under if his wife decided to run. She responded by suggesting a "taint team" review process to identify potential conflict cases. A-CDC said that McCabe was also very concerned with telling WFO employees about his wife's run for fear that they would feel pressured to vote for her. A-CDC said that McCabe told her that he had already notified the Director and the Deputy Director.

4. Meeting with Kelley and Baker on March 11

McCabe met with Kelley at his office at FBI Headquarters on March 11, 2015. The meeting was also attended by A-CDC and FBI General Counsel James Baker, who joined halfway through the meeting. According to McCabe, Kelley addressed two areas in their discussions: the Hatch Act restrictions on McCabe's activities during the campaign, and conflict of interest and other issues to consider in the event Dr. McCabe won her race. They did not discuss how to address donations to Dr. McCabe's campaign or the possibility that they could create an appearance of a conflict of interest if made by individuals who may be under investigation by the FBI, or closely affiliated with individuals under investigation by the FBI. McCabe said that they also discussed a process in which ongoing and future cases would be identified for potential recusal, with A-CDC serving as a "filter" of cases and the WFO's Special Agents in Charge (SACs) tasked with bringing potential conflict cases to A-CDC for a recusal decision. McCabe said that in the meeting they "hammered out the details of how they would do this collaboratively" and that Kelley was satisfied that such a process was "an abundantly cautious way to approach the issue." McCabe said that they had minimal discussion regarding considerations in the event Dr. McCabe won, but that Kelley said a win by her might trigger other recusal issues and that they would "cross that bridge" when they got to it.

According to McCabe, the filtering arrangement they discussed was to take effect immediately. McCabe told us that in the March 11 meeting it was his "strong belief" that his wife would run because the "all-clear report" from Rosenberg was the "last hurdle" prior to her decision to run. Dr. McCabe announced her run for the state senate the next day, March 12, 2015.

According to A-CDC, during the March 11 meeting Kelley and Baker were concerned with potential Hatch Act violations and said they did not think there would be case conflict of interest issues unless Dr. McCabe won her election. A-CDC told us that McCabe said they should nonetheless proceed as if there are conflicts of interest.

Kelley told us that Hatch Act considerations were the focus of most of the March 11 meeting. Kelley said that once the Hatch Act questions were resolved they discussed what to do with WFO investigations and that McCabe, A-CDC, or both said they had put measures in place to screen investigations for conflicts. Kelley's notes of the March 11 meeting are contained in an Ethics Advice Tracker, an OIC electronic form used to memorialize advice provided. The Tracker stated that in the meeting they "reviewed disqualification/recusal requirements" and that McCabe had "already put in place filtering arrangements within his office." A-CDC said that they did not memorialize a filter process or issue written instructions immediately, but that they put in place a "stopgap measure" of funneling all public corruption matters through the Criminal Division SAC, Acting SAC, or someone from the CDC's office to assess potential conflicts until they had implemented a formal process.

McCabe told us that after the March 11 meeting, he expected A-CDC to document the recusal, speak to the Acting SAC about the filtering process, and work with the Acting SAC to list any cases from which he would be recused. McCabe said that he did not necessarily expect to hear about the specific cases that he had been recused from. McCabe told us that at a regularly scheduled meeting of the WFO SACs, the same week as the March 11 meeting, he informed the SACs of his wife's decision to run for state senate and of the filtering arrangement that they had put in place for identifying potential conflict cases.

5. McCabe Recusal EC Issued on April 29

The A-CDC documented McCabe's recusals in an Electronic Communication (EC) dated April 29, 2015, which was approved by McCabe.²³⁵ The EC was sent to all of the WFO's SACs and began by referencing Dr. McCabe's run for state senate and stating that prior to her announcement, McCabe had consulted FBI officials "to identify limitations on his participation in her campaign and to identify areas where Dr. McCabe's campaign may present potential conflicts of interest." It then referenced the March 11 meeting and stated that they had "also addressed with AD Kelley and GC Baker the potential for conflicts of interest." The EC stated that A-CDC and the Acting SAC of the Criminal Division (A-SAC), in which the public corruption squads were located, had "identified several areas" where McCabe's "dissociation would be appropriate," including:

[A]ll public corruption investigations arising out of or otherwise connected to the Commonwealth of Virginia present potential conflicts, as Dr. McCabe is running for state office and is supported by the

²³⁵ A-CDC told us she drafted the EC on her own and did not coordinate the writing of the EC with Kelley or any others in OIC or OGC. A-CDC said McCabe was the approving official on the EC because he was her direct supervisor. When we asked Kelley whether McCabe's supervisor or some other official should have approved the EC given that its subject matter was about his recusal, he said he believed it was "fine" for McCabe to approve it and make a record of the recusal in the system. Kelley provided two reasons. First, he said the EC work flow process requires a supervisor to approve its creation and McCabe is A-CDC's supervisor. Second, he said that substantively the EC does not so much reflect on the decision to recuse as it describes the administrative measures that would be taken to implement the recusal protocols.

Governor of Virginia. Therefore, out of an abundance of caution, the ADIC will be excluded from any involvement in all such cases.

The April 29 EC then stated that supervising case agents in the WFO's Criminal Division had conducted "an initial review" of pending investigations to identify cases that present a potential conflict of interest, that these cases were identified to A-CDC and would be included in the matters in which McCabe "may take no part, either by being briefed or in the decision-making process."

The EC next identified a screening protocol for future or other ongoing cases requiring the CDC to review any investigations that may present "an actual or perceived conflict of interest" and make the recusal determination. The EC concluded by stating: "This protocol will be reassessed and adjusted as necessary and at the conclusion of Dr. McCabe's campaign in November, 2015."

A-CDC told us she did not recall why she did not document the recusal until April 29 and that it was "always the plan" to memorialize the recusal in an EC.

C. No Reassessment of Conflict/Recusal when McCabe becomes ADD or after Dr. McCabe Loses Election

McCabe left the WFO and became the FBI's Associate Deputy Director (ADD) in September 2015, while his wife's campaign was ongoing. The ADD primarily has administrative responsibilities rather than operational ones.

When we asked McCabe if he had any conversations with anyone about whether the April 29 EC and its provisions traveled with him to his new position as ADD, he said he did not recall having any such conversations.

Dr. McCabe lost her race for the state senate on November 3, 2015. As noted above, the April 29 EC stated that the recusal protocol would "be reassessed and adjusted ... at the conclusion of Dr. McCabe's campaign in November 2015." When we asked McCabe about the language related to reassessment, he told us no one approached him at the end of his wife's campaign to discuss the issue with him.

D. Participation in Clinton Email and Clinton Foundation Investigations

1. McCabe Not Recused as ADIC, ADD, or DD

As described in this report, until he recused himself from the Clinton email and Clinton Foundation investigations on November 1, 2016, McCabe had an active role in the supervision of the Clinton email investigation after he became the Deputy Director in February 2016. He also had oversight of the Clinton Foundation investigations when he became Deputy Director. When McCabe served as ADD, he did not have supervision over the Clinton email investigation, but he was occasionally present at meetings where the matter was discussed, according to

McCabe and an FBI response to Congressional inquiries.²³⁶ In July 2015, when the Clinton email investigation was opened, McCabe was serving as the ADIC in the WFO. He told us he had no recollection of participating in any discussions about the opening of the case and only learned after the fact that the WFO had provided personnel to the Clinton email investigation team.

2. Recusal Concerns Related to Clintons Raised in May 2015 when McCabe is ADIC

McCabe said that he never heard of any concerns that his wife's run for office presented a conflict for him in Clinton matters until October 2016, as detailed below. He also told us that until that time, he did not consider addressing a potential Clinton conflict because neither he nor his wife had any connection to Hillary Clinton, his wife's campaign received no support from her, and whatever relationship Hillary Clinton had to Governor McAuliffe did not appear to McCabe to be grounds for a conflict. We found one instance prior to October 2016 in which concerns were raised about a potential conflict for McCabe in Clinton-related matters, although we found no evidence that these concerns were brought to McCabe's attention. As described below, these concerns were raised by WFO personnel in May 2015, shortly after the April 29 EC was issued.

a. Complaint Regarding Clinton

On May 4, 2015, a private attorney emailed Director Comey to request that the FBI open a public corruption investigation into Hillary Clinton, citing public allegations related to the Clinton Foundation and her use of a private email server while she was Secretary of State. Comey forwarded the complaint to Deputy Director Giuliano, who in turn forwarded it the next day to McCabe, stating: "[p]rovided to WFO for whatever action you deem appropriate."

On May 5, 2015, McCabe, who was out of the country on vacation, forwarded the email to A-SAC and directed her to have the complaint reviewed and to contact the private attorney and "conduct a standard assessment of these allegations." McCabe copied Giuliano on this email. A few hours later, McCabe sent a follow up email to A-SAC stating, "To be clear, we are info gathering at this point. Please do not open a case or assessment until we have the chance to discuss further." A-SAC responded by stating she understood and added that they had "already discussed the issue in coordination with [the Department's Public Integrity Section] and [FBI Headquarters] as this is not the first complaint on this matter. We are following established protocol and guidelines for these types of complaints." McCabe responded to A-SAC, "Great. Thanks." He also forwarded to Chuck Rosenberg the

²³⁶ McCabe told us that when he was ADD and Deputy Director Giuliano was absent, McCabe filled in for him at meetings, although McCabe said he did not recollect doing so at any meetings related to the Clinton email investigation. Giuliano also told us that for a period of about two weeks before he departed the FBI and McCabe became the Deputy Director, McCabe shadowed Giuliano and he coached McCabe as he took over his new position.

first email he sent to A-SAC and described to Rosenberg his subsequent instructions to A-SAC to hold off on opening a case or assessment.

Rosenberg told us he vaguely recalled the email thread but he did not recall McCabe's email to him or his response to McCabe, which was "[u]nderstood... [e]njoy your vacation". He said he does not recall the email thread prompting any concerns at headquarters about McCabe working on Clinton matters and that he would not have made a connection with a Clinton matter and Dr. McCabe and Governor McAuliffe.

b. Supervising Case Agent and A-SAC Raise Concerns About McCabe Participating in Decisions Related to Clinton

A-SAC forwarded the email thread to a supervising case agent in the Criminal Division the same day who replied "ADIC should recuse himself from this matter in my opinion." The supervising case agent told us he was concerned because, among other things, he knew "the Clintons and McAuliffe are hard to separate," and that McAuliffe ran her 2008 campaign for President. He also described his concerns as being protective of McCabe's interests by anticipating how any participation by him on a Clinton matter would play out in the press since "the ADIC's wife has benefited from her relationship to McAuliffe."

A-SAC told us that her concern on the nature of a potential Clinton conflict "was overall [public corruption], and Clinton specifically because of just the broader relationship between McAuliffe and Clinton." A-SAC said she spoke to A-CDC who reached out to Kelley. A-SAC said she also addressed her concerns with another SAC in WFO and the then-Chief of the Public Corruption Section of CID (PCS-Chief). PCS-Chief told us he recalls speaking to A-SAC about concerns she had although he did not recall the specifics of those concerns or the identity of the matter. PCS-Chief told us he passed along A-SAC's concerns to one of his superiors. A-SAC said she did not know whether PCS-Chief or anyone else prompted McCabe in the May 5 time period about a potential Clinton conflict.

c. A-CDC and Kelley's Communications and Nonrecusal Decision

On May 5, A-CDC emailed Kelley and stated:

I have an issue I would like to run by you regarding ADIC McCabe's potential conflicts of interest and his wife's campaign. Should be fairly quick, but I would appreciate your opinion on how we are handling a particular matter.

A-CDC's email to Kelley did not identify the subject of the potential conflict of interest. Kelley and A-CDC spoke by phone the following morning, May 6, which Kelley documented in an Ethics Advice Tracker dated May 7, 2015. In the Tracker, Kelley summarized the advice he provided to A-CDC as follows:

Q re necessity of recusal of her ADIC. Relates to ADIC's spouse running for partisan office which we have discussed and worked out recusal arrangements, etc. This matter concerns a separate investigation where there may be a relationship between certain persons. Advised that relationship in the investigations was not enough to warrant recusal. Details too sensitive to be included here.

A-CDC told us she did not remember why she reached out to Kelley and did not recall discussing with anyone a potential McCabe conflict with Clinton-related matters. Likewise, Kelley told us that he did not recall his conversation with A-CDC or whether the advice memorialized in the Tracker related to a potential conflict regarding Clinton. (The Tracker did not reference Clinton or otherwise identify the subject of the potential conflict of interest.)

Kelley said that the first time he remembers hearing about a recusal question regarding Clinton-matters was in October 2016, as discussed below. Kelley also told us that in the May 2015 time frame he would have said there is no need for McCabe to recuse from Clinton-matters on the basis of the relationship between Governor McAuliffe and Clinton because their relationship is tangential: "[T]he question is, are McAuliffe's relationships to Clinton imputed to Ms. McCabe. And frankly, I think that's a bridge too far. I can't see that we should impute all of McAuliffe's relationships to McCabe."

We found no evidence that McCabe was ever made aware of the concerns raised by A-CDC, A-SAC, or the supervising case agent. We also found no evidence that Kelley consulted with or questioned McCabe, who was out of the country on vacation, regarding A-CDC's concerns before reaching his conclusions and providing the advice to A-CDC on May 7.

E. Clinton Email and Clinton Foundation Investigations Recusals

1. October 23, 2016 *Wall Street Journal* Article

On October 23, 2016, the Wall Street Journal (WSJ) published online an article stating that a political-action committee (PAC) run by Virginia Governor McAuliffe and the Virginia Democratic Party (over which the article reported McAuliffe "exerts considerable control") collectively donated nearly \$675,000 to the 2015 unsuccessful state senate campaign of the wife of Andrew McCabe.²³⁷ The article described McAuliffe as "an influential Democrat with long-standing ties to Bill and Hillary Clinton" and noted that McCabe was an FBI official "who later helped oversee the investigation into Mrs. Clinton's email use." The article contained an official FBI statement that McCabe "played no role" in his wife's 2015 state senate campaign and was promoted to FBI Deputy Director months after his wife's defeat

²³⁷ See Devlin Barrett, *Clinton Ally Aided Campaign of FBI Official's Wife*, WALL ST. J., Oct. 23, 2016, <https://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114> (accessed June 11, 2018). A print version of the article was published in the WSJ on Monday, October 24, 2016.

"where, .he assumed for the first time, an oversight role in the investigation into Secretary Clinton's emails."²³⁸ According to the article, FBI officials stated that McCabe's supervision of the Clinton email investigation in 2016 did not present a conflict or ethics issues because his wife's campaign was over by then. The article went on to note that when the Clinton email investigation was launched in July 2015, Mr. McCabe was "running the FBI's Washington, D.C., field office, which provided personnel and resources to the Clinton email probe."

Among other things, the article stated that McAuliffe could recall having met only once with McCabe, on March 7, 2015, when he and other state Democrats met with the couple to urge Dr. McCabe to run. It stated that after the March 7 meeting, McCabe sought ethics advice from the FBI "and followed it, avoiding involvement with public corruption cases in Virginia, and avoiding any campaign activities or events."

2. Internal Deliberations and Recusals from Clinton Email and Clinton Foundation Investigations

Immediately following online publication of the October 23 WSJ article, there was substantial public discussion as to whether McCabe's oversight of the Clinton email investigation had been appropriate in light of the information in the article. In the week that followed the article, discussions ensued within the FBI over whether McCabe should recuse from Clinton-related matters. These discussions took on additional significance on October 27, when Comey was briefed by the FBI Clinton email investigation team regarding the Weiner laptop issue.

a. Comey and Baker Responses to Article

Comey told us he was "frustrated" that he had not known about the facts raised in the October 23 WSJ article earlier and that he had a conversation with McCabe about this. Had he known them earlier, Comey said he believed it "highly likely as a prudential matter" that he would have had someone else take on McCabe's role in the Clinton email investigation, even if presented with an opinion from Kelley finding no requirement for recusal under the ethics rules. Comey said although he did not believe there was an actual conflict, "because of the nature of the [Clinton email] matter" he would not have permitted McCabe to participate as it would have been "used to undercut the credibility of the institution." He said, "I don't buy this. I think it's crap, but it brings a vector of attack to this institution

²³⁸ The "played no role" reference in the FBI statement was derived from information provided by McCabe and was approved in advance by McCabe. Soon after publication of the October 23 WSJ article, the "played no role" statement came under public criticism. Subsequently, in its December 14 letter to Senator Grassley (described below) relating to alleged conflict of interest issues involving McCabe, the FBI removed the "played no role" language from a draft of the letter and instead stated in its final letter. "To the best of his recollection, Mr. McCabe's only activities related in any way to the campaign included providing transportation to his spouse in their personal vehicle on two occasions to public events; attending one public debate as a spectator; and appearing in a family photo which was used in a campaign mailer, all of which are permissible under the Hatch Act."

and why would I open a vector of attack to this institution, its credibility is its bedrock, when I don't need to."

Comey said that while as a lawyer he could see the alleged conflict was a "triple bank shot," a few days after the October 23 WSJ article the necessity of seeking a search warrant on the Weiner laptop was a "mushroom cloud" making "much more significant" the question of whether to notify Congress. He said that given these elevated stakes he did not need the "baggage" of an alleged conflict for McCabe brought into the decisions that would be "heavily scrutinized" and he did not have time to "get a legal opinion" or even for "thoughtful analysis" on whether McCabe should participate in the decisions. He said there was enough in the news articles to counsel against McCabe's involvement. He said that while initially he viewed the conflict allegations as "a PR thing" that needed to be managed, "it became hugely significant to me once [the Clinton email investigation] awoke from the dead." Comey said he told McCabe, "I don't need you on this because I don't see it as that close a call."²³⁹

Baker told us that in the wake of the October 23 WSJ article, he and Comey had one-on-one conversations in which they discussed the issues it raised. Baker said that he believes he and Comey first learned from the October 23 WSJ article that Dr. McCabe's campaign received large contributions attributed to McAuliffe. He said he and Comey concluded that McCabe should recuse himself from the Clinton email investigation "out of an abundance of caution." Baker said that they agreed that it would be best if McCabe recused himself rather than being recused by Comey and that Comey instructed Baker to attempt to persuade McCabe to do so.

b. McCabe Excluded from Weiner Laptop Meeting on October 27

As described above in Chapter Nine, on October 27 at 10:00 a.m., Comey held a meeting with the Clinton email investigation team to discuss obtaining a search warrant for a set of Clinton-related emails the FBI had discovered on a laptop belonging to Anthony Weiner, and taking additional steps in the Clinton email investigation. Lisa Page, McCabe's special counsel, attended the meeting. McCabe was out of town, but joined the meeting via conference call. After the meeting began, Baker suggested, and Comey agreed, that McCabe should leave the call. Comey told us that he asked McCabe to drop off the call, and McCabe was "very unhappy about it."

Accounts differ about the reason stated on the October 27 call for excluding McCabe. McCabe told the OIG that the reason stated on the call for dropping him related to the potential for discussion about classified information. However, Comey, Baker, and Page all told us that Comey asked McCabe to leave the call out of an abundance of caution because of appearance issues following revelations in

²³⁹ Comey told us he did not recall his weighing in on whether McCabe should recuse from the Clinton Foundation investigation and said he did not remember knowing that McCabe ultimately recused from the Clinton Foundation investigation at the same time he recused from the Clinton email investigation.

the October 23 WSJ article about the campaign donations to Dr. McCabe from McAuliffe-associated PACs.

McCabe discussed the issue of his participation in the Clinton email matter further with Comey and Baker by telephone later that day. After these conversations, McCabe sent a text message to Page stating, "I spoke to both. Both understand that no decision on recusal will be made until I return and weigh in."

c. Baker and Kelley Meet on October 27

Baker and Kelley met on October 27 to discuss the allegation of a conflict of interest raised by the October 23 WSJ article. Kelley said that he concluded, along with Baker, that although the facts did not require McCabe to recuse, it was "desirable" to recuse because of appearance concerns, so he recommended it. Baker told us that Kelley concluded that while McCabe was not legally required to recuse from Clinton matters he recommended recusal because of appearance concerns and out of an abundance of caution.

An Ethics Advice Tracker from the October 27 meeting memorializing the discussion and advice Kelley rendered states:

Cited to and discussed DOJ rule at 28 C.F.R. 45.2, conflict of interest statute at 18 USC 208, SOC rules on impartiality at 5 CFR 2635.502, and appearance standard at 5 CFR 2635.101(b)(14). Based on facts, advised that I saw no legal requirement for disqualification but, on balance, there was an appearance issue and would recommend recusal.

d. Kelley's Rationale for Recusal

Although Kelley did not issue a formal opinion in October 2016, he told us that if he had put his advice in writing he was "confident" he would have said recusal of McCabe in the Clinton-related matters was not required. He said his recommendation that it was nonetheless desirable for McCabe to recuse was based on the allegations in the press and potential adverse publicity for the FBI were McCabe not to recuse, the fact that the FBI could "avoid a fight" while "preserving its equities" in having another senior leader take on McCabe's role, and, on a personal level, making "life easier for the people who are under attack or under scrutiny." While Kelley said McCabe's recusals were desirable, he also told us that the question of whether a recusal is required under the standards of conduct is based on the reasonable person standard, see 5 C.F.R. § 2635.101(b)(14), and not on the "*Washington Post* test," i.e., the likelihood that certain facts may become the subject of a news article. He said that while the likelihood of adverse publicity could factor into the reasonable person standard and that "we all have in the back of our mind how is this going to read in the *Post* we have to make the decision based not on what's in the *Washington Post* but on what a reasonable person would take away if that person knew the relevant facts, and sometimes that's very nuanced." In a memorandum Kelley wrote in April 2017, Kelley described McCabe's Clinton-related investigation recusals as "not required by law or regulation" and

done by McCabe “out of an abundance of caution, and to avoid further speculation in some quarters about the propriety of [his] continued participation.”

Kelley told us he did not believe that a reasonable person would question McCabe’s impartiality because Dr. McCabe had no relationship to Clinton, and while the relationship between the Governor and Clinton is close, he did not believe that meant “we can impute that relationship or should impute that relationship to Ms. McCabe and then turn around and impute that imputed relationship to Mr. McCabe it’s too tangential to say recusal is required.”

e. Baker and McCabe Conversation on October 31

McCabe and Baker spoke about recusal by phone while McCabe was out of town on October 27, but no decision was made. McCabe told us he had conversations with Baker after returning to the office on October 31 and that Baker said to him that Kelley’s view was that he should recuse.²⁴⁰ Baker told us that he had a series of conversations with McCabe culminating in a “very intense” conversation in which Baker told McCabe that he believed he needed to recuse himself and that it was better that he do it “than have the boss order him to do it.” He said McCabe “was not happy about it” and “had lots of questions” and they had a “good argument back and forth.”

McCabe said that he had numerous discussions with Baker and Page during this time in which he expressed his view that he should not recuse out of abundance of caution as it “would unfairly create a negative inference over the work that the [Clinton email investigation] team had done with [his] participation over the previous” months. McCabe said Baker presented him with his argument that there existed connections among Hillary Clinton and McAuliffe and his wife, but it seemed to McCabe to be too “attenuated” to call for recusal.

McCabe said that the size of the contributions that came to light in the October 23 WSJ article was a relevant new fact for Baker in creating an appearance concern. McCabe said he countered by arguing that the size of the contributions should not determine whether a conflict is present, that you have a conflict at \$1 as you do at \$200,000, and while Baker agreed with his analysis that there was no legal conflict, Baker was focused on the “external impression of my involvement in the case.”

McCabe said Baker’s response to his concerns was to acknowledge that while he may be right on the law and facts that he was not required to recuse, Baker believed he should recuse in light of the news article, in an abundance of caution, for the sake of perception, and given Kelley’s view. McCabe said he believed there was “a very clear inevitable negative impact to being overly cautious.” McCabe said that in his discussions with Baker he asked whether he would be ordered to recuse

²⁴⁰ McCabe and Page both told us that neither of them spoke directly to Kelley about Clinton matter recusals in October 2016, but wished they had because they would learn in 2017 that Kelley’s view was the same as theirs — that there was no basis in fact or law that required McCabe to recuse from the Clinton matters.

and Baker told him "if the Director thinks you should, then it's better to recuse yourself than to be directed; [b]etter to recuse voluntarily, than involuntarily."

f. McCabe and Comey Meeting on November 1

On November 1, McCabe and Comey spoke in the Director's office. McCabe told us he said to Comey that he did not believe he should recuse from the Clinton email investigation and presented the arguments he made to Baker in their earlier conversations. McCabe said that Comey responded by saying he made a good argument but told him that in light of the external perception from the negative media attention he should recuse. McCabe told us that when he argued that his recusal at this late stage may call into question his earlier participation, Comey acknowledged that recusal could have such a negative impact, but said that given the media attention he should nonetheless recuse. McCabe said that although Comey did not explicitly order him to recuse, given what Baker said about a request from the Director to recuse, he told Comey that he would recuse.

Comey told us that in his conversation with McCabe, McCabe said that the allegations of conflict as to the Clinton email investigation were akin to a "triple cushion bank shot" and that therefore it was unreasonable for him to seek an opinion from Kelley on the alleged Clinton conflict. Comey said McCabe also told him that, although he did not believe there was a legal basis for recusal, he thought it was "prudent" for him to step aside.

Comey also said that in a conversation with McCabe he "made clear to him [his] disappointment" that these facts were not brought to his attention earlier.

g. November 1 Recusal Emails

On November 1, soon after his meeting with Comey, McCabe sent emails to FBI executives and officials overseeing the Clinton Foundation investigation and the Clinton email investigation informing them that he was recusing himself from those investigations. The emails stated:

As of today I am voluntarily recusing myself for the ongoing [Clinton email investigation / Clinton Foundation investigation]. I will continue to respond to congressional requests for historical information as necessary.

McCabe told us that the timing of the recusals from the Clinton Foundation and Clinton email investigations were not on different tracks and he believed that a recusal rationale based on a perceived Clinton-related conflict as to the Clinton email investigation logically extended to the Clinton Foundation investigation.

The FBI did not publicize McCabe's recusals from these Clinton investigations despite the rationale that the recusals were at least in part intended to address the public perception of a potential conflict. In fact, even within the FBI, McCabe's recusal decision was only shared with a limited audience, primarily those copied on the email and those aware of the recusal discussions. McCabe told us that he

thought the decision to recuse was a mistake, so to be “very public” and publicize it “would just compound the mistake.”

3. Participation in Clinton Foundation Investigation after November 1

In this section we summarize three instances in which McCabe took actions related to the Clinton Foundation investigation after his November 1 recusal.

a. Call to NY ADIC Following November 3 *Wall Street Journal* Article

On November 3, 2016, the WSJ published another story on the Clinton Foundation investigation.²⁴¹ That evening, McCabe emailed the ADIC of the FBI New York Office, William Sweeney, and stated, “This is the latest WSJ article. Call me tomorrow.” According to Sweeney’s calendar notes on November 4 and testimony to the OIG, McCabe and Sweeney spoke for approximately 10 minutes around 7 a.m., regarding “leaks and WSJ article” and that McCabe was “angry.” Sweeney’s calendar notes also reflect that McCabe expressed to him: “will be consequence[s] and get to bottom of it post elect[ion]. Need leaks to stop. Damaging to org.”²⁴²

McCabe told the OIG that he did not recall the details of the conversation on November 4, but it was “probably about leaks” to the media. McCabe said he would not have viewed his conversation with Sweeney as participating in the Clinton Foundation investigation but rather as a “logical follow-up to an ongoing conversation” he had been having with Sweeney for several weeks over the general issue of leaks coming out of the New York office. He said he was not transacting on the case, making decisions, or asking about the case, but rather telling Sweeney that he needed to address unauthorized media disclosures by getting his “people under control.” Additionally, McCabe told us he did not believe his recusal from the Clinton Foundation investigation encompassed his general responsibilities to address the issue of FBI leaks.

b. Email to Kortan on November 3 *Wall Street Journal* Article

Also on the evening of November 3, McCabe emailed the latest WSJ article to Kortan and stated: “I am curious as to why I keep stumbling across these things with no notice whatsoever from my OPA machine?... I would like to discuss solutions tomorrow.” Kortan told us he did not recall the email from McCabe or any subsequent conversation with McCabe. McCabe said his email to Kortan was

²⁴¹ See Devlin Barrett and Christopher Matthews, *Secret Recordings Fueled FBI Feud in Clinton Probe*, WALL ST. J., Nov. 3, 2016, <https://www.wsj.com/articles/secret-recordings-fueled-fbi-feud-in-clinton-probe-1478135518> (accessed June 11, 2018).

²⁴² As detailed in a separate OIG misconduct report, McCabe had himself authorized the disclosure of sensitive information about the Clinton Foundation investigation to the Wall Street Journal, which was included in an article published on October 30 as well as in the November 3 article he discussed with Sweeney.

intended to address a “persistent frustration” he had over not receiving timely notice by OPA of news articles of interest. McCabe told us he did not know if he had a subsequent conversation with Kortan in which Kortan provided an explanation for why OPA did not send him the article. However, McCabe said that Kortan may not have brought the November 3 WSJ article to his attention in the first place because McCabe had recused himself from the Clinton Foundation investigation. When we asked McCabe whether in retrospect he should have asked Kortan to be briefed or kept up to speed on matters he was recused from, he said, “no, no” and reiterated that may have been why Kortan did not bring the article to his attention.

F. Decision Not to Disclose McCabe’s Recusals to Congress

Soon after the publication of the October 23 WSJ article, the FBI received three Congressional requests for information regarding the facts and allegations in the article. One was a letter from Senator Charles E. Grassley to Director Comey dated October 28, 2016, requesting answers to 12 questions, including one which stated: “What steps are you taking to mitigate the appearance of a conflict of interest in the Clinton email investigation and to reassure Congress and the American people that the investigation was not subject to political bias?”

On December 14, 2016, the FBI sent its response to Senator Grassley’s letter, signed by the then-Acting Assistant Director (AAD) for the FBI’s Office of Congressional Affairs (OCA). The December 14 letter did not explicitly address Senator Grassley’s question concerning mitigation steps taken or otherwise disclose McCabe’s November 1 recusal from the Clinton email investigation. Instead, the last two sentences of the corresponding paragraph in the final December 14 letter stated:

Dr. McCabe lost the election for state senate on November 3, 2015, months before Mr. McCabe, as DD, assumed responsibility for the Clinton email investigation. Based on these facts, it did not appear that there was a conflict of interest – actual or apparent – that required recusal or waiver.

We attempted to determine who made the decision not to disclose the November 1 recusal of McCabe from the Clinton email investigation in the December 14 response to Senator Grassley, and for what reason.

Beginning in early December 2016, the OCA AAD and another OCA staff member circulated several drafts of the response to Senator Grassley. One draft included the sentence. “On October [?], 2016, out of an abundance of caution, Mr. McCabe recused himself from further participation in the [Clinton email] investigation.” Lisa Page responded in an email that stated, “No way on [that] sentence. During our conversation with Jim [Baker] last week, both of us express[ed] our overwhelming interest in protecting that fact as long as possible.” Page told us she believed the “both of us” reference was to herself and McCabe, but was not sure. Page told us she believed that McCabe’s recusal, if revealed, would have been misused for political purposes and further inflamed the claims that Comey and McCabe were biased in favor of Clinton. Page also said she was not

sure who made the ultimate decision on whether to disclose McCabe's recusal. She said that she did not know whether McCabe weighed in on this decision.

McCabe told us he did not have a recollection of any discussion, including with Comey, regarding whether to reveal his recusal from the Clinton email investigation in the December 14 letter. He said Page's "protect the fact" comment in her email reflected their thinking at the time that to reveal that information would create a "potentially damaging misimpression of the case" and that although he did not recall specifically discussing this issue with Comey, he believed Comey was also of that view.

Comey said he had "some recollection" that his Chief of Staff, James Rybicki, presented him with two options being considered, one sentence urged by McCabe and his staff would respond narrowly, the other would volunteer the fact of McCabe's recusal. Comey told us he did not recall the details of his participation in the decision on how to answer, but he said he recalled seeing the proposed language and hearing about an internal conflict that McCabe did not want the FBI to volunteer that he had recused from the Clinton email investigation. Comey told us that although he does not recall how he responded to the issue as it was presented to him, he assumes he would have agreed to the final language so long as it was "technically accurate I'm okay with answering it narrowly." Rybicki told us he had a vague recollection of the Grassley letter, but could not recall any discussions regarding whether to disclose McCabe's November 1 recusal to Congress or whether the issue was presented to Comey.

The OCA AAD told us he did not specifically recall who made the decision not to disclose McCabe's recusal, but that he believes McCabe likely made the decision. However, the OCA AAD said he did not remember having a conversation with McCabe about disclosing his recusal in the December 14 letter or providing him a draft with the proffered recusal language in it.

V. OIG Analysis

A. Recusal Issues

In this section we analyze whether McCabe should have been recused from the Clinton investigations prior to November 1, 2016 and whether he adhered to the terms of his recusal once he was recused.

1. Summary of Findings

We found that McCabe was not required to recuse from the Clinton-related investigations under section 502(a) or any of the other relevant authorities. We also determined that, at the time McCabe became Deputy Director and thus had authority over Clinton-related investigations, no one in the FBI considered the question of whether Dr. McCabe's campaign raised recusal concerns as to Clinton-related investigation. This issue was not considered until after publication of the October 23 WSJ article and led to McCabe recusing himself from Clinton-related investigations on November 1, 2016. We found that McCabe did not fully comply

with his November 1 recusal in a few instances related to the Clinton Foundation investigation as detailed below.

We found that FBI ethics officials and attorneys did not fully appreciate the potential significant implications to McCabe and the FBI from campaign donations to Dr. McCabe's campaign. The FBI did not implement any review of campaign donations to assess potential conflicts or appearance issues that could arise from the donations. On this issue, we believe McCabe did what he was supposed to do by notifying those responsible in the FBI for ethics issues and seeking their guidance. Had the FBI put in place a system for reviewing campaign donations to Dr. McCabe, which were public under Virginia law, the sizable donations from McAuliffe's PAC and the Virginia Democratic Party may have triggered prior consideration of the very appearance concerns raised in the October 23 WSJ article.

2. Recusal from Clinton-Related Investigations

We agree with FBI chief ethics officer Kelley and found that the relevant authorities did not require McCabe to recuse himself from Clinton-related investigations. With regard to the financial conflicts provisions in Sections 208 and 502(a), there is no evidence of any financial or business ties between the McCabes and the Clintons or their Foundation. Further, there is no evidence that Hillary Clinton provided political or financial support to Dr. McCabe's 2015 senate campaign. The fact that McAuliffe supported Dr. McCabe's campaign, and was a known associate of Hillary Clinton, did not create any connection between the Clinton email investigation and Dr. McCabe's financial interests. Indeed, by the time McCabe became Deputy Director and assumed supervisory responsibilities for any Clinton-related matters, Dr. McCabe had already lost her election, and no developments in the Clinton-related matters could have any plausible impact on Dr. McCabe's financial interests, let alone a direct and predictable one as required under Sections 208 or 502(a).

In addition, because neither McCabe nor Dr. McCabe had a political or personal relationship with Clinton, McCabe was not obligated to recuse under 28 C.F.R. § 45.2. As discussed above, "political relationship" under section 45.2 is defined to mean "a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof." "Personal relationship" is defined as a "close and substantial connection of the type normally viewed as likely to induce partiality." Neither McCabe nor Dr. McCabe, who had never even met Clinton, served as a "principal adviser" to Clinton or had a "close and substantial connection" to Clinton sufficient to meet the definitions of political and personal relationships in section 45.2.

Although McCabe was not required by law or regulation to recuse from the Clinton-related investigations, he recused from these investigations on November 1, 2016, at the urging of Director Comey, who told us that he did not learn about McAuliffe's financial support of Dr. McCabe's candidacy until it was revealed in the October 23 WSJ article. Voluntary recusal is always permissible with the approval

of a supervisor or ethics official, even where the elements in section 502(a) are not present.

We did not find fault with McCabe for not considering, prior to the October 23 WSJ article, whether to recuse himself under the “other circumstances” provision of section 502(a)(2) or the “appearance” provision of section 101(b)(14) of the Standards of Ethical Conduct.²⁴³ However, we were troubled by the fact that the FBI ethics officials and attorneys did not fully appreciate the potential significant implications to McCabe and the FBI from campaign contributions to Dr. McCabe’s campaign and did not implement any review of those campaign donations. Thus, while the same factual circumstances that led to McCabe’s recusal on November 1, 2016 were present at the time McCabe became Deputy Director on February 1, 2016, the FBI ethics officials, McCabe, and Comey only learned of them as a result of the October 23 WSJ article. Had the FBI put in place a mechanism to review the campaign’s donation information, it would have been in a position to consider these issues earlier.

We believe McCabe did what he was supposed to do by notifying those responsible in the FBI for ethics issues and seeking their guidance. Thereafter, he was entitled to rely on those ethics officials to identify any ethics issues that were implicated by Dr. McCabe’s candidacy.

Campaign donations to a spouse’s campaign present complicated questions under section 502(a), as well as under the financial conflict of interest statute. They also may present significant appearance issues under section 502(a)(2). The fact that the FBI did not apparently recognize the issues, and the potential importance of them, became evident when the October 23 WSJ article was published. Under Virginia law, the identity of contributors and their donation amounts was available to the public. Had the FBI reviewed the campaign donations to Dr. McCabe, they would have observed the \$675,288 from McAuliffe’s PAC and the Virginia Democratic Party, which may have resulted in earlier consideration of the very appearance concerns raised in the October 23 WSJ article. The predictable result of the WSJ article triggered the October 2016 controversy, which led to Comey’s decision to ask McCabe to recuse himself from Clinton-related investigations.

We further determined that the FBI’s decision to keep McCabe’s recusal from Clinton matters a secret made no sense. The apparent purpose of that recusal was to address allegations concerning the propriety of McCabe’s continued participation in the Clinton-related investigations, which would be used to undercut the FBI’s credibility. This purpose is generally accomplished by informing the public that McCabe was recused. However, the FBI did not publicize McCabe’s recusal. As a related matter, we do not believe that the FBI acted wisely in deciding not to reveal McCabe’s recusal to Senator Grassley in response to a question to which this fact

²⁴³ As noted above, McCabe told us that neither he nor his wife attended the June 2015 fundraiser in Virginia and that he was unaware that the Clintons or anyone on their behalf ever contributed to Dr. McCabe’s campaign. He said neither he nor his wife have ever met the Clintons.

was reasonably responsive. Again, the recusal decision served no function in protecting the FBI's reputation if it was kept secret.

We considered whether McCabe violated his voluntary recusal from Clinton-related matters after November 1. Recusal "is accomplished by not participating in the matter." 5 C.F.R. § 2635.502(e). Exposure to case related information by a recused employee when attending a meeting or briefing, including receiving information about news articles related to the recused matter, is a form of participation that must be avoided. We found no evidence that McCabe continued to supervise investigative decisions in the Clinton-related matters after that day. We did find that McCabe, prompted by a follow-up WSJ article of November 3, 2016, made inquiries about the steps the FBI was taking to address media leaks relating to the Clinton Foundation and exhorting managers to stop the leaking. McCabe's conduct in inquiring about media leaks appears to have been consistent with instructions that Comey told us he gave McCabe about taking action on media leaks in the Clinton Foundation investigation. However, McCabe's conduct was not fully consistent with his recusal, as the discussion of the Clinton Foundation investigation in the November 3 WSJ article was the very basis for his call and admonitions to Sweeney, the NY ADIC. McCabe told us he did not believe his recusal from the Clinton Foundation investigation encompassed his general responsibilities to address FBI leaks. But McCabe's November 1 recusal email contained one exception, which allowed him to continue to respond to Congressional requests for information, and it did not carve out an exception allowing him to continue addressing the leaks about the Clinton Foundation investigation.

Similarly, McCabe encroached on his recusal obligations when he forwarded the November 3 WSJ article to OPA chief Kortan and asked why he (McCabe) kept seeing such articles without prior notice from OPA. While McCabe told us that his email to Kortan was intended to express a generalized frustration with lack of prior notice by OPA, McCabe acknowledged that he should not have asked Kortan to keep him up to speed on matters he was recused from. McCabe also said that may have been the very reason Kortan did not bring the November 3 WSJ article to his attention.²⁴⁴

²⁴⁴ In March 2017, news accounts reported allegations that McCabe failed to disclose in his Public Financial Disclosure Report (OGE Form 278e) for 2016, the amount of salary his wife received from her employer and the campaign donations she received in 2015. However, such disclosures are not required by OGE Form 278e. First, the OGE regulation addressing the financial disclosure report expressly states that the report does not need to disclose the amount of the spouse's income. See 5 C.F.R. § 2634.309(1). Second, according to the OGE regulations, while campaign funds need not be included in the financial disclosure report "if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported." 5 C.F.R. § 2634.311(a). However, the OGE regulations do not require reporting gifts that are received by a spouse "totally independent" of the spouse's relationship to the filer. 5 C.F.R. § 2634.309(a)(2). While we did not investigate individual donations to Dr. McCabe's campaign committee, during our review we did not find evidence suggesting that Dr. McCabe received campaign donations because of McCabe.

B. Conclusion

We agreed with Kelley, the FBI's chief ethics official, that McCabe was not at any time required to recuse from the Clinton-related investigations under the relevant authorities. However, following the October 23 WSJ article and discussions with Comey, McCabe recused from the Clinton-related investigations on November 1, 2016. Once McCabe recused himself, he was required to cease participation in those matters. Voluntary recusal is always permissible with the approval of a supervisor or ethics official, even where the elements in section 502(a) are not present. We found that McCabe did not fully comply with his recusal in a few instances related to the Clinton Foundation investigation.

We also found that the FBI ethics officials and attorneys did not fully appreciate the potential significant implications to McCabe and the FBI from campaign contributions to Dr. McCabe's campaign and did not implement any review of those campaign donations. We therefore recommend that ethics officials consider implementing a review of campaign donations when Department employees or their spouses run for public office.

CHAPTER FOURTEEN: WHETHER FORMER ASSISTANT ATTORNEY GENERAL PETER J. KADZIK SHOULD HAVE RECUSED FROM CERTAIN MATTERS

I. Introduction

This chapter addresses allegations that former Department of Justice (Department or DOJ) Assistant Attorney General (AAG) for the Office of Legislative Affairs (OLA) Peter J. Kadzik improperly disclosed non-public information to the Clinton campaign and/or should have been recused from participating in certain matters.

The allegations regarding Kadzik stem from the public release of certain emails of John D. Podesta, Jr., the 2016 chairman of the Hillary Clinton presidential campaign and longtime friend of Kadzik. Beginning in October 2016, Wikileaks released Podesta emails, including emails between Kadzik and Podesta. Among the emails released by WikiLeaks was a May 19, 2015 email from Kadzik to Podesta with the subject line "Heads up" and which included information concerning a Department Freedom of Information Act (FOIA) litigation and a congressional oversight hearing. Shortly before that email, Kadzik had made efforts to assist his son in obtaining a position with the 2016 Clinton campaign.

On or about November 2, 2016, Department leadership determined that Kadzik's May 19, 2015 "Heads up" email to the chairman of the Clinton campaign created an appearance of a conflict of interest and required Kadzik to recuse himself from Clinton-related matters. The Department's Office of Professional Responsibility (OPR) subsequently conducted an inquiry and determined that Kadzik did not disclose privileged or confidential Department information in the email to Podesta.

The OIG's investigation included reviewing investigative materials, documents, and emails from several DOJ components including OLA, OPR, and the Civil Division. The OIG also interviewed numerous witnesses, including Kadzik, then Principal Assistant Deputy Attorney General (PADAG) Matt Axelrod, Associate Deputy Attorney General Scott Schools, and the current and former Departmental Ethics Directors. Two relevant witnesses who worked in OLA under Kadzik, but are no longer with the Department, declined our request for an interview or were unable to schedule an interview.²⁴⁵

As detailed below, we found that Kadzik demonstrated poor judgment by failing to recuse himself under Section 502(a)(2) of the Standards of Ethical Conduct prior to November 2, 2016. First, Kadzik did not recognize the appearance of a conflict that he himself had created when he initiated an effort to obtain

²⁴⁵ The Inspector General Act of 1978, as amended, does not provide the OIG with the authority to compel non-Department employees to participate in interviews

employment for his son with the Clinton campaign while he was participating in senior staff meetings where Clinton-related matters were discussed and signing letters to Congress regarding Clinton-related matters on behalf of the Department. Second, Kadzik created an appearance of a conflict when he sent Podesta the "Heads up" email that included government information about the FOIA litigation in an effort to be helpful to the Clinton campaign without knowing whether the information had yet been made public. His willingness to do so raised a reasonable question about his ability to act impartially on Clinton-related matters in connection with his official duties.

Additionally, although Department leadership ultimately decided to recuse Kadzik from Clinton-related matters upon learning of Kadzik's "Heads up" email to Podesta, Kadzik subsequently forwarded several emails communicating information related to Clinton-related matters within the Department and indicated his intent to speak with staff about those matters. We therefore concluded that Kadzik exercised poor judgment by failing to strictly adhere to his recusal.

Lastly, because the government information in the "Heads up" email had in fact been released publically, we did not find that Kadzik released non-public information or misused his official position.

II. Timeline of Key Events

Jun 17, 2014	Kadzik is confirmed as AAG for OLA.
Jan 25, 2015	FOIA litigation is initiated seeking the release of former Secretary of State Clinton's emails.
Mar 2, 2015	The New York Times reports that Clinton exclusively used personal email to conduct government business while Secretary of State.
Apr 12, 2015	Clinton announces candidacy for President of the United States. John Podesta serves as her campaign chairman; Brian Fallon, former DOJ Office of Public Affairs Director, serves as her campaign spokesman; and Jennifer Palmieri serves as her Director of Communications.
Apr 23, 2015	Kadzik emails Fallon asking for a job for his son with the Clinton campaign.
Apr 30, 2015	Fallon emails Kadzik asking for his son's resume and stating that Palmieri would be reviewing resumes over the weekend. Kadzik replies, sending his son's resume and noting that Kadzik's wife and Palmieri went to college together.
May 5, 2015	Kadzik's son emails Podesta his resume and asks for a job with the Clinton campaign. Podesta forwards the email to Palmieri,

who replies that Kadzik's wife had contacted her and that she told Kadzik's wife that there were currently no openings with the campaign but positions might become available in July. (Email released by WikiLeaks).

- May 18, 2015 Department files a proposed schedule for the release of the Clinton emails with the court in the FOIA litigation.
- Politico reports on the Department FOIA filing and proposed schedule for the release of the Clinton emails.
- May 19, 2015 Kadzik sends Podesta the "Heads up" email about the FOIA filing and proposed schedule for the release of the Clinton emails, and about a congressional oversight hearing, which could include questions about the Clinton emails. (Email released by WikiLeaks).
- Civil Division Chief testifies at the congressional oversight hearing.
- Jul 10, 2015 FBI opens the Clinton email investigation.
- Jan 2016 FBI opens Clinton Foundation investigation.
- Nov 1, 2016 WikiLeaks releases the May 5 email chain that begins with Kadzik's son asking Podesta for a job with the Clinton campaign.
- Nov 2, 2016 WikiLeaks releases Kadzik's May 19 "Heads up" email to Podesta.
- ~ Nov 2, 2016 PADAG Axelrod tells Kadzik to recuse himself from Clinton-related matters.
- Nov 8, 2016 Presidential Election
- Dec 2016 OPR conducts an inquiry and finds that Kadzik did not send privileged or confidential information in his May 19, 2015 "Heads up" email to Podesta.
- Jan 19, 2017 Kadzik's last day with the Department.

III. Relevant Standards

In this section we identify the regulations from the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. Part 2635, relevant to our analysis.

A. Personal and Business Relationships Creating an Appearance of a Conflict 5 C.F.R. § 2635.502

Personal and Business Relationships Creating an Appearance of a Conflict 5 C.F.R. § 2635.502 (Section 502) establishes the analytical framework for determining when a federal employee has an appearance of a conflict of interest. As discussed in greater detail in Chapter Thirteen of this report, Section 502 requires an employee to consider the appearance of his participation in a particular matter involving specific parties (1) that is likely to have a direct and predictable effect on the financial interest of a household member or (2) if the employee has a covered relationship with someone who is a party or represents a party to the matter. Section 502 also includes catchall provision which may apply to "other circumstances" that would lead a reasonable person to question an employee's impartiality in a matter.

A recused employee is prohibited from participating in the matter unless authorized by the agency designee based on a determination that the Government's interest "in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). According to OGE, a proper recusal requires "that an employee avoid any official involvement in a covered matter." OGE 99 x 8 at 2.

B. Use of Non-public Information 5 C.F.R. § 2635.703

Section 703 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.703, states: "An employee shall not allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure."

C. Use of Public Office for Private Gain 5 C.F.R. § 2635.702

Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, states: "An employee shall not use his public office...for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity ."

According to commentary to Section 702, "[i]ssues relating to an individual employee's use of public office for private gain tend to arise when the employee's actions benefit those with whom the employee has a relationship outside the office ". 57 Fed. Reg. 35030 (Aug. 7, 1992).

IV. Factual Findings

A. Background

1. Peter J. Kadzik

Peter J. Kadzik was confirmed as the Assistant Attorney General (AAG) for the Office of Legislative Affairs (OLA) on June 17, 2014, and served in the position

until January 19, 2017. As OLA AAG, Kadzik reported to the Deputy Attorney General. Kadzik had re-joined the Department as a Deputy Assistant Attorney General in OLA in 2013 after several decades in private practice. Early in his legal career, Kadzik served as an Assistant United States Attorney in the United States Attorney's Office for the District of Columbia.

Kadzik is married to "LM." LM previously served as a political appointee in former-President Bill Clinton's administration. "RS" is Kadzik's child from a prior marriage, who was 24 years old at the time of these events.²⁴⁶

2. John D. Podesta, Jr.

John D. Podesta, Jr. is an attorney who served as chairman of the 2016 Clinton presidential campaign. During his career, Podesta also served in various high-level positions in both the Bill Clinton and Barack Obama administrations, including as White House Chief of Staff to Bill Clinton and as Counselor to Obama.

Kadzik and Podesta have a long standing personal and professional relationship which, during the Bill Clinton administration, included Kadzik serving as Podesta's lawyer in 1998 during the Independent Counsel investigation. Kadzik's relationship with Podesta was known at the time of and raised during his confirmation for the OLA AAG position.

Kadzik told the OIG that neither he nor his wife had any business, contractual, or financial relationship with Podesta or the Clinton campaign while he served as OLA AAG. He said that he did not serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee of Podesta, Clinton, or the Clinton campaign. Kadzik said that neither he nor Podesta had performed any legal work for the other in the past five years.

3. Office of Legislative Affairs

The Office of Legislative Affairs (OLA) is responsible for managing the Department's relationship with Congress and advancing its interests on Capitol Hill. Among its responsibilities, OLA prepares nominees for confirmation hearings and Department witnesses for congressional hearings; responds to congressional inquiries and oversight requests; advises and assists Department leadership on a variety of congressional matters; and advocates for the Department's legislative priorities. When answering congressional inquiries and preparing nominees and employees for hearings, OLA routinely coordinates with the relevant DOJ investigative, litigation, and administrative components.

As OLA AAG, Kadzik reviewed and signed letters on behalf of the Department responding to Congressional inquiries, prepared the highest level nominees and witnesses for congressional testimony, and represented OLA at the daily senior staff

²⁴⁶ We have anonymized Kadzik's wife and son by giving them initials as pseudonyms. We refer to Kadzik's wife as "LM" and his son as "RS."

meetings. Senior staff meetings were generally attended by the Attorney General (AG) and members of her staff, the Deputy Attorney General (DAG) and her Principal Assistant Deputy Attorney General (PADAG), as well as the Directors of OLA and the Office of Public Affairs (OPA).²⁴⁷ At the senior staff meeting, among other things, attendees discussed sensitive information regarding Department cases and investigations and coordinated matters and information that were expected to become public or to be the source of public commentary and questions.

Kadzik told the OIG that his role was that of the Department's liaison with Congress and that as such, he was "not involved" in Department investigations. He stated that, "[t]o the extent that I corresponded with Congress, it was based on information provided to my office by the relevant component within the Department. So I didn't participate in any investigations."

Department cases and investigations are often the subject of Congressional inquiries. As discussed below, OLA received numerous congressional inquiries related to the Clinton matters.

4. Ethics Training and Obligations

All Department employees are responsible for complying with Department policies as well as the Standards of Ethical Conduct for Employees of the Executive Branch, codified in 5 C.F.R. Part 2635, which include rules and regulations governing conflicts of interest, use of nonpublic information, and misuse of position. The Department provides training and resources to ensure all employees are aware of their ethical responsibilities and are able to obtain ethics advice as specific questions and situations arise. The ethics program includes annual mandatory ethics training, and a Deputy Designated Agency Ethics Official (DDAEO) in each Department component, among other things. A designated DDAEO works within OLA.

Kadzik acknowledged participating in the Department's annual ethics training. He also acknowledged that OLA employees are subject to the same ethics rules and regulations as all other Departmental employees even though OLA employees are not assigned to investigative or litigation teams.

5. Kadzik's Recusals

As a presidential appointee, Kadzik was required to enter an ethics agreement indicating that he understood and would comply with the conflict of interest laws and regulations and submit the financial disclosure form required by the provisions of the Ethics in Government Act of 1978.²⁴⁸ After he was confirmed,

²⁴⁷ The Office of Public Affairs is the Department's principal point of contact for the news media

²⁴⁸ The Ethics Agreement was signed by Kadzik and Lee Lofthus, the AAG for Administration and the Department's Designated Ethics Official, and sent to the Director of Office of Government Ethics (OGE)

Kadzik also sent a 2014 recusal memorandum to various Department components (including OLA) listing the matters from which he was recused and identifying the OLA DDAEO as the individual who would evaluate his need to recuse himself (serve as his “gatekeeper”) and the individuals who would serve in his capacity as Acting OLA AAG on those matters.²⁴⁹

Kadzik’s 2014 recusal memorandum stated that for matters from which he had recused, all communications should be with the Acting OLA AAG and “in no event should there be any discussions with [Kadzik].” Email shows that after the initial 2014 memorandum, Kadzik emailed the OLA DDAEO when he recused himself from additional matters involving clients of his former law firm, clients of his wife’s business, and personal matters. Kadzik told the OIG that he likely orally informed the OLA DDAEO, his deputies, and chief of staff when he was recused from Clinton-related matters on or about November 2, 2016, as discussed below.

B. Events Preceding the “Heads Up” Email from Kadzik to Podesta (March through May 2015)

This section focuses on the events in the spring of 2015 leading up to the “Heads up” email from Kadzik to Podesta, which included information about the FOIA litigation and a congressional oversight hearing.

1. OLA Clinton-Related Work

On March 2, 2015, the New York Times reported that Clinton exclusively used a personal email account to conduct government business while serving as Secretary of State. The same day, the Department filed its initial response (Answer) in a FOIA litigation seeking Clinton’s email and other documents during her tenure as Secretary of State.²⁵⁰

At the time, both Lynch and Yates were awaiting confirmation for the positions of Attorney General and Deputy Attorney General, respectively.²⁵¹ In order to prepare Lynch and Yates to answer questions related to the former Secretary of State’s exclusive use of a personal email account (and the applicable federal laws and regulations), Kadzik’s principal deputy drafted the briefing paper on the topic on March 18, 2015, and Kadzik added edits on March 21, 2015, after the document was reviewed by personnel in the Office of the Attorney General (OAG), Office of the Deputy Attorney General (ODAG), and the OPA.²⁵² The briefing

²⁴⁹ Emails show that Kadzik coordinated his recusal memorandum with OLA’s DDAEO. The individual who served as OLA’s DDAEO under Kadzik has since retired from the Department and declined our requests for an interview.

²⁵⁰ The FOIA litigation discussed in this report is *Leopold v. U.S. Dep’t of State*, 15-cv-123 (D.D.C.).

²⁵¹ Congress confirmed Attorney General Lynch on April 23, 2015, and Deputy Attorney General Yates on May 13, 2015.

²⁵² Despite the OIG’s repeated attempts, Kadzik’s principal deputy in OLA, who is no longer with the Department, was unable to accommodate the OIG’s request for an interview.

paper contained potential questions and the Department's vetted answers on the topic as approved by personnel in OLA, the Civil Division, and the Office of the Attorney General. Briefing papers are used to help prepare nominees and employees to speak publicly on a Department issue or concern.²⁵³ Emails show that OLA (in conjunction with other components) scheduled "moots" or preparatory sessions with Lynch and Yates to prepare them to answer questions related to the State Department emails, among other issues, in March, April, and May 2015.

OLA also responded to congressional inquiries related to Clinton's use of email during her tenure as Secretary of State. Emails show that Kadzik coordinated with the Office of the Attorney General and the White House with respect to nominee-Lynch's response to an April 2, 2015 congressional inquiry asking whether Lynch would commit to an investigation into Clinton's use of an email server and appoint a special counsel. Kadzik also replied on May 21, 2015, on behalf of the Attorney General, to an April 22, 2015 Congressional inquiry into whether Clinton was lobbied while Secretary of State by an unregistered agent of a foreign power associated with the Clinton Foundation.

In addition to preparing nominees Lynch and Yates, OLA participated in the preparation of the Director of the Office of Information Policy (OIP) and the Chief of the Civil Division to answer questions related to the State Department emails at their respective hearings. The OIP Director testified on a panel addressing open government at a Senate Judiciary Committee hearing on May 6, 2015.²⁵⁴ After the hearing, the OLA employee who accompanied the OIP Director emailed Kadzik that the majority of questions were directed to the panelist from the State Department regarding Clinton's emails.

The Civil Division Chief testified on a panel on general oversight at a House Judiciary Committee hearing on May 19, 2015.²⁵⁵ Although prepared to answer, the Civil Division Chief was not asked questions related to the State Department emails at the hearing. After the hearing, Kadzik sent an email complementing the several DOJ division leaders who testified.

On May 18, the evening prior to the Civil Division Chief's testimony before the House Judiciary Committee, the Department filed a proposed schedule for the production of former Secretary of State Clinton's emails as required by the court in the FOIA litigation. According to the proposed schedule, the State Department emails would be released in January 2016.

²⁵³ At the time, both Lynch and Yates were U.S. Attorneys and therefore they could be provided with Department information as part of their briefing materials.

²⁵⁴ The hearing was titled "Ensuring an Informed Citizenry: Examining the Administration's Efforts to Improve Open Government."

²⁵⁵ The hearing was before the Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law and titled "Ongoing Oversight: Monitoring the Activities of the Justice Department's Civil, Tax and Environment and Natural Resources Divisions and the U.S. Trustee Program."

2. 2016 Clinton Campaign Staffed and Announced

In early 2015, Clinton was preparing to announce her candidacy for President. Prior to her announcement, in February 2015, Podesta left his position in the White House as Counselor to the President to become Chief of Staff for the Clinton campaign. In mid-March 2015, Brian Fallon announced that he would be leaving his position as the Director of OPA at the end of the month to become the Clinton campaign's national spokesperson. Clinton formally announced her candidacy for President on April 12, 2015.

Kadzik told the OIG that neither he nor his wife sought employment with the campaign or discussed the prospect of employment with the campaign with Podesta or other campaign members.

3. Kadzik Assists Son's Job Search

Also in early 2015, Kadzik's son "RS" was looking for employment opportunities and sought a job with the Clinton campaign. Emails show that Kadzik's wife forwarded Kadzik her edited version of RS's resume on March 22, 2015, and that RS sent his resume to Kadzik and his wife for their "final review" on April 1, 2015.

According to RS's resume, he lived in New York City and had worked for Kadzik's wife's public affairs firm since December 2014 (approximately 3 months). Emails indicate that RS was paid for hourly work performed from January to March 2015.

Kadzik told the OIG that he did not support his son financially other than paying for his cell phone. He said that he did not declare his son a dependent on his 2015 tax returns and provided a redacted copy of his 2015 return to the OIG.

On April 23, 2015, shortly after he left the Department and on the day Lynch was confirmed as Attorney General, Fallon sent an email from his Clinton campaign address to Kadzik's Department address that included a single word on the subject line "Congrats!" Kadzik replied:

Thanks! Hope all is well with you, [Fallon's wife], the kids, and the candidate. Let me know if you or someone else needs a great assistant; my 25 year old son is ready for [Hillary Rodham Clinton].

One week later, on April 30, 2015, Fallon replied to Kadzik:

Can you send me his resume? Unfortunately I do not get an assistant but Palmieri is hiring one and will be looking over resumes this weekend.

Within the hour, Kadzik emailed RS asking for his current resume and then forwarded RS's resume to Fallon stating "Here you go. Again, thanks. FYI, [Palmieri] and my wife [LM], went to college together."

Kadzik told the OIG that he did not recall sending Fallon the emails requesting a job for his son. Kadzik also said that his son was neither hired nor offered a job by the Clinton campaign and that he found employment with a digital education company in New York City in August 2015.

4. Kadzik's Son Separately Seeks Employment with the Clinton Campaign

According to an email released by Wikileaks, on May 5, 2015, one week after Kadzik emailed Fallon his son's resume, RS emailed his resume directly to Podesta.²⁵⁶ In his email to Podesta, RS said he was sending Podesta his resume at the suggestion of Kadzik and his wife, LM. Podesta then forwarded RS's email to at least two other campaign workers, one of whom was Palmieri, the campaign's Director of Communications. Podesta's email stated "Do you need any help in [headquarters] or states? [Kadzik] and [LM's] son." Palmieri replied:

Heard from [LM], too. Told her we did not have openings for rest of quarter but can open back up in July.

Kadzik told the OIG that he did not recall when RS applied for a position with the Clinton campaign, whether he and his wife suggested that RS send his resume to Podesta, or whether he spoke to his wife about any discussions with Palmieri on RS's behalf. Kadzik also said that he did not know whether his wife or son ever followed up with Podesta, Fallon, Palmieri, or anyone else associated with the campaign for a job for RS, but that he (Kadzik) did not.

5. Kadzik Gives Podesta a "Heads Up"

On May 19, 2015, Kadzik sent from his personal email account the "Heads up" email to Podesta. There is no timestamp on the email. Kadzik wrote:

²⁵⁶ This email was published by WikiLeaks on November 1, 2016. WikiLeaks obtained emails from Podesta's personal email account and released those emails online in the weeks leading up to the November 2016 election. Some of these emails, including this email from RS to Podesta, were not sent to or from a DOJ email address, and as such we were not able to authenticate them. Where the only source for an email was the WikiLeaks publication, we have identified the email as such

"In January of [2017], our Intelligence Community determined that Russian military intelligence—the GRU—had used WikiLeaks to release data of US victims that the GRU had obtained through cyber operations[.]" Director Pompeo Delivers Remarks at CSIS, April 13, 2017, available at <https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-csis.html> (accessed April 25, 2018). The OIG is cognizant of the fact that the release of emails discussed in this chapter may be part of this cyber operation and our review of this material is in no way intended to validate or justify WikiLeaks' data releases.

We note that the fact that the email became public after Podesta's email was allegedly hacked and then released by WikiLeaks did not excuse or minimize Kadzik's conduct. While Department leadership did not publically acknowledge the authenticity of the illegally hacked emails, Axelrod confronted Kadzik (who then authenticated the email), recognized the appearance of the conflict and its impact on the integrity of the Department, and ensured Kadzik's recusal.

There is a [House Judiciary Committee] oversight hearing today where the head of our Civil Division will testify. Likely to get questions on State Department emails. Another filing in the FOIA case went in last night or will file in this am that indicates it will be awhile (2016) before the State Department posts the [Clinton] emails.²⁵⁷

Kadzik told the OIG that he did not recall, but does not deny sending the "Heads up" email to Podesta and that he "apparently" sent the email to Podesta to identify two important events of the day.

Kadzik told the OIG that no one in the Clinton campaign asked him for information regarding the FOIA litigation and that he did not send the email to try to help his son get a job with the campaign. Kadzik also said he did not send any other "heads up" type emails or otherwise communicate about Department matters to Podesta.²⁵⁸

Kadzik also said he did not speak with Podesta about Clinton after the Department opened an investigation into the Clinton email server in July 2015. Kadzik told the OIG that he distinguished speaking to Podesta about the FOIA litigation and the Clinton email investigation. "Whether [the email server investigation] was criminal or a security review, [], it was now the Department doing something as a Department, rather than the Department defending FOIA litigation, which was all public."

C. Kadzik's Subsequent OLA Work Related to or Referencing Clinton

In the time between spring 2015 and the day in November 2016 when Kadzik was recused from Clinton-related matters, the FOIA litigation continued and the FBI opened an investigation into Clinton's use of a private email server and an investigation related to the Clinton Foundation. These cases generated Clinton-related inquiries from Congress to which Kadzik responded both in testimony and in letters.

OLA continually responded to congressional inquiries and prepared Department employees to respond to congressional inquiries related to Clinton's email server and the Department's investigation. The inquiries corresponded to various aspects of the Department's actions and investigative choices including:

²⁵⁷ Wikileaks published this email on November 2, 2016. We have no independent source for this email. Kadzik told us he did not recall it, but did not allege that it was inauthentic or inaccurate. Moreover, Kadzik acknowledged its authenticity to Axelrod when the "Heads up" email was released.

²⁵⁸ Kadzik's "Heads Up" email was not the only email of this type sent to the Clinton campaign. According to emails later released by WikiLeaks, on May 18, 2015, the same evening the Department filed its proposed schedule for releasing the emails, an unidentified Department employee emailed the FOIA filing to Fallon at Fallon's personal email address and wrote "This was filed tonight." Fallon forwarded the email to campaign members including Podesta. As noted above, Fallon left the Department at the end of March 2015 to join the campaign. Kadzik told the OIG that he had no participation in, or knowledge of, the May 18 email to Fallon with the FOIA filing.

requests to appoint a special counsel; decisions to grant immunity; potential perjury charges; the Lynch/Bill Clinton tarmac conversation; Comey's July 5, 2016 and Lynch's July 6, 2016 announcements regarding the email server investigation and declination; congressional access to FBI investigative documents; additional FOIA inquiries; and Comey's October 28 and November 6, 2016 letters to Congress regarding the FBI review of additional Clinton related emails.²⁵⁹ OLA also coordinated its hearing preparation and congressional responses with the appropriate components which, with respect to the Clinton-related matters, included, depending on the specific question, the OAG, ODAG, OPA, the Civil Division, the National Security Division (NSD), and the FBI. Thus while Kadzik had no role in the conduct of the underlying Clinton litigation and investigation, he reported on and defended the Department's actions with respect to its handling of a wide variety of Clinton-related matters.

In addition, Kadzik, along with his FBI counterpart (the then Acting Assistant Director of the FBI's Office of Congressional Affairs), and representatives from the Department of State and Office of the Director of National Intelligence were called to testify before Congress on September 12, 2016, to address congressional access to and redactions of FBI investigative material from the email server investigation.

The last letters that Kadzik signed before the 2016 election were sent on October 31, 2016, to several senators who had written to the Attorney General and FBI Director after receiving the FBI Director's October 28, 2016 letter announcing the review of additional Clinton related emails. Kadzik wrote, in part, "We assure you that the Department will continue to work closely with the FBI and together dedicate all necessary resources and take appropriate steps as expeditiously as possible."

Kadzik told the OIG that he had no role in the email server investigation and that to his memory, in response to a congressional inquiry, met with Department attorneys on the investigative team on only one occasion to discuss the terms of the immunity agreements.

With respect to letters from Congress, Kadzik approved standardized language which OLA used to respond with consistency. For example, when asked about the Clinton email investigation, OLA consistently responded: "Any investigation related to this referral will be conducted by law enforcement professionals and career attorneys in accordance with established Department policies and procedures which are designed to ensure the integrity of all ongoing investigations" and when asked about a special counsel OLA consistently responded by acknowledging the authority and stating that the "authority is rarely exercised."

Axelrod also told the OIG that Kadzik had "no role" in the email server investigation. Axelrod said that the investigative information pertaining to that investigation was closely held, not discussed in senior staff meetings, and not

²⁵⁹ We note that upon receiving a September 2016 congressional inquiry requesting the appointment of special counsel, Kadzik specifically requested the latest Department filing in the FOIA litigation.

discussed with Kadzik. However, Axelrod stated that Kadzik worked “on things related to [the Clinton email investigation].” Axelrod also said that Kadzik likely had more access to information regarding the FOIA litigation for the Clinton emails since that was a civil matter in litigation and discussed in senior staff meetings.

D. Response to WikiLeaks Release

The WikiLeaks release of Podesta/Kadzik emails on November 1 and 2, 2016, generated inquiries about Kadzik’s conduct from several sources.

Axelrod told us that when WikiLeaks released the “Heads up” email, he contacted Kadzik, who authenticated the email and, after searching his emails, assured Axelrod that there were no other similar emails (referencing Departmental matters) that could be released by WikiLeaks.

The Acting Director of OPA emailed Kadzik on November 2 stating that he wanted to speak with Kadzik. The same day the OPA Acting Director informed the press that Kadzik’s “Heads up” email contained “public information” that Kadzik sent “in his personal capacity” and was not sent “during work hours.” The OPA Acting Director told us that he made the statements attributed to him in the press and said that while he did not specifically recall the conversation with Kadzik, he did not dispute that the information came from Kadzik.²⁶⁰

The then Director of the DOJ Ethics Department told us that she contacted the OLA DDAEO about the “Heads up” email and asked whether it contained non-public Departmental information. She said the OLA DDAEO assured her that the information in the email was public when Kadzik sent the email. The then Ethics Director nevertheless expressed concern to us that a Department leader had sent an email to a third party without knowing whether the Department-related information in the email had been made public.

Also following the disclosure, the Department’s Office of Professional Responsibility (OPR) initiated an inquiry into whether Kadzik had disclosed privileged or confidential Department information to the Clinton campaign. OPR submitted questions for Kadzik’s written response and, in December 2016, closed the inquiry after determining that the Kadzik’s “Heads up” email contained only public information and personal opinion. Among other things, OPR found that on May 18, 2015, the Department filed with the court the document containing the proposed schedule for the release of the Clinton emails; the media reported the schedule the same evening; and Kadzik sent his “Heads up” email to Podesta on May 19, 2015, the following day. OPR concluded that Kadzik’s email did not include privileged or confidential information. OPR did not consider Kadzik’s conduct in terms of other ethical standards including recusal.

²⁶⁰ The Acting OPA Director said that he spoke to the reporter off the record and should not have been quoted because the Department did not want to acknowledge illegally obtained emails.

E. Kadzik Is Recused

Axelrod told us that after Wikileaks posted the "Heads up" email, he concluded that Kadzik should be recused from all Clinton-related matters. He stated the email created an appearance problem because high level DOJ employees should not be giving a "heads up" to a campaign and that Kadzik had admitted he did not know whether the schedule in the FOIA litigation had been publicly filed at the time he sent Podesta the email. Axelrod stated that the recusal was not because of Kadzik's personal relationship with Podesta but because Kadzik sent the "Heads up" email. Axelrod said that "it was a feeling that, right, DOJ folks, especially like senate confirmed senior leaders, but really anyone in DOJ shouldn't be, you know, it wasn't good practice to be emailing sort of people involved in sort of political campaigns to, right. It's not our job to give campaigns a head's up. It's our job to do our work free from politics."

Axelrod said that because Kadzik was a presidential appointee, Axelrod probably discussed the matter with the Deputy Attorney General and possibly the Attorney General and Associate Deputy Attorney General. Axelrod said that in those discussions, "the decision was made was made [that Kadzik] should...be screened off from...things Clinton related."

Axelrod said that he told Kadzik that he needed to be recused on all Clinton-related matters and that Kadzik should recuse himself. Axelrod said that Kadzik "understood" but was not "wild about" the need to recuse himself. He said that Kadzik was not on the email server investigative team or the FOIA litigation team but it was an appearance issue and someone else needed to sign the Department's letters to Congress.

Associate Deputy Attorney General (ADAG) Scott Schools told the OIG that after the "Heads up" email was posted, Axelrod called him and they agreed that Kadzik should be recused from Clinton-related matters because of the appearance problem. In a subsequent telephone call, Axelrod informed Schools that Kadzik did not agree with, but was willing to abide by, the decision to recuse himself from the Clinton-related matters. Axelrod also asked if Kadzik's recusal needed to be documented. Schools said that there was no requirement to document the recusal and told the OIG that while the decision to recuse was not difficult, the rationale was nuanced and might be over scrutinized if the document was subject to a FOIA request.

According to Schools, Kadzik's principal deputy in OLA later called him to ask whether OLA should be informed of Kadzik's recusal. Schools told her that she could inform OLA personnel about Kadzik's recusal but told the OIG that he did not know if she had.²⁶¹

Kadzik told us Axelrod called him "on or about November 2, 2016" and said that "in light of the controversy, I should recuse myself from anything further

²⁶¹ As noted above, despite the OIG's repeated attempts, Kadzik's principal deputy, who is no longer with the Department, was unable to accommodate the OIG's request for an interview.

concerning the Clinton emails.” Kadzik said that since he “had nothing to do with the Hillary Clinton email investigation or [FOIA] litigation,” the recusal only meant he would not review and sign anymore letters to Congress about the matters.

Kadzik said that he would have informed his OLA deputies, OLA DDAEO, and chief of staff of his recused status but did not recall the conversation or who stood in his place as Acting OLA AAG for those matters. He said it was likely that it was his principal deputy, as she was “the oversight person.”

Axelrod said that Kadzik’s principal deputy took over his responsibilities on Clinton-related matters – that she took Kadzik’s place in the discussions related to the Clinton email investigation during the week before the election and then generally handled the Clinton related matters through the rest of Kadzik’s term as OLA AAG, which ended on January 19, 2017.

Kadzik told the OIG that he could not recall how Axelrod defined the scope of his recusal but that, as a practical matter, Kadzik understood that he would no longer sign letters to Congress on behalf of the Department that were related to the Clinton emails and that he was not aware that any letters came in after November 2, 2016. Kadzik said that he “wasn’t participating in anything with respect to Hillary Clinton and the emails other than signing letters to Congress.” Kadzik also said that despite his recusal, he never had to leave a meeting because the Clinton email server investigation was never discussed. However, Axelrod and the OPA Acting Director told us that Kadzik was replaced by his principal deputy for a time at senior staff meetings after WikiLeaks released the “Heads up” email. Axelrod said that the principal deputy replaced Kadzik because the discussions involved Clinton-related matters.

Though Kadzik said he told his deputies and the OLA DDAEO that he was recused, emails show that Kadzik subsequently sent and received emails about Clinton-related matters.

Kadzik forwarded various congressional inquiries about Clinton-related matters to ODAG, OAG, OAAG, OLA, and FBI personnel that had also been sent to his principal deputy. When we asked why he did not leave the matter for his principal deputy to handle, Kadzik said he forwarded the emails to the persons who he thought could respond to the inquiries and that action was no different than reminding his principal deputy that he was recused.

We also asked Kadzik about two Clinton-related emails forwarded to him by his principal deputy. Kadzik’s principal deputy sent one email on November 3, 2016, with the notation “FYSA” (for your situational awareness) and another on November 6, 2016, with the notation “I’ve got it. (Calls throughout today. All the right people looped.)” Kadzik said he did not know why his principal deputy sent him emails after he was recused, that he had not asked her to keep him informed of the matter despite his recused status, and that he did not believe the “looped in” email “[broke] the recusal.” As noted previously, we were unable to ask the principal deputy about these emails because she did not make herself available for an interview.

There is evidence that on two other occasions, Kadzik may have spoken with his principal deputy and DDAEO directly about Clinton-related matters. On November 4, 2016, Kadzik's principal deputy forwarded him an email from a Senate Judiciary staffer asking whether there would soon be an official update on the Weiner laptop email review. Kadzik replied, "Call me later this am." Kadzik told the OIG that he did not recall receiving the email, responding to his principal deputy, or whether he ultimately spoke with her. On November 28, 2018, when the OLA DDAEO asked Kadzik and his principal deputy about the Mills immunity agreements with respect to a FOIA request, Kadzik replied "Will circle back with both of you tomorrow." Kadzik said he asked that they circle back to "find out what she was asking about."

In contrast, emails also show that with respect to other (non-Clinton related matters) on which Kadzik was recused, he reminded or informed the persons on the email of his recused status.

V. Analysis

We analyze Kadzik's actions with respect to three regulations from the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. Part 2635: Personal and business relationships, 5 C.F.R. § 2635.502 (Section 502); Use of non-public information, 5 C.F.R. § 2635.703 (Section 703); and Use of public office for private gain, 5 C.F.R. § 2635.702 (Section 702).

A. Whether Kadzik Should Have Been Recused Prior to November 2 from Clinton-Related Matters under Section 502 of the Standards of Ethical Conduct

Section 502 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.502 establishes the analytical framework for determining when a federal employee has an appearance of a conflict of interest that merits recusal. As discussed above, Section 502 requires an employee to consider the appearance of his participation in a particular matter involving specific parties (1) that is likely to have a direct and predictable effect on the financial interest of a household member, or (2) if the employee has a covered relationship with someone who is a party or represents a party to the matter. Section 502 also includes catchall provision which may apply to "other circumstances" that would lead a reasonable person to question an employee's impartiality in a matter.

1. Whether There Was a Particular Matter Involving Specific Parties

The threshold issue for a Section 502(a) analysis is whether there is a "particular matter involving specific parties" before the Department. A "particular matter involving specific parties" denotes a specific proceeding which affects the legal rights of the parties such as an investigation or litigation. 5 C.F.R. § 2640.102(l).

During Kadzik's tenure as OLA AAG, the Department defended the Department of State in a FOIA litigation filed in January 2015 seeking emails from Clinton's personal server during her tenure as Secretary of State, among other things. The Department also initiated the Clinton email investigation in July 2015. Both the FOIA litigation and the email server investigation are "particular matters involving specific parties," as each is a discrete litigation or investigation. Clinton and others were specific subjects of the Clinton email investigation, and the FOIA litigation involved particular plaintiffs and defendants.²⁶² Therefore, we include both the FOIA litigation and the email server investigation in our analysis (and for the ease of the reader refer to both as "Clinton-related matters.")

2. Whether Kadzik Should Have Recused Because of his Son's Efforts to Obtain Employment with the Clinton Campaign

We next considered whether Kadzik was required to recuse from the Clinton-related matters because of Kadzik and his son RS's efforts to obtain employment for his son with the Clinton campaign.

Under the "financial interests" provisions of Section 502(a), recusal would be required if the Clinton-related matters were likely to have a direct and predictable effect on the financial interest of a member of Kadzik's household. A direct and predictable effect requires a causal link between a decision on the matter and the effect on the specified financial interest and cannot be attenuated or dependent on the occurrence of speculative events. 5 C.F.R. §§ 2635.502(b)(2), 2635.402(b)(1).

Kadzik told the OIG that his son lived in New York City and supported himself financially. Kadzik also provided a redacted copy of his 2015 federal tax returns on which he did not declare his son as a dependent.

Even if the Clinton-related matters could affect his son's financial interests, RS was not a member of Kadzik's household. Therefore, we found that RS's efforts to obtain employment with the Clinton campaign did not require Kadzik to recuse himself from Clinton-related matters under the financial interest provision of Section 502(a).

Under the "covered relationship" provision of Section 502(a), recusal would be required if Kadzik had a covered relationship with a party or with someone who represents a party to a matter. Section 502 defines "covered relationship" to include a "person for whom the employee's dependent child is, to the employee's knowledge, seeking to serve as a contractor or employee." This is the only category of "covered relationship" potentially applicable with respect to Kadzik's

²⁶² Although Clinton was not a named party to the FOIA litigation, it is possible that she would be considered a "party" within the meaning of Section 502 because the litigation centered around her use of a private server and sought emails stored on it. OGE does not take a narrow or strictly legal view of what it means to be a party under Section 502. OGE letter 01 x 8. As detailed below, we were not required to reach this issue. The FOIA litigation indisputably had specific parties, even if Clinton was not one of them.

son.²⁶³ If RS was a dependent child, Kadzik would have had a covered relationship with a party to the particular matter since RS was seeking employment with the Clinton campaign and Clinton was clearly a party to the Clinton email investigation and may have been a party to the FOIA litigation. 5 C.F.R. § 2635.502(b)(1)(iii).

We did not find that RS was a "dependent child." In April 2015, Kadzik's son was 24 years old.²⁶⁴ Kadzik said that his son was supporting himself financially while living in New York City and that Kadzik only covered the cost of his son's cell phone. Kadzik also told the OIG that he did not declare his son as a dependent on his 2015 tax returns and provided a redacted copy of his 2015 return to the OIG confirming this fact. Thus we found no evidence of a covered relationship based on Kadzik and his non-dependent son's efforts to obtain employment for his son with the Clinton campaign.²⁶⁵

The "other circumstances" provision in Section 502 applies when a federal employee is concerned that "other circumstances" would cause a reasonable person to question his impartiality. As with all Section 502 provisions, the conflict may be self-identified by the employee or directed by management. OGE Memorandum 04 x 5.

Kadzik did not self-identify a potential appearance of a conflict under the "other circumstances" provision based on his, his wife's, and his son's efforts to get his son a job with the Clinton campaign. In April and May 2015, Kadzik, his wife, and son reached out to personal acquaintances in the Clinton campaign in an attempt to obtain a job for his son RS with the campaign. At the same time, Kadzik was participating in senior staff meetings where Clinton-related matters were discussed and signing letters to Congress regarding Clinton-related matters on behalf of the Department.

We believe that these circumstances would cause a reasonable person to question Kadzik's impartiality in Clinton-related matters during the time RS was seeking employment with the Clinton campaign. We therefore concluded that under the "other circumstances" provision of Section 502(a)(2), Kadzik should have either recused himself from Clinton-related matters beginning in April 2015, when he initiated employment solicitations to the Clinton campaign, until RS was no longer seeking employment with the campaign, or disclosed these circumstances to the appropriate Department ethics officer so that the Department could have considered whether Kadzik should be recused.

According to OGE, self-identification under the "other circumstances" provision is permissive, but not required, and therefore the failure to recuse under

²⁶³ Although RS was a relative of Kadzik's with whom he who presumably had a "close personal relationship," this fact did not create a "covered relationship" because RS was not a party to the Clinton-related investigations, nor did he represent a party.

²⁶⁴ Kadzik wrote in the email to Fallon that his son was 25 years old, however, his son would not turn 25 until later in the year.

²⁶⁵ Because RS was not a dependent child, and no other "covered relationship" appears to be in issue, we were not required to determine whether Clinton was a "party" to the FOIA litigation.

the provision is not an ethics violation. "Employees are encouraged to use the process provided by [the "other circumstances" provision], [but] the 'election not to use that process cannot appropriately be considered to be an ethical lapse.'" OGE letter 01 x 08 citing OGE letter 94 x 10(2); *see also* OGE 97 x 8, OGE 95 x 5; OGE 94 x 10. Instead, according to the former Departmental Ethics Director, the failure to self-identify under the "other circumstances" is evidence of an employee's judgment and may reflect on whether the employee has the judgment necessary for a particular Department position.

Although Kadzik did not commit an ethics violation by failing to recuse himself under Section 502(a)(2), we found that his failure to recognize the appearance of a conflict by participating in Clinton-related matters when he, his wife, and his son were trying to get his son a job with the Clinton campaign demonstrated poor judgment.

3. Whether Kadzik Should Have Recused from Clinton-Related Matters in May 2015 by Reason of Sending the "Heads Up" Email to Podesta

According to Kadzik, Axelrod told him he should recuse himself from Clinton-related matters "on or about" November 2, 2016, after learning that Kadzik had sent the "Heads up" email to Podesta on May 19, 2015. Axelrod told us that the "Heads up" email to Podesta raised appearance concerns because Kadzik communicated with a partisan campaign about Department matters and provided information without knowing whether it had yet been made public.²⁶⁶

As noted, Kadzik sent the "Heads up" email in May 2015. He continued to participate in senior staff meetings, prepare Department employees for hearings, and respond to inquiries about Clinton-related matters between May 19 and November 2, when Axelrod instructed him to recuse himself. We therefore analyzed whether Kadzik should have recused himself under Section 502 in May 2015 rather than waiting for Axelrod to do it a year and a half later.

We determined that the "Heads up" email did not require Kadzik to recuse under the personal or financial interests provision of Section 502(a). Neither sending the email nor any other aspect of Kadzik's relationship with Podesta or the

²⁶⁶ We also note that long standing Department policies addressing employee participation in political activity place greater restrictions on the political activities of presidential appointees than does the Hatch Act. The Department's stated purpose for further restricting the political activities of political appointees is to ensure that "there is not an appearance that politics plays any part in the Department's day to day operations." Among other things, Department policy prohibited Kadzik from participating in political activity "in concert" with a political party, partisan group, or candidate for partisan political office, even when off duty. We believe that it is a close question whether Kadzik violated Department policy by acting "in concert" with the campaign when he sent Podesta the "Heads up" email. Even if Kadzik did not violate the letter of the Department's policy, he certainly intended to provide assistance, however small, directly to Podesta, the campaign Chairman, which was inconsistent with the stated intent of the policy. *See* James M. Cole, Deputy Attorney General, U.S. Department of Justice, memorandum for All Department of Justice Non-Career Employees, July 14, 2014, <https://www.justice.gov/sites/default/files/jmd/legacy/2014/03/24/pol-activ-dag-noncareer-employees.pdf> (accessed June 6, 2018).

Clinton campaign gave Kadzik or a member of his household a financial interest that would be affected by the outcome of the Clinton-related investigations. We are not aware of any evidence that Kadzik or any member of his household had any business, contractual, or financial relationship of any kind with Podesta, Clinton, or the Clinton campaign, or any other financial interest that would be affected by any Clinton-related matters pending in the Department of Justice.

Nor did the facts create a “covered relationship” within the definition in Section 502(b)(1). For example, Kadzik did not serve as, or seek to serve as, an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee of Podesta, Clinton, or the Clinton campaign. See 5 C.F.R. § 2635.502(b)(1).

We therefore turned to the question of whether Kadzik’s “Heads up” email to the Clinton campaign was an “other circumstance” that would raise a question about Kadzik’s impartiality with respect to Clinton-related matters within the meaning of Section 502(a)(2). As noted above, according to OGE, self-identification under the “other circumstances” provision is permissive, but not required. Therefore, the failure to recuse oneself under the provision may be bad judgment, but not an ethics violation.

The “Heads up” email reflected an effort by Kadzik to be helpful to the Clinton campaign. Kadzik sent government information (the proposed schedule for the release of the Clinton emails in the FOIA litigation) to a partisan campaign without knowing whether it had been made public. Kadzik’s May 2015 “Heads up” email explicitly stated that he did not know whether the Department had yet filed the proposed schedule in court. Similarly, according to Axelrod, Kadzik admitted in November 2016 that he did not know whether the information had been released publicly when he sent the email to Podesta. Because Kadzik admittedly did not know that the information had been released publicly when he sent the “Heads up” email to Podesta, Department leadership decided that Kadzik should be recused from Clinton-related matters. As discussed below, Kadzik actually used information he acquired in his official position with the intention to assist the campaign in a manner that would have been a misuse of office but for a fact that Kadzik did not definitely know — that the proposed schedule had already been made public.²⁶⁷

²⁶⁷ After reviewing a draft of this chapter, Kadzik’s attorney submitted a letter to the OIG which, among other things, stated that “Mr. Kadzik learned the information he shared with Mr. Podesta from the Politico article.” However, Kadzik’s attorney provided no evidentiary basis for the statement, and it conflicts with the content of the May 19, 2015 “Heads up” email and is inconsistent with Kadzik’s previous statements to the Department. The Politico article (that Kadzik provided to OPR in response to the inquiry that arose because of his “Heads up” email) clearly states that the proposed schedule was “filed in U.S. District Court in Washington” on “Monday night.” Yet Kadzik wrote in his Tuesday morning email that he did not know if the document had yet been filed and admitted the same to Axelrod in November 2016. In addition, in his December 2016 written response to OPR’s inquiry, Kadzik wrote that he “did not recall” the source from which he learned the information in his email and cited the Politico article only to establish that the information had been made public when he sent it to Podesta.

Kadzik's willingness to do that raised a reasonable question about whether he would be willing or inclined to act partially toward the Clinton campaign in connection with his official duties, which sometimes touched on Clinton-related matters. At minimum, this created an appearance problem with respect to Kadzik's ability to act impartially that justified Axelrod in recusing him from further participation in Clinton-related matters.

We believe that Kadzik used poor judgment not only in sending the email to a partisan campaign without knowing whether its content was public, but also in failing to recognize how his action would impact the Department and in failing thereafter to recuse himself from Clinton-related matters pursuant to Section 502(a)(2).

B. Whether Kadzik Violated the Terms of his Recusal after November 2, 2016

In this section, we discuss whether Kadzik violated the terms of his recusal after Axelrod instructed him to recuse from Clinton-related matters on or about November 2, 2016.

Shortly after his confirmation, Kadzik signed an ethics agreement with JMD (for OGE's approval) which identified the scope of his recusals and sent a 2014 memorandum to various leadership components and OLA identifying the specific matters from which he would be recused. Kadzik's memorandum stated that no one should communicate with him about the matters from which he was recused. Furthermore, Kadzik demonstrated his knowledge that a recusal included communications when he received emails related to other recused matters and replied notifying the sender that he was recused.

Communicating about a matter is considered participation and employees should not communicate with others about matters from which they have been recused.²⁶⁸ Occasionally, a recused employee may receive communications about the matter in an email, telephone call, or meeting. On those occasions, recused employees are trained to clearly identify their recusal to the sender of the email, the caller, or meeting attendees (as the employee leaves the meeting room or the discussion is tabled). While an inadvertent communication would not be considered "participation" in violation of the recusal, repeated and unaddressed communications may evidence a violation of the recusal or a lack of respect for both the process and the Department that would represent poor judgment.

We found that Kadzik forwarded several emails communicating information related to Clinton-related matters within the Department after his recusal and indicated his intent to speak with staff about those matters. In each of those

²⁶⁸ We recognize that Kadzik did not have complete visibility into all Department matters (particularly the closely-held Clinton email investigation). However, recusals not only serve to prevent an employee from affecting a particular investigation or litigation, but also serve to prevent an employee from receiving and misusing Department information. Once an employee is recused from a matter, the employee must fully respect the recusal and cease all participation or seek a determination by the agency designee under section 502(d).

instances his principal deputy also was copied on the incoming email and aware of Kadzik's recusal. In none of those instances did Kadzik either respond to the incoming email informing the sender that he was recused from Clinton-related matters or advise the recipients of his forwarded emails that he was recused from Clinton-related matters. By contrast, when Kadzik received emails related to other matters from which he was recused, he appropriately responded to the senders alerting them to or reminding them of his recusal.

We therefore found that Kadzik understood his responsibilities when contacted about matters from which he was recused, and that he exercised poor judgment when he failed to fully respect his post-November 2 recusal. Kadzik argued that his post-recusal participation was not substantial. However, even if this was a mitigating factor, we could not substantiate his assertion because Kadzik told us he was unable to recall details of his activities during this time. In addition, as noted previously, his principal deputy and his ethics advisor (OLA DDAEO), neither of whom still work for the Department, did not make themselves available to speak with us.

Ultimately, once Department leadership made the decision that Kadzik should be recused from Clinton-related matters, Kadzik was required to cease all participation.

C. Whether Kadzik Improperly Used Non-Public information in Violation of the Standards of Ethical Conduct

We next consider whether Kadzik violated Section 703 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.703, which states: "An employee shall not allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure."

In December 2016, OPR conducted an inquiry to consider whether Kadzik disclosed privileged or confidential Department information to the Clinton campaign and determined that Kadzik's "Heads up" email contained public information and personal opinion. Among other things, OPR found that on May 18, 2015, the Department filed with the court the document containing the proposed schedule for the release of the Clinton emails; the media reported the schedule the same evening; and Kadzik sent his "Heads up" email to Podesta on May 19, 2015, the following day. OPR concluded that Kadzik's email did not include privileged or confidential information.

Although OPR did not specifically address Kadzik's compliance with Section 703, the fact that the information in Kadzik's "Heads up" email did not include nonpublic information also requires the finding that Kadzik did not violate Section 703.

D. Whether Kadzik Misused His Public Office for Private Gain in Violation of the Standards of Ethical Conduct

We next consider whether Kadzik violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which states: "An employee shall not use his public office for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity ". According to commentary to Section 702, "[i]ssues relating to an individual employee's use of public office for private gain tend to arise when the employee's actions benefit those with whom the employee has a relationship outside the office ". 57 Fed. Reg. 35030 (Aug. 7, 1992).

We found that Kadzik learned of the proposed schedule for the release of the Clinton server emails in his capacity as a Department employee. We also found that Kadzik sent the information to a longtime personal friend and professional colleague, Podesta, with whom Kadzik had a relationship outside the office. Further, we found that Kadzik believed that the information would be of benefit to the Clinton campaign.²⁶⁹ However, as discussed above, the information included in the "Heads up" email was public at the time that Kadzik sent it. Therefore we did not find that these facts amounted to a violation of Section 702.

²⁶⁹ In his email, Kadzik also said that the Civil Division Chief may be asked questions about the Clinton emails in the congressional hearing scheduled that day. However, Kadzik's opinion was not based on nonpublic information, as notice of the hearing had been posted on the committee's website and congressional interest in the Clinton emails was public information. We note that the Civil Division Chief was not asked questions about the Clinton email server during the hearing.

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CHAPTER FIFTEEN: FBI RECORDS VAULT TWITTER ANNOUNCEMENTS

I. Introduction

On November 1, 2016, in response to multiple Freedom of Information Act (FOIA) requests, the FBI Records Management Division's Records/Information Dissemination Section (RIDS) posted records to the FBI Records Vault, a page on the FBI's public website, concerning the "William J. Clinton Foundation" (Clinton Foundation). The bulk of those records concerned the 2001 investigation into the pardon of Marc Rich. The @FBIRecordsVault Twitter account announced this posting later that same day.²⁷⁰ This Twitter announcement or "tweet" followed a series of 20 tweets released from the @FBIRecordsVault account on October 30, 2016, after a year-long dormant period during which no tweets announcing FOIA releases on the FBI Records Vault had been issued. One of the 20 tweets on October 30, 2016, concerned a release of records for Fred C. Trump, the father of then candidate Donald Trump.

Several newspaper reports suggested that the timing of the Clinton Foundation tweet—coming four days after FBI Director James Comey had announced the re-opening of the Hillary Clinton email investigation—was "further evidence of FBI meddling" in the 2016 election.

The FBI Inspection Division (INSD) conducted a review of the circumstances leading to the Clinton Foundation tweet that focused particularly on the causes of the one-year dormant period and the circumstances surrounding the release of 20 tweets on October 30, 2016, which as noted above included the Fred C. Trump information. INSD's investigation found that: (1) the materials responsive to the FOIA requests were "properly posted" to the FBI Records Vault and (2) a technical malfunction that began in October 2015 and went unnoticed caused the @FBIRecordsVault Twitter account to cease posting automatic Twitter announcements about records posting to the Vault. The malfunction was corrected with a software update on October 30, 2016. After this correction, INSD found that the tweet function operated properly—automatically posting overdue tweets on the @FBIRecordsVault Twitter feed for FOIA releases posted during the dormant period on the FOIA Vault page—and then functioning as intended from that point forward, to include the November 1, 2016 tweet concerning the Clinton Foundation. Therefore, INSD concluded that the tweet concerning the Clinton Foundation was not affected by the software malfunction that prevented the issuance of other tweets for the one-year period.

The OIG conducted this follow-up review focused in particular on the circumstances surrounding the November 1, 2016 FOIA posting on the FBI Records

²⁷⁰ The posting date for the records on the Vault is October 31, 2016, but the RIDS Section Chief and a RIDS analyst told us that October 31 reflects the date when the records were uploaded into the system to be reviewed by RIDS and OPA personnel, but not the date the records were published for the public.

Vault and the subsequent tweet announcing the posting. The purpose of this review was to determine whether there was any evidence that improper political considerations were a factor in the timing of these events. As part of this investigation, the OIG reviewed FOIA requests received by the FBI on the Clinton Foundation prior to November 1, 2016, documents associated with the FBI's processing of these requests, and email records for individuals involved in processing and releasing the requests. The OIG interviewed eight individuals from RIDS and the FBI's Office of Public Affairs (OPA).

Based on our investigation, we found no evidence to indicate that improper political considerations influenced the FBI's processing and release of the Clinton Foundation documents or the use of an FBI Twitter account to publicize the release. The evidence indicates that the FOIA requests related to the Clinton Foundation were processed according to RIDS' internal procedures like other similarly-sized requests. Likewise, we found no evidence to indicate that the FOIA response was either expedited or delayed in order to impact the 2016 Presidential election. Below are the factual findings and conclusions reached by the OIG's investigation.

II. Background

This section discusses the laws, regulations, guidance, and procedures governing the FBI's activities in receiving, researching, processing, and responding to FOIA requests and, in appropriate cases, publicly releasing documents produced in response to FOIA requests by posting such documents on the FBI Records Vault.

A. Freedom of Information Act, 5 U.S.C. § 552

The *Freedom of Information Act*, 5 U.S.C. § 552 (FOIA), requires federal agencies to make agency records available to the public and sets forth the specific requirements to do so along with guidance on records and information exempt from public release. On June 30, 2016, the *FOIA Improvement Act of 2016* (the FOIA Improvement Act), Public Law No. 114-185, 130 Stat. 538, updated 5 U.S.C. § 552 with a notable change pertinent to this case regarding when an agency must release previously-requested records to the public. Before the FOIA Improvement Act, FOIA permitted agencies to proactively release records, "which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."²⁷¹ This wording, often referred to as the "frequently requested record" provision of FOIA, allowed agencies latitude to decide when to make these records available and for how long.²⁷² However, the FOIA Improvement Act now also requires agencies to publicly release records once they have received three or more requests for the same or substantially similar records. This is commonly referred to as the "rule of

²⁷¹ 5 U.S.C. § 552(a)(2)(D) (2009).

²⁷² 5 U.S.C. § 552(a)(2)(D) (2009).

three.²⁷³ An agency may also pre-emptively release the records if it believes they will receive additional requests for the records.²⁷⁴

Under FOIA, agencies are authorized to withhold information from public release that is specifically exempt from release under 5 U.S.C. § 552(b), traditionally referred to as FOIA exemptions. Exemptions cover material such as classified information, trade secrets, personnel and medical files, and law enforcement information.²⁷⁵ Under this provision however, the agency is tasked with redacting the information that cannot be disclosed, but releasing as much of the requested information as possible.²⁷⁶

In sensitive law enforcement matters, FOIA allows a law enforcement agency to “treat the records as not subject to the requirements of [FOIA].”²⁷⁷ This is known as a FOIA exclusion, which “provide[s] protection in three limited sets of circumstances where publicly acknowledging even the existence of the records could cause harm to law enforcement or national security interests.”²⁷⁸ The first exclusion protects records in an ongoing criminal investigation, the release of which could “reasonably be expected to interfere with enforcement proceedings.”²⁷⁹ The second exclusion protects from the acknowledgment of confidential informant records.²⁸⁰ The last exclusion protects the FBI’s classified foreign intelligence, counterintelligence, and international terrorism records.²⁸¹ The Department’s Office of Information Policy (OIP) requires Department components—including the FBI—to obtain OIP’s approval to use a FOIA exclusion.²⁸²

FOIA allows agencies to expedite the processing of records in cases where the requester can “demonstrate[] a compelling need” or in other situations as defined by each agency.²⁸³ A “compelling need” is defined in FOIA as a situation where not receiving the requested records quickly “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or in situations where individuals who disseminate information demonstrate an “urgency

²⁷³ 5 U.S.C. § 552(a)(2)(D)(ii) (2016)

²⁷⁴ 5 U.S.C. § 552(a)(2)(D)(ii).

²⁷⁵ 5 U.S.C. § 552(b).

²⁷⁶ 5 U.S.C. § 552(b).

²⁷⁷ 5 U.S.C. § 552(c)(1).

²⁷⁸ Department of Justice, Office of Information Policy, Implementing FOIA’s Statutory Exclusion Provisions, Aug. 15, 2014, <https://www.justice.gov/oip/blog/foia-guidance-6>.

²⁷⁹ 5 U.S.C. § 552(c)(1)(B)(ii).

²⁸⁰ 5 U.S.C. § 552(c)(2).

²⁸¹ 5 U.S.C. § 552(c)(3).

²⁸² 36 C.F.R. § 16.6(g)(1) (2017).

²⁸³ 5 U.S.C. § 552(a)(6)(E)(i).

to inform the public concerning actual or alleged Federal Government activity.”²⁸⁴ If the agency grants the request, it must process the FOIA request “as soon as practicable.”²⁸⁵

B. The FBI FOIA Process

RIDS oversees the FBI’s FOIA program. This section describes the RIDS FOIA process, their coordination with other FBI entities on “high visibility” and “rule of three” requests, and the posting of FOIA requests on the FOIA Vault.

1. Records/Information Dissemination Section’s FOIA Process

FBI Policy Directive 0481D, Freedom of Information Act and Privacy Act Requests, February 8, 2012, establishes the FBI’s FOIA and Privacy Act programs and provides top-level guidance. It sets forth that the FBI’s policy is to respond to FOIA and Privacy Act requests within 20 business days (the requirement set forth in the FOIA) and establishes an over-arching list of responsibilities for various offices within the FBI to assist RIDS to meet that goal. Policy Directive 0481D provides no additional procedural guidance beyond this top-level listing of roles and responsibilities. With the exception of Policy Directive 0481D, RIDS does not have any formal rules or manuals that outline the FBI’s FOIA process.²⁸⁶

FOIA requests received by the FBI are initially reviewed during a weekly meeting by senior RIDS personnel, including the section chief, assistant section chief, and unit chiefs. During that meeting, “high visibility” and complex requests are identified, as well as those that may qualify for expedited treatment (if requested). RIDS personnel told us that high visibility requests are generally those dealing with current political issues; anything dealing with a significant issue or person of interest to the public and the FBI; or items that have potential to impact the FBI. According to RIDS personnel, the RIDS Section Chief and Assistant Section Chief normally determine which requests will be designated high visibility requests. As detailed below, responses to high visibility requests receive a higher level of supervisory review at the end of the process, and are also made available to the public on the FBI Records Vault.

Following intake, a FOIA request is then submitted to the Work Process Unit (WPU) in RIDS for initial processing. FOIA analysts send the requestor an acknowledgement of the request and provide them a FOIA number. They then search the FBI’s central records system, including Sentinel and the Automated Case Support (ACS) system, and contact relevant FBI personnel to locate responsive

²⁸⁴ 5 U.S.C. § 552(a)(6)(E)(v). The Department’s FOIA Regulations add two more categories in which the Department may grant expedited processing: the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affects public confidence. 28 C.F.R. § 16.5(e)(1)(i)-(iv).

²⁸⁵ 5 U.S.C. § 552(a)(6)(E)(iii).

²⁸⁶ As a result, the following description of the FBI’s process is based on interviews with RIDS managers and analysts.

records. If no records are found, the FBI communicates this fact to the requestor. If responsive records are identified, they are compiled, quality checked, and then uploaded into the FOIA Document Processing System.

Once the collection of documents has been completed, the response is placed in a workflow "queue" to await processing by a RIDS disclosure analyst in one of the RIDS processing units. The FBI has established four separate workflow "queues" based on the volume of responsive documents. Responses that qualify for expedited treatment under FOIA are moved to the front of the appropriate workload queue. All other responses enter the queue from the back, in a "First In, First Out" order.

According to the RIDS Section Chief, requests with 50 or fewer pages of responsive documents enter the "small" queue and are typically processed within approximately 4 months from the date of the request to the date of the response.²⁸⁷

Requests generating between 50 and 950 pages of responsive documents are directed to the "medium" queue and are typically completed in approximately 9 to 10 months. Completion time for requests placed in the "large" queue, those that generate 950 to 8,000 pages of relevant documents, is approximately 2 and a half years. The fourth queue, for extra-large requests that generate over 8,000 pages of responsive documents, can take upwards of 4 years to fulfill. For larger requests, requestors do not have to wait the full time period for documents; RIDS provides interim releases in batches of 500 pages at a time.

RIDS personnel explained that once a request has worked its way to the front of the appropriate workflow queue, a supervisor assigns the responsive documents to a disclosure analyst for processing. Processing the documents involves a line-by-line review of the documents to identify and redact information exempt from release under the FOIA. After the disclosure analyst's review is complete, RIDS experts and supervisors conduct a quality review. If the request is not a high visibility request, the analyst finalizes the release, sends the appropriate correspondence to the requestor, and closes the matter.

Responses to high visibility requests are subject to additional management review before being released to the requestor or posted to the FBI Vault, including by the RIDS Section Chief and the FOIA attorney supporting RIDS, to ensure accurate and proper application of exemptions, classification decisions, and redactions and to spot any other potential issues. The processing analyst drafts a "high visibility" memorandum to accompany the package through these additional reviews. According to the RIDS Section Chief, the designation of a request as "high visibility" does not mean it will be processed quicker than any other request, unless it otherwise qualifies for expedited treatment. Rather, these requests are processed according to the same prioritization procedures as other FOIA requests.

²⁸⁷ The average processing times are based on regular analysis of queue processing times by RIDS personnel in order to provide estimated completion dates to FOIA requestors.

2. Release of FOIA Documents on the FBI Vault

The FBI Records Vault is a page on the FBI.gov public website. Requests posted to the FBI Records Vault fall into one or both of the following categories: high visibility requests or requests that meet the “rule of three” standard as defined in the 2016 updates to FOIA.

Although OPA manages the overall FBI.gov public website, RIDS is responsible for the content and postings for the FBI Records Vault page. According to RIDS personnel, in the fall of 2016, once RIDS management determined that a post would be made to the FBI Records Vault, RIDS would notify the RMD chain of command, OPA’s National Press Office, and often the General Counsel’s FOIA Litigation Unit Chief of the upcoming post. To assist historians and researchers who use the FBI Records Vault, RIDS would often ask the FBI Historian to draft a summary of the documents to accompany the posting on the FBI Records Vault. The purpose of RIDS’s notification to the National Press Office was to allow the National Press Office an opportunity to prepare for any media inquiries and to notify OPA management and FBI executive management as necessary.

Ultimately, once all these offices had been notified of the upcoming post, and a summary had been drafted to be posted with the responsive documents, the RIDS Section Chief made the final determination of when to post the documents.²⁸⁸ Postings could be delayed by the Section Chief and Assistant Section Chief of RIDS, as well as the Office of Public Affairs and FBI executive management. The RMD Section Chief told us that postings could only be delayed for short periods of time to give FBI executive management notice that information with high public interest was about to be posted. Once the release was posted to the FBI Records Vault, the @FBIRecordsVault Twitter account was configured to automatically announce (auto-tweet) the addition of new content to the FBI Records Vault.

III. Findings

This section presents our findings with regard to the timeline of events and our analysis of whether there were any improper political considerations involved with the timing of the FOIA release and its associated tweet.

A. Facts

1. Timeline

Nov 10, 2015	FBI Records Management Division (RMD) receives the first FOIA request for documents relating to the Clinton Foundation. Several subsequent requests for the same or similar materials are later combined with the initial request for processing.
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²⁸⁸ The Assistant Section Chief of RIDS could make the determination in the absence of the Section Chief.

Dec 17, 2015	Records/Information Dissemination Section (RIDS) analysts begin searching for responsive documents.
May 12, 2016	RIDS analysts complete the search for responsive documents. The resulting collection (the "Clinton Foundation documents") is placed in the "medium workflow queue" to await processing for release on a "First In, First Out" basis.
Aug 15, 2016	RIDS begins reviewing the Clinton Foundation documents for exempt and classified material.
Oct 25, 2016	RIDS completes its review and redaction of the documents. Because RIDS had designated this release as a "high visibility" response, it receives review by the RIDS Assistant Section Chief and the FBI Office of Public Affairs (OPA) prior to release to the requesters and to the FBI Records Vault. The FBI Historian is asked to draft a summary of the documents' contents to accompany the release to the Vault.
Oct 28, 2016	OPA informs RIDS that it concurs with the proposed release of the Clinton Foundation documents.
Oct 31, 2016	OPA requests RIDS to postpone posting the Clinton Foundation documents for one day because of workload resulting from Director Comey's October 28 letter to Congress announcing reactivation of the Clinton email investigation.
Nov 1, 2016	RIDS publishes the Clinton Foundation documents on the FBI Records Vault. The posting is announced on a system-generated tweet from @FBIRecordsVault.

2. Detailed Chronology

The first Clinton Foundation request received by RMD on November 10, 2015, sought any and all records about the Clinton Foundation. Between November 11 and December 15, 2015, the request was pending assignment for initial processing. The Work Processing Unit opened a request for the Clinton Foundation on December 15. Materials from six subsequent, similar requests were later combined with this request.²⁸⁹ These multiple requests met the "rule of three" standard for posting on the FBI's FOIA Vault page. The Clinton Foundation request was designated as a high visibility request during processing due to its subject and the expectation it could attract media attention. The request was not designated for "expedited" treatment.

²⁸⁹ The subsequent requests were dated April 1, 2016; July 13, 2016; July 14, 2016, August 16, 2016, August 17, 2016, and August 30, 2016.

Between December 17, 2015, and May 12, 2016, RIDS analysts searched for and gathered material responsive to the request. During this initial phase, RIDS identified additional documents that were responsive to the FOIA request but potentially qualified for a FOIA exclusion. The RIDS Section Chief stated to the OIG that when they located these documents, he coordinated with the relevant investigative section chief and determined the FBI should seek Department approval to use a FOIA exclusion. The RIDS Section Chief explained to the OIG that the Department's policies required the FBI to "write up an exclusion" for approval by OIP. The Director of OIP ultimately approved the FBI's use of an exclusion for these documents on July 25, 2016.

Responsive materials also included documents involving a closed 2001 FBI investigation probing whether donations to the Clinton Foundation had been made to influence former President Clinton to pardon Marc Rich. After discovering the Marc Rich records on May 9, 2016, the RIDS Section Chief released the records to the medium processing queue.

In the three months between May 12 and August 15, 2016, the documents collected in response to the request (the "Clinton Foundation documents") were in the medium workflow queue awaiting processing. During this timeframe, additional relevant records were located and added to the documents already in the queue, but the request remained in the medium queue.

On August 16, 2016, the Clinton Foundation request entered the processing and review phase in which the analyst reviewed the pages for exempted material and performed a declassification review, and the supervisor performed a quality review. Because the Clinton Foundation request had been designated as a high visibility request, it received additional review by the FOIA Unit Chief, the RIDS Assistant Section Chief and the RIDS Section Chief.

On October 25, 2016, the RIDS Assistant Section Chief notified two individuals in OPA's National Press Office—the Unit Chief and a Public Affairs Specialist—and the FBI Historian via email that documents responsive to the Clinton Foundation request, a high visibility FOIA release, were ready for their review prior to release. The Assistant Section Chief noted in his email that RIDS planned to post the FOIA response to the FBI Records Vault on October 28 or 31, 2016. The Assistant Section Chief noted in his email that "the timing, of course, may draw attention" to this release and provided a copy of the high visibility memo drafted by the FOIA review unit, which provided a brief overview of the substance of the release. The Assistant Section Chief told us and the recipients stated that they understood this statement to refer to the short time before the 2016 election and thus the expected media interest in any release involving the Clintons. In the email the Assistant Section Chief also requested that the FBI Historian write a synopsis for the FBI Records Vault posting.

On October 26, the National Press Office Unit Chief sent an email to the Public Affairs Specialist in her office and the FBI Historian stating, "Can you give this [reviewing the Clinton Foundation documents] priority in the event we need to consider timing?" According to the Unit Chief, her timing concern involved the

election being close and with the potential media coverage, needing to allot time to review documents to be prepared for any issues that might arise after the documents were released. The Unit Chief told us that the press office wanted to review the documents in order to determine whether to alert FBI executive management, potentially including the FBI Director, to the potential media coverage. She stated that her reference to the timing was not to make it a high priority to ensure that it was released prior to the election, but that it meant "that they need[ed] to stop what they're doing and review this so that we can make a decision if we need to, or raise it to another level."

On October 27, the Public Affairs Specialist provided the high visibility memorandum and about 15 pages of the FOIA release documents to the Assistant Director (AD) of OPA, Michael Kortan, for his review. The FBI Historian told us that in response to the request from RIDS and the National Press Office Unit Chief, he drafted a synopsis to accompany the release of records and sent it to the National Press Office Unit Chief on October 27, 2016. That same day, the FBI Historian also emailed the Assistant Section Chief with a short summary of the release to accompany the FBI Records Vault posting, and cautioned the Assistant Section Chief not to make the post "live" before checking back with the Public Affairs Specialist on whether OPA was ready for the release.

On Friday, October 28, the Public Affairs Specialist emailed RIDS to say that OPA reviewed the FOIA response, and had no issues with the proposed release.

On Monday, October 31, the Public Affairs Specialist sent an inquiry to RIDS at 9:17 a.m. asking whether the responsive materials had been released to the requester yet. When the RIDS Assistant Section Chief responded that they were in the process of posting it to the FBI Records Vault, the Public Affairs Specialist requested an hour delay to give AD Kortan an additional heads-up. As a result, RIDS planned for an 11:30 a.m. release and informed OPA. The Public Affairs Specialist then called the RIDS Section Chief and requested to delay the posting for a full day. The RIDS Section Chief stated that the Public Affairs Specialist told him they needed the delay because they were overwhelmed by the reaction to Director Comey's announcement regarding the Clinton email investigation and "that there's not any way [the National Press Office] can deal with this today." However, the Public Affairs Specialist told us she could not recall the reason for the delay. The National Press Office Unit Chief stated that this was a typical delay needed to ensure that AD Kortan had the time to review the documents and make notifications to executive management. The RIDS Section Chief agreed to delay the posting until the next day.

On the morning of November 1, the RIDS Section Chief sent an email to members of his team as well as individuals in OPA stating that RIDS was ready to make the Clinton Foundation documents public on the FBI Vault site. In the absence of further delay requests or other inputs from OPA, the RIDS Section Chief approved the public posting of the materials and instructed one of his subordinates,

a Supervisory Government Information Specialist (SGIS), to publish it on the FBI Records Vault. The SGIS then posted the FOIA records.²⁹⁰

Witnesses told us that the fact that the presidential election was just a week ahead was not a factor in deciding when to release the Clinton Foundation documents to the public, though they knew the timing would call attention to their release. They stated that the FBI does not take into account elections in deciding how to process FOIA requests or when to release responsive documents to the public. Witnesses told us that there was no FOIA equivalent to the Election Year Sensitivities guidance that addresses overt investigative steps and the timing of charges. Further, they told us that there were no discussions about delaying the release of the Clinton Foundation documents until after the election and that the fact that the release occurred the week before the election was a coincidence.

In response to OIG inquiries regarding the processing and the timing of the release, the RIDS Assistant Section Chief emphasized that FOIA is a release statute and presumes release: "[T]he legal duty under the FOIA is to release something...when it's ready to be released...[i]rrespective of any timing, irrespective of any election. [The] FOIA statute says when something is ready to be released, we release it." He also stated, "We deal with the most sensitive issues...every day.... [Y]ou have to stick to the process." The RIDS Section Chief told us that the only guidance they received regarding the timing of FOIA releases came "from the Director himself when he released [a summary of Hillary Rodham Clinton's July 2, 2016 interview with the FBI]."²⁹¹ The FBI had received criticism for releasing the documents on a Friday to minimize press attention. The Section Chief told us that, in a message to the FBI, he understood Comey to say that the FBI does not "hold onto anything for political purposes" and "when it's ready it goes out." The attorney supporting RIDS stated that in her interactions with RIDS management, "they have always been very clear that the FOIA process operates rather independently of any politics with a small p or the big P for that matter, that may be going on." She added:

[T]he way that RIDS works, it's such a massive beast that it's essentially a machine.... And it could be the dogcatcher case next to the Hillary Clinton case, and you're going to handle them the same. The next one in your queue pops up, you're going to work it until it's done, and then you're going to move onto your next one. So, the FOIA process...does not sort of cherry pick the things that we want to handle at any particular time in any particular way, either fast or slow.

²⁹⁰ The public FBI Records Vault webpage indicates that the Clinton Foundation documents were posted on October 31, 2016. However, the RIDS Section Chief and the SGIS told us that this date refers to when the documents were uploaded to the system for review by RIDS and OPA. The documents were not made available to the public until November 1, 2016.

²⁹¹ On September 2, 2016, the FBI posted Hillary Clinton's July 2, 2016 interview with the FBI concerning allegations that classified information was improperly stored or transmitted on a personal email server she used during her tenure.

Later on November 1, a system-generated tweet from @FBIRecordsVault announced the posting on FBI's Records Vault. Shortly thereafter, NPO began receiving inquiries from the media questioning the timing of the posting of the records and the associated tweet. The SGIS stated that he received multiple inquiries about the tweet because individuals within OPA and RMD were concerned that he had manually tweeted the release. The SGIS told us he informed the individuals who called that he had not manually tweeted concerning the release. He then checked the Twitter feed on his phone and realized the attention it was getting, so he looked into what happened. The SGIS stated he then learned about the issues with the automatic Twitter feed, that those issues had been corrected on October 30, and that upon correction the system released multiple tweets concerning posts over the prior year.

B. Analysis

In order to determine whether the Clinton Foundation release was impacted by any improper political motivation, we examined two issues. First, we explored whether the Clinton Foundation request was handled differently than other similarly-sized, high visibility FOIA requests. Next, we also examined whether any FBI officials improperly attempted to affect the timing of the processing or release of the responsive documents to either advance or harm the prospects of either presidential candidate.

We found no evidence that the Clinton Foundation request was handled any differently than other FOIA requests. Within RIDS, all of the individuals we interviewed told us that the Clinton Foundation request was processed just like any other FOIA request. The RIDS Section Chief told us the FOIA process is a regimented process based on workload queues, and that the Clinton Foundation request "just fell right into line with this [process]" and this request "was a number on somebody's spreadsheet." The RIDS Assistant Section Chief said that they followed "the business process at the time."

We found no evidence that anyone in RMD or OPA expedited or delayed the processing or posting of the request for any improper purpose. The RIDS Section Chief stated that the Clinton Foundation request was processed according to its size queue and consistent with that queue's processing timeline. Our review of the timeline for the processing of this request confirmed the Section Chief's assessment. RIDS located over 500 pages responsive to the request, putting the request in the medium queue with a stated average processing time of 9-10 months.²⁹² The request was received on November 10, 2015, and was posted on November 1, 2016—just under 12 months. The RIDS Section Chief told the OIG that the response did not meet the average processing time because it was "an unusual request" due to the potential FOIA exclusion, "which totally skew[ed] what happen[ed]." However, the RIDS SGIS who monitors the FOIA processing time

²⁹² We did not perform an independent audit of RIDS' medium queue, but utilized the averages as reported to us by the RIDS Section Chief and Assistant Section Chief.

statistics, told the OIG that the time it took RIDS to produce this response "wasn't off of the, off-timing," and he did not think anyone had rushed it or slowed it down.

Additionally, the individuals we interviewed told us that there were no efforts to delay the release of the Clinton Foundation documents until after the election or efforts to expedite the release before the election. In fact, all of the witnesses we spoke to said that at no time were there any discussions about holding the Clinton Foundation release until after the election or ensuring that it was released before the election. The RIDS Section Chief told us that "there was no actual timing involvement to get it out before the election." The RIDS Assistant Section Chief said there were no internal discussions about whether to hold the release until after the election. He told us that "FOIA is a disclosure action.... There was no consideration of [timing]." The National Press Office Unit Chief told us that documents are released when they are ready for release, regardless of the date or time period they fall under. She stated that OPA might ask for a delay of a few hours or a day or two if they needed time to review the documents, but would not hold back releasing information for a substantial period of time. The witnesses interviewed denied taking any action, or delaying any action, with regard to the FOIA request in order to assist or harm either candidate's prospects in the election. None of the witnesses had knowledge of any attempt to do so.

CHAPTER SIXTEEN: CONCLUSIONS AND RECOMMENDATIONS

I. Conclusions

The Clinton email investigation was one of the highest profile investigations in the FBI's history; however, it is just one of thousands of investigations handled each year by the approximately 35,000 FBI agents, analysts, and other professionals who dedicate their careers to protecting the American people and upholding the Constitution and the rule of law. Through the collective efforts of generations of FBI employees, the FBI has developed and earned a reputation as one of the world's premier law enforcement agencies.

The FBI has gained this reputation, in significant part, because of its professionalism, impartiality, non-political enforcement of the law, and adherence to detailed policies, practices, and norms. However, as we outline in this report, certain actions during the Midyear investigation were inconsistent with these long-standing policies, practices, and norms.

First, we found that several FBI employees who played critical roles in the investigation sent political messages—some of which related directly to the Midyear investigation—that created the appearance of bias and thereby raised questions about the objectivity and thoroughness of the Midyear investigation. Even more seriously, text messages between Strzok and Page pertaining to the Russia investigation, particularly a text message from Strzok on August 8 stating "No. No he's not. We'll stop it." in response to a Page text "[Trump's] not ever going to become president, right? Right?!", are not only indicative of a biased state of mind but imply a willingness to take official action to impact a presidential candidate's electoral prospects. This is antithetical to the core values of the FBI and the Department of Justice. While we did not find documentary or testimonial evidence that improper considerations, including political bias, directly affected the specific investigative actions we reviewed in Chapter Five, the conduct by these employees cast a cloud over the entire FBI investigation and sowed doubt about the FBI's work on, and its handling of, the Midyear investigation. It also called into question Strzok's failure in October 2016 to follow up on the Midyear-related investigative lead discovered on the Weiner laptop. The damage caused by these employees' actions extends far beyond the scope of the Midyear investigation and goes to the heart of the FBI's reputation for neutral factfinding and political independence.

Second, in key moments, then Director Comey chose to deviate from the FBI's and the Department's established procedures and norms and instead engaged in his own subjective, ad hoc decisionmaking. In so doing, we found that Comey largely based his decisions on what he believed was in the FBI's institutional interests and would enable him to continue to effectively lead the FBI as its Director. While we did not find that these decisions were the result of political bias on Comey's part, we nevertheless concluded that by departing so clearly and dramatically from FBI and Department norms, the decisions negatively impacted the perception of the FBI and the Department as fair administrators of justice.

Moreover, these decisions usurped the authority of the Attorney General and upset the well-established separation between investigative and prosecutorial functions and the accountability principles that guide law enforcement decisions in the United States.

As we further outline in this report, there was a troubling lack of any direct, substantive communication between Comey and then Attorney General Lynch in advance of both Comey's July 5 press conference and his October 28 letter to Congress. With regard to the July 5 events, Comey affirmatively concealed his intentions from Lynch. When he did finally call her on the morning of July 5—after the FBI first notified the press—he told her that he was going to be speaking about the Midyear investigation but that he would not answer any of her questions, and would not tell her what he planned to say. During that call, Lynch did not instruct Comey to tell her what he intended to say at the press conference. With respect to the October 28 letter, Comey chose not to contact Lynch or then Deputy Attorney General Yates directly; rather, he had FBI Chief of Staff Rybicki advise Yates's senior advisor (then PADAG Axelrod) that Comey intended to send a letter to Congress and that Comey believed he had an obligation to do so. Given these circumstances, Lynch and Yates concluded it would be counterproductive to speak directly with Comey and that the most effective way to communicate their strong opposition to Comey about his decision was to relay their views to him through Axelrod and Rybicki. We found it extraordinary that, in advance of two such consequential decisions, the FBI Director decided that the best course of conduct was to not speak directly and substantively with the Attorney General about how best to navigate these decisions and mitigate the resulting harms, and that Comey's decision resulted in the Attorney General and Deputy Attorney General concluding that it would be counterproductive to speak directly with the FBI Director.

This is not the first time the Department and the FBI have conducted a politically-charged investigation, and it will not be the last. To protect the institutions from allegations of abuse, political interference, and biased enforcement of the law, the Department and the FBI have developed policies and practices to guide their decisions. In the vast majority of cases, they are followed as a matter of routine. But they are most important to follow when the stakes are the highest, and when the pressures to divert from them—often based on well-founded concerns and highly fraught scenarios—are the greatest. No rule, policy, or practice is perfect, but at the same time, neither is any individual's ability to make judgments under pressure or in what may seem like unique circumstances. It is in these moments—when the rationale for keeping to the ordinary course fades from view and the temptation to make an exception is greatest—that the bedrock principles and time-tested practices of the Department and the FBI can serve their highest purpose. This notion was most effectively summarized for us by DAAG George Toscas, who was the most senior career Department official involved in the daily supervision of the Midyear investigation:

One of the things that I tell people all the time, after having been in the Department for almost 24 years now, is I stress to people and people who work at all levels, the institution has principles and there's

always an urge when something important or different pops up to say, we should do it differently or those principles or those protocols you know we should—we might want to deviate because this is so different. But the comfort that we get as people, as lawyers, as representatives, as employees and as an institution, the comfort we get from those institutional policies, protocols, has, is an unbelievable thing through whatever storm, you know whatever storm hits us, when you are within the norm of the way the institution behaves, you can weather any of it because you stand on the principle.

And once you deviate, even in a minor way, and you're always going to want to deviate. It's always going to be something important and some big deal that makes you think, oh let's do this a little differently. But once you do that, you have removed yourself from the comfort of saying this institution has a way of doing things and then every decision is another ad hoc decision that may be informed by our policy and our protocol and principles, but it's never going to be squarely within them.

There are many lessons to be learned from the Department's and FBI's handling of the Midyear investigation, but among the most important is the need for Department and FBI leadership to follow its established procedures and policies even in its highest-profile and most challenging investigations. By adhering to these principles and norms, the public will have greater confidence in the outcome of the Department's and the FBI's decisions, and Department and FBI leaders will better protect the interests of federal law enforcement and the dedicated professionals who serve these institutions.

II. Recommendations

For these reasons, and as more fully described in previous chapters, we recommend the following:

1. The Department and the FBI consider developing practice guidance that would assist investigators and prosecutors in identifying the general risks with and alternatives to permitting a witness to attend a voluntary interview of another witness, in particular when the witness is serving as counsel for the other witness.
2. The Department consider making explicit that, except in situations where the law requires or permits disclosure, an investigating agency cannot publicly announce its recommended charging decision prior to consulting with the Attorney General, Deputy Attorney General, U.S. Attorney, or his or her designee, and cannot proceed without the approval of one of these officials.
3. The Department and the FBI consider adopting a policy addressing the appropriateness of Department employees discussing the conduct of uncharged individuals in public statements.

4. The Department consider providing guidance to agents and prosecutors concerning the taking of overt investigative steps, indictments, public announcements, or other actions that could impact an election.
5. The Office of the Deputy Attorney General consider taking steps to improve the retention and monitoring of text messages Department-wide.
6. The FBI add a warning banner to all of the FBI's mobile phones and mobile devices in order to further notify users that they have no reasonable expectation of privacy.
7. The FBI consider (a) assessing whether it has provided adequate training to employees about the proper use of text messages and instant messages, including any related discovery obligations, and (b) providing additional guidance about the allowable uses of FBI devices for any non-governmental purpose, including guidance about the use of FBI devices for political conversations
8. The FBI consider whether (a) it is appropriately educating employees about both its media contact policy and the Department's ethics rules pertaining to the acceptance of gifts, and (b) its disciplinary provisions and penalties are sufficient to deter such improper conduct.
9. Department ethics officials consider implementing a review of campaign donations when Department employees or their spouses run for public office.

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ATTACHMENT A

**U.S. Department of Justice****Office of the Deputy Attorney General**


Associate Deputy Attorney General

Washington, D.C. 20530

June 11, 2018

MEMORANDUM

TO: Michael E. Horowitz
Inspector General
U.S. Department of Justice

FROM: Scott N. Shoof 
Associate Deputy Attorney General
Office of the Deputy Attorney General

SUBJECT: Response to "A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election"

The Department of Justice (Department) appreciates the review your office conducted regarding various actions by the Federal Bureau of Investigation (FBI) and the Department in advance of the 2016 election and the resulting report of investigation. This response addresses only the report and recommendations as they pertain to the Department as the FBI is responding separately.

Based on the findings in the report, your office made six recommendations for the Department to consider. The Department concurs in Recommendations 1-5 and 9 and will expeditiously consider taking steps in response to them.

cc: Hon. John Demers
Assistant Attorney General
National Security Division

Hon. Christopher Wray
Director
Federal Bureau of Investigation

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ATTACHMENT B

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U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington D C 20535-0001

June 12, 2018

The Honorable Michael E. Horowitz
Inspector General
U. S. Department of Justice
Washington, D. C.

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) greatly values the opportunity to review and respond to the forthcoming Report entitled "A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election." The FBI's formal response is enclosed, including a Law Enforcement Sensitive portion appended at the end.

The FBI recognizes and appreciates the importance of the Inspector General's oversight role and thanks you for the thoroughness of your Report and recommendations regarding FBI actions and policies.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Wray", is written over the typed name and title.

Christopher A. Wray
Director

Enclosure

**FBI RESPONSE TO THE REPORT OF
THE DEPARTMENT OF JUSTICE'S OFFICE OF THE INSPECTOR GENERAL**

The mission of the Federal Bureau of Investigation (FBI or Bureau) is to protect the American people and uphold the Constitution of the United States. Within this mission, the FBI has certain priorities, including protecting the United States against terrorist attack, foreign intelligence operations and espionage, cyber-based attacks and high-technology crimes, combatting public corruption at all levels, protecting civil rights, and combating major criminal offenses. Sometimes, the investigations and operations conducted by the FBI in furtherance of its mission may cut against the personally held views of certain Special Agents and other employees supporting those cases. There is nothing inherently wrong with this, indeed, the Constitution contains robust protections for personally held and espoused beliefs and the freedom of association. The FBI endeavors to, and as reflected in the Department of Justice (DOJ) Office of the Inspector General's (OIG) "A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election" Report, succeeds in its efforts, to maintain separation between personally held views and the actual work of the FBI. Nevertheless, proper oversight is required in order to ensure this separation remains effective, that the mission comes first regardless of personal view, that all investigations proceed objectively, and that the American people maintain their trust and confidence that the critically important work of the FBI remains unbiased and apolitical. The FBI appreciates the key role of the DOJ Office of the Inspector General (OIG) in the oversight process.

Below, the FBI sets forth a response to the findings and recommendations contained in the OIG Report. The FBI recognizes that mistakes were made. These mistakes were errors of judgment, violations of or disregard for policy, or, when viewed with the benefit of hindsight, simply not the best courses of action. They were not, in any respect, the result of bias or improper considerations. Further, the OIG Report focuses on the conduct of several individuals acting in extraordinary and unprecedented circumstances. None of the actions or conduct faulted by the OIG impugn the integrity of the FBI as an institution, or of the Bureau's dedicated 37,000-person workforce as a whole.

I. Summary of FBI Response

The FBI identified eight (8) focal points, specific to the FBI, in the OIG Report: (1) conduct creating a perception that political bias could have influenced certain actions or decisions; (2) violation of or disregard for DOJ or FBI policies by former Director James Comey's July 5, 2016, announcement and October 28, 2016, letter; (3) issues involving media contacts, leaks, and ethics rules on acceptance of gifts, (4) former Deputy Director Andrew McCabe's recusal obligations; (5) the use of personal email accounts; (6) missteps in certain investigatory processes; (7) insubordination by former Director Comey; and (8) the potentially improper use of FBI systems and devices to exchange messages, the related referrals for investigation, and the creation of additional warning banners and guidance.

The FBI's accepts the OIG's findings that certain text messages, instant messages, and statements, along with a failure to consistently apply DOJ and FBI interview policies, were inappropriate and created an appearance that political bias might have improperly influenced investigative actions or decisions. The Bureau also agrees with the OIG that, despite these errors

and the damage they may have caused to the FBI's reputation, there was no evidence of bias or other improper considerations affecting the handling of the Midyear Exam (MYE) investigation. The FBI is taking immediate remedial actions to reinforce the importance of maintaining a work environment free from the appearance of political bias. This includes a review of whether the intermixing of work-related discussions with political commentary implicates any of the FBI's Offense Codes and Penalty Guidelines. It will further include political bias training, Hatch Act training, and, as applicable, will also include a review of how the FBI staffs, structures, and supervises sensitive investigations.

The FBI also accepts the OIG's findings that former Director Comey's July 5, 2016, announcement violated DOJ's media policy and may have violated regulations regarding the public release of information, and that his October 28, 2016, letter was a serious error in judgment. In the judgment of the OIG, there was no evidence that these actions were the result of bias, political preference, or an effort to influence the election. The Bureau takes seriously its obligations to control public statements, especially those related to charging recommendations in criminal investigations and uncharged conduct. Accordingly, the FBI has issued a revised media policy, will act to further ensure that all personnel are aware of the new policy and the serious consequences for non-compliance, and will provide further training on media contact and the limited authority to release information.

The OIG also identified a need to change the "cultural attitude" regarding media contacts and leaks at the FBI. The Director has ordered the Office of Integrity and Compliance (OIC), the Office of the General Counsel (OGC), and the Office of Professional Responsibility (OPR) to review how personnel are trained regarding the media policy and related ethics rules, including those related to the acceptance of gifts, and whether current disciplinary penalties are adequate to deter unauthorized media contact or leaks.

The OIG made several determinations regarding former Deputy Director McCabe's recusal from the Clinton-related investigations. Because he may not have fully complied with his voluntary recusal obligations, the FBI OIC has been instructed to review recusal policy and training, and make updates as necessary to help more quickly identify and mitigate actual or perceived conflicts of interest.¹ The FBI OGC and OIC have also been directed to work together to develop a framework for earlier notification of potential conflicts caused by campaign contributions to covered persons and to provide additional training on recusal obligations and conflicts of interest. The Director has called for the framework to be completed within 60 days.

Upon finding that former Director Comey, Lisa Page, and Peter Strzok used personal email accounts for unclassified FBI business, the OIG referred Mr. Strzok for an investigation into whether his actions violated FBI and DOJ policies. This referral will be investigated and adjudicated pursuant to FBI and DOJ policies. While, there is no finding or indication that any classified material ever transited former Director Comey's, Ms. Page's, or Mr. Strzok's personal devices or accounts, the FBI OGC and OIC have been tasked to evaluate whether additional training and messaging would reinforce the existing policies and protocols on the use of non-FBI

¹ The OIG's findings and recommendations related to other recusal issues and contained in the Law Enforcement Sensitive (LES) Appendix Two, are addressed separately in the appended LES response.

devices and accounts and further minimize any non-compliance, and to report back to the Director on their findings within 60 days.

The OIG concluded that certain MYE investigatory missteps were made. The FBI accepts the OIG's conclusions that, in hindsight, it could have taken additional or different investigatory actions, including moving more quickly to secure a search warrant for Anthony Weiner's laptop, and staffing the investigation differently so as to avoid affecting the MYE investigation when senior members of the MYE team were assigned to the Russia investigation. The FBI appreciates, however, that the OIG recognized that many of the identified missteps were judgment calls by seasoned investigators and prosecutors, and that there was no evidence that any decision was made as the result of bias or other improper considerations. This includes the decision not to seek personal devices from former Secretary Clinton's senior aides, the prioritization of the Russia investigation at the time, and the delay in seeking a search warrant for the Weiner laptop. The FBI is convening a working group to provide recommendations, within 120 days, for the staffing, structuring, and supervision of sensitive investigations to help avoid or mitigate similar missteps in the future.

The OIG also stated that former Director Comey was insubordinate by intentionally concealing from DOJ his intentions regarding the July 5, 2016, announcement and instructing his subordinates to do the same. The FBI does not condone insubordination at any level. Compliance with policy – and the chain of command as appropriate – will be reinforced through training.

In its review of collected materials, the OIG found that several FBI employees had exchanged text messages, instant messages, or both, that included political statements hostile to or favoring particular candidates, and appeared to mix political opinion with discussions about the MYE investigation. The OIG found no evidence to connect the political views expressed by these employees with the specific investigative decisions, but referred five employees for investigation into whether the messages violated the FBI's Offense Codes and Penalty Guidelines. The FBI will handle these referrals pursuant to the FBI's disciplinary investigation and adjudication processes, and will impose disciplinary measures as warranted. The OIG separately recommended that the FBI add privacy warning banners to FBI-issued mobile devices and consider assessing whether employees are properly trained on the use of text messages and instant messages, as well as whether it should provide additional guidance about the use of FBI devices for non-governmental purposes. Although the FBI has clear and unambiguous warnings related to the use of FBI Information Technology and Systems, including FBI-issued devices, the Executive Assistant Director of the Information and Technology Branch has been directed to implement the suggested warnings in the most technologically expeditious and feasible manner. The Bureau will also provide renewed training on the governing policies related to device use.

Each of these areas is discussed in more detail below.

II. Detailed Response to the Eight Focal Points of the OIG Report

While the OIG Report contains several findings of poor judgment, violations of or disregard for policy, and investigatory actions that might have benefitted from a better decision-making process, it contains no finding that any error in judgment, violation of policy, or investigatory action was motivated by political bias or other improper considerations. This is critical to the operation of the FBI and the ability of the American people to count on the FBI to

act impartially and objectively. For the same reasons, it is equally important to note again that the OIG Report is narrowly focused on the handful of individuals who were the most deeply involved in running the MYE investigation, and does not generally find fault with the FBI's policies, practices, or procedures as they pertain to investigations, ethical conduct, or media contacts

1. Conduct creating a perception that political bias could have influenced certain actions or decisions

The OIG identified several separate acts that created an appearance that political bias could have influenced certain actions or decisions. The FBI accepts that text messages exchanged over FBI-issued devices by certain FBI employees, primarily Peter Strzok and Lisa Page, demonstrated extremely poor judgment and a lack of professionalism. The FBI also accepts that the content of these messages, critical of political candidates, brought discredit upon those exchanging them and harmed the FBI's reputation. Similarly, the FBI accepts that the decision to allow Cheryl Mills and Heather Samuelson to be present during the interview of former Secretary Clinton was inconsistent with typical investigative strategy and created an appearance that political bias could have influenced this decision, especially when viewed in the light of messages exchanged between Mr. Strzok and Ms. Page.²

Despite the appearance of bias created by these actions, the OIG found no evidence that bias affected any investigatory decision or action. As determined by the OIG, there was no evidence of bias or other improper considerations in former Director Comey's instruction to complete the MYE investigation "promptly." Likewise, the OIG considered multiple decisions and actions taken by the MYE team related to obtaining evidence, interview timing and procedures, and the use of consent or immunity agreements. No evidence of bias or other improper considerations was found by the OIG in the MYE team's: use of consent, rather than subpoenas, search warrants, or other legal process to obtain evidence; decisions regarding how to limit consent agreements; decision not to seek personal devices from former Secretary Clinton's senior aides, decisions to enter into immunity agreements; decisions regarding the timing and scoping of former Secretary Clinton's interview, or to proceed with the interview with Cheryl Mills and Heather Samuelson present; and, the decision to obtain testimony and other evidence from Ms. Mills and Ms. Samuelson by consent agreement and with act-of-production immunity.

Although no bias or other improper consideration was found in the FBI's decisions or actions, the appearance of bias is disconcerting and potentially damaging to the FBI's ability to perform its mission. Accordingly, the FBI is instituting new political bias training, drawing from, among other sources, the training, guidance, and practices of the federal judiciary. To commence within 120 days, training will begin with senior leadership and the Senior Executive Service (SES) ranks, with the objectives of discussing the OIG Report, lessons learned, and the need for scrupulous, unwavering adherence to the policies and procedures intended to combat potential political bias. After this initial training, the Director will require all employees to

² Identifying a different type of potential bias, the OIG Report also found it improper for Ms. Page to comment on or consider how the approach to interviewing former Secretary Clinton might affect the FBI's interests if she won the presidency. The FBI agrees with this finding

undergo similar training to reinforce the importance of maintaining a work environment free from political bias. The training will cover multiple areas, including at a minimum ethics and integrity, objectivity, and the avoidance of political bias, and will occur across multiple settings, such as Special Agent in Charge onboarding, Senior Executive Service onboarding, Senior Leader courses, Leading People courses, and the Basic Field Training Course. If necessary, supplementary Hatch Act and ethics training may also be required.

Additionally, the Director has tasked the Associate Deputy Director with establishing a working group to provide recommendations, within 120 days, on the staffing, structuring, and supervising of sensitive investigations in order to ensure that the full suite of the FBI's investigative strengths, a balance of operational experience, and proper resources are provided such that every future sensitive investigation is conducted to the highest standards of the Bureau. This will include, among other things, consideration of when and whether to increase field office participation in such matters, and when and whether it would be beneficial to team agents from different components and backgrounds to leverage respective skill sets and experiences, *e.g.*, drawing on the experience of public corruption agents when conducting counterintelligence investigations.

Disciplinary referrals from the OIG Report will be handled pursuant to the FBI's disciplinary investigation and adjudication processes. Any allegation of misconduct by an FBI employee is reviewed, and if merited, investigated by either the FBI Inspection Division or the DOJ OIG, as occurred here. At the conclusion of the investigation, the matter is referred to the FBI's OPR for adjudication. FBI employees must maintain the highest standards of personal and institutional responsibility. The FBI OPR ensures that the FBI maintains its rigorous standards of integrity and professionalism by impartially adjudicating allegations of employee misconduct. OPR's prompt, thorough, and fair adjudication of employee misconduct cases materially enhances confidence in and support for the FBI and its mission. With that said, the FBI OPR has already opened and is conducting investigations, or has concluded misconduct investigations arising out of or related to the conduct identified in the Report. It would not be appropriate to comment here on any particular individual who was or may be the subject of such an investigation.

2. Violation of or disregard for DOJ or FBI policies by former Director James Comey's July 5, 2016, announcement and October 28, 2016, letter

The OIG found that former Director Comey violated DOJ's media policy, and potentially regulations related to the public release of information, when he made his July 5, 2016, announcement. He was also found to have committed a serious error in judgment by sending his October 28, 2016, letter, in disregard of FBI and DOJ policy, without DOJ approval, and in usurpation of the Attorney General's authority. The FBI does not contest these findings.

The FBI will implement the OIG's recommendation that the FBI adopt a policy on the appropriateness of employees addressing uncharged conduct in public statements. The Director is also tasking the FBI's OGC to develop, within 30 days, guidance requiring prior consultation with DOJ preceding any public reference to FBI charging recommendations in criminal investigations.

Pursuant to the new FBI media policy, FBI personnel authorized to communicate with the media must abide by DOJ guidelines contained in 28 CFR 50.2 "Release of information by

personnel of the [DOJ] relating to criminal and civil proceedings,” and in the U.S. Attorney’s Manual Title 1-7.000 “Confidentiality and Media Contacts Policy.” This would include receiving advanced approval by the appropriate United States Attorney or Assistant Attorney General before communicating with the media about a pending investigation or case, except in emergency circumstances. Training on these policies will be included in the training described above.

3. Issues involving media contacts, dissemination of information, and leaks

The OIG’s conclusion that there is a need to change the “cultural attitude” regarding media contacts and leaks at the FBI is troubling. The FBI is acutely aware of the damage unauthorized communications or leaks can cause to investigations, prosecutions, the personal lives of those involved in the case or who may be subjects or targets, and the reputation of the Bureau. Leaks or unauthorized communications are not taken lightly, are never condoned, and may result in discipline, up to and including termination, and potentially prosecution. Given the conclusions reached in the OIG report, the Director instructed the Assistant Director of OPR to review whether current disciplinary penalties are adequate to deter unauthorized media contact or leaks and to report back on their adequacy, or the need for additional penalties, within 30 days.

The FBI protects information on a need-to-know basis and, to reinforce the limitations on sharing that information, revised its media policy effective November 15, 2017. As an additional step, the FBI will ensure that, within 30 days, all personnel are fully aware of the media policy and the serious potential consequences for noncompliance. The new media policy restricts who is authorized to communicate with the media (i.e., within FBI Headquarters, the Director, Deputy Director, Associate Deputy Director, Assistant Director of the Office of Public Affairs, and designated OPA staff; in a field office, the Assistant Director in Charge or Special Agent in Charge, designated public affairs officer, or other personnel specifically authorized by the field office head). The new policy requires that “all contact with members of the media about FBI matters must be reported” to the relevant Headquarters or field office officials. It also requires that personnel “must immediately notify their supervisors if contact with a member of the media concerns suspected classified or grand jury subject matter.” The policy also requires conformance with DOJ guidelines contained in 28 CFR 50.2 “Release of information by personnel of the [DOJ] relating to criminal and civil proceedings,” and in the U.S. Attorney’s Manual Title 1-7.000 “Confidentiality and Media Contacts Policy.” The FBI’s policies, training, and disciplinary measures related to media contact and ethics rules, combined with any additional policies and training developed after this review, will sufficiently mitigate the risk and continue to deter this type of misconduct.

4. Former Deputy Director Andrew McCabe’s recusal obligations

The OIG found that the former Deputy Director and the Bureau acted appropriately with regard to his involvement in and recusal from the Clinton-related investigations. The OIG concurred with the FBI’s determination that former Deputy Director McCabe was not required to recuse from those investigations and found that he notified the appropriate persons in the FBI to seek guidance on ethics issues. The OIG Report also makes clear that former Deputy Director McCabe generally abided by his voluntary recusal from Clinton-related matters after November 1, 2016, in that there is no evidence that he continued to supervise investigative decisions in those matters after his recusal. The FBI agrees with the OIG that in a few instances, the former Deputy Director did not fully comply with his voluntary recusal.

Based on the OIG's findings related to the analysis of recusal decisions and recusal obligations, in particular the finding that FBI ethics officials and attorneys did not fully appreciate the potential significant implications of campaign contributions to Dr. McCabe's campaign, and the ninth recommendation in the OIG Report, the FBI's OGC and OIC have been directed to work together to develop a framework for earlier notification of potential conflicts caused by campaign contributions to covered persons and to provide additional training on recusal obligations and conflicts of interest. The Director has mandated that the framework be completed within 60 days.

5. The use of personal email accounts by former Director Comey and Peter Strzok

The OIG found that former Director Comey used personal email accounts for unclassified FBI business, absent exigent circumstances, in contravention of FBI and DOJ policy. The OIG also found that Peter Strzok and Lisa Page used personal email accounts for unclassified FBI business. Although former Director Comey and Ms. Page are no longer employed by the FBI, the OIG referred Mr. Strzok for an investigation into whether his use of personal email accounts violated FBI or DOJ policy. The FBI will handle this referral pursuant to the FBI's disciplinary investigation and adjudication processes. The FBI notes that there is no finding or indication in the OIG Report that any classified material ever transited former Director Comey's, Ms. Page's, or Mr. Strzok's personal devices or accounts.

The Bureau will evaluate whether additional training and messaging would clarify and reinforce the existing policies and protocols on the use of non-FBI devices and accounts and further minimize any non-compliance by FBI personnel. Further, the Director has tasked the Executive Assistant Director of the Information and Technology Branch with evaluating the benefits of consolidating existing relevant policies and guidance concerning the use of personal devices and accounts for FBI business, in order to underscore the requirement for exigency in such use.

6. Missteps in certain investigatory processes

Two complex, exceptionally important investigations were being conducted concurrently by the FBI in 2016, MYE and the Russia influence investigation. The FBI sought to staff both investigations with the people it thought at the time were the best qualified (as it always does). Both were close-hold, sensitive, and multifaceted. At the highest levels of leadership then in the FBI, judgment calls and decisions were made regarding how each investigation should proceed and how investigatory actions should be prioritized. The OIG questioned some of the judgment calls and decisions, including reassigning senior members from the MYE team to the Russia influence investigation, the delay in seeking a search warrant for Anthony Weiner's laptop, and the decision by agents and prosecutors not to subpoena or seek search warrants for the personal devices of three senior aides to former Secretary Clinton. The FBI agrees that it could have moved more quickly to secure a search warrant for Weiner's laptop and could have staffed the two investigations differently to minimize any detrimental effect to the MYE investigation. The addition of staff or resources may have impacted how agents and prosecutors decided what devices to seek and review, even if their judgment that certain devices were likely of limited evidentiary value remained the same.

While the OIG was critical of these judgment calls and decisions, it did not find that these were the result of bias or other improper considerations. Rather, the OIG specifically concluded

that there was no evidence of bias or improper considerations in the decision not to seek the personal devices from former Secretary Clinton's senior aides, the lack of urgency in seeking a search warrant for the Weiner laptop, and the prioritization of the Russia influence investigation.

As previously described, in an effort to learn from its past decisions, good and bad, the FBI is establishing a working group to provide recommendations for the staffing, structuring, and supervision of sensitive investigations to help avoid or mitigate similar missteps in the future

7. Insubordination by former Director Comey

The OIG found that former Director Comey was insubordinate when he intentionally concealed from DOJ his intentions regarding the July 5, 2016, announcement and instructed his subordinates to do the same. The FBI does not condone insubordination at any level and will institute training to ensure compliance with policy and the chain of command, as appropriate

8. The potentially improper use of FBI systems and devices to exchange messages, the related referrals for investigation, and the recommendations to create additional warning banners and guidance.

The OIG found that several FBI employees had exchanged text messages, instant messages, or both that included political statements. The OIG also found that some messages appeared to mix political opinion with discussions about the MYE investigation. The OIG concluded there is no evidence to connect the political views expressed by these employees with the specific MYE investigative decisions. Regarding the messages, the FBI will handle the OIG's referrals pursuant to its disciplinary investigation and adjudication processes and will impose disciplinary measures as warranted

Based on its review of these messages, the OIG separately recommended that the FBI add privacy warning banners to FBI-issued mobile devices and consider assessing whether employees are properly trained on the use of text messages and instant messages and whether it should provide additional guidance about the use of FBI devices for non-governmental purposes. FBI employees sign a Rules of Behavior Agreement expressly consenting to the monitoring of data communications over FBI information systems (emails, facsimile, computer database use and data storage, digital transmission of data, but not voice communications). This agreement form must be signed before access to any FBI Information Technology or Information Systems is granted. Existing policy also advises employees that "FBI personnel using FBI information systems have no reasonable expectation of privacy." Further, the warning banners that appear at login on the FBI's computer systems expressly apply to "all devices [or] storage media attached to this network or to a computer on this network." Although the FBI has clear and unambiguous warnings related to the use of FBI Information Technology and Systems, including FBI-issued devices, the Executive Assistant Director of the Information and Technology Branch has been directed to implement the suggested warnings in the most technologically expeditious and feasible manner. The Bureau will also provide enhanced training on the governing policies related to device use, including but not limited to the use of FBI Information Technology and Systems for political conversations.

* * * *

In addition to the focal points addressed above, which the FBI believes are responsive to findings and recommendations in the OIG report, one other specific and narrow recommendation deserves a brief response.

The OIG recommends that the Office of the Deputy Attorney General (ODAG) consider taking steps to improve the retention and monitoring of text messages Department-wide. The Bureau already goes to great lengths, within the restrictions imposed by existing technology and practicality, to capture and retain text messages sent or received on FBI-issued devices. Still, the FBI stands ready to work with ODAG to improve its processes and capabilities.

III. Conclusion

The FBI appreciates the role of the OIG, its dedication to its task, and the thoroughness of its investigation in bringing to light ways in which the FBI can improve the performance of its mission. The Bureau also appreciates the finding that there was no evidence that bias or improper considerations affected its investigative actions or decisions. Further, while the OIG Report focused on only a handful of individuals, as described above, the FBI is reviewing the recommendations of the OIG and will be taking action that applies far more broadly to FBI leadership, career Special Agents and Intelligence Analysts, and all the various personnel that make the FBI the premiere law enforcement and national security agency in the world. The FBI is extraordinarily cognizant of the need to maintain impartiality and objectivity, and to make certain that the American people trust it to always do so.

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ATTACHMENT C

Unknown

From: STRZOK, PETER P. (CD) (FBI)
 Friday, May 06, 2016 6:08 PM
 MCCABE, ANDREW G. (DO) (FBI); PRIESTAP, E W. (CD) (FBI); [REDACTED]
 (FBI); PAGE, LISA C. (OGC) (FBI)
Subject: RE. Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED
 =====

Understood and will do.

From: MCCABE, ANDREW G. (DO) (FBI)
Sent: Friday, May 06, 2016 5:32 PM
To: PRIESTAP, E W. (CD) (FBI); STRZOK, PETER P. (CD) (FBI); [REDACTED] PAGE, LISA C. (OGC) (FBI)
Subject: FW: Midyear Exam --- UNCLASSIFIED
Importance: High

Classification: UNCLASSIFIED
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Folks:

The Director composed the below straw man in an effort to compose what a "final" statement might look like in the context of a press conference. This was really more of an exercise for him to get his thoughts on the matter in order, and not any kind of decision about venue, strategy, product, etc.

The Director asked me to share this with you four, but not any further. The only additional people who have seen this draft are Jim Rybicki and Jim Baker. Please do not disseminate or discuss any further.

I do not know if the boss will want to discuss this at the Monday update but please review it before the meeting just in case.

Thanks

Andrew G. McCabe
 Deputy Director
 Federal Bureau of Investigation
 [REDACTED]

From: COMEY, JAMES B. (DO) (FBI)
Sent: Monday, May 02, 2016 7:15 PM
To: MCCABE, ANDREW G. (DO) (FBI); BAKER, JAMES A. (OGC) (FBI); RYBICKI, JAMES E. (DO) (FBI)
Cc: COMEY, JAMES B. (DO) (FBI)
Subject: Midyear Exam --- UNCLASSIFIED

Classification: UNCLASSIFIED
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TRANSITORY RECORD

I've been trying to imagine what it would look like if I decided to do an FBI only press event to close out our work and hand the matter to DOJ. To help shape our discussions of whether that, something different, makes sense, I have spent some time crafting what I would say, which follows. In my imagination, I don't see me taking any questions. Here is what it might look like:

Good afternoon folks. I am here to give you an update on our investigation of Secretary Clinton's use of a private email system, which began in late August.

After a tremendous amount of work, the FBI has completed its investigation and has referred the case to the Department of Justice for a prosecutive decision. What I would like to do today is tell you three things: (1) what we did; (2) what we found; (3) what we have recommended to DOJ.

But I want to start by thanking the many agents, analysts, technologists, and other FBI employees who did work of extraordinary quality in this case. Once you have a better sense of how much we have done, you will understand why I am so grateful and proud of their efforts.

So, first: what we have done over the last eight months.

The investigation began as a referral from the Intelligence Community Inspector General in connection with Secretary Clinton's use of a private email server during his time as Secretary of State, focused on whether classified information was transmitted on that private system.

Our investigation focused on whether there is evidence that classified information was improperly stored or transmitted on that private system, in violation of a federal statute that makes it a felony to mishandle classified information either intentionally or in a grossly negligent way, or a second statute that makes it a misdemeanor to remove classified information from appropriate systems or storage facilities.

Consistent with our counterintelligence responsibilities, we have also investigated to determine whether there is evidence of computer intrusion in connection with the private email server by any foreign power, or hackers on behalf of a foreign power.

I have so far used the singular term, "email server," in describing the referral that began our investigation. It turns out to have been more complicated than that. Secretary Clinton used several different servers and providers of those servers during her four years at the State Department, and used numerous mobile devices to view and send email on that private domain. As new servers and providers were employed, older servers were taken out of service, stored, and decommissioned in various ways. Piecing all of that back together to gain as full an understanding as possible of the ways in which private email was used for government work has been a painstaking undertaking, requiring thousands of hours of effort.

For example, when one of Secretary Clinton's original private servers was decommissioned in 20xx, the email software was removed. Doing that didn't remove the email content, but it was like removing the frame from a huge finished jigsaw puzzle and dumping the pieces on the floor. The effect was that

millions of email fragments end up unsorted in the server's un-used – or “slack” – space. We went through all of it to see what was there, and what parts of the puzzle could be put back together.

FBI investigators have also read all 34,000 emails provided by Secretary Clinton to the State Department in spring 2015. Where an email was assessed as possibly containing classified information, the FBI referred the email to the U.S. government agency that was the likely “owner” of the information in the email so that agency could make a determination as to whether the email contained classified information at the time it was sent or received, or whether there was reason to classify the email now, even if its content was not classified at the time it was sent (this is the process sometimes referred to as “up classifying”).

From that group of 34,000 emails that had been returned to the State Department in 2015, the FBI sent xxxx emails to agencies for classification determinations. Of those, xxxx have been determined to contain classified information at the time they were sent or received. Xxxx of those contained information that was Top Secret at the time they were sent; xxxx contained Secret information at the time; and xxxx contained Confidential information. Separate from those, a total of xxxx additional emails were “up classified” to make them Secret or Confidential; the information in those had not been classified at the time the emails were sent.

The FBI also discovered xxxx work-related emails that were not in the group of 34,000 that were returned by Secretary Clinton to State in 2015. We found those additional emails in a variety of ways. Some had been deleted over the years and we found traces of them on devices that supported or were connected to the private email domain. Others we found by reviewing the archived government email accounts of people who had been government employees at the same time as Secretary Clinton, including high-ranking officials at other agencies, with whom a Secretary of State might naturally correspond. This helped us recover work-related emails that were not among the 34,000 produced to the State. Still others we recovered from the laborious review of the millions of email fragments dumped into the slack space of the server decommissioned in 20xx.

All told, we found xxxx emails that were not among those produced to the State Department last year. Of those, we assessed that xxxx possibly contained classified information at the time they were sent or received and so we sent them to other government agencies for classification determinations. To date, agencies have concluded that xxxx of those were classified at the time they were sent or received, xxx at the Secret level and xxxx at the Confidential level. There were no additional Top Secret emails found. Finally, none of those we found have since been “up classified.”

I should add here that we found no evidence that any of the additional work-related emails we found were intentionally deleted in an effort to conceal them. Our assessment is that, like many users of private email accounts, Secretary Clinton periodically deleted emails or emails were purged from the system when devices were changed. Because she was not using a government account, there was no archiving of her emails, so it is not surprising that we discovered emails that were not on Secretary Clinton's system in 2015, when she produced the 34,000 emails to the State Department.

It could also be that some of the additional work-related emails we recovered were among those deleted as “personal” by Secretary Clinton's lawyers when they reviewed and sorted her emails for production in 2015. We have conducted interviews and done technical examination to attempt to understand how that sorting was done. Although we do not have complete visibility because we are

not fully able to reconstruct the electronic record of that sorting, we believe our investigation has been sufficient to give us reasonable confidence there was no intentional misconduct in connection with that sorting effort.

Lawyers doing the sorting for Secretary Clinton in 2015 did not individually read tens of thousands of emails, as we did; instead, they used search terms to try to find all work-related emails among the more than 60,000 total emails remaining on Secretary Clinton's private system in 2015. It is highly likely their search terms missed some work-related emails, and that we found them, for example, in the mailboxes of other officials or in the slack space of a server. It is also likely that there are other work-related emails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all emails they did not return to State, and the lawyers cleaned their devices in a such a way as to preclude forensic recovery.

And, of course, in addition to our technical work, we interviewed many people, from those involved in setting up and maintaining the various iterations of Secretary Clinton's private server to staff members with whom she corresponded on email, to those involved in the email production to State, and finally, Secretary Clinton herself.

Lastly, we have done extensive work with the assistance of our colleagues elsewhere in the Intelligence Community to understand what indications there might be of compromise by hostile actors in connection with the private email operation.

That's what we have done. Now let me tell you what we found.

There is evidence to support a conclusion that Secretary Clinton, and others, used the private email server in a manner that was grossly negligent with respect to the handling of classified information. For example, seven email chains concern matters that were classified at the TS/SAP level when they were sent and received. These chains involved Secretary Clinton both sending emails about those matters and receiving emails from others about the same matters. There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for such an email conversation. Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.

Similarly, the sheer volume of information that was properly classified as Secret at the time it was discussed on email (that is, excluding the "up classified" emails) supports an inference that the participants were grossly negligent in their handling of that information.

We also developed evidence that the security culture of the State Department in general, and with respect to use of unclassified email systems in particular, was generally lacking in the kind of care for classified information found elsewhere in the government.

With respect to potential computer intrusion by hostile actors, we did not find direct evidence that Secretary Clinton's personal email system, in its various configurations since 2009, was successfully hacked. But, given the nature of the system and of the actors potentially involved, we assess that we

would be unlikely to see such direct evidence. We do assess that hostile actors gained access to the private email accounts of individuals with whom Secretary Clinton was in regular contact from her private account. We also assess that Secretary Clinton's use of a private email domain was both known by a large number of people and readily apparent. Given that combination of factors, we assess it is reasonably likely that hostile actors gained access to Secretary Clinton's private email account.

So that's what we found.

Finally, with respect to our recommendation to the Department of Justice. In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. Although we don't normally make public our recommendations to the prosecutors, we frequently make recommendations and engage in productive conversations with prosecutors about what resolution may be appropriate, given the evidence. In this case, given the importance of the matter, I think unusual transparency is in order.

Although there is evidence of potential violations of the statute proscribing gross negligence in the handling of classified information and of the statute proscribing misdemeanor mishandling, my judgment is that no reasonable prosecutor would bring such a case. At the outset, we are not aware of a case where anyone has been charged solely based on the "gross negligence" prohibition in the statute. All charged cases of which we are aware have involved the accusation that a government employee intentionally mishandled classified information. In looking back at our investigations in similar circumstances, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: (1) clearly intentional misconduct; (2) vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; (3) indications of disloyalty to the United States; or (4) efforts to obstruct justice. We see none of that here.

Accordingly, although the Department of Justice makes final decisions on matters such as this, I am completing the investigation by expressing to Justice my view that no charges are appropriate in this case.

I know there will be intense public disagreement in the wake of this result, as there was throughout this investigation. What I can assure the American people is that this investigation was done competently, honestly, and independently. No outside influence of any kind was brought to bear. I know there were many opinions expressed by people who were not part of the investigation -- including people in government -- but none of that mattered to us. Opinions are irrelevant, and they were all uninformed by insight into our investigation, because we did the investigation in a professional way. Only facts matter, and the FBI found them here in an entirely apolitical and professional way. I couldn't be prouder to be part of this organization.

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Classification: UNCLASSIFIED

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ATTACHMENT D

**Statement by FBI Director James B. Comey on the Investigation
of Secretary Hillary Clinton's Use of a Personal Email System**

July 5, 2016

[As Prepared for Delivery]

Good morning. I'm here to give you an update on the FBI's investigation of Secretary Clinton's use of a personal email system during her time as Secretary of State.

After a tremendous amount of work over the last year, the FBI is completing its investigation and referring the case to the Department of Justice for a prosecutive decision. What I would like to do today is tell you three things: what we did; what we found; and what we are recommending to the Department of Justice.

This will be an unusual statement in at least a couple ways. First, I am going to include more detail about our process than I ordinarily would, because I think the American people deserve those details in a case of intense public interest. Second, I have not coordinated or reviewed this statement in any way with the Department of Justice or any other part of the government. They do not know what I am about to say.

I want to start by thanking the FBI employees who did remarkable work in this case. Once you have a better sense of how much we have done, you will understand why I am so grateful and proud of their efforts.

So, first, what we have done:

The investigation began as a referral from the Intelligence Community Inspector General in connection with Secretary Clinton's use of a personal email server during her time as Secretary of State. The referral focused on whether classified information was transmitted on that personal system.

Our investigation looked at whether there is evidence classified information was improperly stored or transmitted on that personal system, in violation of a federal statute making it a felony to mishandle classified information either intentionally or in a grossly negligent way, or a second statute making it a misdemeanor to knowingly remove classified information from appropriate systems or storage facilities

Consistent with our counter-intelligence responsibilities, we have also investigated to determine whether there is evidence of computer intrusion in connection with the personal email server by any foreign power, or other hostile actors.

I have so far used the singular term, "email server," in describing the referral that began our investigation. It turns out to have been more complicated than that. Secretary Clinton used

several different servers and administrators of those servers during her four years at the State Department, and used numerous mobile devices to view and send email on that personal domain. As new servers and equipment were employed, older servers were taken out of service, stored, and decommissioned in various ways. Piecing all of that back together -- to gain as full an understanding as possible of the ways in which personal email was used for government work -- has been a painstaking undertaking, requiring thousands of hours of effort.

For example, when one of Secretary Clinton's original personal servers was decommissioned in 2013, the email software was removed. Doing that didn't remove the email content, but it was like removing the frame from a huge finished jigsaw puzzle and dumping the pieces on the floor. The effect was that millions of email fragments end up unsorted in the server's un-used -- or "slack" -- space. We searched through all of it to see what was there, and what parts of the puzzle could be put back together.

FBI investigators have also read all of the approximately 30,000 emails provided by Secretary Clinton to the State Department in December 2014. Where an email was assessed as possibly containing classified information, the FBI referred the email to any U.S. government agency that was a likely "owner" of information in the email, so that agency could make a determination as to whether the email contained classified information at the time it was sent or received, or whether there was reason to classify the email now, even if its content was not classified at the time it was sent (that is the process sometimes referred to as "up-classifying").

From the group of 30,000 emails returned to the State Department, 110 emails in 52 email chains have been determined by the owning agency to contain classified information at the time they were sent or received. Eight of those chains contained information that was Top Secret at the time they were sent; 36 chains contained Secret information at the time; and 8 contained Confidential information, which is the lowest level of classification. Separate from those, about 2,000 additional emails were "up-classified" to make them Confidential; the information in those had not been classified at the time the emails were sent.

The FBI also discovered several thousand work-related emails that were not in the group of 30,000 that were returned by Secretary Clinton to State in 2014. We found those additional emails in a variety of ways. Some had been deleted over the years and we found traces of them on devices that supported or were connected to the private email domain. Others we found by reviewing the archived government email accounts of people who had been government employees at the same time as Secretary Clinton, including high-ranking officials at other agencies, people with whom a Secretary of State might naturally correspond.

This helped us recover work-related emails that were not among the 30,000 produced to State. Still others we recovered from the laborious review of the millions of email fragments dumped into the slack space of the server decommissioned in 2013.

With respect to the thousands of emails we found that were not among those produced to State, agencies have concluded that 3 of those were classified at the time they were sent or received, 1 at the Secret level and 2 at the Confidential level. There were no additional Top Secret emails found. Finally, none of those we found have since been "up-classified."

I should add here that we found no evidence that any of the additional work-related emails were intentionally deleted in an effort to conceal them. Our assessment is that, like many email users, Secretary Clinton periodically deleted emails or emails were purged from the system when devices were changed. Because she was not using a government account – or even a commercial account like Gmail – there was no archiving at all of her emails, so it is not surprising that we discovered emails that were not on Secretary Clinton’s system in 2014, when she produced the 30,000 emails to the State Department

It could also be that some of the additional work-related emails we recovered were among those deleted as “personal” by Secretary Clinton’s lawyers when they reviewed and sorted her emails for production in 2014

The lawyers doing the sorting for Secretary Clinton in 2014 did not individually read the content of all of her emails, as we did for those available to us, instead, they relied on header information and used search terms to try to find all work-related emails among the reportedly more than 60,000 total emails remaining on Secretary Clinton’s personal system in 2014. It is highly likely their search terms missed some work-related emails, and that we later found them, for example, in the mailboxes of other officials or in the slack space of a server. It is also likely that there are other work-related emails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all emails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery.

We have conducted interviews and done technical examination to attempt to understand how that sorting was done by her attorneys. Although we do not have complete visibility because we are not able to fully reconstruct the electronic record of that sorting, we believe our investigation has been sufficient to give us reasonable confidence there was no intentional misconduct in connection with that sorting effort.

And, of course, in addition to our technical work, we interviewed many people, from those involved in setting up and maintaining the various iterations of Secretary Clinton’s personal server, to staff members with whom she corresponded on email, to those involved in the email production to State, and finally, Secretary Clinton herself.

Last, we have done extensive work to understand what indications there might be of compromise by hostile actors in connection with the personal email operation.

That’s what we have done. Now let me tell you what we found:

Although we did not find clear evidence that Secretary Clinton or her colleagues intended to violate laws governing the handling of classified information, there is evidence that they were extremely careless in their handling of very sensitive, highly classified information.

For example, seven email chains concern matters that were classified at the Top Secret/Special Access Program level when they were sent and received. These chains involved

Secretary Clinton both sending emails about those matters and receiving emails from others about the same matters. There is evidence to support a conclusion that any reasonable person in Secretary Clinton's position, or in the position of those government employees with whom she was corresponding about these matters, should have known that an unclassified system was no place for that conversation. In addition to this highly sensitive information, we also found information that was properly classified as Secret by the U.S. Intelligence Community at the time it was discussed on email (that is, excluding the later "up-classified" emails).

None of these emails should have been on any kind of unclassified system, but their presence is especially concerning because all of these emails were housed on unclassified personal servers not even supported by full-time security staff, like those found at Departments and Agencies of the U.S. Government – or even with a commercial service like Gmail.

Separately, it is important to say something about the marking of classified information. Only a very small number of the emails containing classified information bore markings indicating the presence of classified information. But even if information is not marked "classified" in an email, participants who know or should know that the subject matter is classified are still obligated to protect it.

While not the focus of our investigation, we also developed evidence that the security culture of the State Department in general, and with respect to use of unclassified email systems in particular, was generally lacking in the kind of care for classified information found elsewhere in the government.

With respect to potential computer intrusion by hostile actors, we did not find direct evidence that Secretary Clinton's personal email domain, in its various configurations since 2009, was successfully hacked. But, given the nature of the system and of the actors potentially involved, we assess that we would be unlikely to see such direct evidence. We do assess that hostile actors gained access to the private commercial email accounts of people with whom Secretary Clinton was in regular contact from her personal account. We also assess that Secretary Clinton's use of a personal email domain was both known by a large number of people and readily apparent. She also used her personal email extensively while outside the United States, including sending and receiving work-related emails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton's personal email account.

So that's what we found. Finally, with respect to our recommendation to the Department of Justice:

In our system, the prosecutors make the decisions about whether charges are appropriate based on evidence the FBI has helped collect. Although we don't normally make public our recommendations to the prosecutors, we frequently make recommendations and engage in productive conversations with prosecutors about what resolution may be appropriate, given the evidence. In this case, given the importance of the matter, I think unusual transparency is in order.

Although there is evidence of potential violations of the statutes regarding the handling of classified information, our judgment is that no reasonable prosecutor would bring such a case. Prosecutors necessarily weigh a number of factors before bringing charges. There are obvious considerations, like the strength of the evidence, especially regarding intent. Responsible decisions also consider the context of a person's actions, and how similar situations have been handled in the past.

In looking back at our investigations into mishandling or removal of classified information, we cannot find a case that would support bringing criminal charges on these facts. All the cases prosecuted involved some combination of: clearly intentional and willful mishandling of classified information, or vast quantities of materials exposed in such a way as to support an inference of intentional misconduct; or indications of disloyalty to the United States; or efforts to obstruct justice. We do not see those things here.

To be clear, this is not to suggest that in similar circumstances, a person who engaged in this activity would face no consequences. To the contrary, those individuals are often subject to security or administrative sanctions. But that is not what we are deciding now.

As a result, although the Department of Justice makes final decisions on matters like this, we are expressing to Justice our view that no charges are appropriate in this case.

I know there will be intense public debate in the wake of this recommendation, as there was throughout this investigation. What I can assure the American people is that this investigation was done competently, honestly, and independently. No outside influence of any kind was brought to bear.

I know there were many opinions expressed by people who were not part of the investigation – including people in government – but none of that mattered to us. Opinions are irrelevant, and they were all uninformed by insight into our investigation, because we did the investigation the right way. Only facts matter, and the FBI found them here in an entirely apolitical and professional way. I couldn't be prouder to be part of this organization.

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ATTACHMENT E



U.S. Department of Justice

Federal Bureau of Investigation

Washington D.C. 20535

October 28, 2016

Honorable Richard M. Burr
Chairman
Select Committee on Intelligence

Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary

Honorable Robert Goodlatte
Chairman
Committee on the Judiciary

Honorable Richard Shelby
Chairman
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies

Honorable John Culberson
Chairman
Committee on Appropriations
Subcommittee on Commerce, Justice,
Science and Related Agencies

Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs

Honorable Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform

Dear Messrs Chairmen:

In previous congressional testimony, I referred to the fact that the Federal Bureau of Investigation (FBI) had completed its investigation of former Secretary Clinton's personal email server. Due to recent developments, I am writing to supplement my previous testimony.

In connection with an unrelated case, the FBI has learned of the existence of emails that appear to be pertinent to the investigation. I am writing to inform you that the investigative team briefed me on this yesterday, and I agreed that the FBI should take appropriate investigative steps designed to allow investigators to review these emails to determine whether they contain classified information, as well as to assess their importance to our investigation.

Although the FBI cannot yet assess whether or not this material may be significant, and I cannot predict how long it will take us to complete this additional work, I believe it is important to update your Committees about our efforts in light of my previous testimony.

Sincerely yours,


James B. Comey
Director

- 1 – Honorable Dianne Feinstein
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510
- 1 – Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510
- 1 – Honorable Barbara Mikulski
Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies
United States Senate
Washington, DC 20510
- 1 – Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510
- 1 – Honorable Adam B. Schiff
Ranking Member
Permanent Select Committee on Intelligence
U S House of Representatives
Washington, DC 20515
- 1 – Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515
- 1 – Honorable Michael Honda
Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies
U S House of Representatives
Washington, DC 20515

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1 -- Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform
U S. House of Representatives
Washington, DC 20515

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ATTACHMENT F



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D C 20535

November 6, 2016

Honorable Richard M. Burr
Chairman
Select Committee on Intelligence

Honorable Devin Nunes
Chairman
Permanent Select Committee on Intelligence

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary

Honorable Robert Goodlatte
Chairman
Committee on the Judiciary

Honorable Richard Shelby
Chairman
Committee on Appropriations
Subcommittee on Commerce, Justice,
Science and Related Agencies

Honorable John Culberson
Chairman
Committee on Appropriations
Subcommittee on Commerce, Justice,
Science and Related Agencies

Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs

Honorable Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform

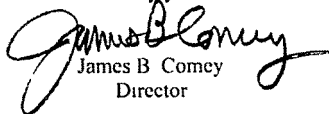
Dear Messrs Chairmen.

I write to supplement my October 28, 2016 letter that notified you the FBI would be taking additional investigative steps with respect to former Secretary of State Clinton's use of a personal email server. Since my letter, the FBI investigative team has been working around the clock to process and review a large volume of emails from a device obtained in connection with an unrelated criminal investigation. During that process, we reviewed all of the communications that were to or from Hillary Clinton while she was Secretary of State.

Based on our review, we have not changed our conclusions that we expressed in July with respect to Secretary Clinton.

I am very grateful to the professionals at the FBI for doing an extraordinary amount of high-quality work in a short period of time.

Sincerely yours,


James B. Comey
Director

cc: See next page

1 – Honorable Dianne Feinstein
Vice Chairman
Select Committee on Intelligence

1 – Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary

1 – Honorable Barbara Mikulski
Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice,
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Committee on Homeland Security and
Governmental Affairs

1 – Honorable Adam B. Schiff
Ranking Member
Permanent Select Committee on Intelligence

1 – Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary

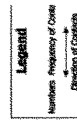
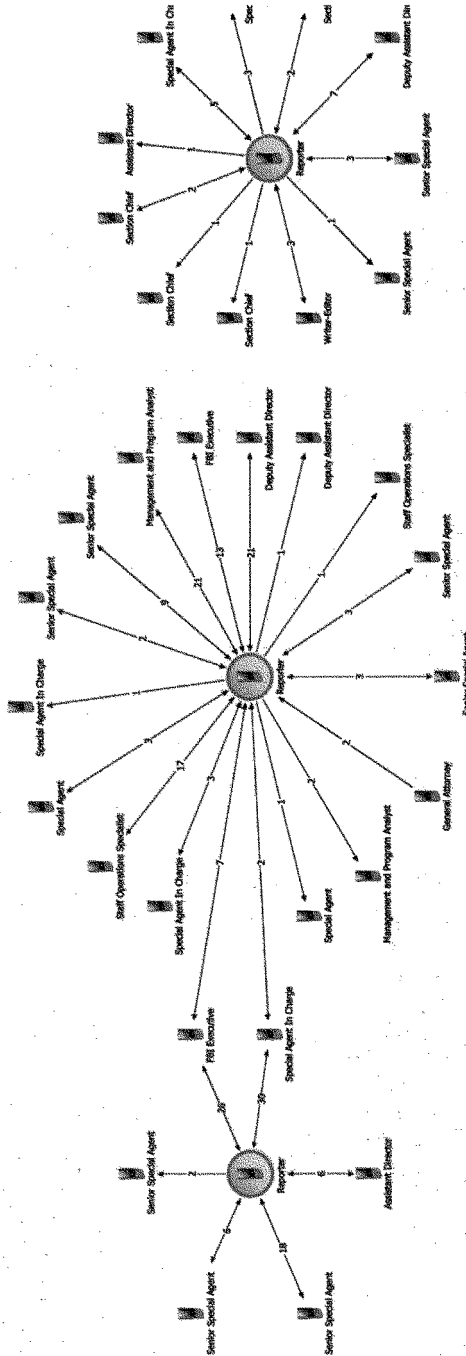
1 – Honorable Michael Honda
Ranking Member
Committee on Appropriations
Subcommittee on Commerce, Justice,
Science, and Related Agencies

1 – Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform

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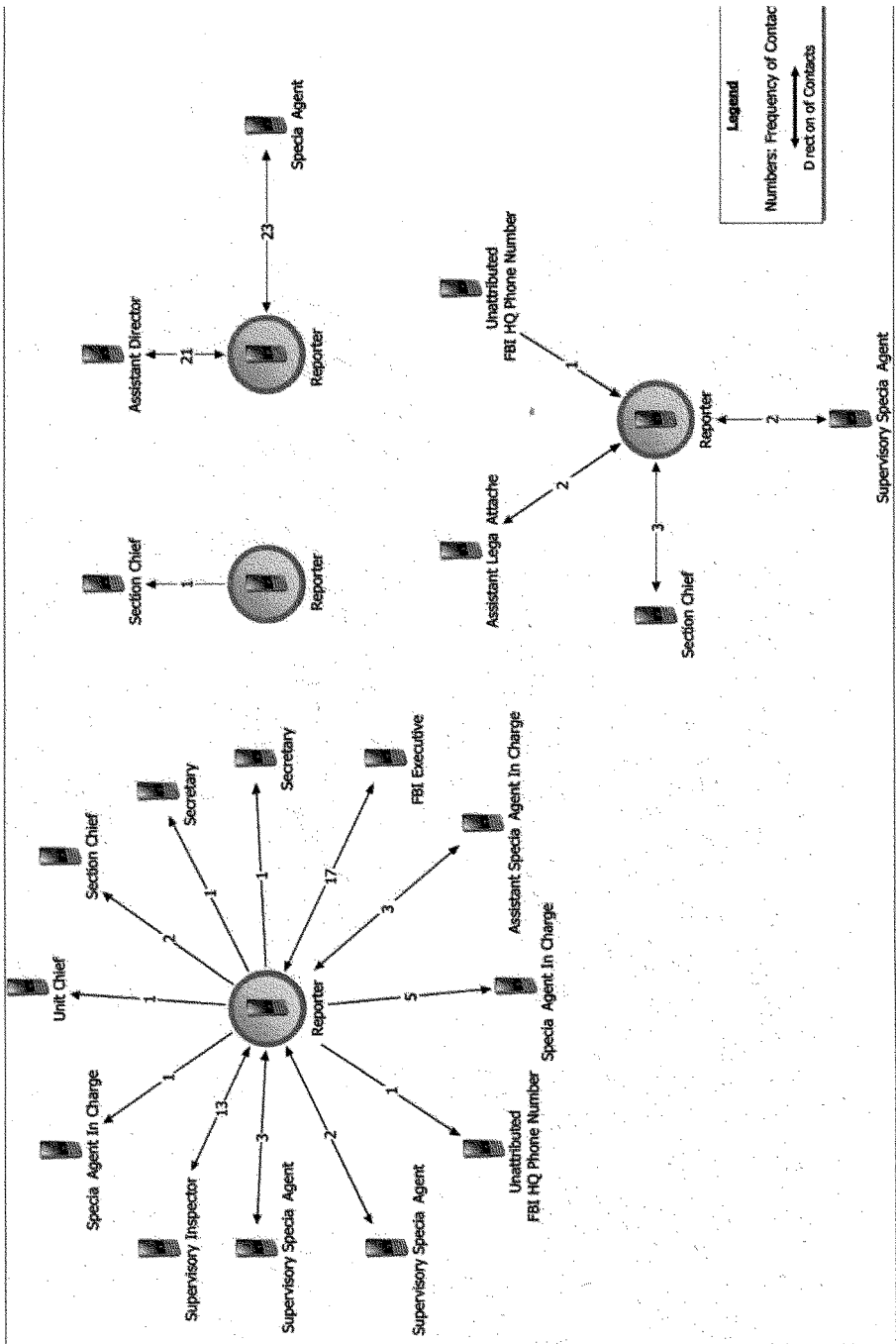
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ATTACHMENT H



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APPENDIX ONE

CLASSIFIED

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APPENDIX TWO

LAW ENFORCEMENT SENSITIVE



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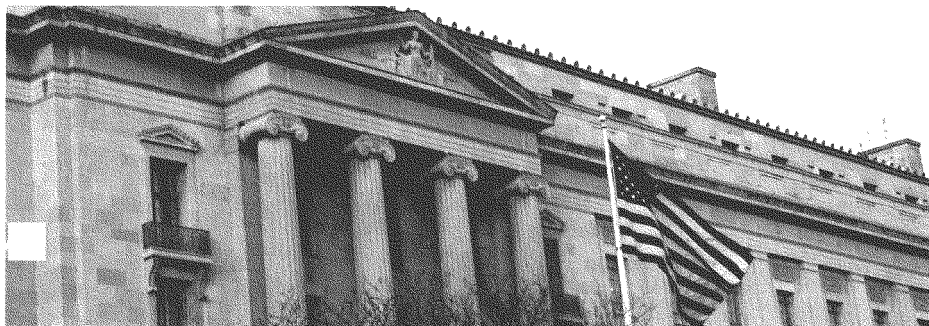
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Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

ersight and Review Division 20-012

December 2019 (Revised)

REDACTED FOR PUBLIC RELEASE

NOTICE

This report was originally issued on December 9, 2019. The report was updated on December 11 and December 20, 2019, with the following changes (page references are to the public version of the report):

- On pages iv, xvi, 400, and 407, we changed the phrase “before and after” to “both during and after the time.” In all instances, the phrase appears in connection to the time period during which we found that the Crossfire Hurricane team used Confidential Human Sources (CHSs) to interact and consensually record conversations with Page and Papadopoulos. The corrected information appearing in this updated report reflects the accurate information concerning these time periods that previously appeared, and still appears, on pages 305 and 313 (*e.g.*, the statement on page 305 that “the Crossfire Hurricane team tasked CHSs to interact with Page and Papadopoulos both during the time Page and Papadopoulos were advisors to the Trump campaign, and after Page and Papadopoulos were no longer affiliated with the Trump campaign”).
 - On pages ix, 164, 165, 214, and 364 we removed redactions of certain information related to Person 1. We also removed redactions throughout the report related to the dates the Carter Page FISA applications were filed and the dates FISA authority expired for each application. These changes to previously-redacted text were made in response to subsequent decisions made by the Department of Justice and the FBI about the classification of the underlying information. See page 14, footnote 24.
 - On pages xi, 242, 368, and 370, we changed the phrase “had no discussion” to “did not recall any discussion or mention.” On page 242, we also changed the phrase “made no mention at all of” to “did not recall any discussion or mention of.” On page 370, we also changed the word “assertion” to “statement,” and the words “and Person 1 had no discussion at all regarding WikiLeaks directly contradicted” to “did not recall any discussion or mention of WikiLeaks during the telephone call was inconsistent with.” In all instances, this phrase appears in connection with statements that Steele’s Primary Sub-source made to the FBI during a January 2017 interview about information he provided to Steele that appeared in Steele’s election reports. The corrected information appearing in this updated report reflects the accurate characterization of the Primary Sub-source’s account to the FBI that previously appeared, and still appears, on page 191, stating that “[the Primary Sub-Source] did not recall any discussion or mention of Wiki[L]eaks.”
 - On page 57, we added the specific provision of the United States Code where the Foreign Agents Registration Act (FARA) is codified, and revised a footnote in order to reference prior OIG work examining the Department’s enforcement and administration of FARA.
 - On page 413, we changed the word, “three” to “second and third.” The corrected information appearing in this updated report reflects the accurate description of the Carter Page FISA applications that did not contain the information the FBI obtained from Steele’s Primary Sub-source in January 2017 that raised significant questions about the reliability of the Steele reporting. This information previously appeared, and still appears, accurately on pages xi, xiii, 368, and 372.
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Executive Summary

Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

Background

The Department of Justice (Department) Office of the Inspector General (OIG) undertook this review to examine certain actions by the Federal Bureau of Investigation (FBI) and the Department during an FBI investigation opened on July 31, 2016, known as "Crossfire Hurricane," into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government's efforts to interfere in the 2016 U.S. presidential election. Our review included examining:

- The decision to open Crossfire Hurricane and four individual cases on current and former members of the Trump campaign, George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn; the early investigative steps taken; and whether the openings and early steps complied with Department and FBI policies;
- The FBI's relationship with Christopher Steele, whom the FBI considered to be a confidential human source (CHS); its receipt, use, and evaluation of election reports from Steele; and its decision to close Steele as an FBI CHS;
- Four FBI applications filed with the Foreign Intelligence Surveillance Court (FISC) in 2016 and 2017 to conduct Foreign Intelligence Surveillance Act (FISA) surveillance targeting Carter Page; and whether these applications complied with Department and FBI policies and satisfied the government's obligations to the FISC;
- The interactions of Department attorney Bruce Ohr with Steele, the FBI, Glenn Simpson of Fusion GPS, and the State Department; whether work Ohr's spouse performed for Fusion GPS implicated ethical rules applicable to Ohr; and Ohr's interactions with Department attorneys regarding the Manafort criminal case; and
- The FBI's use of Undercover Employees (UCEs) and CHSs other than Steele in the Crossfire Hurricane investigation; whether the FBI placed any CHSs within the Trump campaign or tasked any CHSs to report on the Trump campaign; whether the use of CHSs and UCEs complied with Department and FBI policies; and the attendance of a Crossfire Hurricane supervisory agent at counterintelligence briefings given to the 2016 presidential candidates and certain campaign advisors.

OIG Methodology

The OIG examined more than one million documents that were in the Department's and FBI's possession and conducted over 170 interviews involving more than 100 witnesses. These witnesses included former FBI Director Comey, former Attorney General (AG) Loretta Lynch, former Deputy Attorney General (DAG) Sally Yates, former DAG Rod Rosenstein, former Acting AG and Acting DAG and current FBI General Counsel Dana Boente, former FBI Deputy Director Andrew McCabe, former FBI General Counsel James Baker, and Department attorney Bruce Ohr and his wife. The OIG also interviewed Christopher Steele and current and former employees of other U.S. government agencies. Two witnesses, Glenn Simpson and Jonathan Winer (a former Department of State official), declined our requests for voluntary interviews, and we were unable to compel their testimony.

We were given broad access to relevant materials by the Department and the FBI. In addition, we reviewed relevant information that other U.S. government agencies provided the FBI in the course of the Crossfire Hurricane investigation. However, because the activities of other agencies are outside our jurisdiction, we did not seek to obtain records from them that the FBI never received or reviewed, except for a limited amount of State Department records relating to Steele; we also did not seek to assess any actions other agencies may have taken. Additionally, our review did not independently seek to determine whether corroboration existed for the Steele election reporting; rather, our review was focused on information that was available to the FBI concerning Steele's reports prior to and during the pendency of the Carter Page FISA authority.

Our role in this review was not to second-guess discretionary judgments by Department personnel about whether to open an investigation, or specific judgment calls made during the course of an investigation, where those decisions complied with or were authorized by Department rules, policies, or procedures. We do not criticize particular decisions merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was ideal or could have been handled more effectively, but rather whether the Department and the FBI complied with applicable legal requirements, policies, and procedures in taking the actions we reviewed or, alternatively, whether the circumstances surrounding the decision indicated that it was based on



Executive Summary

Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

inaccurate or incomplete information, or considerations other than the merits of the investigation. If the explanations we were given for a particular decision were consistent with legal requirements, policies, procedures, and not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of documentary or testimonial evidence to the contrary.

The Opening of Crossfire Hurricane and Four Related Investigations, and Early Investigative Steps

The Opening of Crossfire Hurricane and Four Individual Cases

As we describe in Chapter Three, the FBI opened Crossfire Hurricane on July 31, 2016, just days after its receipt of information from a Friendly Foreign Government (FFG) reporting that, in May 2016, during a meeting with the FFG, then Trump campaign foreign policy advisor George Papadopoulos “suggested the ‘rump team had received some kind of suggestion from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to Mrs. Clinton (and President Obama).” The FBI Electronic Communication (EC) opening the Crossfire Hurricane investigation stated that, based on the FFG information, “this investigation is being opened to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia.” We did not find information in FBI or Department ECs, emails, or other documents, or through witness testimony, indicating that any information other than the FFG information was relied upon to predicate the opening of the Crossfire Hurricane investigation. Although not mentioned in the EC, at the time, FBI officials involved in opening the investigation had reason to believe that Russia may have been connected to the WikiLeaks disclosures that occurred earlier in July 2016, and were aware of information regarding Russia’s efforts to interfere with the 2016 U.S. elections. These officials, though, did not become aware of Steele’s election reporting until weeks later and we therefore determined that Steele’s reports played no role in the Crossfire Hurricane opening.

The FBI assembled a Headquarters-based investigative team of special agents, analysts, and supervisory special agents (referred to throughout this report as “the Crossfire Hurricane team”) who conducted an initial analysis of links between Trump campaign members and Russia. Based upon this

analysis, the Crossfire Hurricane team opened individual cases in August 2016 on four U.S. persons—Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn—all of whom were affiliated with the Trump campaign at the time the cases were opened.

As detailed in Chapter Two, the Attorney General’s Guidelines for Domestic Operations (AG Guidelines) and the FBI’s Domestic Investigations Operations Guide (DIOG) both require that FBI investigations be undertaken for an “authorized purpose”—that is, “to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.” Additionally, both the AG Guidelines and the DIOG permit the FBI to conduct an investigation, even if it might impact First Amendment or other constitutionally protected activity, so long as there is some legitimate law enforcement purpose associated with the investigation.

In addition to requiring an authorized purpose, FBI investigations must have adequate factual predication before being initiated. The predication requirement is not a legal requirement but rather a prudential one imposed by Department and FBI policy. The DIOG provides for two types of investigations, Preliminary Investigations and Full Investigations. A Preliminary Investigation may be opened based upon “any allegation or information” indicative of possible criminal activity or threats to the national security. A Full Investigation may be opened based upon an “articulable factual basis” that “reasonably indicates” any one of three defined circumstances exists, including:

An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.

In Full Investigations such as Crossfire Hurricane, all lawful investigative methods are allowed. In Preliminary Investigations, all lawful investigative methods (including the use of CHSs and UCEs) are permitted except for mail opening, physical searches requiring a search warrant, electronic surveillance requiring a judicial order or warrant (Title III wiretap or a FISA order), or requests under Title VII of FISA. An investigation opened as a Preliminary Investigation may be converted subsequently to a Full Investigation if



Executive Summary

Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

information becomes available that meets the predication standard. As we describe in the report, all of the investigative actions taken by the Crossfire Hurricane team, from the date the case was opened on July 31 until October 21 (the date of the first FISA order) would have been permitted whether the case was opened as a Preliminary or Full Investigation.

The AG Guidelines and the DIOG do not provide heightened predication standards for sensitive matters, or allegations potentially impacting constitutionally protected activity, such as First Amendment rights. Rather, the approval and notification requirements contained in the AG Guidelines and the DIOG are, in part, intended to provide the means by which such concerns can be considered by senior officials. However, we were concerned to find that neither the AG Guidelines nor the DIOG contain a provision requiring Department consultation before opening an investigation such as the one here involving the alleged conduct of individuals associated with a major party presidential campaign.

Crossfire Hurricane was opened as a Full Investigation and all of the senior FBI officials who participated in discussions about whether to open a case told us the information warranted opening it. For example, then Counterintelligence Division (CD) Assistant Director (AD) E.W. "Bill" Priestap, who approved the case opening, told us that the combination of the FFG information and the FBI's ongoing cyber intrusion investigation of the July 2016 hacks of the Democratic National Committee's (DNC) emails, created a counterintelligence concern that the FBI was "obligated" to investigate. Priestap stated that he considered whether the FBI should conduct defensive briefings for the Trump campaign but ultimately decided that providing such briefings created the risk that "if someone on the campaign was engaged with the Russians, he/she would very likely change his/her tactics and/or otherwise seek to cover-up his/her activities, thereby preventing us from finding the truth." We did not identify any Department or FBI policy that applied to this decision and therefore determined that the decision was a judgment call that Department and FBI policy leaves to the discretion of FBI officials. We also concluded that, under the AG Guidelines and the DIOG, the FBI had an authorized purpose when it opened Crossfire Hurricane to obtain information about, or protect against, a national security threat or federal crime, even though the investigation also had the potential to impact constitutionally protected activity.

Additionally, given the low threshold for predication in the AG Guidelines and the DIOG, we concluded that the FFG information, provided by a government the United States Intelligence Community (USIC) deems trustworthy, and describing a first-hand account from an FFG employee of a conversation with Papadopoulos, was sufficient to predicate the investigation. This information provided the FBI with an articulable factual basis that, if true, reasonably indicated activity constituting either a federal crime or a threat to national security, or both, may have occurred or may be occurring. For similar reasons, as we detail in Chapter Three, we concluded that the quantum of information articulated by the FBI to open the individual investigations on Papadopoulos, Page, Flynn, and Manafort in August 2016 was sufficient to satisfy the low threshold established by the Department and the FBI.

As part of our review, we also sought to determine whether there was evidence that political bias or other improper considerations affected decision making in Crossfire Hurricane, including the decision to open the investigation. We discussed the issue of political bias in a prior OIG report, *Review of Various Actions in Advance of the 2016 Election*, where we described text and instant messages between then Special Counsel to the Deputy Director Lisa Page and then Section Chief Peter Strzok, among others, that included statements of hostility toward then candidate Trump and statements of support for then candidate Hillary Clinton. In this review, we found that, while Lisa Page attended some of the discussions regarding the opening of the investigations, she did not play a role in the decision to open Crossfire Hurricane or the four individual cases. We further found that while Strzok was directly involved in the decisions to open Crossfire Hurricane and the four individual cases, he was not the sole, or even the highest-level, decision maker as to any of those matters. As noted above, then CD AD Priestap, Strzok's supervisor, was the official who ultimately made the decision to open the investigation, and evidence reflected that this decision by Priestap was reached by consensus after multiple days of discussions and meetings that included Strzok and other leadership in CD, the FBI Deputy Director, the FBI General Counsel, and a FBI Deputy General Counsel. We concluded that Priestap's exercise of discretion in opening the investigation was in compliance with Department and FBI policies, and we did not find documentary or testimonial evidence that political bias or improper motivation influenced his decision. We similarly found that, while the formal documentation opening each of the four individual investigations was approved by Strzok (as required by the DIOG), the



Executive Summary

Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation

decisions to do so were reached by a consensus among the Crossfire Hurricane agents and analysts who identified individuals associated with the Trump campaign who had recently traveled to Russia or had other alleged ties to Russia. Priestap was involved in these decisions. We did not find documentary or testimonial evidence that political bias or improper motivation influenced the decisions to open the four individual investigations.

Sensitive Investigative Matter Designation

The Crossfire Hurricane investigation was properly designated as a "sensitive investigative matter," or SIM, by the FBI because it involved the activities of a domestic political organization or individuals prominent in such an organization. The DIOG requires that SIMs be reviewed in advance by the FBI Office of the General Counsel (OGC) and approved by the appropriate FBI Headquarters operational section chief, and that an "appropriate [National Security Division] official" receive notification after the case has been opened.

We concluded that the FBI satisfied the DIOG's approval and notification requirements for SIMs. As we describe in Chapter Three, the Crossfire Hurricane opening was reviewed by an OGC Unit Chief and approved by AD Priestap (two levels above Section Chief). The team also orally briefed National Security Division (NSD) officials within the first few days of the investigations being initiated. We were concerned, however, that Department and FBI policies do not require that a senior Department official be notified prior to the opening of a particularly sensitive case such as this one, nor do they place any additional requirements for SIMs beyond the approval and notification requirements at the time of opening, and therefore we include a recommendation to address this issue.

Early Investigative Steps and Adherence to the Least Intrusive Method

The AG Guidelines and the DIOG require that the "least intrusive" means or method be "considered" when selecting investigative techniques and, "if reasonable based upon the circumstances of the investigation," be used to obtain information instead of a more intrusive method. The DIOG states that the degree of procedural protection the law and Department and FBI policy provide for the use of a particular investigative method helps to determine its intrusiveness. As described in Chapter Three, immediately after opening the investigation, the

Crossfire Hurricane team submitted name trace requests to other U.S. government agencies and a foreign intelligence agency, and conducted law enforcement database and open source searches, to identify individuals associated with the Trump campaign in a position to have received the alleged offer of assistance from Russia. The FBI also sent Strzok and a Supervisory Special Agent (SSA) abroad to interview the source of the information the FBI received from the FFG, and also searched the FBI's database of CHSs to identify sources who potentially could provide information about connections between individuals associated with the Trump campaign and Russia. Each of these steps is authorized under the DIOG and was a less intrusive investigative technique.

Thereafter, the Crossfire Hurricane team used more intrusive techniques, including CHSs to interact and consensually record multiple conversations with Page and Papadopoulos, both during and after the time they were working for the Trump campaign, as well as on one occasion with a high-level Trump campaign official who was not a subject of the investigation. We found that, under Department and FBI policy, although this CHS activity implicated First Amendment protected activity, the operations were permitted because their use was not for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. Additionally, we found that under FBI policy, the use of a CHS to conduct consensual monitoring is a matter of investigative judgment that, absent certain circumstances, can be authorized by a first-line supervisor (an SSA). We determined that the CHS operations conducted during Crossfire Hurricane received the necessary FBI approvals and that, while AD Priestap knew about and approved of all of the operations, review beyond a first-level FBI supervisor was not required by Department or FBI policy.

We found it concerning that Department and FBI policy did not require the FBI to consult with any Department official in advance of conducting CHS operations involving advisors to a major party candidate's presidential campaign, and we found no evidence that the FBI consulted with any Department officials before conducting these CHS operations. As we describe in Chapter Two, consultation, at a minimum, is required by Department and FBI policies in numerous other sensitive circumstances, and we include a recommendation to address this issue.

Shortly after opening the Carter Page investigation in August 2016, the Crossfire Hurricane team discussed the possible use of FISA-authorized



Executive Summary

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electronic surveillance targeting Page, which is among the most sensitive and intrusive investigative techniques. As we describe in Chapter Five, the FBI ultimately did not seek a FISA order at that time because OGC, NSD's Office of Intelligence (OI), or both determined that more information was needed to support probable cause that Page was an agent of a foreign power. However, immediately after the Crossfire Hurricane team received Steele's election reporting on September 19, the team reinitiated their discussions with OI and their efforts to obtain FISA surveillance authority for Page, which they received from the FISC on October 21.

The decision to seek to use this highly intrusive investigative technique was known and approved at multiple levels of the Department, including by then DAG Yates for the initial FISA application and first renewal, and by then Acting Attorney General Boente and then DAG Rosenstein for the second and third renewals, respectively. However, as we explain later, the Crossfire Hurricane team failed to inform Department officials of significant information that was available to the team at the time that the FISA applications were drafted and filed. Much of that information was inconsistent with, or undercut, the assertions contained in the FISA applications that were used to support probable cause and, in some instances, resulted in inaccurate information being included in the applications. While we do not speculate whether Department officials would have authorized the FBI to seek to use FISA authority had they been made aware of all relevant information, it was clearly the responsibility of Crossfire Hurricane team members to advise them of such critical information so that they could make a fully informed decision.

The FBI's Relationship with Christopher Steele, and Its Receipt and Evaluation of His Election Reporting before the First FISA Application

As we describe in Chapter Four, Steele is a former intelligence officer [REDACTED] who, in 2009, formed a consulting firm specializing in corporate intelligence and investigative services. In 2010, Steele was introduced by Ohr to an FBI agent, and for several years provided information to the FBI about various matters, such as corruption in the International Federation of Association Football (FIFA). Steele also provided the FBI agent with reporting about Russian oligarchs.

In 2013, the FBI completed the paperwork allowing the FBI to designate Steele as a CHS. However, as described in Chapter Four, we found that the FBI and Steele held significantly differing views about the nature of their relationship. Steele's handling agent viewed Steele as a former intelligence officer colleague and FBI CHS, with obligations to the FBI. Steele, on the other hand, told us that he was a businessperson whose firm (not Steele) had a contractual agreement with the FBI and whose obligations were to his paying clients, not the FBI. We concluded that this disagreement affected the FBI's control over Steele during the Crossfire Hurricane investigation, led to divergent expectations about Steele's conduct in connection with his election reporting, and ultimately resulted in the FBI formally closing Steele as a CHS in November 2016 (although, as discussed below, the FBI continued its relationship with Steele through Ohr).

In June 2016, Steele and his consulting firm were hired by Fusion GPS, a Washington, D.C., investigative firm, to obtain information about whether Russia was trying to achieve a particular outcome in the 2016 U.S. elections, what personal and business ties then candidate Trump had in Russia, and whether there were any ties between the Russian government and Trump or his campaign. Steele's work for Fusion GPS resulted in his producing numerous election-related reports, which have been referred to collectively as the "Steele Dossier." Steele himself was not the originating source of any of the factual information in his reporting. Steele instead relied on a Primary Sub-source for information, who used his/her network of sub-sources to gather information that was then passed to Steele. With Fusion GPS's authorization, Steele directly provided more than a dozen of his reports to the FBI between July and October 2016, and several others to the FBI through Ohr and other third parties. The Crossfire Hurricane team received the first six election reports on September 19, 2016—more than two months after Steele first gave his handling agent two of the six reports. We describe the reasons it took two months for the reports to reach the team in Chapter Four.

FBI's Efforts to Evaluate the Steele Reporting

Steele's handling agent told us that when Steele provided him with the first election reports in July 2016 and described his engagement with Fusion GPS, it was obvious to him that the request for the research was politically motivated. The supervisory intelligence analyst who supervised the analytical efforts for the Crossfire Hurricane team (Supervisory Intel Analyst)



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explained that he also was aware of the potential for political influences on the Steele reporting.

The fact that the FBI believed Steele had been retained to conduct political opposition research did not require the FBI, under either DOJ or FBI policy, to ignore his reporting. The FBI regularly receives information from individuals with potentially significant biases and motivations, including drug traffickers, convicted felons, and even terrorists. The FBI is not required to set aside such information; rather, FBI policy requires that it critically assess the information. We found that after receiving Steele's reporting, the Crossfire Hurricane team began those efforts in earnest.

We determined that the FBI's decision to receive Steele's information for Crossfire Hurricane was based on multiple factors, including: (1) Steele's prior work as an intelligence professional for [REDACTED]; (2) his expertise on Russia; (3) his record as an FBI CHS; (4) the assessment of Steele's handling agent that Steele was reliable and had provided helpful information to the FBI in the past; and (5) the themes of Steele's reporting were consistent with the FBI's knowledge at the time of Russian efforts to interfere in the 2016 U.S. elections.

However, as we describe later, as the FBI obtained additional information raising significant questions about the reliability of the Steele election reporting, the FBI failed to reassess the Steele reporting relied upon in the FISA applications, and did not fully advise NSD or OI officials. We also found that the FBI did not aggressively seek to obtain certain potentially important information from Steele. For example, the FBI did not press Steele for information about the actual funding source for his election reporting work. Agents also did not question Steele about his role in a September 23, 2016 *Yahoo News* article entitled, "*U.S. intel officials probe ties between Trump advisor and Kremlin*," that described efforts by U.S. intelligence to determine whether Carter Page had opened communication channels with Kremlin officials. As we discuss in Chapters Five and Eight, the FBI assessed in the Carter Page FISA applications, without any support, that Steele had not "directly provided" the information to *Yahoo News*.

The First Application for FISA Authority on Carter Page

At the request of the FBI, the Department filed four applications with the FISC seeking FISA authority

targeting Carter Page: the first application on October 21, 2016, and three renewal applications on January 12, April 7, and June 29, 2017. A different FISC judge considered each application and issued the requested orders, collectively resulting in approximately 11 months of FISA coverage targeting Carter Page from October 21, 2016, to September 22, 2017. We discuss the first FISA application in this section and in Chapter Five.

Decision to Seek FISA Authority

We determined that the Crossfire Hurricane team's receipt of Steele's election reporting on September 19, 2016 played a central and essential role in the FBI's and Department's decision to seek the FISA order. As noted above, when the team first sought to pursue a FISA order for Page in August 2016, a decision was made by OGC, OI, or both that more information was needed to support a probable cause finding that Page was an agent of a foreign power. As a result, FBI OGC ceased discussions with OI about a Page FISA order at that time.

On September 19, 2016, the same day that the Crossfire Hurricane team first received Steele's election reporting, the team contacted FBI OGC again about seeking a FISA order for Page and specifically focused on Steele's reporting in drafting the FISA request. Two days later, on September 21, the FBI OGC Unit Chief contacted the NSD OI Unit Chief to advise him that the FBI believed it was ready to submit a formal FISA request to OI relating to Page. Almost immediately thereafter, OI assigned an attorney (OI Attorney) to begin preparation of the application.

Although the team also was interested in seeking FISA surveillance targeting Papadopoulos, the FBI OGC attorneys were not supportive. FBI and NSD officials told us that the Crossfire Hurricane team ultimately did not seek FISA surveillance of Papadopoulos, and we are aware of no information indicating that the team requested or seriously considered FISA surveillance of Manafort or Flynn.

We did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to seek FISA authority on Carter Page.

Preparation and Review Process

As we detail in Chapter Two, the FISC Rules of Procedure and FBI policy required that the Carter Page FISA applications contain all material facts. Although



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the FISC Rules do not define or otherwise explain what constitutes a "material" fact, FBI policy guidance states that a fact is "material" if it is relevant to the court's probable cause determination. Additionally, FBI policy mandates that the case agent ensure that all factual statements in a FISA application are "scrupulously accurate."

On or about September 23, the OI Attorney began work on the FISA application. Over the next several weeks, the OI Attorney prepared and edited a draft application using information principally provided by the FBI case agent assigned to the Carter Page investigation at the time and, in a few instances, by an OGC attorney (OGC Attorney) or other Crossfire Hurricane team members. The drafting process culminated in an application that asserted that the Russian government was attempting to undermine and influence the upcoming U.S. presidential election, and that the FBI believed Carter Page was acting in conjunction with the Russians in those efforts. The application's statement of facts supporting probable cause to believe that Page was an agent of Russia was broken down into five main elements:

- The efforts of Russian Intelligence Services (RIS) to influence the upcoming U.S. presidential election;
- The Russian government's attempted coordination with members of the Trump campaign, based on the FFG information reporting the suggestion of assistance from the Russians to someone associated with the Trump campaign;
- Page's historical connections to Russia and RIS;
- Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities, based on Steele's reporting; and
- Page's statements to an FBI CHS in October 2016 that that he had an "open checkbook" from certain Russians to fund a think tank project.

In addition, the statement of facts described Page's denials of coordination with the Russian government, as reported in two news articles and asserted by Page in a September 25 letter to then FBI Director Comey.

The application received the necessary Department approvals and certifications as required by law. As we fully describe in Chapter Five, this application received more attention and scrutiny than a typical FISA application in terms of the additional layers

of review and number of high-level officials who read the application before it was signed. These officials included NSD's Acting Assistant Attorney General, NSD's Deputy Assistant Attorney General with oversight over OI, OI's Operations Section Chief and Deputy Section Chief, the DAG, Principal Associate Deputy Attorney General, and the Associate Deputy Attorney General responsible for ODAG's national security portfolio. However, as we explain below, the Department decision makers who supported and approved the application were not given all relevant information.

Role of Steele Election Reporting in the First Application

In support of the fourth element in the FISA application—Carter Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities—the application relied entirely on the following information from Steele Reports 80, 94, 95, and 102:

- Compromising information about Hillary Clinton had been compiled for many years, was controlled by the Kremlin, and had been fed by the Kremlin to the Trump campaign for an extended period of time (Report 80);
- During a July 2016 trip to Moscow, Page met secretly with Igor Sechin, Chairman of Russian energy conglomerate Rosneft and close associate of Putin, to discuss future cooperation and the lifting of Ukraine-related sanctions against Russia; and with Igor Divyeykin, a highly-placed Russian official, to discuss sharing with the Trump campaign derogatory information about Clinton (Report 94);
- Page was an intermediary between Russia and the Trump campaign's then manager (Manafort) in a "well-developed conspiracy" of cooperation, which led to Russia's disclosure of hacked DNC emails to WikiLeaks in exchange for the Trump campaign's agreement to sideline Russian intervention in Ukraine as a campaign issue (Report 95); and
- Russia released the DNC emails to WikiLeaks in an attempt to swing voters to Trump, an objective conceived and promoted by Page and others (Report 102).

We determined that the FBI's decision to rely upon Steele's election reporting to help establish probable cause that Page was an agent of Russia was a judgment reached initially by the case agents on the



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Crossfire Hurricane team. We further determined that FBI officials at every level concurred with this judgment, from the OGC attorneys assigned to the investigation to senior CD officials, then General Counsel James Baker, then Deputy Director Andrew McCabe, and then Director James Comey. FBI leadership supported relying on Steele's reporting to seek a FISA order on Page after being advised of, and giving consideration to, concerns expressed by Stuart Evans, then NSD's Deputy Assistant Attorney General with oversight responsibility over OI, that Steele may have been hired by someone associated with presidential candidate Clinton or the DNC, and that the foreign intelligence to be collected through the FISA order would probably not be worth the "risk" of being criticized later for collecting communications of someone (Carter Page) who was "politically sensitive." According to McCabe, the FBI "felt strongly" that the FISA application should move forward because the team believed they had to get to the bottom of what they considered to be a potentially serious threat to national security, even if the FBI would later be criticized for taking such action. McCabe and others discussed the FBI's position with NSD and ODAG officials, and these officials accepted the FBI's decision to move forward with the application, based substantially on the Steele information.

We found that the FBI did not have information corroborating the specific allegations against Carter Page in Steele's reporting when it relied upon his reports in the first FISA application or subsequent renewal applications. OGC and NSD attorneys told us that, while the FBI's "Woods Procedures" (described in Chapter Two) require that every factual assertion in a FISA application be "verified," when information is attributed to a FBI CHS, the Woods Procedures require only that the agent verify, with supporting documentation, that the application accurately reflects what the CHS told the FBI. The procedures do not require that the agent corroborate, through a second, independent source, that what the CHS told the FBI is true. We did not identify anything in the Woods Procedures that is inconsistent with these officials' description of the procedures.

However, absent corroboration for the factual assertions in the election reporting, it was particularly important for the FISA applications to articulate the FBI's knowledge of Steele's background and its assessment of his reliability. On these points, the applications advised the court that Steele was believed to be a reliable source for three reasons: his professional background; his history of work as an FBI CHS since 2013; and his prior non-election reporting,

which the FBI described as "corroborated and used in criminal proceedings." As discussed below, the representations about Steele's prior reporting were overstated and had not been approved by Steele's handling agent, as required by the Woods Procedures.

Due to Evans's persistent inquiries, the FISA application also included a footnote, developed by OI based on information provided by the Crossfire Hurricane team, to address Evans's concern about the potential political bias of Steele's research. The footnote stated that Steele was hired by an identified U.S. person (Glenn Simpson) to conduct research regarding "Candidate #1's" (Donald Trump) ties to Russia and that the FBI "speculates" that this U.S. person was likely looking for information that could be used to discredit the Trump campaign.

Relevant Information Inaccurately Stated, Omitted, or Undocumented in the First Application

Our review found that FBI personnel fell far short of the requirement in FBI policy that they ensure that all factual statements in a FISA application are "scrupulously accurate." We identified multiple instances in which factual assertions relied upon in the first FISA application were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the application was filed. We found that the problems we identified were primarily caused by the Crossfire Hurricane team failing to share all relevant information with OI and, consequently, the information was not considered by the Department decision makers who ultimately decided to support the applications.

As more fully described in Chapter Five, based upon the information known to the FBI in October 2016, the first application contained the following seven significant inaccuracies and omissions:

1. Omitted information the FBI had obtained from another U.S. government agency detailing its prior relationship with Page, including that Page had been approved as an "operational contact" for the other agency from 2008 to 2013, and that Page had provided information to the other agency concerning his prior contacts with certain Russian intelligence officers, one of which overlapped with facts asserted in the FISA application;
2. Included a source characterization statement asserting that Steele's prior reporting had been "corroborated and used in criminal proceedings,"



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which overstated the significance of Steele's past reporting and was not approved by Steele's handling agent, as required by the Woods Procedures;

3. Omitted information relevant to the reliability of Person 1, a key Steele sub-source (who was attributed with providing the information in Report 95 and some of the information in Reports 80 and 102 relied upon in the application), namely that (1) Steele himself told members of the Crossfire Hurricane team that Person 1 was a "boaster" and an "egoist" and "may engage in some embellishment" and (2) the FBI had opened a counterintelligence investigation on Person 1 a few days before the FISA application was filed;
4. Asserted that the FBI had assessed that Steele did not directly provide to the press information in the September 23 *Yahoo News* article based on the premise that Steele had told the FBI that he only shared his election-related research with the FBI and Fusion GPS, his client; this premise was incorrect and contradicted by documentation in the Woods File—Steele had told the FBI that he also gave his information to the State Department;
5. Omitted Papadopoulos's consensually monitored statements to an FBI CHS in September 2016 denying that anyone associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails;
6. Omitted Page's consensually monitored statements to an FBI CHS in August 2016 that Page had "literally never met" or "said one word to" Paul Manafort and that Manafort had not responded to any of Page's emails; if true, those statements were in tension with claims in Report 95 that Page was participating in a conspiracy with Russia by acting as an intermediary for Manafort on behalf of the Trump campaign; and
7. Included Page's consensually monitored statements to an FBI CHS in October 2016 that the FBI believed supported its theory that Page was an agent of Russia but omitted other statements Page made that were inconsistent with its theory, including denying having met with Sechin and Divyekin, or even knowing who Divyekin was; if true, those statements contradicted the claims in Report 94 that Page

had met secretly with Sechin and Divyekin about future cooperation with Russia and shared derogatory information about candidate Clinton.

None of these inaccuracies and omissions were brought to the attention of OI before the last FISA application was filed in June 2017. Consequently, these failures were repeated in all three renewal applications. Further, as we discuss later, we identified 10 additional significant errors in the renewal applications.

The failure to provide accurate and complete information to the OI Attorney concerning Page's prior relationship with another U.S. government agency (item 1 above) was particularly concerning because the OI Attorney had specifically asked the case agent in late September 2016 whether Carter Page had a current or prior relationship with the other agency. In response to that inquiry, the case agent advised the OI Attorney that Page's relationship was "dated" (claiming it was when Page lived in Moscow in 2004-2007) and "outside scope." This representation, however, was contrary to information that the other agency had provided to the FBI in August 2016, which stated that Page was approved as an "operational contact" of the other agency from 2008 to 2013 (after Page had left Moscow). Moreover, rather than being "outside scope," Page's status with the other agency overlapped in time with some of the interactions between Page and known Russian intelligence officers that were relied upon in the FISA applications to establish probable cause. Indeed, Page had provided information to the other agency about his past contacts with a Russian Intelligence Officer (Intelligence Officer 1), which were among the historical connections to Russian intelligence officers that the FBI relied upon in the first FISA application (and subsequent renewal applications). According to the information from the other agency, an employee of the other agency had assessed that Page "candidly described his contact with" Intelligence Officer 1 to the other agency. Thus, the FBI relied upon Page's contacts with Intelligence Officer 1, among others, in support of its probable cause statement in the FISA application, while failing to disclose to OI or the FISC that (1) Page had been approved as an operational contact by the other agency during a five-year period that overlapped with allegations in the FISA application, (2) Page had disclosed to the other agency contacts that he had with Intelligence Officer 1 and certain other individuals, and (3) the other agency's employee had given a positive assessment of Page's conduct.

Further, we were concerned by the FBI's inaccurate assertion in the application that Steele's prior reporting had been "corroborated and used in criminal



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proceedings," which we were told was primarily a reference to Steele's role in the FIFA corruption investigation. We found that the team had speculated that Steele's prior reporting had been corroborated and used in criminal proceedings without clearing the representation with Steele's handling agent, as required by the Woods Procedures. According to the handling agent, he would not have approved the representation in the application because only "some" of Steele's prior reporting had been corroborated—most of it had not—and because Steele's information was never used in a criminal proceeding. We concluded that these failures created the inaccurate impression in the applications that at least some of Steele's past reporting had been deemed sufficiently reliable by prosecutors to use in court, and that more of his information had been corroborated than was actually the case.

We found no evidence that the OI Attorney, NSD supervisors, ODAG officials, or Yates were made aware of these issues before the first application was submitted to the court. Although we also found no evidence that Comey had been made aware of these issues at the time he certified the application, as discussed in our analysis in Chapter Eleven, multiple factors made it difficult for us to precisely determine the extent of FBI leadership's knowledge as to each fact that was not shared with OI and not included, or inaccurately stated, in the FISA applications. These factors included, among other things, limited recollections, the inability to question Comey or refresh his recollection with relevant, classified documentation because of his lack of a security clearance, and the absence of meeting minutes that would show the specific details shared with Comey and McCabe during briefings they received, beyond the more general investigative updates that we know they were provided.

FBI Activities After the First FISA Application and FBI Efforts to Assess Steele's Election Reporting

On October 31, 2016, shortly after the first FISA application was signed, an article entitled "A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump," was published by *Mother Jones*. Steele admitted to the FBI that he was a source for the article, and the FBI closed him as a CHS for cause in November 2016. However, as we describe below, despite having been closed for cause, the Crossfire Hurricane team continued to obtain information from Steele through Ohr, who met with the FBI on 13 occasions to pass along information he had been provided by Steele.

In Chapter Six, we describe the events that followed Steele's closing as a CHS, including the FBI's receipt of information from several third parties who had acquired copies of the Steele election reports, use of information from the Steele reports in an interagency assessment of Russian interference in the U.S. 2016 elections, and continuing efforts to learn about Steele and his source network and to verify information from the reports following Steele's closure.

Starting in December 2016, FBI staff participated in an interagency effort to assess the Russian government's intentions and actions concerning the 2016 U.S. elections. We learned that whether and how to present Steele's reporting in the Intelligence Community Assessment (ICA) was a topic of significant discussion between the FBI and the other agencies participating in it. According to FBI staff, as the interagency editing process for the ICA progressed, the Central Intelligence Agency (CIA) expressed concern about the lack of vetting for the Steele election reporting and asserted it did not merit inclusion in the body of the report. An FBI Intel Section Chief told us the CIA viewed it as "internet rumor." In contrast, as we describe in Chapter Six, the FBI, including Comey and McCabe, sought to include the reporting in the ICA. Limited information from the Steele reporting ultimately was presented in an appendix to the ICA.

FBI efforts to verify information in the Steele election reports, and to learn about Steele and his source network continued after Steele's closure as a CHS. In November and December 2016, FBI officials travelled abroad and met with persons who previously had professional contacts with Steele or had knowledge of his work. Information these FBI officials obtained about Steele was both positive and negative. We found, however, that the information about Steele was not placed in his FBI CHS file.

We further learned that the FBI's Validation Management Unit (VMU) completed a human source validation review of Steele in early 2017. The VMU review found that Steele's past criminal reporting was "minimally corroborated," and included this finding in its report that was provided to the Crossfire Hurricane team. This determination by the VMU was in tension with the source characterization statement included in the initial FISA application, which represented that Steele's prior reporting had been "corroborated and used in criminal proceedings." The VMU review also did not identify any corroboration for Steele's election reporting among the information that the Crossfire Hurricane team had collected. However, the VMU did not include this finding in its written validation report.



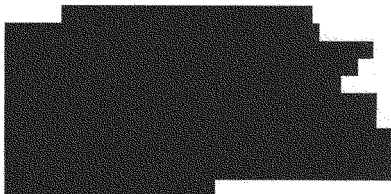
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and therefore members of the Crossfire Hurricane team and FBI executives were unaware of it.

We also found that the FBI's interviews of Steele, his Primary Sub-source, a second sub-source, and other investigative activity, revealed potentially serious problems with Steele's descriptions of information in his reports. For example, as detailed in Chapters Six and Eight, the Primary Sub-source made statements during his/her January 2017 FBI interview that were inconsistent with multiple sections of the Steele reports, including some that were relied upon in the FISA applications. Among other things, regarding the allegations attributed to Person 1, the Primary Sub-source's account of these communications, if true, was not consistent with and, in fact, contradicted the allegations of a "well-developed conspiracy" in Reports 95 and 102 attributed to Person 1.

We further determined that the Crossfire Hurricane team was unable to corroborate any of the specific substantive allegations regarding Carter Page contained in Steele's election reporting which the FBI relied on in the FISA applications. We were told by the Supervisory Intel Analyst that, as of September 2017, the FBI had corroborated limited information in the Steele election reporting, and much of that was publicly available information. Most relevant to the Carter Page FISA applications, the allegations contained in Reports 80, 94, 95, and 102, which were relied upon in all four applications, remained uncorroborated and, in several instances, were inconsistent with information gathered by the Crossfire Hurricane team.



The Three Renewal Applications for Continued FISA Authority on Carter Page

As noted above, the FBI filed three renewal applications with the FISC, on January 12, April 7, and June 29, 2017. In addition to repeating the seven significant errors contained in the first FISA application and outlined above, we identified 10 additional

significant errors in the three renewal applications, based upon information known to the FBI after the first application and before one or more of the renewals. We describe the circumstances surrounding these 10 errors in Chapter Eight, and provide a chart listing additional errors in Appendix One. As more fully described in Chapter Eight, the renewal applications:

8. Omitted the fact that Steele's Primary Sub-source, who the FBI found credible, had made statements in January 2017 raising significant questions about the reliability of allegations included in the FISA applications, including, for example, that he/she did not recall any discussion with Person 1 concerning WikiLeaks and there was "nothing bad" about the communications between the Kremlin and the Trump team, and that he/she did not report to Steele in July 2016 that Page had met with Sechin;
9. Omitted Page's prior relationship with another U.S. government agency, despite being reminded by the other agency in June 2017, prior to the filing of the final renewal application, about Page's past status with that other agency; instead of including this information in the final renewal application, the OGC Attorney altered an email from the other agency so that the email stated that Page was "not a source" for the other agency, which the FBI affiant relied upon in signing the final renewal application;
10. Omitted information from persons who previously had professional contacts with Steele or had direct knowledge of his work-related performance, including statements that Steele had no history of reporting in bad faith but "[d]emonstrates lack of self-awareness, poor judgment," "pursued people with political risk but no intelligence value," "didn't always exercise great judgment," and it was "not clear what he would have done to validate" his reporting;
11. Omitted information obtained from Ohr about Steele and his election reporting, including that (1) Steele's reporting was going to Clinton's presidential campaign and others, (2) Simpson was paying Steele to discuss his reporting with the media, and (3) Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President";



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12. Failed to update the description of Steele after information became known to the Crossfire Hurricane team, from Ohr and others, that provided greater clarity on the political origins and connections of Steele's reporting, including that Simpson was hired by someone associated with the Democratic Party and/or the DNC;
13. Failed to correct the assertion in the first FISA application that the FBI did not believe that Steele directly provided information to the reporter who wrote the September 23 *Yahoo News* article, even though there was no information in the Woods File to support this claim and even after certain Crossfire Hurricane officials learned in 2017, before the third renewal application, of an admission that Steele made in a court filing about his interactions with the news media in the late summer and early fall of 2016;
14. Omitted the finding from a FBI source validation report that Steele was suitable for continued operation but that his past contributions to the FBI's criminal program had been "minimally corroborated," and instead continued to assert in the source characterization statement that Steele's prior reporting had been "corroborated and used in criminal proceedings";
15. Omitted Papadopoulos's statements to an FBI CHS in late October 2016 denying that the Trump campaign was involved in the circumstances of the DNC email hack;
16. Omitted Joseph Mifsud's denials to the FBI that he supplied Papadopoulos with the information Papadopoulos shared with the FFG (suggesting that the campaign received an offer or suggestion of assistance from Russia); and
17. Omitted information indicating that Page played no role in the Republican platform change on Russia's annexation of Ukraine as alleged in the Report 95, which was inconsistent with a factual assertion relied upon to support probable cause in all four FISA applications.

Among the most serious of the 10 additional errors we found in the renewal applications was the FBI's failure to advise OI or the court of the inconsistencies, described in detail in Chapter Six, between Steele and his Primary Sub-source on the reporting relied upon in the FISA applications. Although the Primary Sub-source's account of these communications, if true, was not consistent with and, in fact, contradicted the allegations of a "well-developed

conspiracy" in Reports 95 and 102 attributed to Person 1, the FBI did not share this information with OI. The FBI also failed to share other inconsistencies with OI, including the Primary Sub-source's account of the alleged meeting between Page and Sechin in Steele's Report 94 and his/her descriptions of the source network. The fact that the Primary Sub-source's account contradicted key assertions attributed to his/her own sub-sources in Steele's Reports 94, 95, and 102 should have generated significant discussions between the Crossfire Hurricane team and OI prior to submitting the next FISA renewal application. According to Evans, had OI been made aware of the information, such discussions might have included the possibility of foregoing the renewal request altogether, at least until the FBI reconciled the differences between Steele's account and the Primary Sub-source's account to the satisfaction of OI. However, we found no evidence that the Crossfire Hurricane team ever considered whether any of the inconsistencies warranted reconsideration of the FBI's assessment of the reliability of the Steele reports or notice to OI before the subsequent renewal applications were filed.

Instead, the second and third renewal applications provided no substantive information concerning the Primary Sub-source's interview, and offered only a brief conclusory statement that the FBI met with the Primary Sub-source "[i]n an effort to further corroborate Steele's reporting" and found the Primary Sub-source to be "truthful and cooperative." We believe that including this statement, without also informing OI and the court that the Primary Sub-source's account of events contradicted key assertions in Steele's reporting, left a misimpression that the Primary Sub-source had corroborated the Steele reporting. Indeed, in a letter to the FISC in July 2018, before learning of these inconsistencies from us during this review, the Department defended the reliability of Steele's reporting and the FISA applications by citing, in part, to the Primary Sub-source's interview as "additional information corroborating [Steele's] reporting" and noting the FBI's determination that he/she was "truthful and cooperative."

The renewal applications also continued to fail to include information regarding Carter Page's past relationship with another U.S. government agency, even though both OI and members of the Crossfire Hurricane expressed concern about the possibility of a prior relationship following interviews that Page gave to news outlets in April and May 2017 stating that he had assisted other U.S. government agencies in the past. As we describe in Chapter Eight, in June 2017, SSA 2, who was to be the affiant for Renewal Application No. 3



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and had been the affiant for the first two renewals, told us that he wanted a definitive answer to whether Page had ever been a source for another U.S. government agency before he signed the final renewal application. This led to interactions between the OGC Attorney assigned to Crossfire Hurricane and a liaison from the other U.S. government agency. In an email from the liaison to the OGC Attorney, the liaison provided written guidance, including that it was the liaison's recollection that Page had or continued to have a relationship with the other agency, and directed the OGC Attorney to review the information that the other agency had provided to the FBI in August 2016. As noted above, that August 2016 information stated that Page did, in fact, have a prior relationship with that other agency. The next morning, immediately following a 28 minute telephone call between the OGC Attorney and the OI Attorney, the OGC Attorney forwarded to the OI Attorney the liaison's email (but not the original email from the OGC Attorney to the liaison setting out the questions he was asking). The OI Attorney responded to the OGC Attorney, "thanks I think we are good and o need to carry it any further." However, when the JGC Attorney subsequently sent the liaison's email to SSA 2, the OGC Attorney altered the liaison's email by inserting the words "not a source" into it, thus making it appear that the liaison had said that Page was "not a source" for the other agency. Relying upon this altered email, SSA 2 signed the third renewal application that again failed to disclose Page's past relationship with the other agency. Consistent with the Inspector General Act of 1978, following the OIG's discovery that the OGC Attorney had altered and sent the email to SSA 2, who thereafter relied on it to swear out the third FISA application, the OIG promptly informed the Attorney General and the FBI Director and provided them with the relevant information about the OGC Attorney's actions.

None of the inaccuracies and omissions that we identified in the renewal applications were brought to the attention of OI before the applications were filed. As a result, similar to the first application, the Department officials who reviewed one or more of the renewal applications, including Yates, Boente, and Rosenstein, did not have accurate and complete information at the time they approved them.

We do not speculate whether or how having accurate and complete information might have influenced the decisions of senior Department leaders who supported the four FISA applications, or the court, if they had known all of the relevant information. Nevertheless, it was the obligation of the FBI agents and supervisors who were aware of the information to

ensure that the FISA applications were "scrupulously accurate" and that OI, the Department's decision makers, and ultimately, the court had the opportunity to consider the additional information and the information omitted from the first application. The individuals involved did not meet this obligation.

Conclusions Concerning All Four FISA Applications

We concluded that the failures described above and in this report represent serious performance failures by the supervisory and non-supervisory agents with responsibility over the FISA applications. These failures prevented OI from fully performing its gatekeeper function and deprived the decision makers the opportunity to make fully informed decisions. Although some of the factual misstatements and omissions we found in this review were arguably more significant than others, we believe that all of them taken together resulted in FISA applications that made it appear that the information supporting probable cause was stronger than was actually the case.

We identified at least 17 significant errors or omissions in the Carter Page FISA applications, and many additional errors in the Woods Procedures. These errors and omissions resulted from case agents providing wrong or incomplete information to OI and failing to flag important issues for discussion. While we did not find documentary or testimonial evidence of intentional misconduct on the part of the case agents who assisted OI in preparing the applications, or the agents and supervisors who performed the Woods Procedures, we also did not receive satisfactory explanations for the errors or problems we identified. In most instances, the agents and supervisors told us that they either did not know or recall why the information was not shared with OI, that the failure to do so may have been an oversight, that they did not recognize at the time the relevance of the information to the FISA application, or that they did not believe the missing information to be significant. On this last point, we believe that case agents may have improperly substituted their own judgments in place of the judgment of OI, or in place of the court, to weigh the probative value of the information. Further, the failure to update OI on all significant case developments relevant to the FISA applications led us to conclude that the agents and supervisors did not give appropriate attention or treatment to the facts that cut against probable cause, or reassess the information supporting probable cause as the investigation progressed. The agents and SSAs also did not follow, or appear to even



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know, the requirements in the Woods Procedures to re-verify the factual assertions from previous applications that are repeated in renewal applications and verify source characterization statements with the CHS handling agent and document the verification in the Woods File.

That so many basic and fundamental errors were made by three separate, hand-picked teams on one of the most sensitive FBI investigations that was briefed to the highest levels within the FBI, and that FBI officials expected would eventually be subjected to close scrutiny, raised significant questions regarding the FBI chain of command's management and supervision of the FISA process. FBI Headquarters established a chain of command for Crossfire Hurricane that included close supervision by senior CD managers, who then briefed FBI leadership throughout the investigation. Although we do not expect managers and supervisors to know every fact about an investigation, or senior officials to know all the details of cases about which they are briefed, in a sensitive, high-priority matter like this one, it is reasonable to expect that they will take the necessary steps to ensure that they are sufficiently familiar with the facts and circumstances supporting and potentially undermining a FISA application in order to provide effective oversight, consistent with their level of supervisory responsibility. We concluded that the information that was known to the managers, supervisors, and senior officials should have resulted in questions being raised regarding the reliability of the Steele reporting and the probable cause supporting the FISA applications, but did not.

In our view, this was a failure of not only the operational team, but also of the managers and supervisors, including senior officials, in the chain of command. For these reasons, we recommend that the FBI review the performance of the employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers and supervisors in the chain of command of the Carter Page investigation, including senior officials, and take any action deemed appropriate. In addition, given the extensive compliance failures we identified in this review, we believe that additional OIG oversight work is required to assess the FBI's compliance with Department and FBI FISA-related policies that seek to protect the civil liberties of U.S. persons. Accordingly, we have today initiated an OIG audit that will further examine the FBI's compliance with the Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations. This audit will be informed by the findings in this review, as well as by our prior work over

the past 15 years on the Department's and FBI's use of national security and surveillance authorities, including authorities under FISA, as detailed in Chapter One.

Issues Relating to Department Attorney Bruce Ohr

In Chapter Nine, we describe the interactions Department attorney Bruce Ohr had with Christopher Steele, the FBI, Glenn Simpson (the owner of Fusion GPS), and the State Department during the Crossfire Hurricane investigation. At the time of these interactions, which took place from about July 2016 to May 2017, Ohr was an Associate Deputy Attorney General in the Office of the Deputy Attorney General (ODAG) and the Director of the Organized Crime and Drug Enforcement Task Force (OCDETF).

Ohr's Interactions with Steele, the FBI, Simpson, and the State Department

Beginning in July 2016, at about the same time that Steele was engaging with the FBI on his election reporting, Steele contacted Ohr, who he had known since at least 2007, to discuss information from Steele's election reports. At Steele's suggestion, Ohr also met in August 2016 with Simpson to discuss Steele's reports. At the time, Ohr's wife, Nellie Ohr, worked at Fusion GPS as an independent contractor. Ohr also met with Simpson in December 2016, at which time Simpson gave Ohr a thumb drive containing numerous Steele election reports that Ohr thereafter provided to the FBI.

On October 18, 2016, after speaking with Steele that morning, Ohr met with McCabe to share Steele's and Simpson's information with him. Thereafter, Ohr met with members of the Crossfire Hurricane team 13 times between November 21, 2016, and May 15, 2017, concerning his contacts with Steele and Simpson. All 13 meetings occurred after the FBI had closed Steele as a CHS and, except for the November 21 meeting, each meeting was initiated at Ohr's request. Ohr told us that he did not recall the FBI asking him to take any action regarding Steele or Simpson, but Ohr also stated that "the general instruction was to let [the FBI] know...when I got information from Steele." The Crossfire Hurricane team memorialized each of the meetings with Ohr as an "interview" using an FBI FD-302 form. Separately, in November 2016, Ohr met with senior State Department officials regarding Steele's election reporting.



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Department leadership, including Ohr's supervisors in ODAG and the ODAG officials who reviewed and approved the Carter Page FISA applications, were unaware of Ohr's meetings with FBI officials, Steele, Simpson, and the State Department until after Congress requested information from the Department regarding Ohr's activities in late November 2017.

We did not identify a specific Department policy prohibiting Ohr from meeting with Steele, Simpson, or the State Department and providing the information he learned from those meetings to the FBI. However, Ohr was clearly cognizant of his responsibility to inform his supervisors of these interactions, and acknowledged to the OIG that the possibility that he would have been told by his supervisors to stop having such contact may have factored into his decision not to tell them about it.

We concluded that Ohr committed consequential errors in judgment by (1) failing to advise his direct supervisors or the DAG that he was communicating with Steele and Simpson and then requesting meetings with the FBI's Deputy Director and Crossfire Hurricane team on matters that were outside of his areas of responsibility, and (2) making himself a witness in the investigation by meeting with Steele and providing Steele's information to the FBI. As we describe in Chapter Eight, the late discovery of Ohr's meetings with the FBI prompted NSD to notify the FISC in July 2018, over a year after the final FISA renewal order was issued, of information that Ohr had provided to the FBI but that the FBI had failed to inform NSD and OI about (and therefore was not included in the FISA applications), including that Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President."

FBI Compliance with Policies

The FBI's CHS Policy Guide (CHSPG) provides guidance to agents concerning contacts with CHSs after they have been closed for cause, as was the case with Steele as of November 2016. According to the CHSPG, a handling agent must not initiate contact with or respond to contacts from a former CHS who has been closed for cause absent exceptional circumstances that are approved by an SSA. The CHSPG also requires reopening of the CHS if the relationship between the FBI and a closed CHS is expected to continue beyond the initial contact or debriefing. Reopening requires high levels of supervisory approval, including a finding that the benefits of reopening the CHS outweigh the risks.

We found that, while the Crossfire Hurricane team did not initiate direct contact with Steele after his closure, it responded to numerous contacts made by Steele through Ohr. Ohr himself was not a direct witness in the Crossfire Hurricane investigation; rather, his purpose in communicating with the FBI was to pass along information from Steele. While the FBI's CHS policy does not explicitly address indirect contact between an FBI agent and a closed CHS, we concluded that the repeated contacts with Steele should have triggered the CHS policy requiring that such contacts occur only after an SSA determines that exceptional circumstances exist. While an SSA was present for the meetings with Ohr, we found no evidence that the SSAs made considered judgments that exceptional circumstances existed for the repeated contacts. We also found that, given that there were 13 different meetings with Ohr over a period of months, the use of Ohr as a conduit between the FBI and Steele created a relationship by proxy that should have triggered, pursuant to FBI policy, a supervisory decision about whether to reopen Steele as a CHS or discontinue accepting information indirectly from him through Ohr.

Ethics Issues Raised by Nellie Ohr's Former Employment with Fusion GPS

Fusion GPS employed Nellie Ohr as an independent contractor from October 2015 to September 2016. On his annual financial disclosure forms covering calendar years 2015 and 2016, Ohr listed Nellie Ohr as an "independent contractor" and reported her income from that work on the form. We determined that financial disclosure rules, 5 C.F.R. Part 2634, did not require Ohr to list on the form the specific organizations, such as Fusion GPS, that paid Nellie Ohr as an independent contractor during the reporting period.

In addition, for reasons we explain in Chapter Eleven, we concluded that the federal ethics rules did not require Ohr to obtain Department ethics counsel approval before engaging with the FBI in connection with the Crossfire Hurricane matter because of Nellie Ohr's prior work for Fusion GPS. However, we found that, given the factual circumstances that existed, and the appearance that they created, Ohr displayed a lapse in judgment by not availing himself of the process described in the ethics rules to consult with the Department ethics official about his involvement in the investigation.

Meetings Involving Ohr, CRM officials, and the FBI Regarding the MLARS Investigation



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Ohr's supervisors in ODAG also were unaware that Ohr, shortly after the U.S. elections in November 2016, and again in early 2017, participated in discussions about a money laundering investigation of Manafort that was then being led by prosecutors from the Money Laundering and Asset Recovery Section (MLARS), which is located in the Criminal Division (CRM) at the Department's headquarters.

As described in more detail in Chapter Nine, in November 2016, Ohr told CRM Deputy Assistant Attorney General Bruce Swartz and Counsel to the CRM Assistant Attorney General Zainab Ahmad about information he was getting from Steele and Simpson about Manafort. Between November 16, 2016 and December 15, 2016, Ohr participated in several meetings that were attended, at various times, by some or all of the following individuals: Swartz, Ahmad, Andrew Weissmann (then Section Chief of CRM's Fraud Section), Strzok, and Lisa Page. The meetings involving Ohr, Swartz, Ahmad, and Weissmann focused on their shared concern that MLARS was not moving quickly enough on the Manafort criminal investigation and whether there were steps they could take to move the investigation forward. The meetings with Strzok and Page focused primarily on whether the FBI could assess the case's relevance, if any, to the FBI's Russian interference investigation. MLARS was not represented at any of these meetings or told about them, and none of attendees had supervisory responsibility over the MLARS investigation.

There were no meetings about the Manafort case involving Ohr, Swartz, Ahmad, and Weissmann from December 16, 2016 to January 30, 2017. On January 31, 2017, one day after Yates was removed as DAG, Ahmad, by then an Acting CRM Deputy Assistant Attorney General, after consulting with Swartz and Weissmann, sent an email to Lisa Page, copying Weissmann, Swartz, and Ohr, requesting a meeting the next day to discuss "a few Criminal Division related developments." The next day, February 1, Swartz, Ohr, Ahmad, and Weissmann met with Strzok, Lisa Page, and an FBI Acting Section Chief. None of the attendees at the meeting could explain to us what the "Criminal Division related developments" were, and we did not find any. Meeting notes reflect, among other things, that the group discussed the Manafort criminal investigation and efforts that the Department could undertake to investigate attempts by Russia to influence the 2016 elections. MLARS was not represented at, or told about, the meeting.

We are not aware of information indicating that any of the discussions involving Ohr, Swartz,

Weissmann, Ahmad, Strzok, and Lisa Page resulted in any actions taken or not taken in the MLARS investigation, and ultimately the investigation remained with MLARS until it was transferred to the Office of the Special Counsel in May 2017. We also did not identify any Department policies prohibiting internal discussions about a pending investigation among officials not assigned to the matter, or between those officials and senior officials from the FBI. However, as described in Chapter Nine, we were told that there was a decision not to inform the leadership of CRM, both before and after the change in presidential administrations, of these discussions in order to insulate the MLARS investigation from becoming "politicized." We concluded that this decision, made in the absence of concerns of potential wrongdoing or misconduct, and for the purpose of avoiding the appearance that an investigation is "politicized," fundamentally misconstrued who is ultimately responsible and accountable for the Department's work. We agree with the concerns expressed to us by then DAG Yates and then CRM Assistant Attorney General Leslie Caldwell. Department leaders cannot fulfill their management responsibilities, and be held accountable for the Department's actions, if subordinates intentionally withhold information from them in such circumstances.

The Use of Confidential Sources (Other Than Steele) and Undercover Employees

As discussed in Chapter Ten, we determined that, during the 2016 presidential campaign, the Crossfire Hurricane team tasked several CHSs, which resulted in multiple interactions with Carter Page and George Papadopoulos, both during and after the time they were affiliated with the Trump campaign, and one with a high-level Trump campaign official who was not a subject of the investigation. All of these CHS interactions were consensually monitored and recorded by the FBI. As noted above, under Department and FBI policy, the use of a CHS to conduct consensual monitoring is a matter of investigative judgment that, absent certain circumstances, can be authorized by a first-line supervisor (a supervisory special agent). We determined that the CHS operations conducted during Crossfire Hurricane received the necessary FBI approvals, and that AD Priestap knew about, and approved of, all of the Crossfire Hurricane CHS operations, even in circumstances where a first-level supervisory special agent could have approved the operations. We found no evidence that the FBI used CHSs or UCEs to interact with members of the Trump campaign prior to the opening of the Crossfire Hurricane investigation. After the opening of the investigation, we



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found no evidence that the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. Finally, we also found no documentary or testimonial evidence that political bias or improper motivations influenced the FBI's decision to use CHSs or UCEs to interact with Trump campaign officials in the Crossfire Hurricane investigation.

Although the Crossfire Hurricane team's use of CHSs and UCEs complied with applicable policies, we are concerned that, under these policies, it was sufficient for a first-level FBI supervisor to authorize the domestic CHS operations that were undertaken in Crossfire Hurricane, and that there was no applicable Department or FBI policy requiring the FBI to notify Department officials of the investigative team's decision to task CHSs to consensually monitor conversations with members of a presidential campaign. We found no evidence that the FBI consulted with any Department officials before conducting these CHS operations. We believe that current Department and FBI policies are not sufficient to ensure appropriate oversight and accountability when such operations potentially implicate sensitive, constitutionally protected activity, and that they should require, at minimum, Department consultation. As noted above, we include a recommendation in this report to address this issue.

Consistent with current Department and FBI policy, we learned that decisions about the use of CHSs and UCEs were made by the case agents and the supervisory special agents assigned to Crossfire Hurricane. These agents told the OIG that they focused the CHS operations on the FFG information and the four investigative subjects, and that they viewed CHS operations as one of the best methods available to quickly obtain information about the predicated allegations, while preventing information about the nature and existence of the investigation from becoming public, and potentially impacting the presidential election.

During the meeting between a CHS and the high-level Trump campaign official who was not a subject of the investigation, the CHS asked about the role of three Crossfire Hurricane subjects—Page, Papadopoulos, and Manafort—in the Trump campaign. The CHS also asked about allegations in public reports concerning Russian interference in the 2016 elections, the campaign's response to ideas featured in Page's Moscow speech, and the possibility of an "October Surprise." In response, the campaign official made no comments of note about those topics. The CHS and the high-level campaign official also discussed [REDACTED]

[REDACTED] We found that the Crossfire Hurricane team made no use of any information collected from the high-level Trump campaign official, because the team determined that none of the information gathered was "germane" to the allegations under investigation. However, we were concerned that the Crossfire Hurricane team did not recall having in place a plan, prior to the operation involving the high-level campaign official, to address the possible collection of politically sensitive information.

As discussed in Chapter Ten, through the use of CHSs, the investigative team obtained statements from Carter Page and Papadopoulos that raised questions about the validity of allegations under investigation. For example, when questioned in August 2016 about other individuals who were subjects in the investigation, Page told a CHS that he had "literally never met" or "said one word to" Manafort and that Manafort had not responded to any of Page's emails. As another example, Papadopoulos denied to a CHS that anyone associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails. Papadopoulos stated that the "campaign, of course, [does not] advocate for this type of activity because at the end of the day it's...illegal" and that "our campaign is not...engag[ing] or reaching out to WikiLeaks or to the whoever it is to tell them please work with us, collaborate because we don't, no one does that...." Papadopoulos also said that "as far as I understand...no one's collaborating, there's been no collusion and it's going to remain that way." In another interaction, Papadopoulos told a CHS that he knew "for a fact" that no one from the Trump campaign had anything to do with releasing emails from the DNC, as a result of Papadopoulos's involvement in the Trump campaign. Despite the relevance of this material, as described in Chapters Five and Seven, none of Papadopoulos's statements were provided by the Crossfire Hurricane team to the OI Attorney and Page's statements were not provided to the OI attorney until June 2017, approximately ten months after the initial Carter Page FISA application was granted by the FISC.

Through our review, we also determined that there were other CHSs tasked by the FBI to attempt to contact Papadopoulos, but that those attempted contacts did not lead to any operational activity. We also identified several individuals who had either a connection to candidate Trump or a role in the Trump



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campaign, and were also FBI CHSs, but who were not tasked as part of the Crossfire Hurricane investigation. One such CHS did provide the Crossfire Hurricane team with general information about Crossfire Hurricane subjects Page and Manafort, but we found that this CHS had no further involvement in the investigation.

We identified another CHS that the Crossfire Hurricane team first learned about in 2017, after the CHS voluntarily provided his/her handling agent with an

—and the handling agent forwarded the material, through his supervisor and FBI Headquarters, to the Crossfire Hurricane team.

The handling agent told us that, when he subsequently informed the Crossfire Hurricane team that the CHS had access to [REDACTED], a Crossfire Hurricane team intelligence analyst asked the handling agent to collect [REDACTED] from the CHS, which the handling agent did. We found that the Crossfire Hurricane team determined that there was not "anything significant" in this [REDACTED] collection, and did not seek to task the CHS. While we found that no action was taken by the Crossfire Hurricane team in response to receiving [REDACTED], we nevertheless were concerned to learn that the handling agent for the CHS placed [REDACTED] into the FBI's files, and we promptly notified the FBI upon learning that they were still being maintained in the FBI's files. We further concluded that, because the CHS's handling agent did not understand the CHS's political involvement, no assessment was performed by the source's handling agent or his supervisors (none of whom were members of the Crossfire Hurricane team) to determine whether the CHS required re-designation as a "sensitive source" or should have been closed during the pendency of the campaign.

While we concluded that the investigative activities undertaken by the Crossfire Hurricane team involving CHSs and UCEs complied with applicable Department and FBI policies, we believe that in certain circumstances Department and FBI policies do not provide sufficient oversight and accountability for investigative activities that have the potential to gather sensitive information involving protected First Amendment activity, and therefore include recommendations to address these issues.

Finally, as we also describe in Chapter Ten, we learned during the course of our review that in August

2016, the supervisor of the Crossfire Hurricane investigation, SSA 1, participated on behalf of the FBI in a strategic intelligence briefing given by Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including Michael Flynn, and in a separate strategic intelligence briefing given to candidate Clinton and her national security advisors. The stated purpose of the FBI portion of the briefing was to provide the recipients "a baseline on the presence and threat posed by foreign intelligence services to the National Security of the U.S." However, we found that SSA 1 was selected to provide the FBI briefings, in part, because Flynn, who was a subject in the ongoing Crossfire Hurricane investigation, would be attending the Trump campaign briefing.

Following his participation in the briefing of candidate Trump, Flynn, and another Trump advisor, SSA 1 drafted an EC documenting his participation in the briefing, and added the EC to the Crossfire Hurricane investigative file. We were told that the decision to select SSA 1 to participate in the ODNI briefing was reached by consensus among a group of senior FBI officials, including McCabe and Baker. We noted that no one at the Department or ODNI was informed that the FBI was using the ODNI briefing of a presidential candidate for investigative purposes, and found no applicable FBI or Department policies addressing this issue. We concluded that the FBI's use of this briefing for investigative reasons could potentially interfere with the expectation of trust and good faith among participants in strategic intelligence briefings, thereby frustrating their purpose. We therefore include a recommendation to address this issue.

Recommendations

Our report makes nine recommendations to the FBI and the Department to assist them in addressing the issues that we identified in this review:

- The Department and the FBI should ensure that adequate procedures are in place for OI to obtain all relevant and accurate information needed to prepare FISA applications and renewal applications, including CHS information. In Chapter Twelve, we identify a few specific steps to assist in this effort.



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- The Department and FBI should evaluate which types of SIMs require advance notification to a senior Department official, such as the DAG, in addition to the notifications currently required for SIMs, especially for case openings that implicate core First Amendment activity and raise policy considerations or heighten enterprise risk, and establish implementing policies and guidance, as necessary.
- The FBI should develop protocols and guidelines for staffing and administering any future sensitive investigative matters from FBI Headquarters.
- The FBI should address the problems with the administration and assessment of CHSs identified in this report, including, at a minimum, revising the FBI's standard CHS admonishments, improving the documentation of CHS information, revising FBI policy to address the acceptance of information from a closed CHS indirectly through a third party, and taking other steps we identify in Chapter Twelve.
- The Department and FBI should clarify the terms (1) "sensitive monitoring circumstance" in the AG Guidelines and the DIOG to determine whether to expand its scope to include consensual monitoring of a domestic political candidate or an individual prominent within a domestic political organization, or a subset of these persons, so that consensual monitoring of such individuals would require consultation with or advance notification to a senior Department official, such as the DAG, and (2) "prominent in a domestic political organization" so that agents understand which campaign officials fall within that definition as it relates to "sensitive investigative matters," "sensitive UDP," the designation of "sensitive sources," and "sensitive monitoring circumstance."
- The FBI should ensure that appropriate training on DIOG § 4 is provided to emphasize the constitutional implications of certain monitoring situations and to ensure that agents account for these concerns, both in the tasking of CHSs and in the way they document interactions with and tasking of CHSs.
- The FBI should establish a policy regarding the use of defensive and transition briefings for investigative purposes, including the factors to be considered and approval by senior leaders at the FBI with notice to a senior Department official, such as the DAG.
- The Department's Office of Professional Responsibility should review our findings related to the conduct of Department attorney Bruce Ohr for any action it deems appropriate. Ohr's current supervisors in CRM should also review our findings related to Ohr's performance for any action they deem appropriate.
- The FBI should review the performance of all employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers, supervisors, and senior officials in the chain of command of the Carter Page investigation for any action it deems appropriate.

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CHAPTER ONE INTRODUCTION

I. Background and Overview

The Department of Justice (Department) Office of the Inspector General (OIG) undertook this review to examine certain actions by the Federal Bureau of Investigation (FBI) and the Department during an FBI investigation into whether individuals associated with the Donald J. Trump for President Campaign were coordinating, wittingly or unwittingly, with the Russian government. The FBI's counterintelligence investigation, known as "Crossfire Hurricane," was opened on July 31, 2016, weeks after the Republican National Convention (RNC) formally nominated Trump as its candidate for President, and several months before the November 8, 2016 elections, through which Trump was elected President of the United States. On May 17, 2017, the Crossfire Hurricane investigation was transferred from the FBI to the Office of Special Counsel upon the appointment of Special Counsel Robert S. Mueller III to investigate Russian interference with the 2016 presidential election and related matters.

The FBI opened Crossfire Hurricane in July 2016 following the receipt of certain information from a Friendly Foreign Government (FFG). According to the information provided by the FFG, in May 2016, a Trump campaign foreign policy advisor, George Papadopoulos, "suggested" to an FFG official that the Trump campaign had received "some kind of suggestion" from Russia that it could assist with the anonymous release of information that would be damaging to Hillary Clinton (Trump's opponent in the presidential election) and President Barack Obama. At the time the FBI received the FFG information, the U.S. Intelligence Community (USIC), which includes the FBI, was aware of Russian efforts to interfere with the 2016 U.S. elections, including efforts to infiltrate servers and steal emails belonging to the Democratic National Committee (DNC) and the Democratic Congressional Campaign Committee. The FFG shared this information with the State Department on July 26, 2016, after the internet site WikiLeaks began releasing emails hacked from computers belonging to the DNC and Clinton's campaign manager. The State Department advised the FBI of the information the next day.

Crossfire Hurricane was opened several weeks after the FBI's July 5, 2016 conclusion of its "Midyear Exam" investigation into Clinton's handling of government emails during her tenure as Secretary of State.¹ Some of the same FBI officials, supervisors, and attorneys responsible for the Midyear investigation were assigned to the newly opened Crossfire Hurricane investigation, but there was almost no

¹ See U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*, Oversight and Review Division Report 18-04 (June 2018), <https://www.justice.gov/file/1071991/download> (accessed November 12, 2019), 2 (hereinafter *Review of Various Actions in Advance of the 2016 Election*).

overlap between the FBI agents and analysts assigned to the Midyear and Crossfire Hurricane investigations.

The FBI opened Crossfire Hurricane as an umbrella counterintelligence investigation, without identifying any specific subjects or targets. FBI officials told us that they did not immediately identify subjects or targets because it was unclear from the FFG information who within the Trump campaign may have received the reported offer of assistance and might be coordinating, wittingly or unwittingly, with the Russian government. By August 10, 2016, the FBI had assembled an investigative team of special agents, analysts, and supervisory special agents (the Crossfire Hurricane team) and conducted an initial analysis of links between Trump campaign members and Russia. Based upon this analysis, the FBI opened individual cases under the Crossfire Hurricane umbrella on three U.S. persons—Papadopoulos, Carter Page, and Paul Manafort—all of whom were affiliated with the Trump campaign at the time the cases were opened.² On August 16, 2016, the FBI opened a fourth individual case under Crossfire Hurricane on Michael Flynn, who was serving at the time as the Trump campaign's National Security Advisor.³

Two of the four Crossfire Hurricane subjects were already the subjects of other existing federal investigations. Carter Page was the subject of an ongoing counterintelligence investigation opened by the FBI's New York Field Office (NYFO) on April 4, 2016, relating to his contacts with suspected Russian intelligence officers. Manafort was the subject of an ongoing criminal investigation, supervised by the Money Laundering and Asset Recovery Section (MLARS) in the Department's Criminal Division, concerning millions of dollars Manafort allegedly received from the government of Ukraine.⁴

² According to public reporting, Carter Page ceased being associated with the Trump campaign as of September 26, 2016, and Manafort resigned as of August 19, 2016. As noted in Chapter Ten, accounts vary as to when Papadopoulos left the Trump campaign; according to *The Special Counsel's Report on the Investigation into Russian Interference with the 2016 Presidential Election*, Papadopoulos was dismissed from the campaign in early October 2016. See Special Counsel Robert S. Mueller III, *Report on the Investigation Into Russian Interference in the 2016 Presidential Election*, Vol. I (March 2019), 93 (hereinafter *The Special Counsel's Report*).

³ Flynn remained on the Trump campaign through the election and was subsequently appointed as National Security Advisor. Flynn resigned that position on February 13, 2017. Papadopoulos, Manafort, and Flynn were later indicted in federal district court for crimes prosecuted by the Special Counsel. On October 5, 2017, and December 1, 2017, respectively, Papadopoulos and Flynn pleaded guilty to making material false statements and material omissions during interviews with the FBI. On August 21, 2018, Manafort was convicted after trial on tax and bank fraud charges, and on September 14, 2018, pleaded guilty to charges of conspiracy against the United States and conspiracy to obstruct justice.

The indictments and sentencing documents are publicly available and therefore we refer to these individuals by name in this report. We also refer to Carter Page by name in this report because the Department publicly released, in response to Freedom of Information Act (FOIA) requests, redacted versions of the Foreign Intelligence Surveillance Act (FISA) applications and orders that name him.

⁴ Prior to January 2017, MLARS was named the Asset Forfeiture and Money Laundering Section.

Some of the early investigative steps taken by the Crossfire Hurricane team immediately after opening the investigation were to develop profiles on each subject; send names of, among others, individuals associated with the Trump campaign to other U.S. government intelligence agencies for any further information; and review FBI files for potential FBI Confidential Human Sources (CHSs) who might be able to assist the investigation. FBI witnesses we interviewed told us they believed that using CHSs in covert operations would be an efficient way to develop a better understanding of the information received from the FFG. We determined that the Crossfire Hurricane team tasked several CHSs and Undercover Employees (UCEs) during the 2016 presidential campaign, which resulted in interactions with Carter Page, Papadopoulos, and a high-level Trump campaign official who was not a subject of the investigation. All of these interactions were consensually monitored and recorded by the FBI. The interactions between CHSs and Page and Papadopoulos occurred both during the time Page and Papadopoulos were advisors to the Trump campaign, and after Page and Papadopoulos were no longer affiliated with the Trump campaign. We also learned that in August 2016, a supervisor of the Crossfire Hurricane investigation participated on behalf of the FBI in a strategic intelligence briefing given by the Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including investigative subject Flynn, and also participated in a separate strategic intelligence briefing given to candidate Clinton and her national security advisors. The FBI viewed the briefing of candidate Trump and his advisors as a possible opportunity to collect information potentially relevant to the Crossfire Hurricane and Flynn investigations. The supervisor memorialized the results of the briefing in an official FBI document, including instances where he was engaged by Trump and Flynn, as well as anything he considered related to the FBI or pertinent to the Crossfire Hurricane investigation. The supervisor did not memorialize the results of the briefing of candidate Clinton and her advisors.

An early investigative step considered but not initially taken by the Crossfire Hurricane team was to seek court orders under the Foreign Intelligence Surveillance Act (FISA) authorizing surveillance of Page and Papadopoulos. The U.S. Foreign Intelligence Surveillance Court (FISC) may approve FISA surveillance of an American citizen for a period of up to 90 days, subject to renewal, if the government's FISA application establishes probable cause to believe that the targeted individual is an agent of a foreign power by knowingly engaging in at least one of the five activities enumerated in the FISA statute.⁵ The Crossfire Hurricane team initially considered seeking FISA surveillance of Papadopoulos as a result of his statement to the FFG and of Page based upon information the FBI had collected about his prior and more recent contacts with known and suspected Russian intelligence officers, as well as Page's financial, political, and business ties to the

⁵ See 50 U.S.C. §§ 1801(b)(2)(A) through (E). In the case of the Carter Page FISA applications, the government relied upon the definition of an agent of a foreign power in Section 1801(b)(2)(E), which covers, among other things, any person who knowingly aids or abets any other person who knowingly engages in clandestine intelligence activities (other than intelligence gathering activities) that involve or are about to involve a violation of the criminal statutes of the United States, pursuant to the direction of an intelligence service or network of a foreign power, or knowingly conspires with other persons in such activities.

Russian government. Officials determined there was an insufficient basis to proceed with a FISA application concerning Papadopoulos, and the Crossfire Hurricane team never submitted a FISA application for Papadopoulos. With regard to Page, on August 15, 2016, the Crossfire Hurricane team requested assistance from the FBI's Office of the General Counsel (OGC) to prepare a FISA application for submission to the FISC. However, after consultation between FBI OGC and attorneys in the Office of Intelligence (OI) in the Department's National Security Division (NSD), which is responsible for preparing FISA applications and appearing before the FISC, the Crossfire Hurricane team was told in late August 2016 that more information was needed to establish probable cause for a FISA on Page.

A few weeks later, on September 19, 2016, the Crossfire Hurricane team received a set of six reports prepared by Christopher Steele concerning Russian interference in the 2016 U.S. election and alleged connections between this Russian effort and individuals associated with the Trump campaign.⁶ Steele is a former intelligence officer [REDACTED] who, following his retirement, opened a consulting firm and furnished information to the FBI beginning in 2010, primarily on matters concerning organized crime and corruption in Russia and Eastern Europe. In 2013, the FBI prepared paperwork to enable it to open Steele as an FBI CHS. In providing the first two election reports to his FBI handling agent in July 2016, Steele told the handling agent that he had been hired by an investigative firm, Fusion GPS, to collect information on the relationship between candidate Trump's businesses and Russia. Steele further informed the FBI handling agent that Fusion GPS had been retained by a law firm to conduct this research. According to the handling agent, it was obvious to him that the request for the research was politically motivated.

Two of the six Steele reports received by the Crossfire Hurricane team on September 19 referenced Carter Page by name. One stated that Page had held secret meetings with two high level Russian officials during Page's July 2016 trip to Moscow. This report also indicated that one of the alleged meetings included a discussion about the Kremlin potentially releasing compromising information about Democratic candidate Hillary Clinton to Trump's campaign team. Another report from Steele described "a well-developed conspiracy of co-operation" between the Russian government and Trump's campaign to defeat Clinton, using Carter Page and others as intermediaries.⁷ On September 21, 2016, 2 days after the team received these reports, FBI OGC advised OI that the FBI believed it was ready to

⁶ As described in this report, information from Christopher Steele's reports—sometimes collectively referred to as the "Steele dossier"—that pertained to Carter Page was relied upon in the Carter Page FISA applications. In those applications, Steele was referred to as "Source #1." We refer to Steele by name in this report because the Department and the FBI have publicly revealed Steele's identity as Source #1 in connection with FOIA litigation.

⁷ A third report from Steele, which did not reference Carter Page, stated that Russian intelligence services had used concealed cameras to film Trump's alleged sexual activities with prostitutes at a Moscow hotel, and claimed that the Russians could blackmail Trump by threatening to release this compromising material. These allegations, which have come to be known publicly as the "salacious and unverified" portion of the reporting, were not included in the original Carter Page FISA application or any of the renewal applications.

submit a request for FISA authority on Carter Page, and OI and the FBI began drafting the first FISA application. Among the FBI's purposes in seeking a FISA order for Page was to obtain information about Page's trip to Russia in July 2016, when Page was still a member of the Trump campaign.

On September 23, 2016, *Yahoo News* published an article stating that U.S. intelligence officials had received reports regarding Carter Page's private meetings in Moscow with senior Russian officials. The article cited a "well-placed Western intelligence source," and contained details about Carter Page's activities in Russia that closely paralleled the information contained in the reporting that Steele had provided to the FBI. We found no evidence that anyone from the FBI asked Steele in September 2016 or at any other time, if he had spoken with the *Yahoo News* reporter. Steele had, in fact, spoken with the reporter prior to the article's publication, which the FBI would learn from public records after the submission of the first FISA application.

On October 21, 2016, NSD submitted the Carter Page FISA application to the FISC, asserting that there was probable cause to believe that Page was an agent of the Russian government. The application relied on, among other things:

- The information provided by the FFG about its interaction with Papadopoulos;
- Information from the FBI's previously opened counterintelligence investigation relating to Page arising from his contacts with Russian intelligence officers;
- Information from Steele's reports that pertained specifically to Carter Page; and
- Information from a meeting between Page and an FBI CHS that was consensually monitored by Crossfire Hurricane investigators.

The application also stated in a footnote that the FBI "speculates that the [person who hired Steele] was likely looking for information that could be used to discredit [candidate Trump's] campaign." Further, the application advised the court of information reported in the September 23, 2016 *Yahoo News* article and stated that (a) the FBI "does not believe that Source #1 directly provided...to the press" the information in the article, (b) according to the article and other news articles, individuals affiliated with the Trump campaign made statements distancing the campaign from Carter Page, and (c) Page himself denied the accusations in the *Yahoo News* article and reiterated that denial in a September 25, 2016 letter to the FBI Director and in a September 26, 2016 media interview.

However, the application, as well as the renewal applications, did not include significant relevant information, and contained inaccurate and incomplete information, that was known to the Crossfire Hurricane team at the time but that it did not share with NSD attorneys. For example, when asked by an NSD attorney who was involved in helping to draft the first FISA application whether Page had provided information to another U.S. government agency or was a source for that other agency, a Crossfire Hurricane agent incorrectly told the NSD attorney that

Page's contact with the other U.S. government agency was "dated" and "outside scope." The Crossfire Hurricane agent made this statement despite the fact that the Crossfire Hurricane team had been told by the other agency in a written memorandum that Page had been approved as an operational contact for the other agency from 2008 to 2013 and that Page had provided information to the other agency that was relevant to the FISA application.⁸ The Crossfire Hurricane team also failed to inform NSD attorneys about information obtained by the FBI during CHS operations and interviews that was inconsistent with the allegations contained in the Steele reporting that was being relied upon in the FISA application.

The FISA application was reviewed by numerous FBI agents, FBI attorneys, and NSD attorneys, and, as required by law, was ultimately certified by then FBI Director James Comey and approved by then Deputy Attorney General Sally Yates. The FISC granted the first FISA application on October 21, 2016, authorizing the use of FISA authority on Carter Page.

On October 31, 2016, *Mother Jones* magazine published an online news article titled "A Veteran Spy has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump." The October 31 article quoted a "well-placed Western intelligence source," and described how that individual had provided reports to the FBI about connections between Trump and the Russian government. According to the article, the source was continuing to provide information to the FBI, and was quoted as saying "it's quite clear there was or is a pretty substantial inquiry going on." On November 1, 2016, Steele's FBI handling agent questioned Steele, who admitted speaking to the reporter who wrote the October 31 article. The handling agent advised Steele at that time that his relationship with the FBI would likely be terminated for disclosing his relationship with the FBI to the press, and the FBI officially closed Steele for cause on November 17, 2016. Steele was never paid by the FBI for any of the reports or information that he provided concerning Carter Page or connections between the Russian government and the Trump campaign.

After Steele was closed as an FBI CHS, Crossfire Hurricane agents continued to receive information from him through a conduit, Department attorney Bruce Ohr, who at the time was an Associate Deputy Attorney General in the Office of the Deputy Attorney General (ODAG). Ohr had known Steele, through work, since at least 2007 and, starting in July 2016, Steele had contacted Ohr on multiple occasions to discuss information from Steele's reports. At Steele's suggestion, Ohr also met in August and December 2016 with Glenn Simpson, the owner of Fusion GPS, which Ohr's wife had worked for as an independent contractor through September 2016. During those meetings, Simpson provided Ohr with several of

⁸ According to the other U.S. government agency, "operational contact," as that term is used in the memorandum about Page, provides "Contact Approval," which allows the other agency to contact and discuss sensitive information with a U.S. person and to collect information from that person via "passive debriefing," or debriefing a person of information that is within the knowledge of an individual and has been acquired through the normal course of that individual's activities. According to the U.S. government agency, a "Contact Approval" does not allow for operational use of a U.S. person or tasking of that person.

Steele's election reports. Ohr also communicated with a senior State Department official concerning, among other matters, the Steele reporting. Between the date of Steele's closing as an FBI CHS in November 2016 and May 15, 2017, Ohr met with the FBI on 13 occasions. In his meetings with the FBI, Ohr provided the FBI with information that Steele had provided to him, the Steele election reports that Ohr had received from Simpson, as well as a thumb drive containing information Ohr had received from his wife that contained open source research she had compiled while working for Fusion GPS. Department leaders, including Ohr's supervisors within ODAG, were unaware of Ohr's meetings with Steele, Simpson, the FBI, or the State Department, or of Ohr's wife's connection to Fusion GPS, until late November 2017, when Congress requested information from the Department regarding Ohr's activities.

As the FBI's Crossfire Hurricane investigation proceeded, the Department submitted three renewal applications to the FISC seeking authority to continue FISA surveillance of Carter Page. Comey and Yates approved the first renewal application, Comey and then Acting Attorney General Dana Boente approved the second renewal, and then Acting FBI Director Andrew McCabe and then Deputy Attorney General (DAG) Rod Rosenstein approved the third renewal. In total, at the request of the FBI, the Department filed four FISA applications, each of which was granted by the FISC: the first FISA application on October 21, 2016, and three renewal applications on January 12, April 7, and June 29, 2017. A different FISC judge considered each application before issuing the requested orders, which collectively resulted in approximately 11 months of FISA coverage of Carter Page from October 21, 2016, until September 22, 2017.

Each of the FISA orders issued by the FISC authorized the U.S. government to conduct electronic surveillance [REDACTED] targeting Carter Page for a period of up to 90 days. The authority permitted the government to, among other things, [REDACTED]

by Carter Page. This included [REDACTED]

[REDACTED] during the 90-day period.

The authority also permitted the government to [REDACTED]

[REDACTED]. The orders expressly limited the electronic surveillance to only [REDACTED]

specifically identified in the order and in the manner specified by the order. Further, the orders required the government to adhere to standard procedures designed to minimize the government's acquisition and retention of non-public information about a U.S. person that did not constitute foreign intelligence information. At the request of the government, the orders also included special procedures restricting access to acquired information to only those individuals assigned to the Crossfire Hurricane investigation (and their supervisors), which the Department interpreted to include Department attorneys and officials assisting in and overseeing the investigation. The orders also required higher approval than would normally be required before disseminating the information outside the FBI.

In April and May 2017, following news reports that the FBI had obtained a FISA for Carter Page, Page gave interviews to news outlets denying that he had collected intelligence for the Russian government and asserting instead that he had previously assisted U.S. government agencies. Shortly before the FBI filed the final renewal application with the FISC in mid-June 2017, and in response to concerns expressed by the Investigative team and NSD about Page's claim, an FBI OGC Attorney emailed the U.S. government agency that had provided information to the FBI in August 2016, referenced above, about its prior interactions with Carter Page to inquire about Page's past status. The other U.S. government agency's liaison to the Crossfire Hurricane team responded by email to the FBI OGC attorney by directing the attorney to a memoranda previously sent to the FBI by the other U.S. government agency informing the FBI that Page had been approved as an operational contact for the other agency from 2008 to 2013. The email also stated, using the other agency's terminology, that it was the other agency liaison's recollection that Page had prior interactions with that other agency. However, when asked by one of the supervisory special agents (SSA) on the Crossfire Hurricane team (who was going to be the affiant on the final FISA renewal application) about Page's prior interactions with that other agency, the OGC Attorney advised the SSA that Page was "never a source" for the other U.S. government agency. In addition, the OGC Attorney altered the email that the other U.S. government agency had sent to the OGC Attorney so that the email inaccurately stated that Page was "not a source" for the other agency; the OGC Attorney then forwarded the altered email to the SSA. Shortly thereafter, on June 29, 2017, the SSA served as the affiant on the final renewal application, which was again silent about Page's prior relationship with the other U.S. government agency.

On July 12, 2018, while the OIG's review was ongoing, NSD submitted a letter to the FISC advising the court of certain factual omissions in the Carter Page FISA applications that had come to NSD's attention after the final renewal application was filed on June 29, 2017.⁹ The Department's letter stated that, despite the omissions, it was the Department's view that the applications contained sufficient information to support the FISC's earlier probable cause findings as to Page.

On March 28, 2018, the OIG publicly announced that, in response to requests from the Attorney General and Members of Congress, it had initiated this review to examine:

- Whether the Department and the FBI complied with legal requirements and applicable policies and procedures in FISA applications filed with the FISC relating to surveillance of Carter Page;
- What information was known to the Department and FBI at the time the applications were filed about Christopher Steele; and

⁹ At the time of this letter, NSD was unaware of the numerous factual assertions made in the FISA applications that were inaccurate, incomplete, or unsupported by appropriate documentation that the OIG identified during the course of our review and that we detail in this report.

- How the Department's and FBI's relationships and communications with Steele related to the FISA applications.¹⁰

In addition, during the *OIG's Review of Various Actions in Advance of the 2016 Election*, we discovered text messages and instant messages between some FBI employees, using FBI mobile devices and computers, which expressed statements of hostility toward then candidate Trump and expressed statements of support for then candidate Clinton.¹¹ Because some of the FBI employees responsible for those communications, including Section Chief Peter Strzok and FBI Attorney Lisa Page, also had involvement in the Crossfire Hurricane investigation, we examined whether their communications evidencing a potential bias affected investigative decisions made in Crossfire Hurricane.¹² We also examined, where available, the government emails, text messages, and instant messages of all Department and FBI employees who played a substantive role in Crossfire Hurricane to determine if there were any additional communications evidencing a potential bias and, if so, whether the views expressed influenced any investigative decisions.

The March 28, 2018 *OIG* announcement also stated that "if circumstances warrant, the *OIG* will consider including other issues that may arise during the course of the review." In May 2018, in response to Rosenstein's request, the *OIG* added to the scope of this review to determine whether the FBI infiltrated or surveilled the Trump campaign. Accordingly, we examined the FBI's use of CHSs in the Crossfire Hurricane investigation, up through November 8, 2016 (the date of the 2016 U.S. elections) to evaluate whether the FBI had placed any CHSs within the Trump campaign or tasked any CHSs to report on the Trump campaign, and, if so, whether any such use of CHSs was in violation of applicable Department and FBI policies or was politically motivated. We subsequently learned of and included in our review certain other CHS activities that took place after the 2016 election.

II. Prior *OIG* Reports on FISA and Related Issues

In addition to the requests described above from the Attorney General, the Deputy Attorney General, and Members of Congress, our initiation of this review was informed by our prior work over the past 15 years on the Department's and FBI's use of national security and surveillance authorities, including authorities under FISA. This prior *OIG* work considered the challenges faced by the Department and the FBI as they utilized national security authorities while also striving to safeguard civil liberties and privacy. In every year since 2006, the *OIG's*

¹⁰ As part of our review of this issue, the *OIG* examined the interactions between Ohr and the Crossfire Hurricane team as well as Ohr's communications with Steele and Simpson, both before and after the FBI closed Steele as a CHS. Our review also examined Ohr's interactions with Department attorneys regarding the Manafort criminal case.

¹¹ DOJ *OIG*, *Review of Various Actions in Advance of the 2016 Election*, 3.

¹² FBI Attorney Lisa Page is not related to Carter Page, the individual affiliated with the Trump campaign who was the subject of the FISA surveillance in Crossfire Hurricane.

annual report on “*Top Management and Performance Challenges Facing the Department of Justice*” has highlighted the difficulty faced by the Department and the FBI in maintaining a balance between protecting national security and safeguarding civil liberties.

The OIG’s prior oversight work, some of which was congressionally mandated, informed our decision to initiate this review. That prior oversight work included OIG reviews of the FBI’s use of specific FISA authorities,¹³ the FBI’s use of other national security-related surveillance authorities,¹⁴ and the FBI’s or other Department law enforcement components’ use of CHSs and administrative subpoenas.¹⁵ We also conducted reviews that specifically examined the impact of

¹³ DOJ OIG, *A Review of the FBI’s Handling of Intelligence Information Related to the September 11 Attacks*, Oversight and Review Division (November 2004), <https://oig.justice.gov/special/s0606/final.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Activities Under Section 702 of the Foreign Intelligence Surveillance Act Amendments Act of 2008*, Oversight and Review Division (September 2012), <https://oig.justice.gov/reports/2016/o1601a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of Section 215 Order for Business Records*, Oversight and Review Division (March 2007), <https://oig.justice.gov/reports/2014/215-1.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Section 215 Orders for Business Records in 2006*, Oversight and Review Division (March 2008), <https://oig.justice.gov/reports/2016/215-2008.pdf> (accessed November 12, 2019); DOJ OIG, *FBI’s Use of Section 215 Orders: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009*, Oversight and Review Division Report 15-05 (May 2015), <https://oig.justice.gov/reports/2015/o1505.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Section 215 Orders for Business Records in 2012 through 2014*, Oversight and Review Division Report 16-04 (September 2016), <https://oig.justice.gov/reports/2016/o1604.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of Trap and Trace Devices Under the Foreign Intelligence Surveillance Act in 2007 through 2009*, Oversight and Review Division 15-06 (June 2015), <https://oig.justice.gov/reports/2015/o1506.pdf> (accessed November 12, 2019).

¹⁴ DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of National Security Letters*, Oversight and Review Division (March 2007), <https://oig.justice.gov/reports/2016/NSL-2007.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI’s Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006*, Oversight and Review Division (March 2008), <https://oig.justice.gov/reports/2014/s1410a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of National Security Letters: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009*, Oversight and Review Division (August 2014), <https://oig.justice.gov/reports/2014/s1408.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Federal Bureau of Investigation’s Use of Exigent Letters and Other Informal Requests for Telephone Records*, Oversight and Review Division (January 2010), <https://oig.justice.gov/reports/2014/o1411.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Department of Justice’s Involvement with the President’s Surveillance Program*, Oversight and Review Division (July 2009), <https://oig.justice.gov/reports/2016/PSP-01-08-16-vol-3.pdf> (accessed November 12, 2019).

¹⁵ DOJ OIG, *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Management and Oversight of Confidential Informants*, Audit Division 17-17 (March 2017), <https://oig.justice.gov/reports/2017/a1717.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration’s Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*, Audit Division 15-28 (July 2015), <https://oig.justice.gov/reports/2015/a1528.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration’s Management and Oversight of its Confidential Source Program*, Audit Division 16-33 (September 2016), <https://oig.justice.gov/reports/2016/a1633.pdf> (accessed November 12, 2019); DOJ OIG,

the FBI's use of investigative authorities on U.S. persons engaged in activities that are protected by the First Amendment of the U.S. Constitution.¹⁶

III. Methodology

During the course of this review, the OIG conducted over 170 interviews involving more than 100 witnesses. These interviews included former FBI Director Comey, former Attorney General Loretta Lynch, former DAG Yates, former Acting Attorney General and Acting DAG and current FBI General Counsel Dana Boente, former FBI Deputy Director McCabe, former DAG Rod Rosenstein, former FBI General Counsel James Baker, FBI agents, analysts, and supervisors who worked on the Crossfire Hurricane investigation, attorneys from the FBI's National Security and Cyber Law Branch, NSD attorneys who prepared or reviewed the FISA applications, Department attorneys from ODAG who reviewed the FISA applications, former and current members of the FBI's senior executive leadership, Department attorney Bruce Ohr and his wife, Nellie Ohr, and additional Department attorneys who supervised and worked with Ohr on matters relevant to this review.

The OIG also interviewed witnesses who were not current or former Department employees regarding their interactions with the FBI on matters falling within the scope of this review, including Christopher Steele and employees of other U.S. government agencies.¹⁷ Steele provided the OIG with access to, but not copies of, memoranda regarding interactions he had with FBI personnel and Bruce Ohr in 2010, 2011, and 2016. Steele represented to us that he drafted the memoranda shortly after each interaction. In addition, we reviewed relevant information that other U.S. government agencies provided to the FBI in the course of the Crossfire Hurricane investigation. Because the activities of other agencies were not within the scope of this review, we did not seek to obtain records from them that the FBI never received or reviewed, except for a limited amount of State

Public Summary of the Addendum to the Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program, Audit Division 16-33a (March 2017), <https://oig.justice.gov/reports/2017/a1633a.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the Drug Enforcement Administration's Use of Administrative Subpoenas to Collect or Exploit Bulk Data*, Oversight and Review Division 19-01 (March 2019), <https://oig.justice.gov/reports/2019/o1901.pdf> (accessed November 12, 2019); DOJ OIG, *The Federal Bureau of Investigation's Management of Confidential Case Funds and Telecommunication Costs*, Audit Division 18-03 (January 2008), <https://oig.justice.gov/reports/FBI/a0803/final.pdf> (accessed November 12, 2019).

¹⁶ DOJ OIG, *A Review of the FBI's Investigative Activities Concerning Potential Protesters at the 2004 Democratic and Republican National Political Conventions*, Oversight and Review Division (April 2006), <https://oig.justice.gov/special/s0604/final.pdf> (accessed November 12, 2019); DOJ OIG, *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups*, Oversight and Review Division (September 2010), <https://oig.justice.gov/special/s1009r.pdf> (accessed November 12, 2019).

¹⁷ According to Steele, his cooperation with our investigation [REDACTED]

Department records relating to Steele.¹⁸ Additionally, our review also did not seek to independently determine whether corroboration existed for the Steele election reporting; rather, our review was focused on information that was available to the FBI prior to and during the pendency of the Carter Page FISAs that related to the Steele reporting.

Two witnesses, Glenn Simpson and Jonathan Winer (a former State Department official), declined our requests for voluntary interviews, and we were unable to compel their testimony.¹⁹ The OIG does not have authority to subpoena for testimony former Department employees or third parties who may have relevant information about an FBI or Department program or operation.²⁰ Certain former FBI employees who agreed to interviews, including Comey and Baker, chose not to request that their security clearances be reinstated for their OIG interviews. Therefore, we were unable to provide classified information or documents to them during their interviews to develop their testimony, or to assist their recollections of relevant events.

We also received and reviewed more than one million documents that were in the Department's and FBI's possession. Among these were electronic communications of Department and FBI employees and documents from the Crossfire Hurricane investigation, including interview reports (FD-302s and Electronic Communications or ECs), contemporaneous notes from agents, analysts, and supervisors involved in case-related meetings, documents describing and analyzing Steele's reporting and information obtained through FISA coverage on

¹⁸ In this review, we also did not seek to assess the actions taken by or information available to U.S. government agencies outside the Department of Justice, as those agencies are outside our jurisdiction.

¹⁹ The OIG did not seek to interview Carter Page or any other subject in the Crossfire Hurricane investigation because their actions were not the focus of our review. Rather, consistent with the OIG's jurisdiction, we examined the actions of the FBI and Department. In response to a request from Page to review a draft of our report, the OIG advised Page in correspondence in November 2019 that the OIG would notify him of the report's anticipated release date shortly before the report is made public. This courtesy is consistent with the OIG's practice in other matters where the actions we reviewed affected the personal interests of a private citizen.

²⁰ In 2016, Congress passed the "Inspector General Empowerment Act" (IGEA) (P. L. 114-317). Timely completion of this review would not have been possible without the IGEA's statutory clarification that OIGs must be granted access to all agency records and information, including highly sensitive records, such as FISA materials. We note that the Department and the FBI gave us broad and timely access to all such material, and provided us with their full cooperation.

Earlier versions of the IGEA also included a provision to authorize all OIGs to issue testimonial subpoenas (the Department of Defense OIG already has such authority, as does the Health and Human Services OIG in certain circumstances), but the provision was removed from the IGEA prior to its passage. The OIG would have directly benefited from the ability to subpoena former government and non-government individuals in this review. In addition to being able to compel the testimony of the small number of individuals who did not testify voluntarily, the ability to subpoena witnesses would have expedited completion of the review, as multiple individuals only agreed to interviews at a late stage in the review. In September 2018, the House of Representatives unanimously passed legislation that would provide testimonial subpoena authority to OIGs. No similar legislation has been introduced in the current Congress.

Carter Page, and draft and final versions of materials used to prepare the FISA applications and renewals filed with the FISC.²¹ We also obtained documents from attorneys and supervisors in NSD, Criminal Division (CRM), ODAG, and the Office of the Attorney General (OAG).

As with the *OIG's Review of Various Actions in Advance of the 2016 Election*, we obtained electronic communications between and among FBI agents, analysts, and supervisors, and FBI and Department officials to understand what happened during the investigation and identify what was known by the members of the Crossfire Hurricane team as the investigation progressed. In addition to a large volume of unclassified and classified emails, we received and reviewed hundreds of thousands of text messages and instant messages to or from FBI personnel who worked on the investigation.²² We also were provided with and reviewed transcripts of testimony from numerous witnesses who participated in hearings jointly conducted during the 115th Congress by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform.

Our review included the examination of highly classified information. We were given broad access to relevant materials by the Department and the FBI, including emails, text messages, and instant messages from both the FBI's Top Secret SCINet and Secret FBINet systems, as well as access to the FBI's classified Delta database, which FBI agents use to record their interactions with, and information received from, CHSs. Chapter Ten provides more information on the methodology we employed to examine the FBI's use of CHSs.

As with the *OIG's* handling of past reviews, we did not analyze all of the decisions made during the Crossfire Hurricane investigation. Rather, we reviewed the issues described below in Section IV of this chapter. Moreover, our role in this review was not to second-guess discretionary judgments by Department personnel about whether to open an investigation, or specific judgment calls made during the course of an investigation, where those decisions complied with or were authorized by Department rules, policies, or procedures. We do not criticize particular decisions merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was ideal or could have been handled more effectively, but whether the Department and the FBI complied with applicable legal requirements, policies, and procedures in taking the actions we reviewed or, alternatively, whether the circumstances surrounding the

²¹ We did not review the entirety of FISA [REDACTED] obtained through FISA surveillance [REDACTED] targeting Carter Page. We reviewed only those documents [REDACTED] under FISA authority that were pertinent to our review.

²² During our review, we identified a small number of text messages and instant messages, beyond those discussed in the *OIG's Review of Various Actions in Advance of the 2016 Election*, in which FBI employees involved in the Crossfire Hurricane investigation discussed political issues and candidates. Unlike the messages in the *OIG's Review of Various Actions in Advance of the 2016 Election*, the messages here did not raise significant questions of potential bias or improper motivation because of the potential connection to investigative activity.

decision indicated that it was based on inaccurate or incomplete information, or considerations other than the merits of the investigation. If the explanations we were given for a particular decision were consistent with legal requirements, policies and procedures, reflected rational investigative strategy and were not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of documentary or testimonial evidence to the contrary.²³

IV. Structure of the Report

This report consists of twelve chapters. The public version of this report contains limited redactions of information that the FBI and other agencies determined is classified or too sensitive for public release.²⁴ Following this introduction, Chapter Two summarizes relevant Department and FBI policies concerning counterintelligence investigations, including the policies governing the FBI's use of CHSs and FISA authority in the context of counterintelligence investigations.

In Chapter Three, we provide an overview of the Crossfire Hurricane investigation, including the information that predicated the investigation, the identification of the subjects of the investigation, the organization and staffing of the Crossfire Hurricane team, and the involvement of Department and FBI leadership. We also describe the context surrounding the Crossfire Hurricane investigation, in particular the conclusion by the USIC that the Russian government was attempting to interfere with the 2016 U.S. elections. In Chapter Four, we discuss the FBI's receipt and evaluation of information from Steele up and through the first Carter Page FISA application. In Chapter Five, we describe the preparation of the first FISA application which, once granted by the FISC, authorized FISA surveillance of Carter Page. We also describe instances in which information in the first FISA application was inaccurate, incomplete, or unsupported by appropriate documentation.

Chapter Six discusses the FBI's activities involving Steele after the first FISA application, including the FBI's decision to close Steele as a CHS and the FBI's efforts to assess Steele's election reports. Chapter Seven describes the three renewal applications for FISA surveillance of Carter Page as the Crossfire Hurricane investigation proceeded. In Chapter Eight, we discuss a letter NSD sent to the FISC

²³ As part of the standard practice in our reviews, we provided a draft copy of this report to the Department and the FBI to conduct a factual accuracy review. Also consistent with our standard practice, we contacted individuals who were interviewed as part of the review and whose conduct is addressed in this report, and certain other witnesses, to provide them an opportunity to review the portions of the report that pertain to their testimony to the OIG. With limited exceptions, these witnesses availed themselves of this opportunity, and we provided those who did conduct such a review with the opportunity to provide oral or written comments directly to the OIG concerning the portions they reviewed, consistent with rules to protect classified information.

²⁴ Consistent with our standard practice, we provided a draft copy of this report to the Department and the FBI, and as appropriate, other government agencies, for the purpose of conducting a classification review and providing final classification markings.

in July 2018, about one year after the final renewal application was filed, outlining omissions from the FISA applications. We also describe additional instances of inaccurate, incomplete, or undocumented information in the three FISA renewal applications that were not identified in NSD's letter.

In Chapter Nine, we discuss the interactions between Ohr and the Crossfire Hurricane team, Ohr's communications with Steele and Simpson, both before and after the FBI closed Steele as a CHS, and Ohr's interactions with Department attorneys regarding the Manafort criminal case. Chapter Ten discusses the FBI's use of CHSs other than Steele and its use of Undercover Employees (UCEs) as part of the Crossfire Hurricane investigation. We also describe several individuals we identified who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs, and provide the reasons such individuals were not tasked as part of the Crossfire Hurricane investigation. Finally, we describe the attendance of an SSA on the Crossfire Hurricane team at counterintelligence briefings given to the presidential candidates and certain campaign advisors.

Chapter Eleven contains our analysis of the factual information presented in Chapters Three through Ten. Chapter Twelve provides our conclusions and our nine recommendations.

Appendix One to this report contains a chart illustrating the results of our review of the FBI's compliance with the FISA "Woods Procedures" that are described in Chapter Two. Appendix Two is the FBI's official response to this report and the report's recommendations.

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CHAPTER TWO

APPLICABLE LAWS AND DEPARTMENT AND FBI POLICIES

In this chapter, we describe the standards set forth in the Attorney General's Guidelines for Domestic FBI Operations (AG Guidelines) and implemented through the FBI's Domestic Investigations and Operations Guide (DIOG) and the Counterintelligence Division (CD) Policy Directive and Policy Guide (CDPG) for the opening of predicated counterintelligence investigations. We then describe the FBI's process for opening and overseeing Sensitive Investigative Matters (SIMs), such as those involving political candidates or officials. Next, we discuss relevant policies governing the use and handling of Confidential Human Sources (CHS), focusing on the validation process, the use of sub-sources, and the continued receipt of intelligence from a closed CHS.

We then summarize the legal standards for obtaining approval to conduct electronic surveillance and physical searches under the Foreign Intelligence Surveillance Act of 1978 (FISA), as well as the procedural steps, approval and certification standards, and accuracy requirements necessary to obtain such approvals. Because our review focuses on the process the FBI used to obtain authorization to conduct electronic surveillance and physical searches targeting Carter Page, the discussion of FISA in this chapter is limited to the provisions applicable to these authorities. We also describe government ethics regulations concerning conflicts of interests that apply to certain events discussed in Chapter Nine.

Finally, we discuss examples of other Department and FBI policies regulating investigative activity that could potentially impact civil liberties, including policies that address when someone acting on behalf of the FBI becomes a member of, or participates in, the activity of an organization without disclosing their FBI affiliation to an appropriate official of the organization, and when investigative actions involve members of the news media, White House personnel, and Members of Congress.

I. FBI Counterintelligence Investigations

The FBI has the authority to investigate federal crimes that are not exclusively assigned to other agencies.²⁵ In addition, under Executive Order (EO) 12333 and various statutory authorities, the FBI has the primary domestic responsibility for investigating threats within the United States to the national security. Such threats are defined to include the following:

- International terrorism;
- Espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons;

²⁵ See AG Guidelines § A.1; DIOG §§ 6.4.1, 7.4.1.

- Foreign computer intrusion; and
- Other matters determined by the Attorney General, consistent with E.O. 12333 or any successor order.

Beyond these investigative functions, the FBI also serves as a domestic intelligence agency and has the authority to collect and analyze foreign intelligence as a member of the U.S. Intelligence Community (USIC).²⁶

The standards that the FBI must follow when conducting investigative and intelligence gathering activities are set forth in the AG Guidelines and implemented through the DIOG. The AG Guidelines and the DIOG both require that FBI investigations be undertaken for an authorized purpose—that is, “to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.”²⁷ The DIOG requires that the authorized purpose be “well-founded and well-documented,” and states that this threshold requirement is a safeguard intended to ensure that FBI employees respect the constitutional rights of Americans. Under both the AG Guidelines and the DIOG, no investigation may be conducted for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.²⁸ However, the DIOG also recognizes that

the law does not preclude FBI employees from observing and collecting any of the forms of protected speech and considering its content—as long as those activities are done for a valid law enforcement or national security purpose and are conducted in a manner that does not unduly infringe upon the ability of the speaker to deliver his or her message.²⁹

Balancing individual rights and the FBI’s legitimate investigative needs requires “a rational relationship between the authorized purpose and the protected speech to be collected such that a reasonable person with knowledge of the circumstances could understand why the information is being collected.”³⁰

The AG Guidelines recognize that activities subject to investigation as “threats to the national security” also may involve violations or potential violations of federal criminal laws, or may serve important purposes outside the ambit of normal criminal investigation and prosecution by informing national security decisions.³¹ Given such potential overlaps in subject matter, the AG Guidelines

²⁶ See AG Guidelines §§ A.2, B.

²⁷ AG Guidelines § II.B.1; DIOG § 7.2.; *see also* AG Guidelines §§ I.B.1, II; DIOG §§ 2.2.1, 6.2.

²⁸ See AG Guidelines §§ I.B.1, I.C.3; DIOG § 4.1.2.

²⁹ DIOG § 4.2.1.

³⁰ DIOG § 4.2.1.

³¹ See AG Guidelines § A.2.

state that the FBI is not required to differently label its activities as criminal investigations, national security investigations, or foreign intelligence collection, nor is it required to segregate FBI personnel based on the subject areas in which they operate. Rather, the AG Guidelines state that, where an authorized purpose exists, all of the FBI's legal authorities are available for deployment in all cases to which they apply.³²

The AG Guidelines and the DIOG require that the "least intrusive" means or method be "considered" when selecting investigative techniques and, "if reasonable based upon the circumstances of the investigation," be used to obtain information instead of a more intrusive method.³³ In choosing whether an investigative method is appropriate, the DIOG requires FBI agents to balance the level of intrusion against the investigative needs, particularly where the information sought involves clearly established constitutional, statutory, or evidentiary rights, or sensitive circumstances. Considerations include the seriousness of the crime or national security threat; the strength and significance of the intelligence or information to be gained; the amount of information already known about the subject or group under investigation; and the requirements of operational security, including protection of sources and methods.³⁴ The DIOG states that the degree of procedural protection the law and Department and FBI policy provide for the use of a particular investigative method helps to determine its intrusiveness.³⁵ According to the DIOG, search warrants, wiretaps, and undercover operations are considered to be very intrusive, while database searches and communication with established sources are less intrusive.³⁶ The least intrusive method principle reflects an attempt to balance the FBI's ability to effectively conduct investigations with the potential negative impact an investigation can have on the privacy and civil liberties of individuals encompassed within an investigation.³⁷ However, the DIOG states that investigators "must not hesitate to use any lawful method consistent with the [AG Guidelines] when the degree of intrusiveness is warranted in light of the seriousness of the matter concerned."³⁸ According to the DIOG, "[i]n the final analysis, choosing the method that [most] appropriately balances the impact on privacy and civil liberties with operational needs, is a matter of judgment, based on training and experience."³⁹

Where the authorized purpose involves a threat to the national security, the AG Guidelines require the FBI to coordinate with other Department components,

³² See AG Guidelines § A, II.

³³ See AG Guidelines § I.C.2; DIOG § 4.4.1.

³⁴ See DIOG § 4.4.4.

³⁵ See DIOG § 4.4.3.

³⁶ See DIOG § 4.4.3.

³⁷ See DIOG § 4.4.4.

³⁸ See DIOG § 4.1.1(F).

³⁹ See DIOG § 4.4.5.

specifically including the National Security Division (NSD), and to share information with other agencies with national security responsibilities, including other USIC agencies, the Department of Homeland Security, and the White House. Section VI.D of the AG Guidelines governs the FBI's responsibility to provide information concerning threats to the national security to NSD and to the White House. Where there is "compromising" information about U.S. officials or political organizations, or information concerning activities of U.S. persons intended to affect the political process, the FBI may disseminate it to the White House with the approval of the Attorney General, based on a determination that the dissemination is needed for foreign intelligence purposes, to protect against international terrorism or other threats to the national security, or for the conduct of foreign affairs.⁴⁰

A. Predicated Investigations

Where the FBI has an authorized purpose and factual predication—that is, allegations, reports, facts or circumstances indicative of possible criminal activity or a national security threat, or the potential for acquiring information responsive to foreign intelligence requirements—it may initiate an investigation. The predication requirement is not a legal requirement but rather a prudential one imposed by Department and FBI policy.⁴¹

Predicated investigations that concern federal crimes or threats to the national security are divided into Preliminary Investigations and Full Investigations.⁴² Preliminary Investigations may be opened on the basis of any "allegation or information" indicative of possible criminal activity or threats to the national security. Authorized investigative methods in Preliminary Investigations include all lawful methods (to include CHS and UCE operations) except mail opening, search warrants, electronic surveillance requiring a judicial order or warrant (Title III or FISA), or requests under Title VII of FISA. A Preliminary Investigation may also be converted to a Full Investigation if the available information provides predication for a Full Investigation.⁴³ As described in more detail in Chapter Three, both Crossfire Hurricane and an earlier counterintelligence investigation on Carter Page were initiated as Full Investigations, and thus we focus on the requirements for this level of predicated investigation.⁴⁴

⁴⁰ See AG Guidelines § VI.D.2.b.

⁴¹ For example, the Supreme Court has held that the Department and FBI can lawfully open a federal criminal grand jury investigation even in the absence of predication. See *United States v. Morton Salt*, 338 U.S. 632, 642-43 (1950) (a grand jury "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not"); see also *United States v. R. Enterprises*, 498 U.S. 292, 297 (1991).

⁴² See AG Guidelines § II.B.3.

⁴³ See AG Guidelines §§ II.B.3, II.B.4; DIOG §§ 6.1, 6.4, 6.6, 6.7.2, 6.9 (Preliminary Investigations); DIOG §§ 7.5, 7.6, 7.7.3, 7.9 (Full Investigations).

⁴⁴ In addition to predicated investigations, the AG Guidelines and the DIOG also authorize the FBI to use relatively non-intrusive means to conduct assessments when it receives or obtains allegations or other information concerning crimes or threats to the national security. Assessments

Under Section II.B.3 of the AG Guidelines and Section 7 of the DIOG, the FBI may open a Full Investigation if there is an “articulable factual basis” that reasonably indicates one of the following circumstances exists:

- An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity;
- An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat; or
- The investigation may obtain foreign intelligence that is responsive to a requirement that the FBI collect positive foreign intelligence—*i.e.*, information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.

The DIOG provides examples of information that is sufficient to initiate a Full Investigation, including corroborated information from an intelligence agency stating that an individual is a member of a terrorist group, or a threat to a specific individual or group made on a blog combined with additional information connecting the blogger to a known terrorist group.⁴⁵

A Full Investigation may be opened if there is an “articulable factual basis” of possible criminal or national threat activity. When opening a Full Investigation, an FBI employee must certify that an authorized purpose and adequate predication exist; that the investigation is not based solely on the exercise of First Amendment rights or certain characteristics of the subject, such as race, religion, national origin, or ethnicity; and that the investigation is an appropriate use of personnel and financial resources. The factual predication must be documented in an electronic communication (EC) or other form, and the case initiation must be approved by the relevant FBI personnel, which, in most instances, can be a Supervisory Special Agent (SSA) in a field office or at Headquarters. As described in more detail below, if an investigation is designated as a Sensitive Investigative Matter, that designation must appear in the caption or heading of the opening EC, and special approval requirements apply.

require an authorized purpose but no particular factual predication, and are the lowest level of investigation permitted under the AG Guidelines and the DIOG. See AG Guidelines § II.A; DIOG § 5.2. The investigations opened on Carter Page were not assessments.

⁴⁵ DIOG § 7.5.

All lawful investigative methods may be used in a Full Investigation, including electronic surveillance and physical searches under FISA.⁴⁶ However, as described above, the FBI must consider the least intrusive means or method to accomplish the operational objectives of the investigation.

B. Sensitive Investigative Matters (SIM)

The DIOG states that certain investigative matters, known as Sensitive Investigative Matters or SIMs, should be brought to the attention of FBI management and Department officials, as described in further detail below, because of the possibility of public notoriety and sensitivity.⁴⁷ Section 10.1.2.1 of the DIOG, in relevant part, defines a SIM as an assessment or predicated investigation of the activities of a domestic public official or domestic political candidate (involving corruption or a threat to the national security), or a domestic political organization or an individual prominent in such an organization. The term "domestic political candidate" includes an individual who is seeking nomination or election to federal or other political office, while the term "domestic political organization" includes, in relevant part, a committee or group formed to elect an individual to public office. Under the DIOG, if an assessment or predicated investigation concerns a person prominent in a "domestic political organization" but not the political organization itself, it nonetheless must be treated as a SIM.⁴⁸

Section 10.1.3 of the DIOG states that the following factors are to be considered when deciding to open a SIM:

- The seriousness or severity of the violation or threat;
- The significance of the information sought to the violation or threat;
- The probability that the proposed course of action will be successful;
- The risk of public exposure, and if there is such a risk, the adverse impact or the perception of the adverse impact on civil liberties and public confidence; and
- The risk to the national security or the public welfare if the proposed course of action is not approved (*i.e.*, the risk of doing nothing).

The DIOG cautions that, when conducting a SIM, the FBI should take particular care to consider whether a planned course of action is the least intrusive method if reasonable, based upon the circumstances of the investigation.⁴⁹ As noted above, when balancing the needs of the investigation and the intrusiveness of an investigative method, the FBI must consider the seriousness of the crime or national security threat, the strength and significance of the intelligence or

⁴⁶ See AG Guidelines § II.B.4(b)(ii); see also DIOG §§ 7.9, 18.7.1.

⁴⁷ DIOG § 10.1.1

⁴⁸ See DIOG § 10.1.2.2.3.

⁴⁹ See DIOG § 10.1.3

information to be gained, the amount of information already known about the subject or group under investigation, and the requirements of operational security, including protection of sources and methods.⁵⁰

The DIOG and CDPG impose special approval and notification requirements for initiating a Full Investigation of a U.S. person relating to a threat to the national security or any investigation involving a SIM. When a case is opened and designated a SIM by FBI Headquarters, these include review by the FBI Office of the General Counsel (OGC), approval by the FBI Headquarters operational Section Chief (SC), and notification to NSD.⁵¹ At NSD, counterintelligence investigations fall within the purview of the Counterintelligence and Export Control Section (CES), which has the responsibility of supervising and coordinating, among other things, the criminal investigation and prosecution of national security cases, except counterterrorism cases, nationwide. CES receives a steady volume of investigation notifications from the FBI, referred to as letterhead memoranda or LHMs, and on counterintelligence matters CES officials meet regularly with officials from the FBI's Counterintelligence Division.

II. Department and FBI Policies Governing the Use of Confidential Human Sources (CHS)

CHSs play a crucial role in the FBI's efforts to combat crime and protect national security. CHSs provide the FBI with information and insights about the inner workings of criminal, terrorist, and espionage networks that otherwise would be unavailable. The intelligence that CHSs generate has enabled the FBI to thwart terrorist plots, combat intelligence gathering by malign foreign actors, and collect critical evidence for criminal prosecutions.

A. Risk Management Issues Related to CHSs

The operation of CHSs carries numerous risks, both for the CHSs and for law enforcement.⁵² CHSs oftentimes place themselves in significant danger because

⁵⁰ See DIOG § 4.4.4.

⁵¹ The DIOG states "an appropriate NSD official" should be notified and provides a general email account for notification. See DIOG §§ 7.7, 7.10, DIOG Appendix G § G.9.1 (classified); CDPG § 3.1.2.

⁵² The OIG has conducted numerous reviews of the CHS Programs at the Department's law enforcement components, including most recently the OIG's *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes*, Audit Division Report 20-009 (November 2019), <http://oig.justice.gov/reports/2019/a20009.pdf> (accessed December 1, 2019). See also DOJ OIG, *Audit of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Management and Oversight of Confidential Informants*, Audit Division 17-17 (March 2017), <https://oig.justice.gov/reports/2017/a1717.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration's Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*, Audit Division 15-28 (July 2015), <https://oig.justice.gov/reports/2015/a1528.pdf> (accessed November 12, 2019); DOJ OIG, *Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program*, Audit Division 16-33 (September 2016), <https://oig.justice.gov/reports/2016/a1633.pdf> (accessed November 12, 2019); DOJ OIG,

disclosure of their cooperation with the FBI can result in retaliation by the persons on whom they are reporting, including physical abuse and even death. Maintaining the confidential nature of the FBI's relationship with its human sources consequently is a priority for the FBI and the Department. Without such secrecy, the safety of CHSs and the FBI's ability to recruit CHSs would be severely jeopardized.

Law enforcement agencies, including the FBI, also assume various risks when utilizing CHSs. Sources may fail to follow instructions and engage in criminal activities that are not authorized, or they may lie or otherwise provide inaccurate information. In light of these risks, the Department and the FBI have established detailed policies to govern the use of CHSs, which seek to mitigate the various risks that such use creates. The Department has established AG Guidelines for FBI CHSs (AG CHS Guidelines) and baseline risk and mitigation protocols for CHS operations.⁵³ The AG CHS Guidelines and protocols require, for example, that the FBI: (1) complete an initial suitability or validation review prior to operating a CHS; (2) admonish the CHS regarding the parameters of his or her service, such as a prohibition on unauthorized illegal activity, and the requirement to abide by the FBI's instructions; (3) maintain proper payment documentation; and (4) subject the CHS to an on-going validation review, to include quarterly and annual reporting on the CHS's activities.⁵⁴ Sources that the FBI operates outside of the United States are subject to further requirements under a separate set of Attorney General's Guidelines.⁵⁵

The FBI's CHS policies provide additional guidance about source operation procedures and include the DIOG, the Confidential Human Source Policy Guide (CHSPG), and the Confidential Human Source Validation Standards Manual (VSM).⁵⁶ Under these policies, FBI case agents (handling agents) are responsible for recruiting and operating CHSs, as well as securing approvals for CHS activities and maintaining accurate CHS case files.⁵⁷ These policies expressly recognize that the "FBI must, to the extent practicable, ensure that the information collected from

Public Summary of the Addendum to the Audit of the Drug Enforcement Administration's Management and Oversight of its Confidential Source Program, Audit Division 16-33a (March 2017), <https://oig.justice.gov/reports/2017/a1633a.pdf> (accessed November 12, 2019);

⁵³ Alberto Gonzales, *Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources* ("AG CHS Guidelines") (Dec. 13, 2006); James M. Cole, Deputy Attorney General, *Baseline Risk Assessment and Mitigation Policies for Law Enforcement Operations in Criminal Matters* (December 7, 2013) at 6-10.

⁵⁴ AG CHS Guidelines §§ II.A, II.B, II.C & IV.C.4.

⁵⁵ William P. Barr, *Attorney General's Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions* (January 15, 1993); See also Confidential Human Source Policy Guide (CHSPG) § 19.

⁵⁶ The FBI is in the process of drafting new guidance to replace the *Confidential Human Source Validation Standards Manual* ("VSM"), 0258PG (March 26, 2010). Witnesses we interviewed told the OIG that the FBI has changed its validation process, and no longer follows much of the VSM, but it has not yet been replaced by more recent guidance.

⁵⁷ DIOG § 18.5.5; CHSPG § 1.0; VSM § 1.0.

every CHS is accurate and current, and not given to the FBI in an effort to distract, mislead, or misdirect FBI organizational or governmental efforts."⁵⁸

The CHSPG recognizes that the decision to open an individual as a CHS will not only forever affect the life of that individual, but that the FBI will also be viewed, fairly or unfairly, in light of the conduct or misconduct of that individual.⁵⁹ Accordingly, the CHSPG identifies criteria that handling agents must consider when assessing the risks associated with the potential CHS. [REDACTED]

[REDACTED]⁶⁰ These risks must be weighed against the benefits associated with use of the potential CHS.⁶¹

Once a CHS has been evaluated and recruited, the CHSPG does not allow for tasking until after the CHS has been approved for opening by an FBI SSA; the required approvals for a specific tasking have been granted; and the CHS has met with the co-handling agent assigned to his or her file, who has the same duties, responsibilities, and file access as the handling agent.⁶² The CHSPG requires additional supervisory approval by a Special Agent in Charge (SAC) and review by a Chief Division Counsel (CDC) to open CHSs that are "sensitive" sources, [REDACTED]

[REDACTED]⁶³

Before a CHS may be tasked, the CHS must also be admonished by the handling agent regarding the nature and parameters of the CHS's relationship with

⁵⁸ VSM § 1.0.

⁵⁹ CHSPG § 3.1.

⁶⁰ CHSPG § 3.1.

⁶¹ Criteria used by agents and analysts to weigh the risks and benefits are: [REDACTED]

[REDACTED] CHSPG § 3.1.

⁶² CHSPG §§ 2.2.1, 4.2.

⁶³ CHSPG § 3.5.1.1. [REDACTED]

the FBI.⁶⁴ Admonishments must also be given to the CHS "whenever it appears necessary or prudent to do so, and at least annually."⁶⁵ The CHSPG contains a list of required admonishments, which include that the CHS's assistance to the FBI is voluntary; that the CHS must abide by the admonishments of the FBI and must not take any independent actions on behalf of the U.S. government; and that the CHS must provide truthful information to the FBI.⁶⁶ The required admonishments listed in the CHSPG do not include a specific statement that the CHS must keep his or her relationship with the FBI confidential.

Exceptions to the requirements of the CHSPG and the DIOG may be made in "extraordinary circumstances" and require the approval of the Assistant Director of the Directorate of Intelligence.⁶⁷

B. Documenting CHS Activities

The FBI maintains an automated case management system for all CHS records, which the FBI refers to as "Delta."⁶⁸ The Delta file for each CHS contains

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69 The handling agent also assigns the CHS a [REDACTED], which enables the CHS to sign payment receipts, admonishments, and consent forms without indicating the CHS's true identity.⁷¹ The FBI permanently retains its CHS files, as directed by the National Archives and Records Administration (NARA).⁷²

Within Delta, handling agents are required to document information reported by the CHS, as well as a wide variety of other information, including interactions between the handling agent and the CHS, [REDACTED]

⁶⁴ CHSPG § 5.1.

⁶⁵ CHSPG § 5.1.

⁶⁶ CHSPG § 5.2.

⁶⁷ CHSPG § 1.5.2.

⁶⁸ CHSPG §§ 3.10.1, 16.1.1.

⁶⁹ CHSPG § 16.1.5. The FBI's CHS Policy requires case agents to enter all communications concerning their CHSs into Delta, unless an exemption for "compelling circumstances" has been granted. CHSPG § 16.1.2. Even if such an exemption is granted, however, all CHSs must nevertheless be "registered" in the FBI's Delta database in a source-opening communication. CHSPG §§ 16.1.2, 16.1.4.

⁷⁰ CHSPG § 16.2.

⁷¹ CHSPG § 16.3.

⁷² CHSPG § 16.1.8.

- [REDACTED]);
- [REDACTED]); and
- [REDACTED]).⁸⁰

Each year, the handling agent must complete a Field Office Annual Source Report (FOASR), [REDACTED].⁸¹ FOASRs must be maintained in the CHS's Delta validation sub-file, where they are reviewed and approved by the SSA and an Assistant Special Agent in Charge (ASAC), then submitted to the FBI Headquarters' Validation Management Unit (VMU), which assesses each CHS for continued operation.⁸²

SSAs are responsible for daily oversight of CHSs operated by handling agents on the SSA's squad. SSAs review all communications regarding those CHSs, and perform required reviews of documentation collected in each CHS's Delta file.⁸³ Every 90 days, the SSA must also complete a Quarterly Supervisory Source Report (QSSR) for each CHS operated by a handling agent under that SSA's supervisory authority.⁸⁴ As part of the QSSR, the SSA must review the Delta file for each CHS to note any significant anomalies (for example, potential derogatory information, sudden requests for money, or substantial changes in behavior, lifestyle, or viewpoint) that occurred in the last 90 days.⁸⁵

VMU independently conducts Human Source Validation Reviews (HSVRs), which are separate evaluations of the CHS that are completed, among other reasons, because an FBI Field Office or Operational Division has requested enhanced review.⁸⁶ These HSVRs involve:

- Independent review and analysis of the [REDACTED];⁸⁷
- Appropriate traces to [REDACTED], criminal activities, or interactions with other intelligence services, terrorist groups, or criminal organizations;⁸⁸

⁸⁰ VSM § 2.1.2.

⁸¹ CHSPG § 16.7; VSM § 4.1.2.

⁸² CHSPG §§ 16.7, 4.1.2.1.

⁸³ CHSPG §§ 2.1.1, 16.7 & 16.8.

⁸⁴ CHSPG § 16.8.

⁸⁵ CHSPG § 16.8.

⁸⁶ VSM §§ 4.1, 4.1.2, 4.1.3 & 4.1.4.

⁸⁷ VSM §§ 4.1.3, 4.1.4.

⁸⁸ VSM §§ 4.1.3, 4.1.4.

- [REDACTED];⁸⁹ and
- [REDACTED]⁹⁰

In the validation context, the term "corroborated" has a specific meaning—that an independent source (for example, [REDACTED] has provided the FBI with the same information. [REDACTED]

[REDACTED]⁹¹

The FBI's validation process also addresses the use of sub-sources by a CHS.⁹² For example, the VSM requires the FOASR to assess the CHS's access to information, [REDACTED]

[REDACTED]⁹³ If the latter, the FOASR should [REDACTED]

[REDACTED]⁹⁴

D. Closure and Re-Opening of CHSs

Closing a CHS requires documentation of the reason for the closure, which must be included in the CHS's Delta file.⁹⁵ A CHS may be closed for general reasons or for cause. General reasons include considerations such as a lack of productivity, poor health, or transfer of the handling agent.⁹⁶ However, a CHS must be closed for cause "if there is grievous action by the CHS or a discovery of previously unknown facts or circumstances that make the individual unsuitable for use as a CHS."⁹⁷ Reasons that justify closing a CHS for cause include commission

⁸⁹ VSM §§ 4.1.4, 4.1.4.1.

⁹⁰ VSM §§ 4.1.4., 4.1.4.2.

⁹¹ VSM § 2.2.

⁹² CHSPG § 10.12; VSM § 4.1.2.1.7.

⁹³ VSM § 4.1.2.1.7.

⁹⁴ VSM § 4.1.2.1.7.

⁹⁵ CHSPG § 18.1.

⁹⁶ CHSPG § 18.1.1.

⁹⁷ CHSPG § 18.1.2.

of unauthorized illegal activity, unwillingness to follow instructions, unreliability, or serious control problems.⁹⁸ The handling agent must advise the CHS that he or she has been closed, and document such notification in the CHS's validation sub-file, including a statement as to whether the CHS acknowledged or refused to acknowledge the closure.⁹⁹

Absent exceptional circumstances that are approved (in advance, whenever possible) by an SSA, a handling agent must not initiate contact with or respond to contacts from a former CHS who has been closed for cause.¹⁰⁰ Where there is contact with a CHS following closure (whether or not for cause), new information "may be documented" to a closed CHS file.¹⁰¹ However, the CHSPG requires reopening of the CHS if the relationship between the FBI and the CHS is expected to continue beyond the initial contact or debriefing.¹⁰²

A request to reopen a CHS that has previously been closed for cause requires high levels of supervisory approval, [REDACTED] A CHS who has been closed for cause [REDACTED]
[REDACTED]¹⁰⁴

E. Use of CHSs in Sensitive Monitoring Circumstances

The CHSPG "emphasizes the importance of oversight and self-regulation to ensure that CHS Program activities are conducted within Constitutional and statutory parameters and that civil liberties and privacy are protected."¹⁰⁵ To protect such rights, the FBI must meet additional requirements for use of CHSs in what the AG Guidelines and the DIOG define as "sensitive monitoring circumstances."¹⁰⁶

One of the investigative techniques that the FBI may use in predicated investigations is consensual monitoring, which means the monitoring and/or recording of conversations, telephone calls, and electronic communications based on the consent of one party involved, such as an FBI CHS.¹⁰⁷ SSAs may approve the use of CHSs for consensual monitoring in ordinary cases, so long as the consent

⁹⁸ CHSPG § 18.1.2.

⁹⁹ CHSPG § 18.2.

¹⁰⁰ CHSPG § 18.3.

¹⁰¹ CHSPG § 18.3

¹⁰² CHSPG § 18.3.

¹⁰³ CHSPG § 4.5.1.

¹⁰⁴ CHSPG § 4.5.1.

¹⁰⁵ CHSPG § 1.2.

¹⁰⁶ AG Guidelines § VII.O; DIOG § 18.6.1.6.3.

¹⁰⁷ AG Guidelines § V.A.4; DIOG §§ 18.6.1.2, 18.6.1.4.

of the CHS has been documented, and the CDC or OGC has determined that, given the facts of the case, the consensual monitoring is legal.¹⁰⁸

For investigations concerning threats to national security, the FBI is required to obtain approval from the Department for consensual monitoring in a "sensitive monitoring circumstance."¹⁰⁹ A "sensitive monitoring circumstance" as defined by the AG Guidelines and the DIOG is not the same as a "sensitive investigative matter" or "SIM." As described in Section I.B of this chapter, DIOG § 10.1.2 defines a SIM to include predicated investigations of the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), or a domestic political organization or an individual prominent in such an organization.¹¹⁰ In contrast, a "sensitive monitoring circumstance" is defined more narrowly. As it pertains to this report, a "sensitive monitoring circumstance" arises only when the FBI seeks to record communications of officials who have already been elected or appointed, such as Members of Congress, federal judges, or high ranking members of the executive branch.¹¹¹

The AG Guidelines and the DIOG do not mandate prior notice to, or approval by, the Department before the FBI conducts consensual monitoring of candidates for political office or prominent officials in domestic political organizations, including the most senior officials in a national presidential campaign. However, the definition of a sensitive monitoring circumstance provides that the Attorney General, the DAG, or an Assistant Attorney General (AAG) can require that the FBI obtain Department approval prior to conducting consensual monitoring for a specific investigation of which they are aware.¹¹² As described in Chapter Ten of this report, the consensual monitoring conducted in the Crossfire Hurricane investigation did not meet the definition of sensitive monitoring circumstances provided by the AG Guidelines and the DIOG.

F. Use of CHS Reporting in FISA Applications

The CHSPG allows the use of CHS reporting in FISA applications without revealing the identity of the CHS, so long as the handling agent provides the relevant FBI Headquarters operational unit (*e.g.*, Counterintelligence, Counterterrorism) with the CHS file number, duration of service to the FBI, and a statement on whether the CHS is reliable and has provided reporting that has been corroborated.¹¹³ The CHS handling agent must also be prepared to furnish information to NSD concerning the CHS's criminal history, payments, and any

¹⁰⁸ DIOG §§ 18.6.1.5.1, 18.6.1.5.1.7.

¹⁰⁹ AG Guidelines § VII.O; DIOG § 18.6.1.6.3.

¹¹⁰ AG Guidelines §§ VII.N, VII.O; DIOG §§ 10.1.2, 18.6.1.6.3.

¹¹¹ AG Guidelines §§ VII.N, VII.O; DIOG §§ 10.1.2, 18.6.1.6.3.

¹¹² AG Guidelines § VII.O(4); DIOG § 18.6.1.6.3.

¹¹³ CHSPG § 10.13.

impeachment information.¹¹⁴ All information provided to support a FISA application must also be documented in the CHS's Delta file.¹¹⁵

Further, the FBI's Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA SMP PG) requires that the FISA accuracy or "Woods" file, described in more detail in the next section, contains documentation from the CHS handling agent stating that the handling agent has reviewed the facts presented in the FISA application regarding the CHS's reliability and background, and that, based upon a review of the CHS file, the facts presented in the application concerning the CHS are accurate.

III. The Foreign Intelligence Surveillance Act (FISA)

The FBI identified Carter Page as a U.S. person during all times relevant herein.¹¹⁶ Accordingly, in this section, we briefly describe the statutory requirements and Department policies and procedures for obtaining approval to conduct electronic surveillance and physical searches targeting a U.S. person under FISA.¹¹⁷

A. Statutory Requirements and the Foreign Intelligence Surveillance Court

FISA authorizes the U.S. government to apply for and obtain an order from the Foreign Intelligence Surveillance Court (FISC) to conduct electronic surveillance and physical searches for foreign intelligence purposes. The government's application for electronic surveillance must be approved by the Attorney General (or his or her designee) and contain certain specified information, including a statement of the facts and circumstances relied upon by the applicant to support the belief that the target is a foreign power or an agent of a foreign power, and that each facility or place at which the electronic surveillance is directed is being used,

¹¹⁴ CHSPG § 10.13.

¹¹⁵ CHSPG § 10.13.

¹¹⁶ A U.S. person means a U.S. citizen, a lawful permanent resident (i.e., a green card holder), an unincorporated association with a substantial number of members who are citizens of the United States or lawful permanent residents, or a corporation that is incorporated in the United States—provided such corporation does not constitute a foreign government or any component thereof, a faction of a foreign nation, or an entity that is openly acknowledged by a foreign government to be directed and controlled by the foreign government. See 50 U.S.C. § 1801(i). FISA treats U.S. persons and non-U.S. persons differently in various aspects, including by setting forth different definitions of an "agent of a foreign power" for non-U.S. persons, and authorizing initial electronic surveillance and physical searches targeting a non-U.S. person for a longer duration (120 days versus 90 days for a U.S. person).

¹¹⁷ This report does not describe other FISA provisions not relevant here, including the statutory requirements for obtaining similar FISA authority on a non-U.S. person, see 50 U.S.C. §§ 1801-1805, 1821-1825; see also E.O. 12139 (May 23, 1979); E.O. 12949 (Feb. 9, 1995). Also not relevant here are the circumstances under which the U.S. government may conduct emergency electronic surveillance or physical searches without a court order (for not more than 7 days). For the emergency provisions, see 50 U.S.C. §§ 1805(e), 1824(e).

or is about to be used, by a foreign power or an agent of a foreign power; proposed minimization procedures; and a description of the nature of the information sought and the type of communications or activities subject to surveillance.

An application for physical searches requires substantially similar information, except that it also must state the facts and circumstances justifying the applicant's belief that the premises or property to be searched contains "foreign intelligence information" and "is or is about to be, owned, used, possessed by, or is in transit to or from" the target.¹¹⁸ Electronic surveillance and physical searches targeting a U.S. person may be approved for up to 90 days, and subsequent extensions may be approved for up to 90 days provided the government submits another application that meets the requirements of FISA.¹¹⁹ The approvals and certifications required for applications for electronic surveillance and physical searches are discussed in more detail below.

In addition, 50 U.S.C. § 1881d(b) allows the U.S. government to apply for and obtain concurrent authorization to continue targeting a U.S. person reasonably believed to be outside the United States when applying for authorization to conduct electronic surveillance and physical searches within the United States. Because the requirements for such applications are substantially similar to those for surveillance and searches within the United States, we discuss them together.

Probable Cause

The electronic surveillance and physical search provisions of FISA require the FISC to make a probable cause finding based on information submitted by the government. Specifically, the FISC must find probable cause to believe that: (1) the target of the electronic surveillance and physical searches is a foreign power or, as described in more detail below, the agent of a foreign power; (2) for electronic surveillance, that each of the facilities or places at which the surveillance is being directed is being used, or is about to be used, by the foreign power or agent of a foreign power; and (3) for physical searches, that each of the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from the foreign power or agent of a foreign power. In determining whether probable cause exists, a judge may consider the target's past activities, as well as the facts and circumstances relating to his current or future activities.¹²⁰ Where the

¹¹⁸ See 50 U.S.C. §§ 1823(a)(1)-(8). Foreign intelligence information means information that relates to, and if concerning a U.S. person is necessary to, the ability of the United States to protect against actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power. See, e.g., 50 U.S.C. § 1801(e)(1).

¹¹⁹ An order for electronic surveillance or physical searches may be extended on the same basis as the original order. The extension for a U.S. person may not exceed 90 days, whereas for non-U.S. person who is an agent of a foreign power it may be for a period not to exceed 1 year. See 50 U.S.C. §§ 1801(b)(1)-(2), 1805(d), 1824(d).

¹²⁰ 50 U.S.C. §§ 1805(a)(2), 1805(b), 1824(a)(2), 1824(b).

FISC authorizes the electronic surveillance or physical search of a U.S. person, the Attorney General may authorize, for the effective period of the FISC's order, the targeting of the U.S. person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.¹²¹

According to FISA guidance issued by OGC, probable cause means the following:

"[P]robable cause" is reason to believe, based on the available facts and circumstances, as well as the logical inferences that can be drawn from them. It is determined by the totality of the facts and circumstances, as viewed from the perspective of a reasonable person. Probable cause [means] probability, not certainty, and, thus, is significantly lower than the "proof beyond a reasonable doubt" necessary to support a criminal conviction. It is also lower than the "preponderance of the evidence" required in most civil cases.

The FISA guidance also states:

[OGC] recommends that a field agent seeking a FISA order focus on the *object* of the belief required, *i.e.*, the facts and circumstances demonstrating that the target of the proposed search or surveillance is an agent of a foreign power and that the premises to be surveilled...is used by that agent of a foreign power, rather than on the *quantum* of the belief involved. If you can show that a target is engaged in certain activities, and that he is engaged in them for or on behalf of a foreign power, you have won most of the battle.¹²²

Unlike wiretap applications in a criminal case, which require the government to establish probable cause to believe that an individual is committing, has committed, or is about to commit a specific criminal offense, among other requirements, FISA does not require that the government show a nexus to criminality.¹²³ Rather, a probable cause finding under FISA "focuses on the status of the target as a foreign power or the agent of a foreign power," which is discussed in more detail below.¹²⁴ The Report of the Senate Select Committee on Intelligence

¹²¹ See 50 U.S.C. § 1881b(c)(B)(i).

¹²² FBI OGC, *What Do I Have to Do to Get a FISA?* ("FISA guidance"), Jan. 23, 2003 (emphasis in original); see also *United States v. Rosen*, 447 F. Supp. 2d 538, 549 (E.D. Va. 2006).

¹²³ See, e.g., *United States v. Daoud*, 761 F.3d 678, 681 (7th Cir. 2014); *United States v. Abu-Jihaad*, 630 F.2d 102, 122, 127 (2d Cir. 2010); *United States v. Duka*, 671 F.3d 329, 339-41 (3d Cir. 2011); *United States v. Wen*, 477 F.3d 896, 898 (7th Cir. 2007); *In re Sealed Case*, 310 F.3d 717, 738 (Foreign Intel. Surv. Ct. Rev. 2002) (per curiam); *United States v. Cavanagh*, 807 F.2d 787, 790 (9th Cir. 1987).

¹²⁴ See, e.g., *United States v. El-Mezain*, 664 F.3d 467, 564 (5th Cir. 2011); see also *United States v. Duggan*, 743 F.2d 59, 72-73 (2d Cir. 1984).

(SSCI) that accompanied the 1978 passage of FISA explains the rationale for the different probable cause standards:

[I]f electronic surveillance is to make an effective contribution to foreign counterintelligence, it must be available for use when necessary for the investigative process. The criminal laws are enacted to establish standards for arrest and conviction[,] and they supply guidance for investigations conducted to collect evidence for prosecution. Foreign counterintelligence investigations have different objectives. They succeed when the United States can insure that an intelligence network is not obtaining vital information, that a suspected agent's future access to such information is controlled effectively, and that security precautions are strengthened in areas of top priority for the foreign intelligence service.... Therefore, procedures appropriate in regular criminal investigations need modification to fit the counterintelligence context. [FISA] adopts probable cause standards that allow surveillance at an early stage in the investigative process by not requiring that a crime be imminent or that the elements of a specific offense exist.¹²⁵

Given these differences, the FISA guidance notes that the strictures developed to assess the reliability of informants providing information used to support a wiretap application in criminal cases do not necessarily apply to FISA.¹²⁶ However, the FISA guidance nonetheless cautions that probable cause determinations should take into account "the same aspects of reliability...as in the ordinary criminal context, including the reliability of any informant, the circumstances of the informant's knowledge, and the age of the information relied upon." The FISA guidance instructs agents to "look to the totality of the information and consider its reliability on a case-by-case basis" when judging the information supporting a FISA application.¹²⁷

Agent of a Foreign Power

As described above, the probable cause finding required under FISA focuses on the status of the target as a foreign power or the agent of a foreign power. Under FISA § 1801(b)(2), the definition of "agent of a foreign power" includes, in relevant part, "any person" (including any U.S. person) who engages in the following conduct:

- A. Knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities

¹²⁵ Report of the Senate Select Committee on Intelligence, *Foreign Intelligence Surveillance Act of 1978*, S. Rep. No. 701, 95th Cong., 2d Sess. 34 (Mar. 14, 1978) (S. Rep. 95-701), 3981.

¹²⁶ The rules for assessing the reliability of information provided by confidential informants or sources in counterintelligence cases are discussed above in Section II.

¹²⁷ See FISA guidance, *supra* (citing *Illinois v. Gates*, 462 U.S. 213 (1983)).

involve or may involve a violation of the criminal statutes of the United States; or

- B. Pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States.¹²⁸

Further, under FISA § 1801(b)(2)(E), the provision the Department relied upon in the Carter Page FISA applications, an agent of a foreign power also includes any person who knowingly aids or abets any person, or conspires with any person, in the conduct described above.

FISA provides that a U.S. person may not be found to be a foreign power or an agent of a foreign power solely upon the basis of activities protected by the First Amendment.¹²⁹ Congress added this language to reinforce that lawful political activities may not serve as the only basis for a probable cause finding, recognizing that “there may often be a narrow line between covert action and lawful activities undertaken by Americans in the exercise of the [F]irst [A]mendment rights,” particularly between legitimate political activity and “other clandestine intelligence activities.”¹³⁰ The Report by SSCI accompanying the passage of FISA states that there must be “willful” deception about the origin or intent of political activity to support a finding that it constitutes “other clandestine intelligence activities”:

If...foreign intelligence services hide behind the cover of some person or organization in order to influence American political events and deceive Americans into believing that the opinions or influence are of domestic origin and initiative and such deception is willfully maintained in violation of the Foreign Agents Registration Act, then electronic

¹²⁸ FISA does not define what constitutes “other clandestine intelligence activities.” However, the 1978 House Permanent Select Committee on Intelligence (HPSCI) Report accompanying the passage of FISA states the following:

The term “any other clandestine intelligence activities” is intended to refer to covert actions by intelligence services of foreign powers. Not only do foreign powers engage in spying in the United States to obtain information, they also engage in activities which are intended to harm the Nation's security by affecting the course of our Government, the course of public opinion, or the activities of individuals. Such activities may include political action (recruiting, bribery or influencing of public officials to act in favor of the foreign power), disguised propaganda (including the planting of false or misleading articles or stories), and harassment, intimidation, or even assassination of individuals who oppose the foreign power. Such activity can undermine our democratic institutions as well as directly threaten the peace and safety of our citizens. Report of the House Permanent Select Committee on Intelligence, *Foreign Intelligence Surveillance Act of 1978*, H. Rep. No. 1283, 95th Cong., 2d Sess. 41 (Jun. 8, 1978) (H. Rep. 95-1283).

¹²⁹ See 50 U.S.C. §§ 1805(a)(2)(A), 1824(a)(2)(A).

¹³⁰ H. Rep. 95-1283 at 41, 79-80; FISA guidance at 7-8; see also *Rosen*, 447 F. Supp. 2d at 547-48 (probable cause finding may be based partly on First Amendment protected activity).

surveillance might be justified under ["other clandestine intelligence activities"] if all the other criteria of [FISA] were met.¹³¹

Approval and Certification Requirements

Each application for electronic surveillance or physical searches under FISA must be approved by the "Attorney General," defined to include the Attorney General, Acting Attorney General, DAG, or, upon designation, the AAG of NSD.¹³² The Attorney General (or his or her designee) must provide written approval that an application satisfies the statutory requirements—namely, that the facts and circumstances set forth in the affidavit support a finding of probable cause, and that the application meets all other statutory criteria.¹³³ During times relevant herein, the general practice was to submit FISA applications to the NSD AAG for approval and, in instances where the NSD AAG was unavailable or in an acting position, to the DAG. Similarly, in the event the DAG was unavailable or in an acting position, the FISA application was submitted to the Attorney General for approval.

Applications submitted to the FISC must also include written certification by certain specified high-ranking executive branch officials. In the case of FISA applications for FBI investigations, the application is usually certified by the FBI Director or Deputy Director.¹³⁴ The written certification must include the following:

- A statement that the certifying official deems the information sought to be "foreign intelligence information;"
- A statement that a "significant purpose" of the electronic surveillance or physical searches is to obtain foreign intelligence information;
- A statement that such information cannot reasonably be obtained by normal investigative techniques;
- A designation of the type of foreign intelligence information being sought (e.g., information concerning a U.S. person that is necessary to the ability of the United States to protect against clandestine

¹³¹ See S. Rep. 95-701 at 24-25. The Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*, is a disclosure statute that requires persons acting as agents of foreign principals such as a foreign government or foreign political party in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities.

¹³² See 50 U.S.C. §§ 1801(g), 1804(a), 1821(1), 1823(a).

¹³³ See *generally* David S. Kris and J. Douglas Wilson, National Security Investigations and Prosecutions § 6:5 (2016). In certain cases, the Director of the FBI, the Secretary of Defense, the Secretary of State, the Director of National Intelligence (DNI), or the Director of the CIA may request that the Attorney General personally review a FISA application. This obligation is not delegable by the Attorney General (or any of the other officials mentioned) except "when disabled or otherwise unavailable." See 50 U.S.C. §§ 1804(d), 1823(d).

¹³⁴ See 50 U.S.C. §§ 1804(a)(6), 1823(a)(6); E.O. 12139 (May 23, 1979) (electronic surveillance); E.O. 12949 (Feb. 9, 1995) (physical search).

intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power).

- A "statement of the basis" for the certification that the information sought is the type of foreign intelligence designated and that it cannot reasonably be obtained by normal investigative means.¹³⁵

As described in more detail below, the FISC must find that an application includes all of the required statements and certifications (among other requirements) before issuing an order authorizing electronic surveillance or physical searches. Where the target is a U.S. person, the FISC must find that the certifications are not clearly erroneous.¹³⁶

Foreign Intelligence Surveillance Court (FISC)

The FISC was established in 1978 to hear applications and grant orders for electronic surveillance.¹³⁷ Subsequent amendments to FISA expanded the FISC's jurisdiction to the collection of foreign intelligence information by other means, including physical searches.¹³⁸ The FISC consists of 11 federal district court judges, chosen by the Chief Justice of the United States, from at least 7 judicial circuits, with at least 3 judges required to reside within 20 miles of the District of Columbia.¹³⁹ Judges on the FISC sit for staggered 7-year terms, during which time they also continue to serve as judges in their home districts.¹⁴⁰ According to former FISC Presiding Judge John D. Bates, district court judges selected to sit on the FISC are typically experienced judges with significant national security or Fourth Amendment experience.¹⁴¹

The FISC's Rules of Procedure require the government to submit a proposed application for authorization to conduct FISA surveillance and physical searches no later than 7 days before the government seeks to have the matter entertained, except that the 7-day requirement is waived when submitting an application

¹³⁵ See 50 U.S.C. §§ 1804(a)(6)(A)-(E), 1823(a)(6); see also H. Rep. 95-1283 at 76.

¹³⁶ See 50 U.S.C. § 1881b(c)(1)(D). The certifications submitted in support of a FISA application are presumed valid. The certifications are upheld absent a "substantial preliminary showing" that the application knowingly and intentionally, or with reckless disregard for the truth, included a false statement, and that the allegedly false statement was "necessary" to the approval of the application. In 2002, the Foreign Intelligence Surveillance Court of Review stated: "We think the government's purpose...is to be judged by the national security official's articulation and not be a FISA [C]ourt inquiry into the origins of the investigation nor an examination of the personnel involved...." *In re Sealed Case*, 310 F.3d at 736.

¹³⁷ See National Security Investigations and Prosecutions § 5:3.

¹³⁸ See *In re Motion for Release of Court Records*, 526 F. Supp. 2d 484, 487-88 (FISA Ct. 2007).

¹³⁹ See 50 U.S.C. § 1803(a)(1); Rule 4, FISC Rules of Procedure (Nov. 1, 2010).

¹⁴⁰ See 50 U.S.C. § 1803(d).

¹⁴¹ See Culper Rule of Law Series: Judge John Bates, Lawfare Podcast at 32:00, <https://www.lawfareblog.com/lawfare-podcast-culper-partners-rule-law-series-judge-john-bates> (accessed Dec. 2, 2019) (hereinafter Lawfare Podcast).

following emergency authorization (not applicable here) or when the court agrees to expedite its consideration of an application at the government's request.¹⁴² The proposed application typically is referred to as the "read copy," which is prepared by an attorney in NSD's Office of Intelligence (OI) based upon information provided by the FBI. The FISC will review the read copy, evaluate whether it meets the requirements of the statute, and, through a legal advisor, discuss with the assigned OI attorney, any issues the legal advisor or judge identified. The read copy allows FISC legal advisors to have informal interaction with OI to convey any questions, concerns, or requests for additional information from the legal advisor or judge before a final application is filed.¹⁴³ The OI attorney then works with the FBI to provide additional information to the FISC legal advisor and makes any necessary revisions before submitting the final application to the FISC.¹⁴⁴

Once a final application is submitted, the judge may request that the OI attorney present it at a scheduled hearing, or may approve the application based on the written submission.¹⁴⁵ The judge is authorized to enter an order approving electronic surveillance or physical searches if he or she finds that the facts presented in the application are sufficient to establish probable cause, as discussed above; that the application includes "minimization procedures" sufficient to minimize the acquisition and retention, and prohibit the dissemination, of non-public information about a U.S. person unless it meets certain criteria; and that the application includes all required statements and certifications.¹⁴⁶

¹⁴² See Rules 6(a), 9(a), FISC Rules of Procedure (2010). The FISC Rules specifically address emergency authorizations but do not address expedited applications. However, Rule 9(a) states that the 7-day requirement does not apply to emergency authorizations or "as otherwise permitted by the Court." According to NSD, in instances where the government seeks the court's expedited consideration of a FISA application, and the court is able to do so, the court will rely upon "as otherwise permitted by the Court" to waive the 7-day requirement.

¹⁴³ According to a 2013 letter explaining how the FISC operates, FISC legal advisors interact with NSD on a daily basis. See Letter from Judge Reggie Walton to Senator Patrick Leahy, U.S. Senate Committee on the Judiciary (Jul. 29, 2013) (2013 Judge Walton Letter), <http://www.fisc.uscourts.gov/sites/default/files/Leahy.pdf> (accessed Dec. 2, 2019).

¹⁴⁴ See 2013 Judge Walton Letter, at 6 & n.3.

¹⁴⁵ If the judge denies a final application, he or she is required to draft a statement of reasons explaining the basis for the denial. See 50 U.S.C. §§ 1803(a)(1), 1822(c). Denials of applications for electronic surveillance or physical searches may be appealed to the Foreign Intelligence Surveillance Court of Review. See 50 U.S.C. §§ 1803(b), 1822(d). Alternatively, if the judge indicates that he or she will deny a proposed or final application, NSD may decide not to submit a final application, or may withdraw a final application after submission. See 2013 Judge Walton Letter at 3.

¹⁴⁶ See 50 U.S.C. §§ 1805(a), 1824(a); see also 50 U.S.C. § 1881d(b) (concurrent authorization to conduct electronic surveillance and physical searches targeting a U.S. person inside and outside the United States). In addition to the standard minimization procedures, which apply to all information acquired through electronic surveillance and physical searches, each application may describe other minimization procedures that are appropriate for the particular surveillance or search in question. The FISC may modify the government's proposed minimization procedures if it concludes they do not meet the statutory requirements. See National Security Investigations and Prosecutions, § 9.1.

If the FISC approves a FISA application, it issues a primary order finding that the statutory requirements were met and authorizing the electronic surveillance or physical searches. The primary order also must direct the government to follow the minimization procedures proposed in the application.¹⁴⁷ Where assistance from a third party (such as an email provider, telephone company, or landlord) is required, the FISC also issues a secondary order directing the third party to “furnish...all information, facilities, or technical assistance necessary” to accomplish the search or surveillance “in such a manner as will protect its secrecy and produce a minimum of interference.”¹⁴⁸

In addition, under Rule 13(a) of the FISC Rules of Procedure, if the government subsequently identifies a misstatement or omission of material fact in an application or other document submitted to the FISC, the government, in writing, must immediately inform the judge to whom the submission was made of the following: (1) the misstatement or omission, (2) any necessary correction, (3) the facts and circumstances of the misstatement or omission, (4) any modifications the government has made or proposes to make to how it will implement any authority or approval granted by the FISC, and (5) the government’s proposal for disposal of or treatment of any information obtained as a result of the misstatement or omission.¹⁴⁹

B. FBI and Department FISA Procedures

1. Preparation and Approval of FISA Applications

The FBI’s policies and procedures for the preparation and approval of applications for authorization to conduct electronic surveillance or physical searches under FISA are contained in the FBI’s online FISA Management System (FISAMS), the FISA Verification Form (described below), the DIOG, and the FISA SMP PG. We will describe the typical preparation and approval process below. The preparation and approval process taken with respect to the four Carter Page FISA applications, including steps that were taken in addition to the steps typically completed during the FISA process, are discussed in Chapters Five and Seven.

The FBI’s FISA process is initiated when a case agent begins drafting a FISA Request Form for submission to OI. The FISA Request Form requires that the case agent provide specific categories of information to OI, the most important of which is a description of the facts and circumstances that the agent views as establishing probable cause to believe the target of the application is a foreign power or an agent of a foreign power. In particular, the FISA Request Form states that the case agent should provide a complete description of all material facts regarding a target to justify FISA authority or, in the case of renewals, to justify continued FISA coverage. In the case of FISA renewals, the form also asks the case agent to describe in detail any previous information that requires modification or correction.

¹⁴⁷ See 50 U.S.C. §§ 1805(c)(2)(A), 1824(c)(2)(A).

¹⁴⁸ See 50 U.S.C. § 1805(c)(2)(B).

¹⁴⁹ See Rule 13(a), FISC Rules of Procedure.

The form does not specifically require the case agent disclose exculpatory facts or facts that, if accurate, would tend to undermine the factual assertions being relied upon to support the government's theory, in whole or in part, that the target is a foreign power or an agent of a foreign power.

After the case agent prepares the FISA Request Form, in ordinary circumstances, the supervisory chain in the relevant field office will receive the request for approval, including the SSA, CDC, ASAC, and the SAC, before the request is sent to the appropriate FBI Headquarters substantive division Unit Chief (UC). The UC reviews and approves the request, assigns it to the appropriate FBI Headquarters substantive division SSA Program Manager, and to OGC's National Security and Cyber Law Branch (NSCLB) for assignment and review. As described in Chapter Five, in the case of Carter Page, because the investigation was close-hold and being conducted from FBI Headquarters instead of a field office, the case agent submitted the FISA Request Form directly to the NSCLB line attorney assigned to Crossfire Hurricane.

Once the FISA Request Form is submitted to NSCLB, an NSCLB line attorney reviews the request and provides feedback to the case agent. Once the draft is finalized, the NSCLB line attorney approves the FISAMS request and routes the form to the appropriate FBI Headquarters Section Chief for review and approval. The FBI Headquarters Section Chief reviews the request and, if approved, submits the request to the appropriate Deputy Assistant Director (DAD) for approval in the case of an expedited request, or, if not, directly to OI. Once in OI, the request is then assigned to an OI line attorney from one of three units within OI's Operations Section: the Counterintelligence Unit, the Counterterrorism Unit, or the Special Operations Unit. In this instance, an OI attorney in the Counterintelligence Unit was assigned to the Carter Page FISA request.

The OI attorney prepares the read copy application using the information provided by the FBI and works with the NSCLB attorney and FBI case agent to obtain additional information, frequently resulting in a "back and forth" between OI and the FBI. According to NSD, as part of this back and forth process, OI will ask whether the FBI is aware of any "exculpatory" information that relates to the target of the application, as well as any derogatory information that relates to sources relied upon in the application. An OI supervisor, usually the relevant Unit Chief or Deputy Unit Chief, then reviews the draft read copy. Neither the FISA statute nor FISC procedures dictate who in the Department must approve the read copy before it is submitted to the FISC. In most instances, once the FBI case agent affirms the accuracy of the information in the read copy, the OI supervisor conducts the final review and approval before a read copy is submitted with the FISC. However, in some cases, multiple OI supervisors, or even senior NSD leadership, may review the read copy, particularly if it presents a novel or complicated issue or otherwise has been flagged by the OI supervisor for further review.

NSD's Deputy Assistant Attorney General (Deputy AAG) for Intelligence is responsible for, among other things, overseeing OI. According to the Deputy AAG for Intelligence at the time of the Carter Page FISA applications and renewals, not all FISA requests from the FBI culminate in the filing of an application with the

FISC. Sometimes the back and forth process between the OI attorney and the case agent does result in sufficient factual information for a showing of probable cause or sometimes investigative objectives and needs change during the drafting process, obviating the FBI's desire for FISA authority on a particular target.

However, as described previously, after a read copy is filed, OI may receive feedback from the court through the FISC legal advisor. The OI attorney will then work with the case agent to address any issues raised by the legal advisor, such as by providing additional information to the FISC legal advisor and making any requested revisions before preparing the final application. Occasionally, the feedback from the court leads the FBI, in consultation with OI, to decide not to submit a final application, or to limit the authorities sought in the final application.

At the same time the read copy is filed with the FISC, OI sends the completed FISA application (referred to as the "FISA Certification Copy" or "cert copy") and a one-page cover memorandum (cert memo) signed by the OI supervisor to the case agent for final review within the FBI. This process in OI is sometimes referred to as "signing out" a FISA.

After receiving the cert copy and cert memo, an FBI agent, not necessarily the case agent, is assigned to complete an accuracy review of the application, which is discussed in more detail in Section III.B.2 below. After any additional edits necessitated by the accuracy review are made, the agent and an SSA sign the FISA Verification Form, also known as the Woods Procedures (described further below) or "Woods Form," and send the application package to the FBI Headquarters substantive division Program Manager who, according to the FISA SMP PG, must review the FISA application and coordinate the FISA accuracy and approval process that takes place at FBI Headquarters.

The Headquarters Program Manager is responsible for ensuring that the supervisory personnel in the field office have completed and documented their reviews of the application; determining whether another field office should also review the application for factual accuracy; verifying and providing documentation for any factual assertions identified by the field office as requiring Headquarters verification; and notifying OI and NSCLB of any factual assertions in the application that could not be verified so that the necessary action is taken to remove the unverified information from the declaration. If all factual assertions have been verified and documented, the Headquarters Program Manager will sign the affidavit in the application declaring under penalty of perjury that the information in the application is true and correct. The Program Manager then submits the application package to NSCLB for final legal review and approval by an NSCLB line attorney and Senior Executive Service-level supervisor. Witnesses told us that usually the Senior Executive Service-level supervisor is an NSCLB Section Chief or a Deputy General Counsel, but that, on occasion, the role is delegated to a GS-15 Unit Chief.

FBI procedures do not specify what steps must be taken during the final legal review. As described in Chapter Five, the FBI's Deputy General Counsel at the time of the Carter Page FISA applications told us that she typically reviewed the cert memo and FISA Verification Form to determine whether the FISA application

package was complete, all the steps of the Woods Procedures were completed, the probable cause standard was met, and there were no outstanding issues.¹⁵⁰ Ultimately, if the NSCLB line attorney and a Senior Executive Service-level supervisor approve the FISA cert copy, they both sign the cert memo, and the complete application package is then taken to the FBI Director's Office for review and approval. If the FBI Director signs the cert copy, the paper copy of the signed application is delivered to OI. OI then provides the signed application package to the final signatory who, as discussed above, is usually the NSD AAG but can sometimes be the DAG or Attorney General.

In addition to receiving the final application and cert memo, the NSD AAG (or DAG or Attorney General) typically receives an oral briefing from senior OI managers. The NSD AAG receives the application for the first time during or shortly before the oral briefing, unless the application was submitted for his or her review beforehand, which is not typical. During the oral briefing, senior OI managers present all the FISA applications awaiting final Department approval, which, according to NSD, in 2016 generally ranged from 20 to 30 total applications in any given week (though the quantity sometimes varied outside that range). Once the FISA application is approved and signed by the NSD AAG, OI will submit it to the FISC for its final consideration.

2. "Woods Procedures"

In April 2001, the FBI implemented FISA verification procedures (known as "Woods Procedures") for applications for electronic surveillance or physical searches under FISA.¹⁵¹ These procedures were adopted following errors in numerous FISA applications in FBI counterterrorism investigations, virtually all of which "involved information sharing and unauthorized disseminations to criminal investigators and prosecutors."¹⁵²

To address these concerns, the procedures focused on ensuring accuracy in three areas: (1) the specific factual information supporting probable cause, (2) the existence and nature of any related criminal investigations or prosecutions involving the target of the FISA authorization, and (3) the existence and nature of any ongoing asset relationship between the FISA target and the FBI. The procedures required FBI agents and supervisors to undertake specific steps before filing a FISA application, which included a determination of whether the target is the subject of a

¹⁵⁰ As discussed in Chapter Five, the then Deputy General Counsel told us that she would sometimes read the FISA application if she determined, based on the cert memo or otherwise, that there was a reason to do so.

¹⁵¹ Memorandum from Michael J. Woods, Unit Chief, FBI Office of the General Counsel, National Security Law Unit, to FBI Field Offices (Apr. 5, 2001), <https://fas.org/irp/agency/doj/fisa/woods.pdf> (accessed Dec. 2, 2019); see generally National Security Investigations and Prosecutions § 6.3.

¹⁵² *In re All Matters Submitted to the Foreign Intelligence Surveillance Court*, 218 F. Supp. 2d 611, 620-21 (FISA Ct. 2002), *rev'd*, *In re Sealed Case*, 310 F.3d at 736.

past or current criminal investigation, negative or positive search results in FBI databases on the target, and a review of the affidavit for factual accuracy.

The Woods Procedures in the original memorandum were subsequently expanded and incorporated into other policy documents, including the 2016 FISA SMP PG, which was the applicable FBI policy guide in effect during the period relevant to this review, and a 2009 joint NSD-FBI guidance memorandum on FISA application accuracy (2009 Accuracy Memorandum).¹⁵³ Both the FISA SMP PG and 2009 Accuracy Memorandum state that the U.S. government's ability to obtain FISA authority depends on the accuracy of applications submitted to the FISC and that because FISA proceedings are *ex parte*, the FISC relies on the U.S. government's "full and accurate presentation of the facts to make its probable cause determinations." The FISA SMP PG further states that it is the case agent's responsibility to ensure that statements contained in applications submitted to the FISC are "scrupulously accurate."

Like the original procedures, the accuracy procedures in the FISA SMP PG require relevant FBI personnel to conduct database searches [REDACTED] to identify any previous or ongoing criminal investigations and to determine the target's immigration status; [REDACTED]; and identify the source of every fact asserted in a FISA application. The results of these steps must be documented in the FISA Verification or Woods Form and must be reviewed for accuracy and verified by relevant FBI personnel, with the results of the factual review documented and included in the final FISA package.

The FISA SMP PG requires that the case agent who requested the FISA application create and maintain an accuracy sub-file (known as a "Woods File") that contains: (1) supporting documentation for every factual assertion contained in a FISA application, and (2) supporting documentation and the results of the required searches and verifications. The Woods File must include the documented results of the required database and CHS file searches, as well as copies of the "most authoritative documents" supporting the facts asserted in the application. The FISA SMP PG advises that while there is some "latitude" as to what documents meet this requirement, the case agent "should endeavor to obtain the original documentation and/or best evidence of any given fact."

Further, as described earlier in this chapter, where a FISA application contains reporting from a CHS, the Woods File must contain a memorandum, email, or other documentation from the handling agent, CHS coordinator, or either of their immediate supervisors, stating that: (1) this individual has reviewed the facts presented in the FISA application regarding the CHS's reliability and background,

¹⁵³ Foreign Intelligence Surveillance Act and Standard Minimization Procedures, 0828PG, Aug. 11, 2016; Matthew G. Olsen, NSD Acting Assistant Attorney General and Valerie Caproni, FBI General Counsel, Memorandum for All Office of Intelligence Attorneys, All National Security Law Branch Attorneys, and All Chief Division Counsels, Guidance to Ensure the Accuracy of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act, February 11, 2009; *see also* previous FBI policy guide, FBI FISA Accuracy Policy Implementation Guide, 0394PG, Mar. 31, 2011 (superseded by 0828PG).

and (2) based on this review of the CHS file documentation, the facts presented in the FISA application are accurate. Common accuracy documentation for a CHS include, among other things, [REDACTED]

[REDACTED] and reliability of the CHS.

After the Woods File is created, the case agent is responsible for verifying each factual assertion in the FISA application and ensuring that the supporting documentation is in the Woods File. In the case of renewal applications, the case agent must re-verify the accuracy of each factual assertion that is carried over from the first application and also verify and obtain supporting documentation for any new factual assertions that are added. After the case agent completes this process, the agent signs the Woods Form affirming the accuracy and documentation of every factual assertion in the application. The case agent then submits the Woods Form and Woods File to his or her SSA. The SSA is responsible for reviewing the Woods File and confirming that it contains supporting documentation of every factual assertion in the application. After the SSA completes this process, the SSA signs the Woods Form, and then the Woods Form, but not the Woods File, is transmitted to Headquarters. As described previously, one of the responsibilities of the Headquarters Program Manager is to verify any factual assertions that require Headquarters verification and provide supporting documentation for the Woods File. After doing so, the Program Manager signs the Woods Form affirming that he or she has verified the accuracy of those factual assertions and has transmitted the necessary documentation to the field office for inclusion in the Woods File.

According to FBI training materials, "everyone in the FISA process" relies on the case agent's signature on the Woods Form verifying that the factual assertions contained in the application are accurate. According to the FISA SMP PG, the Headquarters Program Manager, who signs the FISA application under penalty of perjury certifying that the information in the application is true and correct, does not typically have the personal or programmatic knowledge of the factual information necessary for a FISA application and therefore must rely on the field office for the accuracy of the information in the application. The case agent's signature allows the Program Manager to sign and swear to the application and the Director or Deputy Director to certify the application. Further, OI, NSD, the approving official (NSD AAG, DAG, or Attorney General), and the FISC rely on the Headquarters Program Manager, or declarant, that the application contains a complete and accurate recitation of the relevant facts.

The FISA SMP PG states that information in a FISA application that cannot be verified as true and correct must be removed from the application, or the entire application must be delayed until the information is verified and the verification is documented. According to FBI and NSD officials, in the case of information provided by a CHS, the verification process does not require that the FBI establish the accuracy of the CHS's information before that information may be relied upon in a FISA application. The OGC Unit Chief who supervised the attorney assigned to assist the Carter Page FISA applications told us that the Woods Procedures require that the case agent identify documentation stating what the CHS told the FBI, but

does not require the agent to corroborate the underlying accuracy of the information. Similarly, according to NSD supervisors, although the Woods Procedures require that every factual assertion in a FISA application be "verified," when a particular fact is attributed to a source, an agent must only verify that the fact came from the source and that the application accurately states what the source said. The Woods Procedures do not require that the FBI have corroboration from a second source for the same information. According to the Deputy AAG who had oversight over OI at the time of the Carter Page FISA applications, the FISC is aware of how the FBI "verifies" information that is attributed to a CHS, and the court has not requested a change to their Woods Procedures. Further, NSD officials told us that in all instances, a FISA application will include an FBI assessment of the reliability of the CHS's information, which may come from factual corroboration or, in the absence of factual corroboration, from information about the CHS's general reliability.

IV. Ethics Regulations

Government ethics regulations, specifically those providing guidance on conflicts of interests pertain to the events discussed in Chapter Nine concerning Department attorney Bruce Ohr.

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct), 5 C.F.R. § 2635, is a comprehensive set of regulations that set forth the principles of ethical conduct to which all executive branch employees must adhere. In addition to the basic obligations of public service, the regulations address such ethical issues as gifts from outside sources and impartiality in performing official duties. Specifically, 5 C.F.R. § 2635.502 seeks to avoid any appearance of the loss of impartiality in the performance of official government duties by an employee due to a financial interest that the employee may have. It applies in circumstances:

[w]here an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household...and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter....

Another portion of the regulations, 5 C.F.R. § 2635.402(b)(1), defines "direct and predictable effect" as "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest."

Section 502 also includes a catch-all provision, which states:

An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to

determine whether he should or should not participate in a particular matter. 5 C.F.R. § 2635.502(a)(2).

The process referenced in this section is for the employee to describe the circumstances that would raise an impartiality question to a Department ethics officer for the purpose of receiving guidance on how to address potential conflicts of interest, including whether the employee should be disqualified from participation. 5 C.F.R. § 2635.502(c).

V. Examples of Other Department and FBI Policies Regulating Investigative Activity that Could Potentially Impact Civil Liberties

On occasion, the Department and the FBI investigate alleged illegal activity that is intertwined with, or take investigative steps with the potential to implicate, what is otherwise constitutionally protected activity. Examples include investigations of allegations of illegal campaign finance activity, allegations of violations of the Foreign Agent Registration Act, or the use of legal process to obtain information about the media or Members of Congress. The Department and the FBI have promulgated specific policies intended to ensure appropriate oversight of and accountability for many of these investigative activities. Some of these policies, such as the notification requirement described above for a "Sensitive Investigative Matter," applied to the Crossfire Hurricane investigation. In this section, we provide examples of other Department and FBI policies and procedures, not applicable to the Crossfire Hurricane investigation, that establish senior-level approval requirements and other procedures to regulate certain investigative activity capable of implicating civil liberties and constitutional concerns.

A. Undisclosed Participation

Undisclosed Participation (UDP) takes place when anyone acting on behalf of the FBI, including a CHS, becomes a member of, or participates in, the activity of an organization on behalf of the U.S. government without disclosing their FBI affiliation to an appropriate official of the organization.¹⁵⁴ A CHS who participates in an organization entirely on his or her own behalf and who is not tasked by the FBI to obtain information or undertake other activities in that organization is not engaging in UDP—regardless of whether the CHS volunteers information to the FBI and regardless of whether the CHS's affiliation with the FBI is known. However, if the CHS is tasked by the FBI to join an organization, obtain specific information through participation in the organization, or take specific actions, those activities are on behalf of the FBI, and require compliance with the UDP policies set forth in the DIOG.¹⁵⁵

¹⁵⁴ DIOG § 16.1.

¹⁵⁵ DIOG §§ 16.2.3.1, 16.3.

[REDACTED]

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In our review, we identified an FBI CHS who, months after the presidential campaign was concluded, [REDACTED] to the FBI, without being tasked by the FBI to gather that information, or directed by the FBI to participate in the campaign. This type of voluntary activity does not meet the definition of UDP and therefore does not implicate the FBI's requirements for approval of UDP.

B. Investigative Activities Concerning Members of the News Media, White House and Executive Branch Personnel, and Members of Congress

The Department and the FBI have policies to ensure appropriate oversight and accountability for investigative activities involving members of the news media, White House personnel, and Members of Congress.

1. Members of the News Media

The Department and the FBI have numerous regulations and policies regarding investigations that involve members of the news media that relate to events arising from their profession. For example, 28 C.F.R. § 50.10 and the

¹⁵⁶ DIOG § 16.2.3.5.

¹⁵⁷ DIOG § 16.4(A).

¹⁵⁸ DIOG § 16.3.1.5.1(B).

¹⁵⁹ DIOG § 16.2.3.2.

¹⁶⁰ DIOG § 16.3.1.5.3(C).

Department's Justice Manual § 9-13.400 govern obtaining information from, or records of, members of the news media and questioning, arresting, or charging members of the news media. The rules require, with certain exceptions, the Attorney General to approve subpoenas issued to members of the news media; warrants to search premises, properties, communications records, or business records of a member of the news media; and questioning, arresting, or charging members of the news media.

Pursuant to DIOG § 18.5.9.3.1, FBI agents must obtain higher-level authority, consistent with 28 C.F.R. § 50.10, when seeking the issuance of a subpoena for records relating to members of the news media. Similarly, DIOG § 18.6.4.3.4.3 requires the FBI to obtain the Attorney General's approval when using an administrative subpoena directed to a telecommunications provider for toll records associated with members of the news media.

2. White House and Executive Branch Personnel

The Department's Justice Manual states that any monitoring of oral communications without the consent of all parties, when it is known that the monitoring concerns an investigation into an allegation of misconduct committed by a senior member of the executive branch, must be approved by a Deputy AAG from the Department's Criminal Division.¹⁶¹

DIOG § 18.5.6.4.7 states that an FBI agent may only initiate contact with White House personnel as part of an investigation after consulting with the FBI OGC and obtaining SAC and appropriate FBI Assistant Director approval.

3. Members of Congress and Their Staff

The Department's Justice Manual states that any monitoring of oral communications without the consent of all parties when it is known that the monitoring concerns an investigation into an allegation of misconduct committed by a Member of Congress must be approved by a Deputy AAG from the Department's Criminal Division.¹⁶²

DIOG § 18.5.6.4.6 requires FBI agents to obtain SAC and appropriate FBI Assistant Director approval, along with notice to the AD for the Office of Congressional Affairs, when seeking to interview a Member of Congress or Congressional staff in connection with a public corruption matter or a foreign counterintelligence matter.

¹⁶¹ Section 9-7.302.

¹⁶² Sections 9-7.302, 9-85.110.

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CHAPTER THREE

THE OPENING OF CROSSFIRE HURRICANE, STAFFING, AND THE EARLY STAGES OF THE INVESTIGATION

On July 31, 2016, the FBI opened a counterintelligence investigation known as "Crossfire Hurricane." In this chapter, we provide an overview of the opening and initial steps of the Crossfire Hurricane investigation and its related cases. We first summarize the intelligence available to the FBI in the summer of 2016 regarding the Russian government's efforts to interfere with the 2016 U.S. elections. We then describe the events that led to the opening of the Crossfire Hurricane umbrella investigation and the related counterintelligence investigations of George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn. We also describe the structure and oversight of these investigations, including the FBI's staffing of the cases and the involvement of senior FBI and Department officials. Finally, we describe the early investigative steps taken in furtherance of the investigations.

I. Intelligence Community Awareness of Attempted Russian Interference in the 2016 U.S. Elections

At the time the Crossfire Hurricane investigation was opened in July 2016, the U.S. Intelligence Community (USIC), which includes the FBI, was aware of Russian efforts to interfere with the 2016 U.S. elections. The Russian efforts included cyber intrusions into various political organizations, including the Democratic National Committee (DNC) and Democratic Congressional Campaign Committee (DCCC). Throughout spring and early summer 2016, the FBI became aware of specific cyber intrusions for which the Russian government was responsible, through ongoing investigations into Russian hacking operations conducted by the FBI's Cyber Division and the FBI's Counterintelligence Division (CD).

In March and May 2016, FBI field offices identified a spear phishing campaign by the Russian military intelligence agency, known as the General Staff Intelligence Directorate (GRU), targeting email addresses associated with the DNC and the Hillary Clinton campaign, as well as efforts to place malware on DNC and DCCC computer networks. In June and July 2016, stolen materials were released online through the fictitious personas "Guccifer 2.0" and "DCLeaks." In addition, in late July 2016, WikiLeaks released emails obtained from DNC servers as part of its "Hillary Leak Series." By August 2016, the USIC assessed that in the weeks leading up to the 2016 U.S. elections, Russia was considering further intelligence operations to impact or disrupt the elections.

In addition to the Russian infiltration of DNC and DCCC computer systems, between March and August 2016, the FBI became aware of numerous attempts to hack into state election systems. These included confirmed access into elements of multiple state or local electoral boards using tactics, techniques, and procedures

associated with Russian state-sponsored actors.¹⁶³ The FBI learned that Russian efforts also included cyber-enabled scanning and probing of election related infrastructure in several states.

It was in this context that the FBI received information on July 28, 2016, about a conversation between Papadopoulos and an official of a Friendly Foreign Government (FFG) in May 2016 during which Papadopoulos “suggested the Trump team had received some kind of suggestion” from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to candidate Clinton and President Obama. As described below, the FBI opened the Crossfire Hurricane investigation 3 days after receiving this information.

II. The Friendly Foreign Government Information and the FBI’s Decision to Open Crossfire Hurricane and Four Related Counterintelligence Investigations

On July 31, 2016, the FBI opened the Crossfire Hurricane counterintelligence investigation to determine whether individuals associated with the Donald J. Trump for President Campaign were coordinating or cooperating, wittingly or unwittingly, with the Russian government to influence or interfere with the 2016 U.S. elections. According to the opening Electronic Communication (EC), the investigation was predicated on intelligence from an FFG. In this section, we describe the receipt of the information from the FFG and the decisions to open the Crossfire Hurricane

¹⁶³ Beginning in January 2017 and continuing into 2019, several U.S. government agencies, as well as senior intelligence officials, reported on Russia’s efforts to interfere with the 2016 U.S. elections. For example, the Intelligence Community Assessment (ICA) titled “Assessing Russian Activities and Intentions in Recent U.S. Elections,” published on January 6, 2017, concluded that Russian President Vladimir Putin and the Russian government conducted an influence campaign followed by a Russian messaging strategy that blended covert intelligence operations, such as cyber activity, with overt efforts in order to undermine public faith in the U.S. democratic process, denigrate then candidate Clinton, and harm Clinton’s electability and potential presidency. Additionally, in June 2017, during a Senate Select Committee on Intelligence Hearing on Russian Interference in the 2016 U.S. Elections, USIC leadership concurred with the ICA and acknowledged that the Russian government was responsible for compromises of and leaks from political figures and institutions, among other activities, as part of its efforts to influence and interfere in U.S. elections. Similarly, the Senate Select Committee on Intelligence in 2019 and the House Permanent Select Committee on Intelligence in 2018 found, in part, that the Russian government historically has attempted to interfere in U.S. elections and attempted to interfere in the 2016 U.S. elections through attacks on state voter registration databases, cyber operations targeting governments and businesses using tactics such as spear phishing, hacking operations to include the DNC network, and social media campaigns. U.S. House Permanent Select Committee on Intelligence, *Report on Russian Active Measures*, 115th Cong., 2d sess., 2018, 114-130. U.S. Senate Select Committee on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Volume 1: Russian Efforts Against Election Infrastructure with Additional Views*, 116th Cong., 1st sess., 2019, 1-10. Further, Special Counsel Robert S. Mueller III concluded that the Russian government interfered with the 2016 U.S. elections through a social media campaign that favored then candidate Trump and disparaged then candidate Clinton, and through cyber intrusion operations against entities and individuals working on the Clinton Campaign. See *The Special Counsel’s Report*, Vol. I at 1, 4-7.

counterintelligence investigation and the related investigations of Papadopoulos, Page, Manafort, and Flynn.

A. Receipt of Information from the Friendly Foreign Government and the Opening of Crossfire Hurricane

By March 2016, Papadopoulos, Page, and Flynn were among several individuals serving as foreign policy advisors for the Trump campaign. Manafort joined the Trump campaign in March 2016 as the campaign convention manager. In the weeks that followed, Papadopoulos met with officials of an FFG in a European city that had arranged several meetings in May 2016 to engage with members of the Trump campaign. During one of these meetings, Papadopoulos reportedly “suggested” to an FFG official that the Trump campaign “received some kind of a suggestion from Russia” that it could assist the campaign by anonymously releasing derogatory information about presidential candidate Hillary Clinton.¹⁶⁴ However, the FFG did not provide information about Papadopoulos’s statements to the U.S. government at that time.

On July 26, 2016, 4 days after WikiLeaks publicly released hacked emails from the DNC, the FFG official spoke with a U.S. government (USG) official in the European city about an “urgent matter” that required an in-person meeting. At the meeting, the FFG official informed the USG official of the meeting with Papadopoulos. The FFG official also provided [REDACTED] information from [REDACTED] FFG officials [REDACTED] following the May 2016 meeting (hereinafter referred to as the FFG information). [REDACTED] stated, in part, that Papadopoulos

¹⁶⁴ During October 25, 2018 testimony before the House Judiciary and House Committee on Government Reform and Oversight, Papadopoulos stated that the source of the information he shared with the FFG official was a professor from London, Joseph Mifsud. Papadopoulos testified that Mifsud provided him with information about the Russians possessing “dirt” on Hillary Clinton. Papadopoulos raised the possibility during his Congressional testimony that Mifsud might have been “working with the FBI and this was some sort of operation” to entrap Papadopoulos. As discussed in Chapter Ten of this report, the OIG searched the FBI’s database of Confidential Human Sources (CHS), and did not find any records indicating that Mifsud was an FBI CHS, or that Mifsud’s discussions with Papadopoulos were part of any FBI operation. In Chapter Ten, we also note that the FBI requested information [REDACTED]

We refer to Joseph Mifsud by name in this report because the Department publicly revealed Mifsud’s identity in The Special Counsel’s Report (public version). According to The Special Counsel’s Report, Papadopoulos first met Mifsud in March 2016, after Papadopoulos had already learned that he would be serving as a foreign policy advisor for the Trump campaign. According to The Special Counsel’s Report, Mifsud only showed interest in Papadopoulos after learning of Papadopoulos’s role in the campaign, and told Papadopoulos about the Russians possessing “dirt” on then candidate Clinton in late April 2016. The Special Counsel found that Papadopoulos lied to the FBI about the timing of his discussions with Mifsud, as well as the nature and extent of his communications with Mifsud. The Special Counsel charged Papadopoulos under Title 18 U.S.C. § 1001 with making false statements. Papadopoulos pled guilty and was sentenced to 14 days in prison. See *The Special Counsel’s Report*, Vol. 1, at 192-94.

suggested the Trump team had received some kind of suggestion from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to Mrs. Clinton (and President Obama). It was unclear whether he or the Russians were referring to material acquired publicly of [sic] through other means. It was also unclear how Mr. Trump's team reacted to the offer. We note the Trump team's reaction could, in the end, have little bearing of what Russia decides to do, with or without Mr. Trump's cooperation.

On July 27, 2016, the USG official called the FBI's Legal Attaché (Legat) and [REDACTED] in the European city to her office and provided them with the FFG information.¹⁶⁵ The Legat told us he was not provided any other information about the meetings between the FFG and Papadopoulos.¹⁶⁶ The Legat also told us that he did not know under what FBI case number the FFG information should be documented and transmitted. At the recommendation of the European city Assistant Legal Attaché (ALAT) for Counterintelligence, the Legat contacted a former ALAT who at the time was an Assistant Special Agent in Charge (ASAC) in the FBI's Philadelphia Field Office. The ASAC told the Legat that he believed the FFG information was related to the hack of DNC emails and identified a case number for that investigation for the Legat to use to transmit the information. The following day, on July 28, 2016, the Legat sent an EC documenting the FFG information to the Philadelphia Field Office ASAC. The same day, the information in the EC was emailed to the Section Chief of the Cyber Counterintelligence Coordination Section at FBI Headquarters.

From July 28 to July 31, officials at FBI Headquarters discussed the FFG information and whether it warranted opening a counterintelligence investigation. The Assistant Director (AD) for CD, E.W. "Bill" Priestap, was a central figure in these discussions. According to Priestap, he discussed the matter with then Section Chief of CD's Counterespionage Section Peter Strzok, as well as the Section Chief of CD's Counterintelligence Analysis Section I (Intel Section Chief); and with representatives of the FBI's Office of the General Counsel (OGC), including Deputy General Counsel Trisha Anderson and a unit chief (OGC Unit Chief) in OGC's National Security and Cyber Law Branch (NSCLB). Priestap told us that he also discussed the matter with either then Deputy Director (DD) Andrew McCabe or then Executive Assistant Director (EAD) Michael Steinbach, but did not recall discussing the matter with then Director James Comey told the OIG that he did not recall being briefed on the FFG information until after the Crossfire Hurricane investigation was opened, and that he was not involved in the decision to open the case. McCabe said that although he did not specifically recall meeting with Comey immediately after the FFG information was received, it was "the kind of thing that would have been brought to Director Comey's attention immediately." McCabe's

¹⁶⁵ A Legal Attaché (Legat) is the FBI Director's personal representative in a country in which the FBI has regional responsibility.

¹⁶⁶ According to the Legat, the [REDACTED] stated at the meeting with the USG official that the FFG information "sounds like an FBI matter."

contemporaneous notes reflect that the FFG information, Carter Page, and Manafort, were discussed on July 29, after a regularly scheduled morning meeting of senior FBI leadership with the Director. Although McCabe told us he did not have an independent recollection of this discussion, he told us that, based upon his notes, this discussion likely included the Director. McCabe's notes reflect only the topic of the discussion and not the substance of what was discussed.

McCabe told us that he recalled discussing the FFG information with Priestap, Strzok, then Special Counsel to the Deputy Director Lisa Page, and Comey, sometime before Crossfire Hurricane was opened, and he agreed with opening a counterintelligence investigation based on the FFG information. He told us the decision to open the case was unanimous. McCabe said the FBI viewed the FFG information in the context of Russian attempts to interfere with the 2016 U.S. elections in the years and months prior, as well as the FBI's ongoing investigation into the DNC hack by a Russian Intelligence Service (RIS). He also said that when the FBI received the FFG information it was a "tipping point" in terms of opening a counterintelligence investigation regarding Russia's attempts to influence and interfere with the 2016 U.S. elections because not only was there information that Russia was targeting U.S. political institutions, but now the FBI had received an allegation from a trusted partner that there had been some sort of contact between the Russians and the Trump campaign. McCabe said that he did not recall any discussion about whether the FFG information constituted sufficient predication for opening a Full Investigation, as opposed to a Preliminary Investigation, but said that his belief at the time, based on his experience, was that the FFG information was adequate predication.¹⁶⁷

According to Priestap, he authorized opening the Crossfire Hurricane counterintelligence investigation on July 31, 2016, based upon these discussions. He told us that the FFG information was provided by a trusted source—the FFG—and he therefore felt it "wise to open an investigation to look into" whether someone associated with the Trump campaign may have accepted the reported offer from the Russians. Priestap also told us that the combination of the FFG information and the FBI's ongoing cyber intrusion investigation of the DNC hacks created a counterintelligence concern that the FBI was "obligated" to investigate. Priestap said that he did not recall any disagreement about the decision to open Crossfire Hurricane, and told us that he was not pressured to open the case.

We interviewed all of the senior FBI officials who participated in these discussions about their reactions to the FFG information and assessments of it as

¹⁶⁷ As detailed in Chapter Two, the DIOG provides for two types of predicated investigations, Preliminary Investigations and Full Investigations. A Preliminary Investigation may be opened based upon "any allegation or information" indicative of possible criminal activity or threats to the national security; a Full Investigation may be opened based upon an "articulable factual basis" of possible criminal activity or threats to the national security. In cases opened as Preliminary Investigations, all lawful investigative methods (including CHS and UCE operations) may be used except for mail opening, physical searches requiring a search warrant, electronic surveillance requiring a judicial order or warrant (Title III wiretap or a FISA order), or requests under Title VII of FISA. A Preliminary Investigation may be converted to a Full Investigation if the available information provides predication for a Full Investigation.

predication for Crossfire Hurricane. Each of these officials told us the information warranted opening a counterintelligence investigation. For example, Anderson told us that when the information from the Legat arrived it was "really disturbing," and that she told Priestap the information needed to be reviewed by the Deputy Director immediately (Anderson and Priestap, in fact, briefed McCabe that day, July 28). She also told us that the decision to open the case was based upon the concern that the U.S. democratic process could be manipulated by a foreign power. Anderson also told us that "[the FBI] would have been derelict in our responsibilities had we not opened the case," and that a foreign power allegedly colluding with a presidential candidate or his team members was a threat to our nation that the FBI was obligated to investigate under its counterintelligence mission.

Similarly, then FBI General Counsel James Baker told us that everyone was in agreement about opening an investigation because the information came from a trusted intelligence partner, and it concerned a "Russian connection to the Trump campaign." He told us the FBI had information about the Russian's hacking activities, which they considered "a threat." Baker could not specifically recall whether Crossfire Hurricane was opened as a Preliminary Investigation or a Full Investigation, but told us that a Full Investigation "would have been justified under these facts."

The Intel Section Chief also told us that he recalled the discussions about the FFG information when it arrived and said no one disagreed with opening a counterintelligence investigation based on the information. The Intel Section Chief also said that in the context of what was occurring with the DNC hacks and the release of the DNC emails, there was a possibility that the Russians reached out to a campaign to offer their assistance, and the FBI needed to investigate the allegation. The OGC Unit Chief had the same recollection, telling us that there was no real question about whether to investigate and that her impression was everyone thought the FFG information was so serious that the FBI had to investigate the allegations: "[T]his is not something we were looking to do, but given the allegations, we thought they were serious enough [that] we had to investigate."

Like Priestap, these officials told us that their evaluation of the FFG information was informed by the FBI's ongoing cyber investigation involving Russia and the DNC hack. According to the Intel Section Chief and Strzok, when the FFG information arrived, the FBI already had strong corroborating information indicating that senior officials in the Russian government were responsible for directing attacks on the 2016 U.S. elections, including the hack of the DNC. Anderson said the FBI's ongoing cyber investigation supported the decision to open a counterintelligence case based on the FFG information. Anderson stated:

...I don't remember exactly when we felt, you know, the moment in time when we felt that we had Russian attribution, not just to the hack, but also to the release of the emails. So though that was suspected or we had some information to support that theory for quite some time, but whether you...can attribute that to the Russians with a

high degree of certainty or...not, it sort of puts the whole thing together. On the one hand you've got the Russian efforts to obtain material that could be used as part of a foreign influence campaign and then on the other hand you've got [this] information about the possibility of collusion between the Russians and members of a presidential candidate's campaign.

Priestap told the OIG that before arriving at a final decision, he considered whether to provide a "defensive briefing" to any member of the Trump campaign in lieu of opening an investigation. According to Priestap, defensive briefings occur when U.S. government or corporate officials are being targeted by a foreign adversary and the FBI determines the officials should be alerted to the potential threat. Priestap did not recall who first raised the issue of defensive briefings, but said he discussed the subject collaboratively with other FBI officials. Priestap told us that he ultimately decided not to conduct defensive briefings and explained his reasoning:

While the Counterintelligence Division does regularly provide defensive briefings to U.S. government officials or possible soon to be officials, in my experience, we do this when there is no indication, whatsoever, that the person to whom we would brief could be working with the relevant foreign adversary. In other words, we provide defensive briefings when we obtain information indicating a foreign adversary is trying or will try to influence a specific U.S. person, and when there is no indication that the specific U.S. person could be working with the adversary. In regard to the information the [FFG] provided us, we had no indication as to which person in the Trump campaign allegedly received the offer from the Russians. There was no specific U.S. person identified. We also had no indication, whatsoever, that the person affiliated with the Trump campaign had rejected the alleged offer from the Russians. In fact, the information we received indicated that Papadopoulos told the [FFG] he felt confident Mr. Trump would win the election, and Papadopoulos commented that the Clintons had a lot of baggage and that the Trump team had plenty of material to use in its campaign. While Papadopoulos didn't say where the Trump team had received the "material," one could reasonably infer that some of the material might have come from the Russians. Had we provided a defensive briefing to someone on the Trump campaign, we would have alerted the campaign to what we were looking into, and, if someone on the campaign was engaged with the Russians, he/she would very likely change his/her tactics and/or otherwise seek to cover-up his/her activities, thereby preventing us from finding the truth. On the other hand, if no one on the Trump campaign was working with the Russians, an investigation could prove that. Because the possibility existed that someone on the Trump campaign could have taken the Russians up on their offer, I thought it wise to open an investigation to look into the situation.

McCabe said that he did not consider a defensive briefing as an alternative to opening a counterintelligence case. He said that based on the FFG information, the FBI did not know if any member of the campaign was coordinating with Russia and that the FBI did not brief people who “could potentially be the subjects that you are investigating or looking for.” McCabe told us that in a sensitive counterintelligence matter, it was essential to have a better understanding of what was occurring before taking an overt step such as providing a defensive briefing.¹⁶⁸

We also asked those FBI officials involved in the decision to open Crossfire Hurricane whether the FBI received any other information, such as from members of theUSIC, that the FBI relied upon to predicate Crossfire Hurricane. All of them told us that there was no such information and that predication for the case was based solely on the FFG information.¹⁶⁹ We also asked Comey and McCabe about then CIA Director John Brennan’s statements reported in several news articles that he provided to the FBI intelligence on Russian contacts with U.S. persons that predicated or prompted the opening of Crossfire Hurricane. Comey told us that while Brennan shared intelligence on the overarching efforts by the Russian government to interfere in the 2016 U.S. elections, Brennan did not provide any information that predicated or prompted the FBI to open Crossfire Hurricane. McCabe said that he did not recall Brennan providing the FBI with information before the FBI’s decision to open an investigation about any U.S. person potentially cooperating with Russia in the efforts to interfere with the 2016 U.S. elections. Priestap and the Intel Section Chief also told us that Brennan did not provide the FBI any intelligence that predicated the opening of Crossfire Hurricane. We did not find information in FBI or Department electronic communications, emails, or other documents, or through witness testimony, indicating otherwise.

On July 31, 2016, the FBI opened a full counterintelligence investigation under the code name Crossfire Hurricane “to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia.” As the predicated information did not indicate a specific individual, the opening EC did not include a specific subject or subjects. As described in Chapter Two, the factual predication required to open a Full Investigation under the Attorney General’s Guidelines for Domestic Operations (AG

¹⁶⁸ McCabe told us that the decision to brief the DNC and Clinton campaign about the DNC hack was a different situation than the decision not to brief the Trump campaign about allegations of Russian efforts to assist the Trump campaign. He said that the DNC was a victim of hacking and the FBI had known that the DNC was not responsible for the hacks for some time.

¹⁶⁹ As we describe in Chapter Four, although the FBI first received reporting from Christopher Steele regarding alleged Russian interference in the 2016 U.S. elections in early July 2016, the agents and analysts investigating the FFG information (the Crossfire Hurricane team) did not become aware of the Steele reporting until September 19, 2016. We found no evidence the Steele election reporting was known to or used by FBI officials involved in the decision to open the Crossfire Hurricane investigation.

In the OIG’s *Review of Various Actions in Advance of the 2016 Election*, we describe in Classified Appendix One certain information that the FBI was in possession of in 2016 but the vast majority of which the FBI had not reviewed by June 2018. Given that timing, we did not see any evidence that any of that information was considered for or part of the predication for the opening of Crossfire Hurricane.

Guidelines) and the FBI's Domestic Investigations and Operations Guide (DIOG) is an "articulable factual basis" that reasonably indicates that one of several circumstances exist:

- An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity;
- An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat; or
- The investigation may obtain foreign intelligence that is responsive to a requirement that the FBI collect positive foreign intelligence—*i.e.*, information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists.

The opening EC describing the predication for Crossfire Hurricane relied exclusively on Papadopoulos's statements to the FFG [REDACTED] in the FFG information.

Crossfire Hurricane was opened by CD and was assigned a case number used by the FBI for possible violations of the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611, *et seq.*, and 18 U.S.C. § 951 (Agents of Foreign Governments).¹⁷⁰ As described in Chapter Two, the AG Guidelines recognize that activities subject to investigation as "threats to the national security" may also involve violations or potential violations of federal criminal laws, or may serve important purposes outside the ambit of normal criminal investigation and prosecution by informing national security decisions. Given such potential overlap in subject matter, neither the AG Guidelines nor the DIOG require the FBI to differently label its activities as criminal investigations, national security investigations, or foreign intelligence collections. Rather, the AG Guidelines state that, where an authorized purpose exists, all of the FBI's legal authorities are available for deployment in all cases to which they apply.¹⁷¹

The opening EC also designated Crossfire Hurricane as a "sensitive investigative matter," or SIM, which as described in Chapter Two, includes matters

¹⁷⁰ We have previously found differing understandings between FBI agents and federal prosecutors and NSD officials about the intent of FARA as well as what constitutes a "FARA case." See DOJ OIG, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act*, Audit Division 16-24 (September 2016), <https://oig.justice.gov/reports/2016/a1624.pdf> (accessed December 19, 2019).

¹⁷¹ See AG Guidelines § A, II.

involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), or a domestic political organization or an individual prominent in such an organization.¹⁷² The term “domestic political organization” includes, in relevant part, a committee or group formed to elect an individual to public office. According to David Laufman, then Chief of the National Security Division’s (NSD) Counterintelligence and Export Control Section (CES), the case was designated a SIM because it involved a campaign and “people associated with a campaign.” The DIOG requires that cases opened and designated as SIMs by FBI Headquarters be reviewed by OGC and approved by the appropriate FBI Headquarters operational section chief. The DIOG also requires that the FBI provide an “appropriate NSD official” with written notification of the opening of a SIM.¹⁷³ The DIOG does not impose any additional special requirements on SIMs, but does state particular care should be taken when considering whether a planned course of action is the least intrusive method and if reasonable based upon the circumstances of the investigation.¹⁷⁴

After Priestap authorized the opening of Crossfire Hurricane, Strzok, with input from the OGC Unit Chief, drafted and approved the opening EC.¹⁷⁵ Strzok told us that the case agent normally drafts the opening EC for an investigation, but that Strzok did so for Crossfire Hurricane because a case agent was not yet assigned and there was an immediate need to travel to the European city to interview the FFG officials who had met with Papadopoulos. With respect to the DIOG’s notification requirement to NSD, we located in the Crossfire Hurricane case file a Letterhead Memorandum (LHM) dated August 3, 2016, addressed to NSD. However, NSD officials told us that NSD has no record showing it received the LHM, and we were unable to determine whether the FBI in fact provided the LHM to NSD.¹⁷⁶

In addition to being designated a SIM, witnesses told us that, because the information being investigated related to an ongoing presidential election campaign, the Crossfire Hurricane case file was designated as “prohibited” meaning that access to the file was restricted and viewable to only those individuals assigned to

¹⁷² The DIOG requires that if a case is designated as a SIM at the time of opening, the title or case caption must contain the words “Sensitive Investigative Matter.” The opening EC for Crossfire Hurricane met this DIOG requirement.

¹⁷³ There is no requirement under the AG Guidelines or the DIOG that a senior Department official approve of or be consulted prior to the opening of an investigation designated a SIM.

¹⁷⁴ The DIOG requires that the least intrusive means or method be considered and—if reasonable based upon the circumstances of the investigation—used to obtain intelligence or evidence in lieu of a more intrusive method. The concept of least intrusive method applies to the collection of all information.

¹⁷⁵ Strzok was promoted to a CD Section Chief in February 2016, and later to Deputy Assistant Director (DAD) of CD’s Operations Branch I on September 4, 2016.

¹⁷⁶ According to FBI documents, although the FBI usually provides an LHM to NSD, “due to the extreme sensitivity of both predication and subject of [Crossfire Hurricane], NSD was orally briefed.” Notes and testimony reflect that in early August, NSD officials were briefed on at least two occasions at FBI Headquarters about the Crossfire Hurricane investigation.

work on the investigation. Agents and analysts referred to the investigation as “close-hold” and, as discussed later in this chapter, used covert investigative techniques to ensure information about the investigation remained known only to the team and FBI and Department officials.

B. The FBI Opens Counterintelligence Investigations on Papadopoulos, Carter Page, Manafort, and Flynn

On August 1, 2016, Strzok and a supervisory special agent (SSA 1) traveled to the European city to interview the FFG officials who met with Papadopoulos in May 2016.¹⁷⁷ According to Strzok and SSA 1, during the interview they learned that Papadopoulos did not say that he had direct contact with the Russians; that while his statement did not include him, it did not exclude him either; and that Papadopoulos stated the Russians told “us.” Strzok and SSA 1 also said they learned that Papadopoulos did not specify any other individual who received the Russian suggestion. Strzok, the Intel Section Chief, the Supervisory Intelligence Analyst (Supervisory Intel Analyst), and Case Agent 2 told the OIG that, based on this information, the initial investigative objective of Crossfire Hurricane was to determine which individuals associated with the Trump campaign may have been in a position to have received the alleged offer of assistance from Russia.

After conducting preliminary open source and FBI database inquiries, intelligence analysts on the Crossfire Hurricane team identified three individuals—Carter Page, Paul Manafort, and Michael Flynn—associated with the Trump campaign with either ties to Russia or a history of travel to Russia. On August 10, 2016, the team opened separate counterintelligence FARA cases on Carter Page, Manafort, and Papadopoulos, under code names assigned by the FBI. On August 16, 2016, a counterintelligence FARA case was opened on Flynn under a code name assigned by the FBI. The opening ECs for all four investigations were drafted by either of the two Special Agents assigned to serve as the Case Agents for the investigation (Case Agent 1 or Case Agent 2) and were approved by Strzok, as required by the DIOG.¹⁷⁸ Each case was designated a SIM because the individual subjects were believed to be “prominent in a domestic political campaign.”¹⁷⁹

As summarized below, the opening ECs for the investigations provided similar descriptions of the predating information relied upon to open the cases. The ECs

¹⁷⁷ Email exchanges reflect that the FBI planned to interview the FFG officials by telephone; however, the Legat told Strzok that a Senior Executive Service-level (SES) FBI official from CD should make the trip and meet with the FFG officials. Emails also reflect that a USG official advised the FBI that one of the FFG officials the FBI planned to interview would be unavailable on August 9 and suggested the interview take place prior to that date.

¹⁷⁸ Although the opening ECs identified Strzok, SSA 1, and the OGC Unit Chief as approvers, the OGC Unit Chief said that she provided legal review of the opening ECs only. As we described in Chapter Two, when a case is opened and designated a SIM by FBI Headquarters, the case opening requires review by OGC and approval by the FBI Headquarters operational Section Chief (SC).

¹⁷⁹ We did not locate any records that indicated the FBI provided written notification to NSD about the opening of these cases. However, as we described earlier in this chapter, the FBI orally briefed NSD officials on at least two occasions in August 2016 about the Crossfire Hurricane investigation to include Papadopoulos, Manafort, Flynn, and Carter Page.

differed in their descriptions of the particular activities of the subjects that gained the FBI's attention.

- The opening EC for the Carter Page investigation stated that there was an articulable factual basis that Carter Page "may wittingly or unwittingly be involved in activity on behalf of the Russian Federation which may constitute a federal crime or threat to the national security." The EC cross-referenced the predication for Crossfire Hurricane and stated that Page was a senior foreign policy advisor for the Trump campaign, had extensive ties to various Russia-owned entities, and had traveled to Russia as recently as July 2016. The EC also noted that Carter Page was the subject of an open, ongoing counterintelligence investigation assigned to the FBI's New York Field Office (NYFO), which we describe in the next section.
- The opening EC for the Manafort investigation stated that there was an articulable factual basis that Manafort "may wittingly or unwittingly be involved in activity on behalf of the Russian Federation which may constitute a federal crime or threat to the national security." The EC cross-referenced the predication for Crossfire Hurricane and stated that Manafort was designated the Delegate Process and Convention Manager for the Trump campaign, was promoted to Campaign Manager for the Trump campaign, and had extensive ties to pro-Russian entities of the Ukrainian government.
- The opening EC for the Papadopoulos investigation stated that there was an articulable factual basis that Papadopoulos "may wittingly or unwittingly be involved in activity on behalf of the Russian Federation which may constitute a federal crime or threat to the national security." The EC cross-referenced the predication for Crossfire Hurricane and stated that Papadopoulos was a senior foreign advisor for the Trump campaign and had "made statements indicating that he is knowledgeable that the Russians made a suggestion to the Trump team that they could assist the Trump campaign with an anonymous release of information during the campaign that would be damaging to the Clinton Campaign."
- The opening EC for the Flynn investigation stated that there was an articulable factual basis that Flynn "may wittingly or unwittingly be involved in activity on behalf of the Russian Federation which may constitute a federal crime or threat to the national security." The EC cross-referenced the predication for Crossfire Hurricane and stated that Flynn was an advisor to the Trump campaign, had various ties to state-affiliated entities of Russia, and traveled to Russia in December 2015.

C. The Pre-Existing FBI New York Field Office Counterintelligence Investigation of Carter Page

The OGC Unit Chief told us that of all the individuals associated with the Trump campaign best positioned to have received the alleged offer of assistance from Russia, Carter Page “quickly rose to the top” of the list because of his past connections to Russian officials and the FBI’s previous contacts with Page. As reflected in the FISA applications described in Chapters Five and Seven, as well as in other FBI documents, NYFO had an interest in Carter Page for several years before August 2016 and had interviewed him on multiple occasions because of his relationships with individuals the FBI knew to be Russian intelligence officers.

An FBI counterintelligence agent in NYFO (NYFO CI Agent) with extensive experience in Russian matters told the OIG that Carter Page had been on NYFO’s radar since 2009, when he had contact with a known Russian intelligence officer (Intelligence Officer 1). According to the EC documenting NYFO’s June 2009 interview with Page, Page told NYFO agents that he knew and kept in regular contact with Intelligence Officer 1 and provided him with a copy of a non-public annual report from an American company. The EC stated that Page “immediately advised [the agents] that due to his work and overseas experiences, he has been questioned by and provides information to representatives of [another U.S. government agency] on an ongoing basis.” The EC also noted that agents did not ask Page any questions about his dealings with the other U.S. government agency during the interviews.¹⁸⁰

NYFO CI agents believed that Carter Page was “passed” from Intelligence Officer 1 to a successor Russian intelligence officer (Intelligence Officer 2) in 2013 and that Page would continue to be introduced to other Russian intelligence officers in the future.¹⁸¹ In June 2013, NYFO CI agents interviewed Carter Page about these contacts. Page acknowledged meeting Intelligence Officer 2 following an introduction earlier in 2013. When agents intimated to Carter Page during the interview that Intelligence Officer 2 may be a Russian intelligence officer, specifically, an “SVR” officer, Page told them he believed in “openness” and because

¹⁸⁰ On or about August 17, 2016, the Crossfire Hurricane team received a memorandum from the other U.S. government agency detailing its prior relationship with Carter Page, including that Page had been approved as an operational contact for the other agency from 2008 to 2013 and information that Page had provided to the other agency concerning Page’s prior contacts with certain Russian intelligence officers. We found no evidence that, after receiving the August 17 Memorandum, the Crossfire Hurricane team requested additional information from the other agency prior to submission of the first FISA application in order to deconflict on issues that we believe were relevant to the FISA application. According to the U.S. government agency, “operational contact,” as that term is used in the August 17 Memorandum, provides “Contact Approval,” which allows the agency to contact and discuss sensitive information with a U.S. person and to collect information from that person via “passive debriefing,” or debriefing a person of information that is within the knowledge of an individual and has been acquired through the normal course of that individual’s activities. According to the U.S. government agency, a “Contact Approval” does not allow for operational use of a U.S. person or tasking of that person.

¹⁸¹ CI agents refer to this as “slot succession,” whereby a departing intelligence officer “passes” his or her contacts to an incoming intelligence officer.

he did not have access to classified information, his acquaintance with Intelligence Officer 2 was a "positive" for him. In August 2013, NYFO CI agents again interviewed Page regarding his contacts with Intelligence Officer 2. Page acknowledged meeting with Intelligence Officer 2 since his June 2013 FBI interview.

In January 2015, three Russian intelligence officers, including Intelligence Officer 2, were charged in a sealed complaint, and subsequently indicted, in the Southern District of New York (SDNY) for conspiring to act in the United States as unregistered agents of the Russian Federation.¹⁸² The indictment referenced Intelligence Officer 2's attempts to recruit "Male-1" as an asset for gathering intelligence on behalf of Russia.

On March 2, 2016, the NYFO CI Agent and SDNY Assistant United States Attorneys interviewed Carter Page in preparation for the trial of one of the indicted Russian intelligence officers. During the interview, Page stated that he knew he was the person referred to as Male-1 in the indictment and further said that he had identified himself as Male-1 to a Russian Minister and various Russian officials at a United Nations event in "the spirit of openness." The NYFO CI Agent told us she returned to her office after the interview and discussed with her supervisor opening a counterintelligence case on Page based on his statement to Russian officials that he believed he was Male-1 in the indictment and his continued contact with Russian intelligence officers.

The FBI's NYFO CI squad supervisor (NYFO CI Supervisor) told us she believed she should have opened a counterintelligence case on Carter Page prior to March 2, 2016 based on his continued contacts with Russian intelligence officers; however, she said the squad was preparing for a big trial, and they did not focus on Page until he was interviewed again on March 2. She told us that after the March 2 interview, she called CD's Counterespionage Section at FBI Headquarters to determine whether Page had any security clearances and to ask for guidance as to what type of investigation to open on Page.¹⁸³ On April 1, 2016, the NYFO CI Supervisor received an email from the Counterespionage Section advising her to open a [REDACTED] investigation on Page. The NYFO CI Supervisor said that [REDACTED]

[REDACTED] In addition, according to FBI records, the relevant CD section at FBI Headquarters, in consultation with OGC, determined at that time that the Page investigation opened by NYFO was not a SIM, but also noted, "should his status change, the appropriate case modification would be made." The NYFO CI Supervisor told us that based on what was documented in

¹⁸² Intelligence Officer 3 pled guilty in March 2016. The remaining two indicted Russian intelligence officers were no longer in the United States.

¹⁸³ CI agents in NYFO told us that the databases containing security clearance information were located at FBI Headquarters. When a subject possesses a security clearance, the FBI opens an espionage investigation; if the subject does not possess a security clearance, the FBI typically opens a counterintelligence investigation.

the file and what was known at that time, the NYFO Carter Page investigation was not a SIM.

Although Carter Page was announced as a foreign policy advisor for the Trump campaign prior to NYFO receiving this guidance from FBI Headquarters, the NYFO CI Supervisor and CI Agent both told the OIG that this announcement did not influence their decision to open a case on Page and that their concerns about Page, particularly his disclosure to the Russians about his role in the indictment, predated the announcement. However, the NYFO CI Supervisor said that the announcement required noting his new position in the case file should his new position require he obtain a security clearance.

On April 6, 2016, NYFO opened a counterintelligence [REDACTED] investigation on Carter Page under a code name the FBI assigned to him (NYFO investigation) based on his contacts with Russian intelligence officers and his statement to Russian officials that he was "Male-1" in the SDNY indictment. Based on our review of documents in the NYFO case file, as well as our interview of the NYFO CI Agent, there was limited investigative activity in the NYFO investigation between April 6 and the Crossfire Hurricane team's opening of its investigation of Page on August 10. The NYFO CI Agent told the OIG that the steps she took in the first few months of the case were to observe whether any other intelligence officers contacted Page and to prepare national security letters seeking Carter Page's cell phone number(s) and residence information. The NYFO CI agent said that she did not use any CHSs to target Page during the NYFO investigation. The NYFO investigation was transferred to the Crossfire Hurricane team on August 10 and became part of the Crossfire Hurricane investigation.

III. Organization and Oversight of the Crossfire Hurricane Investigation

The FBI conducted and oversaw the Crossfire Hurricane investigation from July 31, 2016, to May 17, 2017, at which time it was transferred to the Special Counsel's Office. Over that 10-month period, three different teams of agents and analysts were assigned to the case: the first team worked out of FBI Headquarters from the opening of the case through December 2016; the second team worked out of three FBI field offices and FBI Headquarters from approximately January 2017 through April 2017; and the third team worked, like the second team, out of the three FBI field offices and FBI Headquarters from April 2017 to May 17, 2017. In this section, we describe the organization and staffing of the three investigative teams and the FBI's reasons for making changes as to how the investigation was organized. We also describe the role played by FBI and Department senior leadership in the investigation.

A. FBI Staffing of the Crossfire Hurricane Investigation**1. The Management and Structure of the Crossfire Hurricane Team**

Witnesses told us that because of the sensitivity of the investigation, CD officials originally decided to conduct the investigation out of FBI Headquarters, under the program management of Operational Branch I, Section CD-4, rather than out of one or more field offices, which is more typical. The original team consisted of intelligence analysts, special agents, and SSAs from multiple field offices who were assigned to Headquarters for 90-day temporary duty assignments (TDYs). CD assigned the original team to the same office space at Headquarters, with both agents and analysts working together in close proximity. Agents and analysts on the Crossfire Hurricane team told the OIG that the decision to conduct the investigation out of FBI Headquarters instead of a field office presented multiple challenges, such as difficulties in obtaining needed investigative resources, including surveillance teams, electronic evidence storage, technically trained agents, and other investigative assets standard in field offices to support investigations. We were told that these were known risks consciously taken by CD officials, including Priestap, in order to minimize the potential for unauthorized public disclosure of the investigation and allow for better coordination with Headquarters and interagency partners.

Priestap told us that although he was ultimately responsible for the investigation, Strzok and the Intel Section Chief managed Crossfire Hurricane. Following the opening of the case, the team held meetings three times a week to discuss and determine the next investigative and analytical steps. The agents and analysts told us that the investigative and analytical decisions for the investigation were made at these meetings by the agents and analysts and then presented to the supervisors. Priestap said that while Strzok managed the operational side of Crossfire Hurricane, Priestap also sought the opinions of the Intel Section Chief and the OGC Unit Chief on operational decisions. Priestap also told us that he originally wanted to assign the investigation to a Deputy Assistant Director (DAD) other than Strzok because, although he had confidence in Strzok's counterintelligence capabilities, he had concerns about Strzok's personal relationship with Lisa Page affecting the Crossfire Hurricane team. According to Priestap, he told Steinbach about his concerns and Steinbach was supportive of his decision to remove Strzok from the team, but his decision was overruled by McCabe. Steinbach told us that he had concerns about Strzok and Lisa Page working together because he was aware of instances where they bypassed the chain of command to advise McCabe about case related information that had not been provided to Priestap or Steinbach. Priestap and Steinbach said they did not know why McCabe kept Strzok assigned to the investigation. Strzok told the OIG he did not ask McCabe to keep him on the investigation and does not know whether Lisa Page requested Strzok remain on the investigation in conversations with McCabe. We found no evidence that Page made any such request of McCabe.

McCabe told us that he recalled separate conversations with Steinbach and Priestap about Strzok's work on Crossfire Hurricane, but he said that in neither

conversation did he (McCabe) overrule a decision by Priestap to remove Strzok from the case. According to McCabe, Steinbach said that he wanted to remove Strzok from his role on Crossfire Hurricane after Strzok became DAD (in September 2016) so that Strzok could have a “traditional DAD experience,” rather than spending too much attention on a single, major sensitive case. McCabe told us that he did not disagree with Steinbach, and he saw it as a decision for Steinbach and Priestap to make on their own. McCabe said that in a separate conversation with Priestap, Priestap raised a concern about Strzok and Page, but that it was not about any personal relationship between the two, which McCabe said he did not know about at the time. According to McCabe, Priestap expressed frustration about the amount of time Page and Strzok were spending together talking about casework and that it was interfering with Strzok’s ability to carry out his other responsibilities. McCabe told us that he did not recall Priestap requesting that Strzok be removed from the case because of this concern, but McCabe said that he talked to Page about reducing the amount of time she was interacting with Strzok.

Over a dozen agents, analysts, and one Staff Operations Specialist (SOS) were originally assigned on a full-time basis to the Crossfire Hurricane team. Only one of the team members on Crossfire Hurricane, Case Agent 3, had previously been assigned to the team that conducted the investigation, known as “Midyear Exam” or “Midyear,” of Secretary of State Hillary Clinton’s use of personal email for official purposes. However, the supervisory chain of DAD Strzok, the Intel Section Chief, AD Priestap, EAD Steinbach, Deputy Director McCabe, and Director Comey was the same for the Midyear and Crossfire Hurricane investigations. EAD Steinbach retired in February 2017 and was succeeded by Carl Ghattas. The Crossfire Hurricane team members were selected by Strzok, the Intel Section Chief, and SSA 1. The agents reported to SSA 1 and the analysts reported to the Supervisory Intel Analyst. SSA 1 reported operational activities to Strzok. The Supervisory Intel Analyst reported analytical findings to the Intel Section Chief. In addition, an OGC line attorney (OGC Attorney) was supervised by the OGC Unit Chief and provided legal support to the team.¹⁸⁴ The OGC Unit Chief reported to Anderson, who reported to Baker.

Case Agent 1 and the SOS were the original Crossfire Hurricane team members who had primary responsibility over the Carter Page investigation. They were joined by Case Agent 3 and Case Agent 4 who worked on the Papadopoulos and Manafort investigations, respectively.

Following the November 2016 U.S. elections, the 90-day TDY assignments ended for the agents and analysts on the original investigative team, and many of the team members, including SSA 1, returned to their field offices. In addition, in January 2017, CD reorganized the structure of the Crossfire Hurricane investigation by transferring the day-to-day operations of the four individual investigations to three field offices, and dividing oversight of the investigations between two operational branches at FBI Headquarters—Operations Branch I and Operations Branch II. According to Priestap, he transferred the cases to the field offices

¹⁸⁴ Both of these attorneys were also assigned to the Midyear team to provide legal support.

because of the need to conduct investigative activities in cities where the subjects of the investigations were located and to do so efficiently. Priestap told us that he also wanted to incorporate Operations Branch II into the program management of some of the Crossfire Hurricane cases for its expertise on RIS.

With respect to the four individual investigations, CD transferred the Carter Page investigation to NYFO, and it remained assigned to Case Agent 1, who returned to that office following his 90-day TDY. DAD Jennifer Boone and SSA 3 of Operations Branch II at FBI Headquarters assumed program management responsibilities over the case. The Papadopoulos investigation was transferred to the Chicago Field Office and assigned to Case Agent 3. The Flynn investigation was transferred to the Washington Field Office (WFO) and assigned to Case Agent 4. Strzok and SSA 2 of Operations Branch I retained program management responsibilities over both of these investigations. The Manafort investigation was transferred to a white collar criminal squad at WFO.¹⁸⁵

The Supervisory Intel Analyst told us that the shifting makeup of the teams and the changing leadership created a divide between the analysts and the agents, which resulted in less interaction between the two groups. In April 2017, CD again reorganized the Crossfire Hurricane investigation by restructuring the day-to-day operations of the cases at FBI Headquarters to recentralize the case. Officials told us that the investigation had become too decentralized and that the reason to restructure the investigation at Headquarters was to impose greater structure on the team's investigative and analytical efforts. In addition, in March 2017, Comey notified Congress about the existence of the Crossfire Hurricane investigation. Witnesses told us that this created a need for a more cohesive effort by the Crossfire Hurricane team to keep Priestap regularly informed of case activities so that he was better able to respond to Congressional inquiries.

At the end of this chapter, Figure 3.1 illustrates the FBI chain of command for the Crossfire Hurricane investigation from the opening of the case on July 31, 2016 through December 2016. Figure 3.2 illustrates the chain of command from January 2017 through April 2017, and Figure 3.3 from April 2017 until the cases were transferred to the Special Counsel's Office on May 17, 2017.

2. The Role of Peter Strzok and Lisa Page in Crossfire Hurricane and Relevant Text Messages

In the OIG's June 2018 *Review of Various Actions in Advance of the 2016 Election*, we described text messages between Strzok and Lisa Page expressing statements of hostility toward then candidate Trump and statements of support for then candidate Clinton, and several text messages that appeared to mix political opinions with discussions of the investigation into candidate Clinton's email use and references to the Crossfire Hurricane investigation. One such exchange occurred on July 31, 2016, the date of the opening of the Crossfire Hurricane investigation,

¹⁸⁵ As described further in Chapter Nine, in January 2016, the FBI initiated a money laundering and tax evasion investigation of Manafort predicated on his activities as a political consultant to members of the Ukrainian government and Ukrainian politicians.

when Strzok texted Page: "And damn this feels momentous. Because this matters. The other one did, too, but that was to ensure we didn't F something up. This matters because this MATTERS. So super glad to be on this voyage with you." (Emphasis in original).

The following week, in an exchange on August 6, 2016, Lisa Page forwarded to Strzok a news article relating to Trump's criticism of a Gold Star family who appeared at the Democratic National Convention. The text message stated, in part, "And Trump should go f himself." Strzok responded favorably to the article and added, "And F Trump." Page replied, "So. This is not to take away from the unfairness of it all, but we are both deeply fortunate people." She then forwarded another news article and texted, "And maybe you're meant to stay where you are because you're meant to protect the country from that menace." Strzok responded, "Thanks. It's absolutely true that we're both very fortunate. And of course I'll try and approach it that way. I just know it will be tough at times. I can protect our country at many levels, not sure if that helps...."

Two days later, on August 8, 2016, Lisa Page texted Strzok, "[Trump's] not ever going to become president, right? Right?!" and Strzok replied, "No. No he's not. We'll stop it." In Chapter Twelve of the OIG's June 2018 *Review of Various Actions in Advance of the 2016 Election*, we detail additional text messages by Strzok and Page and the explanations that they provided to the OIG for these and the other text messages and our findings regarding them. See <https://www.justice.gov/file/1071991/download>.

In that review, we found that Strzok led the Midyear investigation shortly after its opening through its conclusion, and that he was deeply and actively involved in investigative decision making throughout the course of that investigation. We further found that Lisa Page served as a liaison between the investigative team and McCabe, and that she also regularly participated in team meetings and in investigative decision making.

As part of this review, in order to determine whether there was any bias in the investigative activities for Crossfire Hurricane that we reviewed, we asked agents and analysts assigned to the case about the roles Strzok and Page played in the Crossfire Hurricane investigation and their level of involvement in decision making. With respect to Strzok, these witnesses told us that while he approved the team's investigative decisions during the time he was in the supervisory chain of command for the investigation, he did not unilaterally make any decisions or override any proposed investigative steps. Priestap, in addition to telling us that it was his (Priestap's) decision to initiate the investigation, told us that to his knowledge, Strzok was not the primary or sole decision maker on any investigative step in Crossfire Hurricane. Further, as described above, in January 2017, the Crossfire Hurricane cases were divided between two operational branches within CD, and Strzok no longer supervised the Carter Page investigation, which was transferred to Operations Branch II, CD-1, under the supervision of then DAD Boone. In this report, we describe those occasions when Strzok was involved in investigative decisions.

With respect to Lisa Page, witnesses told us that she did not work with the team on a regular basis or make any decisions that impacted the investigation. Priestap told us that Lisa Page was “not in charge of anything” and that he never witnessed her attempt to steer the investigation or dictate investigative actions. Baker said that Lisa Page attended high-level meetings and knew the facts of the case, but was not in a “decision making position” and had no “decision making authority.” Lisa Page told us that she did not have a formal role in the Crossfire Hurricane investigation but may have participated in team meetings to keep McCabe aware of the status of the investigation. McCabe also told us that she was the “facilitation point” between CD and his office during the investigation. As with Strzok, when we learned in this review of Lisa Page’s presence at meetings or involvement in any investigative activity, we include that information in this report.

B. The Role of Senior FBI and Department Leadership in the Crossfire Hurricane Investigation

As part of our review, we examined the role that senior FBI and Department leaders played in Crossfire Hurricane, as well as their knowledge of critical events in the case, including its opening, the use of CHSs to gather information, and the decision to seek authority to conduct electronic surveillance. Throughout the chapters of this report, we highlight and describe this involvement and knowledge, where relevant. In this section, we summarize the role of FBI leadership and Department officials in the early stages of the investigation until May 2017 when the Papadopoulos, Carter Page, Manafort, and Flynn cases were transferred to the Special Counsel’s Office.

1. FBI Leadership

We learned that CD officials briefed the Crossfire Hurricane investigation to FBI senior leadership throughout the investigation. Comey told the OIG that the FBI had “hundreds of thousands” of counterintelligence cases opened while he was Director, and he would not be involved in a counterintelligence case unless the chain of command made a judgment call about whether the nature of the case required the Director’s involvement. He said the decision to brief the Director was based on several things, including whether the case required engagement with Department leadership or whether it was of interest to Congress. Comey said his level of involvement in Crossfire Hurricane was similar to some cases and dissimilar to others. He said:

I would put [cases in] three buckets. One, cases they’d never tell me about because of a judgment by the leadership chain that it wasn’t for the Director to know. Cases that I would be told about, simply to be aware of. And then cases, the third category would be cases that I was told about and, in some detail, and kept informed of as the investigation went on. Crossfire Hurricane was in that third bucket.

According to records reviewed by the OIG, Comey received his first, formal briefing on August 15, 2016, though, as described previously, McCabe’s contemporaneous notes suggest Comey may have been told about the FFG

information on July 29. Comey told us that he was updated on the status of the investigation every 2 to 4 weeks. These status updates were provided at the end of his regularly scheduled morning national security briefings conducted by, among others, McCabe, Steinbach, Priestap, and Strzok. According to Comey, these briefings did not typically include discussions about investigative strategy, but he was often briefed on specific investigative actions the Crossfire Hurricane team had taken or planned to take. Comey said that he did not recall playing a role in making any significant investigative decisions and did not have any concerns or disagreements with the investigative actions described by senior CD officials during briefings.

Comey told us that he recalled a discussion with the briefers about taking precautions to keep the case close-hold. Comey said he was mindful that the investigation involved a political campaign, and he advised the team to keep in mind that, “[although] it’s smoke that we see, we don’t know whether there’s fire there.” McCabe also told us the FBI wanted “to keep our inquiry as quiet as we could.” He said that it was important to keep the investigation covert to avoid alerting the subjects of the investigation or others, and, specifically in this case, it was important due to the pending election.

McCabe told us he received regular briefings on the progress of Crossfire Hurricane and discussed the investigation with Comey at regular briefings. Strzok told us the team briefed McCabe approximately 5-10 times during the investigation, and the OGC Unit Chief told us McCabe was briefed every few weeks until the election in November and less frequently thereafter. According to both Strzok and the OGC Unit Chief, these briefings provided updates on the team’s investigative activities and typically were not discussions about what steps to take. The OGC Unit Chief also said that McCabe directed the team to “get to the bottom of this as quickly as possible, but with a light footprint.”

Priestap told us that Strzok, the Intel Section Chief, and the OGC Unit Chief frequently briefed him on the investigation and kept him apprised of significant developments. In addition to approving the opening of the Crossfire Hurricane cases, Priestap told us that he was involved in discussions as to whether to seek authority under FISA to conduct electronic surveillance [REDACTED] targeting Carter Page, a subject we describe in detail in Chapter Five. Priestap said he briefed Steinbach nearly every day on the case and provided Comey or McCabe with updates on an as-needed basis.

2. Department of Justice

a. National Security Division

The Department was first notified about the opening of Crossfire Hurricane on August 2, 2016, when Priestap and the Intel Section Chief briefed several representatives from NSD, including Deputy Assistant Attorney General (Deputy AAG) George Toscas, Deputy AAG Adam Hickey, and David Laufman, who as

described previously was the CES Section Chief.¹⁸⁶ According to Laufman and his contemporaneous notes of the briefing, FBI officials described the FFG information and the four individuals the FBI had identified through its initial investigative work who were members of the campaign and had ties to Russia. Laufman told us that his impression was that the information from the FFG had “raised obvious alarm bells in the FBI” and he said the information “resonated” with him. He also said that the information the FBI provided at the briefing presented the question of whether someone in the Russian government was working with the campaign of a major party candidate to influence the U.S. elections. Laufman told us that “we certainly understood the significance of the matter and the need for further investigation” and that it would have been “a dereliction of duty and responsibility of the highest order not to commit the appropriate resources as urgently as possible to run these facts to the ground, and find out what was going on.”

After this initial briefing, Toscas contacted Deputy AAG Stuart Evans who oversaw NSD’s Office of Intelligence (OI), which prepares and files FISA applications. Evans told us that he met with Toscas, Hickey, and FBI representatives on or about August 11, 2016, concerning the opening of Crossfire Hurricane. Evans said he believed the FBI described the information from the FFG that led to the opening of the case and the FBI’s preliminary assessment that led the team to focus on the four individuals associated with the Trump campaign. He said the basis for the investigation did not strike him as “thin” at the time of this briefing or in retrospect, and the steps the FBI had taken up to that point were not dissimilar to how he had seen the FBI handle other counterintelligence cases involving insider threat information reported by a credible source. Evans told the OIG that he did not recall anyone raising the issue of seeking FISA authority targeting Carter Page at this August briefing.

Following these initial briefings, the FBI invited NSD to attend weekly meetings with the Crossfire Hurricane team. According to Evans, he and Toscas attended some of the meetings, as did representatives from CES, including Laufman, and OI. Laufman’s notes reflect that Hickey attended some of the meetings as well. According to Evans, CES and OI maintained “loose involvement and knowledge” of the status of the investigation in case the FBI requested assistance from CES on criminal legal process or from OI on a FISA application. However, Evans told us that his reaction to these meetings was that the investigation seemed “pretty slow moving,” with not much changing week-to-week in terms of the updates the FBI was providing to NSD.

According to Laufman and his deputy, the FBI did not ask CES to assist with criminal legal process at any time before the 2016 U.S. elections. In December 2016, the FBI briefed NSD officials on the status of the Crossfire Hurricane cases, and, according to Laufman’s notes, advised NSD of CD’s reorganization of the investigation. According to his notes, the FBI decided that it would be establishing a new unit or team to focus on Russian influence activities and that none of the

¹⁸⁶ Lisa Page was the other FBI representative who attended this briefing. As described earlier, Strzok was meeting with the FFG officials about their conversations with Papadopoulos on this date.

Crossfire cases had been closed “so far.” Laufman told us that he advised the FBI that CES wanted to be in a position to provide input should the FBI decide to close any of the Crossfire Hurricane cases, just to be sure the FBI had exhausted all investigative steps, but he did not recall this ever arising.

Mary McCord was NSD’s Principal Deputy AAG when Crossfire Hurricane was opened. She told us that she received a comprehensive briefing from the FBI on the investigation in January 2017, by which time she was the Acting AAG of NSD.¹⁸⁷ She said that prior to that time, she was involved in certain aspects of the investigation through OI’s assistance with the first Carter Page FISA application in September and October 2016, as well as through meetings she attended in November and December 2016 about aspects of the Manafort and Flynn cases. She said that she neither attended nor received long debriefs about the weekly Crossfire Hurricane meetings attended by other NSD officials before the election. According to McCord, as a general matter, it was typical for Department attorneys not to become directly involved in a counterintelligence investigation until the case required legal guidance or legal process.

According to McCord, by January 2017, developments in some of the cases, particularly the Flynn and Manafort cases, led to the need for a comprehensive briefing for Department officials on the different cases the FBI was pursuing, as well as for the greater involvement of prosecutors moving forward. In late February 2017, Laufman assigned a CES trial attorney (CES Trial Attorney) to assist the FBI’s Crossfire Hurricane team by providing legal guidance as needed on any of the cases. Laufman told us, and his notes reflect, that CES did not receive regular briefings on the investigation from the FBI between December 2016 and March 2017.¹⁸⁸ As we described earlier in this chapter, during this period of time, the Crossfire Hurricane investigation was decentralized, with the individual cases being handled by three different FBI field offices. Witnesses from NYFO who worked on the Carter Page investigation told us that as a result of this, there were no regular team meetings with officials at FBI Headquarters.

b. Office of the Deputy Attorney General

Sally Yates was the Deputy Attorney General (DAG) when Crossfire Hurricane was opened on July 31, 2016. Yates told the OIG that she did not specifically recall receiving a formal briefing from the FBI in the summer of 2016 about the case, or at any time before she left the Department on January 30, 2017, though she left open the possibility that such a briefing could have occurred. According to Yates, her office was typically less involved in counterintelligence investigations than criminal investigations.¹⁸⁹ Yates said that although she and others in the Office of

¹⁸⁷ McCord became the acting AAG in mid-October 2016 and continued in both roles until Dana Boente became the Acting AAG for NSD in April 2017.

¹⁸⁸ Laufman did not attend the meetings in January, February, and March 2017 that were attended by Boente, McCord, and other senior Department officials.

¹⁸⁹ Matthew Axelrod, then Principal Assistant Deputy Attorney General, told us that ODAG had less involvement in counterintelligence investigations than criminal investigations because most

the Deputy Attorney General (ODAG) attended Monday, Wednesday, and Friday morning threat intelligence briefings with the FBI Director on national security issues, typically those briefings focused on matters involving imminent national security threats and criminal cases. According to Yates, the primary counterintelligence issue for ODAG in the summer of 2016 was the broader issue of Russian interference in the elections and the possible infiltration of voting machines.

Yates told us that she did recall that following one of the morning threat intelligence briefings, Comey pulled her aside to discuss the FFG information the FBI had received regarding Papadopoulos. Yates did not recall specifically when this conversation took place, except that it was some time before she received the first Carter Page FISA application for approval.¹⁹⁰ Yates told us that she did not recall the specific details Comey provided, but did recall that they discussed why the FFG had not notified U.S. officials sooner. She said she recalled learning during that conversation that the FFG did not determine the significance of the information about Papadopoulos until the WikiLeaks release of DNC emails in July 2016. She also said that she did not recall whether Comey told her the FBI had opened an investigation in response to the FFG information. However, she said that an investigation "would be the natural consequence of that," and "[i]t would be strange not to" open an investigation given that what Papadopoulos said in May 2016 would happen, *i.e.*, the release of information damaging to then candidate Clinton, did, in fact, happen in July 2016.

We asked Comey and McCabe about any discussions they had with Yates about the FFG information. Comey told us that he did not recall providing any briefing to Yates, but that the topic was likely discussed at one of the threat intelligence briefings. Comey also told us that the FBI generally tried to keep Department leadership informed about all significant activities to include important public corruption or espionage cases concerning Russian efforts to interfere with the 2016 U.S. elections. McCabe told us that he did not recall briefing Crossfire Hurricane to Yates; however, his contemporaneous notes of a regularly scheduled meeting with the DAG on August 10 reflect that Yates was briefed on the FFG information at that time. According to McCabe, the FBI did not provide regular briefings to Yates on Crossfire Hurricane after this meeting, but the FBI provided updates on developments in the investigation to ODAG following the Attorney General's morning briefings, which Yates typically attended.

Yates told us that she did not recall specific discussions about any of the Crossfire Hurricane cases after her initial conversation with Comey, though she said she was confident that such discussions took place and thought that Tashina Gauhar, the Associate Deputy Attorney General responsible for ODAG's national security portfolio, likely had such discussions with NSD or the FBI. Yates did recall

counterintelligence investigations do not lead to prosecution and can last for years while agents gather intelligence.

¹⁹⁰ As described in Chapter Five, ODAG received the first FISA application on or about October 14, 2016.

having a conversation with McCabe regarding the ongoing money laundering investigation of Manafort (described in more detail in Chapter Nine) and about not taking any overt investigative steps before the election. She told us that even though Manafort was no longer chair of the Trump campaign at the time of this conversation, she and McCabe agreed that they did not want to do anything that could potentially impact candidate Trump. She said she did not recall having a similar conversation with McCabe or Comey about the Crossfire Hurricane cases and thought that this was because, to her knowledge, the FBI was not contemplating any overt steps in those cases before the election.

Gauhar told the OIG that she was sure she attended discussions about the Crossfire Hurricane cases, likely during regularly scheduled meetings ODAG held with NSD officials, or possibly during the regularly scheduled morning threat intelligence briefings, but she did not recall any discussions specifically. According to Gauhar, discussions she attended before the election about Russia tended to focus on the broader topic of what Russia was trying to do to influence the upcoming election. She said she did not recall the Crossfire Hurricane cases being an ongoing topic of conversation from her vantage point, until issues came up in the Flynn case in early January 2017. Gauhar also told us that she learned more about the individual Crossfire Hurricane cases and the investigation after Boente requested regular briefings in February 2017.

On January 30, 2017, Boente became the Acting Attorney General after Yates was removed, and ten days later became the Acting DAG after Jefferson Sessions was confirmed and sworn in as Attorney General. Boente simultaneously served as the Acting Attorney General on the FBI's Russia related investigations after Sessions recused himself from overseeing matters "arising from the campaigns for President of the United States." Boente told the OIG that after reading the January 2017 Intelligence Community Assessment (ICA) report on Russia's election influence efforts (described in Chapter Six), he requested a briefing on Crossfire Hurricane. That briefing took place on February 16, and Boente said that he sought regular briefings on the case thereafter because he believed that it was extraordinarily important to the Department and its reputation that the allegations of Russian interference in the 2016 U.S. elections were investigated. Boente told us that he also was concerned that the investigation lacked cohesion because the individual Crossfire Hurricane cases had been assigned to multiple field offices. In addition, he said that he had the impression that the investigation had not been moving with a sense of urgency—an impression that was based, at least in part, on "not a lot" of criminal legal process being used. To gain more visibility into Crossfire Hurricane, improve coordination, and speed up the investigation, Boente directed ODAG staff to attend weekly or bi-weekly meetings with NSD for Crossfire Hurricane case updates.

Boente's calendar entries and handwritten notes reflect multiple briefings in March and April 2017. Boente's handwritten notes of the March meetings reflect that he was briefed on the predication for opening Crossfire Hurricane, the four individual cases, and the status of certain aspects of the Flynn case. Boente told us that when he was briefed on the predication for the investigation, he did not question it and did not have any concerns about the decision to open Crossfire

Hurricane. Boente's handwritten notes of the meetings focused on the Flynn investigation and potential criminal violations of the Logan Act, the FBI's efforts to corroborate information contained in the source reporting that we describe in Chapters Four and Six, and the FBI's investigative efforts in the Carter Page and Manafort cases.¹⁹¹ According to Boente's handwritten notes, he was last briefed on Crossfire Hurricane the day after Rod Rosenstein was sworn in as DAG on April 26, 2017.

Rosenstein told us that he recalled being briefed three times during his initial two weeks as DAG on aspects of the investigation and Russian efforts to influence the 2016 U.S. elections. The first briefing occurred within a day or two of being sworn in and was provided by Boente and then Principal Associate Deputy Attorney General James Crowell. That briefing was followed by a meeting with Comey, McCord, and several others from the FBI and NSD. Rosenstein said he also received a briefing from representatives of the USIC that included an overview of Russian interference with the U.S. elections.

Rosenstein told us that during the initial Department briefings he was most focused on information that had developed into criminal investigations, which he believed were going to be more immediately relevant to his work as DAG. Rosenstein said he did not recall the details provided during the briefings regarding Carter Page other than Page was suspected of being a foreign agent. Rosenstein said he also did not recall the details of what was explained to him about the predication for opening the Crossfire Hurricane investigation.¹⁹² He said he would have been focused on the status and direction of the cases at the time of the briefings, and not as much on any historical information concerning their initiation.

In Chapters Five and Seven, we describe ODAG's role in the four Carter Page FISA applications. As described in Chapter Seven, Yates approved the first Carter Page FISA application on October 21, 2016 and FISA Renewal Application No. 1 on January 12, 2017, Boente approved FISA Renewal Application No. 2 on April 7, 2017, and Rosenstein approved the FISA Renewal Application No. 3 on June 29, 2017.

c. Office of the Attorney General

Loretta Lynch was sworn in as Attorney General on April 27, 2015. Lynch told the OIG that she did not recall receiving a briefing on the Crossfire Hurricane investigation. Lynch's National Security Counselor told us that she did not receive any briefing on the case and did not know if Lynch received a briefing. Lynch said

¹⁹¹ The Logan Act, Title 18 U.S.C. § 953, makes it a crime for a citizen to confer with foreign governments against the interest of the United States. Specifically, it prohibits citizens from negotiating with other nations on behalf of the United States without authorization.

¹⁹² Rosenstein told us that at some later point—most likely in 2018—FBI officials represented to him that the basis for opening Crossfire Hurricane was the FFG information concerning Papadopoulos, and nothing else. He told us that he did not receive any information from the FBI indicating otherwise. He also told us that he did not have an opinion about whether the FFG information provided a sufficient basis to open the case.

she did not recall providing any guidance or direction to the FBI on the investigation, or having any awareness of the Carter Page FISA applications before she left the Department on January 20, 2017. She told us that her office generally did not oversee counterintelligence investigations, but that sometimes counterintelligence issues were raised during morning threat intelligence briefings. She said that she remembered knowing that Papadopoulos was a concern for the FBI, but she did not recall learning the specific information that came from the FFG relating to him.

Office of the Attorney General (OAG) officials told us that they did not read the Carter Page FISA applications or provide any feedback to OI, but email communications reflect that they were aware the FBI was seeking FISA authority targeting Carter Page before the first application was filed. These officials included Lynch's Chief of Staff and her National Security Counselor. The Chief of Staff told us she had no recollection of the email that referenced the FISA application. The National Security Counselor told us that she believed she would have advised the Attorney General of the application, but she did not have any specific recollection of having done so.

Lynch told the OIG that after one of her weekly security meetings at FBI Headquarters in the spring of 2016, Comey and McCabe pulled her aside and provided information about Carter Page, which Lynch believed they learned from another member of the Intelligence Community. According to Lynch, Comey and McCabe provided her with information indicating that Russian intelligence reportedly planned to use Page for information and to develop other contacts in the United States, and that they were interested in his affiliation with the campaign. Lynch told us that her understanding was that this information from Comey and McCabe was "preliminary" in that they did not state that any decisions or actions needed to be taken that day. She said that they discussed the possibility of providing a defensive briefing to the Trump campaign, but she believed it was "preliminary" and "something that might happen down the road." According to Lynch, she did not recall receiving any further updates on this issue following this conversation. Lynch's recollection of what Comey and McCabe told her is consistent with information referenced in connection with the 2015 SDNY indictment and subsequent conviction of a Russian intelligence officer referenced earlier in this chapter.

Comey told the OIG that he did not recall having such a conversation with Lynch, and that he did not think it was possible for such conversation to have occurred in the spring of 2016 because the FBI did not receive the FFG information concerning Papadopoulos until late July (as we described earlier in this chapter). He also said that he did not recall himself having any knowledge of Carter Page's existence until the middle of 2016.¹⁹³ Similarly, McCabe told us that he did not

¹⁹³ The OIG was unable to question Comey further using classified details Lynch described to us because, as noted in Chapter One, Comey chose not to have his security clearances reinstated for our interview. Internal email communications reflect that in April 2016 NYFO prepared summaries of the information that ultimately led NYFO to open a counterintelligence investigation on Carter Page on

recall having any knowledge of Carter Page at this time. He told us he had no recollection of briefing Lynch in the spring of 2016 about Carter Page and did not know Carter Page was the subject of an open investigation in NYFO.

3. White House Briefings

Lynch told us that in her interactions with the White House in 2016, she did not recall substantive discussions about the Crossfire Hurricane investigations but did recall discussions about the broader topic of Russian interference in the 2016 U.S. elections. Lynch said that the FBI, and not the Attorney General, would brief the White House on the investigation if the FBI was able to share information it received, but she did not recall that occurring. Yates also told us she did not attend any White House briefings where Crossfire Hurricane or the Carter Page FISA application was briefed or discussed, and she had no knowledge of whether any such meetings occurred.

Priestap told the OIG that the FBI does not routinely brief ongoing cases to the White House with the exception of mass shootings, major terrorist attacks, or intelligence that suggests an imminent attack on the United States. Priestap said that due to certain national security considerations, information from ongoing investigations may also need to be briefed to the White House by the Director.

Comey told us that he received no requests from the White House to investigate members of the Trump campaign or inquiries about whether the campaign was involved with the efforts by the Russians to interfere in the 2016 U.S. elections. Comey said that he recalled generally the administration's interest in what the FBI was doing as a member of the USIC to understand and defeat Russia's efforts to interfere with the elections. In fact, according to Strzok, the White House requested a briefing from the USIC in the fall of 2016 about actions the Russians were taking to interfere in the elections. On September 2, 2016, Lisa Page and Strzok exchanged the following text:

9:41 a.m., Strzok to Lisa Page: "Checkout my 9:30 mtg on the 7th"

9:42 a.m., Lisa Page to Strzok: "I can tell you why you're having that meeting."

9:42 a.m., Lisa Page to Strzok: "It's not what you think."

9:49 a.m., Strzok to Lisa Page: "TPs [Talking Points] for D [Director]?"

9:50 a.m., Lisa Page to Strzok: "Yes bc POTUS wants to know everything we are doing."

Strzok told us that these texts referred to the request by the White House to know everything the USIC knew about what Russia was doing to interfere in the 2016 U.S. elections and did not refer to the Crossfire Hurricane cases investigating

April 6, 2016 (described previously), and provided them to CD officials at Headquarters to be used for a "Director's note" and a separate "Director's Brief" to be held on April 27, 2016.

U.S. subjects. Strzok told us that he never attended any White House briefings about Crossfire Hurricane.

McCabe's notes from a morning meeting with Comey and others in late July 2016 reflect that McCabe learned from Comey during the meeting that another U.S. government agency had briefed President Obama on intelligence that agency had suggesting that a RIS was engaged in covert actions to influence the U.S. presidential election in favor of Trump. McCabe told us he did not attend this White House briefing; however, based on his notes, he said he did not believe the FFG information would have been discussed during this meeting, and our review of his notes did not indicate otherwise. According to McCabe's notes of what he had been told by Comey, President Obama stated that the FBI should think about doing "defensive briefs." The notes do not provide any further details about what Obama said regarding defensive briefings, and McCabe told us he did not recall that any further details were provided to him. However, McCabe said he surmised from his notes that the briefings under discussion were to be given to the Trump campaign. As more fully described in Chapter Ten, the FBI participated in ODNI strategic intelligence briefings that were provided to members of both the Trump campaign and the Clinton campaign, including the candidates, in August and September 2016. However, those were not defensive briefings and did not address the allegations contained in the FFG information.

When we asked Comey about meetings with the White House concerning Crossfire Hurricane, he said that although he did not brief the White House about the investigation, he did mention to President Obama and others at a meeting in the Situation Room that the FBI was trying to determine whether any U.S. person had worked with the Russians in their efforts to interfere in the 2016 U.S. election.¹⁹⁴ Comey said he thought it was important that the President know the nature of the FBI's efforts without providing any specifics. Comey said although he did not recall exactly what he said, he may have said there were four individuals with "some association or connection to the Trump campaign." Comey stated that after he provided this information, no one at the meeting responded or followed up with any questions. Comey did not recall specifically when this meeting took place, but believed it may have been in August 2016. We were unable to determine whether this meeting was part of the same meeting reflected in McCabe's notes discussed above.

IV. Investigative Steps in Crossfire Hurricane Prior to Receipt of Christopher Steele Reporting on September 19

According to FBI officials, the early investigative steps taken in Crossfire Hurricane were structured to maintain a close-hold on the investigation and avoid any impact on the 2016 U.S. elections. FBI officials told us that no steps were

¹⁹⁴ Comey told us that this meeting was attended by then Chief of Staff Dennis McDonough, then National Security Advisor Susan Rice, then Director of National Intelligence (DNI) James Clapper, then CIA Director John Brennan, and then Director of the National Security Agency Michael Rogers.

taken to investigate anyone associated with the Trump campaign prior to the opening of Crossfire Hurricane on July 31.¹⁹⁵ Department officials including Rosenstein, Evans, Laufman, and Gauhar said they did not learn anything at any time suggesting otherwise. We reviewed emails of senior CD officials from the 2 months prior to the opening of Crossfire Hurricane and did not find any communications suggesting any investigative actions relating to Trump campaign personnel were taken prior to July 31, 2016, with the exception of the pre-existing Page and Manafort cases discussed previously.

Anderson told us that the investigation began on July 31 with covert investigative techniques to be "very quiet" prior to the election. We were told that the team's concern was that if the information about the investigation became public, it would disrupt the investigative efforts and could potentially impact the 2016 U.S. elections. Anderson also told us that counterintelligence investigations are typically "conducted in the dark" because any public confirmation of the existence of the investigation "might alert the hostile foreign power...that we were onto them." She also said that early on in the investigation, FBI managers overseeing the Crossfire Hurricane team "took off the table any idea of legal process" in conducting the investigation, because the FBI was "trying to move very quietly." The FBI did not use national security letters or compulsory process prior to obtaining the first FISA orders.

At the outset of the investigation, as described earlier in this chapter, Strzok and SSA 1 traveled to verify the FFG information while analysts conducted open source and database research on the Crossfire Hurricane subjects and monitored their travel. Analysts also developed profiles on each of the four subjects and reviewed FBI files for information and to identify potential FBI CHSs with useful contacts for the investigation.¹⁹⁶ Additionally, almost immediately after opening the Page, Papadopoulos, and Manafort investigations on August 10, the case agent assigned to the Carter Page investigation, Case Agent 1, contacted OGC about the possibility of seeking FISA authority for Carter Page. As we discuss in Chapter Five, FBI documents indicate that by late August, Case Agent 1 had been told that he had not yet presented enough information to support a FISA application targeting Carter Page.

The FBI also sent names of individuals associated with the Trump campaign to other U.S. government agencies and a foreign intelligence agency and requested any information about those individuals. McCabe said that requesting a name trace from other U.S. government agencies is a standard step in counterterrorism and counterintelligence cases that assists investigators by providing information on the

¹⁹⁵ As referenced in Chapter Nine, prior to his involvement with the Trump campaign, Manafort was the subject of a federal criminal investigation by the Department for alleged white collar offenses. Further, as referenced earlier in this chapter, prior to his involvement with the Trump campaign, Carter Page was the subject of a NYFO counterintelligence investigation for his contacts with Russian intelligence officers.

¹⁹⁶ As described in Chapter Ten, early in the investigation, the Crossfire Hurricane team discovered that they had an existing FBI CHS who had previously interacted with three of the named subjects of the investigation.

kind of network surrounding a person in whom the FBI is interested. He told us that the FBI requests a name check on an individual who is the subject of an investigation, or who the FBI is considering as a subject, but is not certain that an investigation is warranted. McCabe said that the FBI also uses the information received from such name checks to eliminate individuals as subjects. The FBI received information from the name trace requests and serialized that information to the Crossfire Hurricane case file.

As we describe in Chapter Five, on or about August 17, 2016, the Crossfire Hurricane team received information from another U.S. government agency advising the team that Carter Page had been approved as an operational contact for the other agency from 2008 to 2013 and detailing information that Page had provided to the other agency regarding Page's past contacts with certain Russian intelligence officers. However, this information was not provided to NSD attorneys and was not included in any of the FISA applications. We also found no evidence that the Crossfire Hurricane team requested additional information from the other agency prior to submission of the first FISA application in order to deconflict on issues that were relevant to the FISA application.

FBI officials told us that the early steps in the investigation focused on developing information about the four subjects and conducting CHS operations to obtain relevant subject specific information. According to McCabe, using sources is a logical first step in an investigation to learn what information the FBI may have access to that could be of value in the investigation. Agents told us that CHS operations can be an effective tool for quickly obtaining information, including, for example, the telephone numbers and email addresses of the named subjects. In determining how to use CHSs in the Crossfire Hurricane investigation, SSA 1 and the case agents told the OIG that they focused their CHS operations on the predicated information and the four named subjects. Case Agent 1 told the OIG that the team "had a very narrow mandate" and that was "a mandate to look at these four individuals...and see if there's any potential cooperation between themselves and the Russian government...that was our goal in that investigation." He added that they were focused on the information provided by the FFG and "we wanted to prove or disprove it, [as] best we could" but also "wanted to make sure that it didn't get broadcast out and we didn't harm the electoral process." Case Agent 2 stated that the core of the investigation was "literally looking at the predication and saying, okay, who reasonably could have had been in a position to receive suggestions from the Russians?"

As summarized in Chapter Ten, the Crossfire Hurricane team conducted three CHS operations prior to the team's initial receipt of Steele's reporting on September 19, 2016. All three CHS operations were with individuals who were still with the Trump campaign. The first was a consensually recorded meeting in August 2016 between Carter Page and an FBI CHS. During the meeting, Page discussed his recent trip to Moscow, a pending "October Surprise" discussed further in Chapters Five, Seven, and Ten, and his involvement with the Russian energy company Gazprom. Page also told the CHS that he had "literally never met" Paul Manafort, had "never said one word to him," and that Manafort had not responded to any of

Carter Page's emails.¹⁹⁷ SSA 1 and Case Agent 1 told the OIG that this meeting was important for the investigation as it helped the team determine where Page lived and what he was currently working on as well as developing a successful contact between an established FBI source and one of the Crossfire Hurricane targets.

The second CHS operation took place in September 2016, between an FBI CHS and a high-level official in the Trump campaign who was not a subject of the investigation. Case Agent 1 told the OIG that the plan for this operation was for the CHS to ask the high-level official about Papadopoulos and Carter Page "because they were...unknowns" and the Crossfire Hurricane team was trying to find out how "these two individuals who are not known in political circles...[got] introduced to the campaign," including whether the person responsible for those introductions had ties to RIS. During the consensually recorded meeting, the CHS raised a number of issues that were pertinent to the investigation, but received little information from the high-level official in response.¹⁹⁸

The third CHS operation took place in September 2016, and involved Papadopoulos. The Crossfire Hurricane case agents told the OIG that, during this CHS operation, they were trying to recreate the conditions that resulted in Papadopoulos's comments to the FFG official about the suggestion from Russia that it could assist the Trump campaign by anonymously releasing derogatory information about then candidate Clinton, which we described earlier in this chapter. Among other things, when the CHS asked Papadopoulos whether help "from a third party like WikiLeaks for example or some other third party like the Russians, could be incredibly helpful" in securing a campaign victory, Papadopoulos responded that the "campaign, of course, [does not] advocate for this type of activity because at the end of the day it's...illegal." Papadopoulos also stated that the campaign is not "reaching out to WikiLeaks or to whoever it is to tell them please work with us, collaborate because we don't, no one does that..."¹⁹⁹

Thereafter, on September 19, 2016, the Crossfire Hurricane team received information from an FBI source (Christopher Steele) on election matters that became an important part of the Crossfire Hurricane investigation and the FBI seeking FISA authority targeting one of the Crossfire Hurricane subjects, Carter Page. The information the Crossfire Hurricane team received from Steele and the team's use of the information is described in the next chapter.

¹⁹⁷ As we discuss later in this report, Carter Page's comment about his lack of a relationship with Manafort was relevant to one of the allegations in the Steele reporting that was relied upon in the Carter Page FISA applications, but information about the August 2016 CHS meeting was not shared with the OI attorneys handling the FISA applications until June 2017.

¹⁹⁸ We found no evidence that the information learned at this meeting was put to use by the Crossfire Hurricane team or disclosed to the OI attorneys handling the Carter Page FISA applications.

¹⁹⁹ The Crossfire Hurricane team did not provide information about this meeting to OI attorneys handling the Carter Page FISA applications. As described in Chapter Eight, OI learned of the information from ODAG in May 2018.

Figure 3.1
FBI Chain of Command and Legal Support
for the Crossfire Hurricane Investigation
July 31, 2016 to December 2016

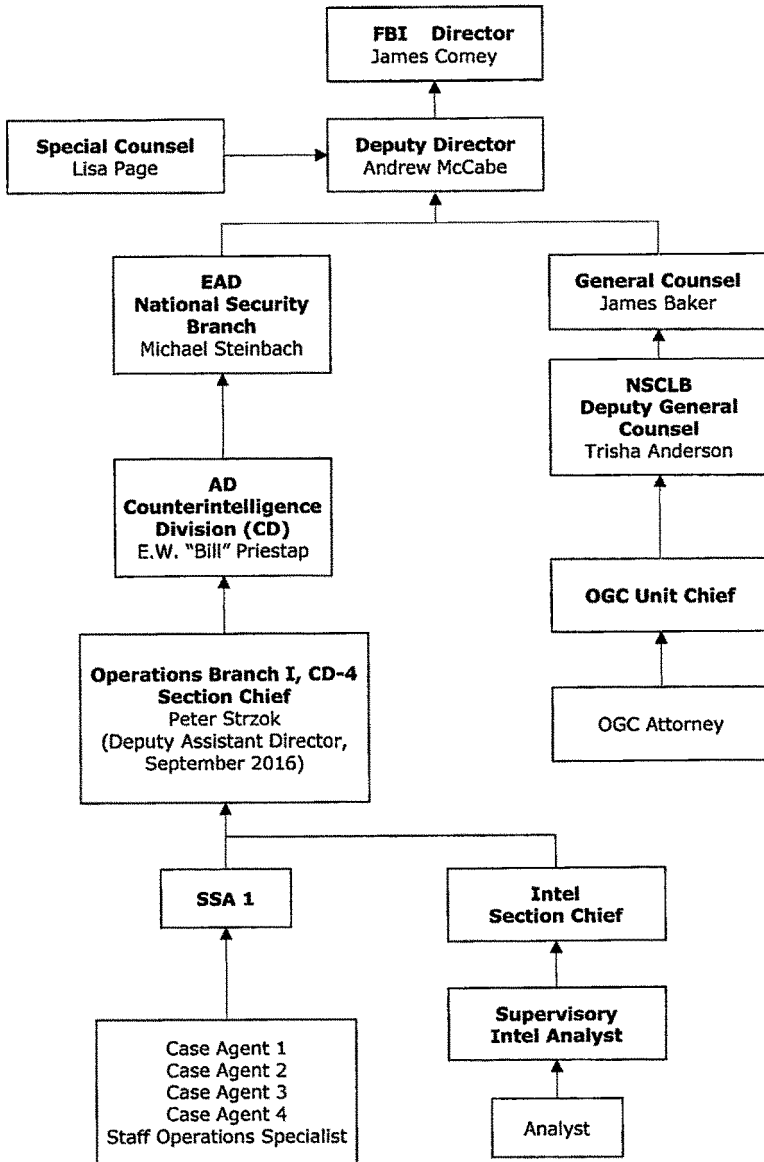


Figure 3.2
FBI Chain of Command and Legal Support
for the Crossfire Hurricane Investigation
January 2017 to April 2017

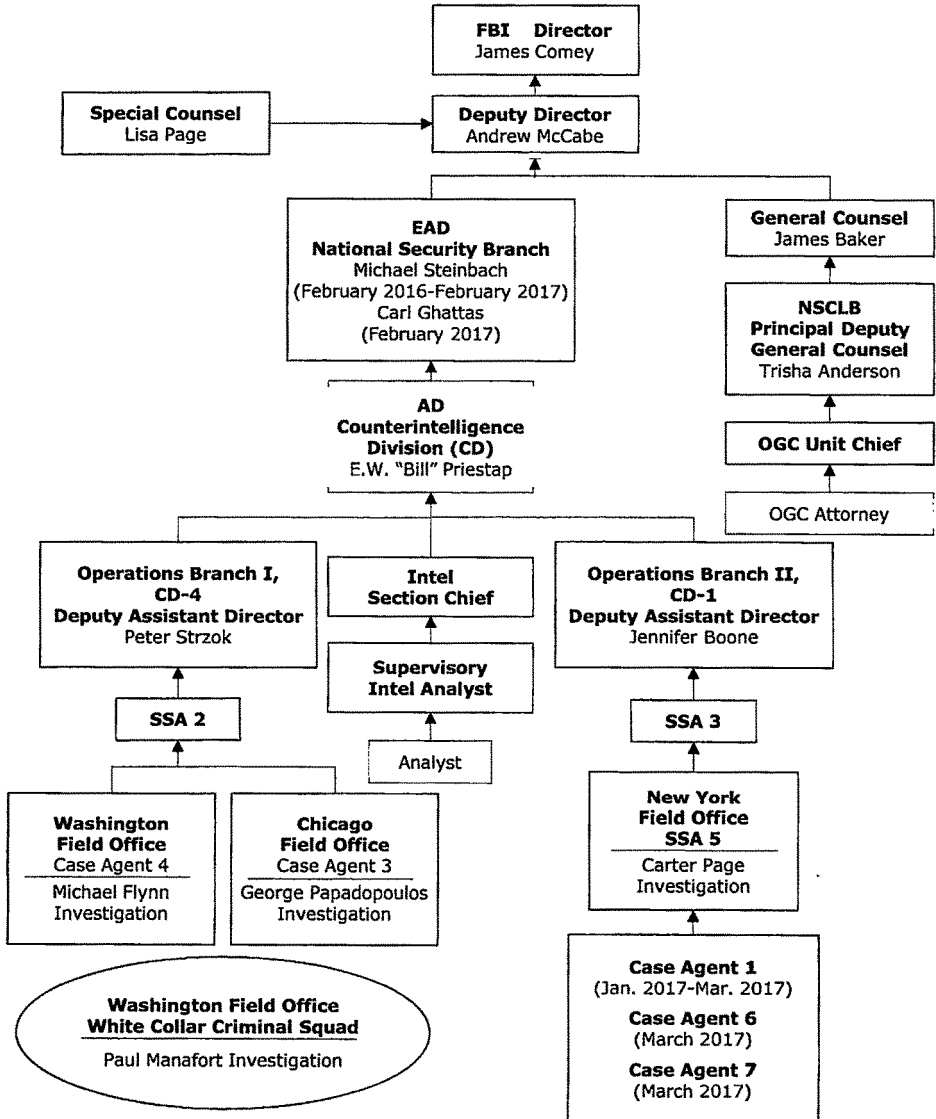
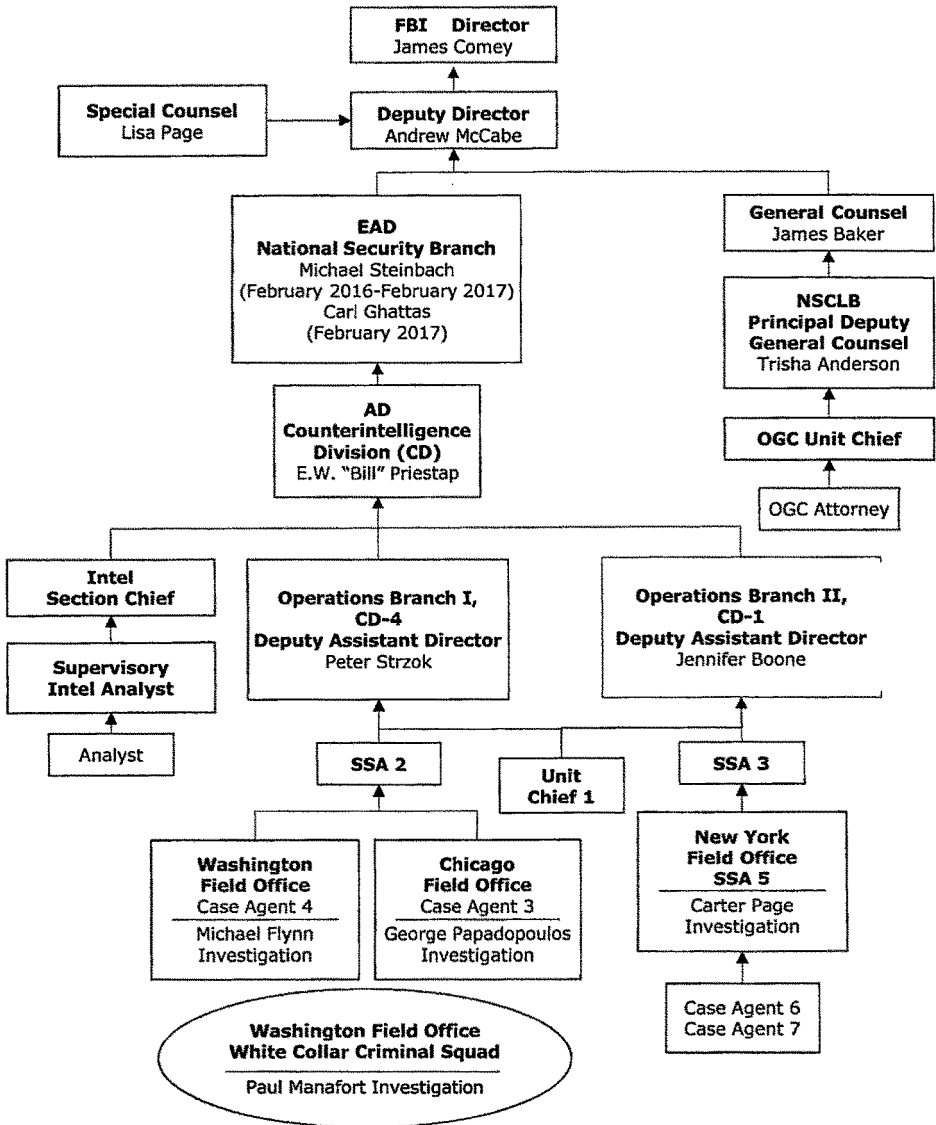


Figure 3.3
FBI Chain of Command and Legal Support
for the Crossfire Hurricane Investigation
April 2017 to May 17, 2017



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CHAPTER FOUR

THE FBI'S RECEIPT AND EVALUATION OF INFORMATION FROM CHRISTOPHER STEELE PRIOR TO THE FIRST FISA APPLICATION

In this chapter, we describe the FBI's relationship with Christopher Steele, who furnished information that was used in the Carter Page FISA applications (Steele is referred to in those applications as "Source #1"). Steele is a former intelligence officer [REDACTED] who, following his retirement, opened a consulting firm and furnished information to the FBI beginning in 2010, primarily on matters concerning organized crime and corruption in Russia and Eastern Europe. In 2013, the FBI prepared paperwork to enable it to open Steele as an FBI CHS.²⁰⁰ We examine the considerations that led the FBI to conclude that Steele was a reliable CHS before submitting the first FISA application. According to FBI personnel we interviewed, these considerations included Steele's past record of furnishing information to the FBI; recommendations from persons familiar with his work; Steele's extensive experience with matters involving Russia; and the assessment by Steele's FBI handling agent. We also examine Steele's development of reporting concerning the 2016 U.S. elections, his initial production of that information to the FBI, the FBI's early efforts to assess the reporting, and Steele's contacts with the media prior to the first FISA application.

I. Steele and His Assistance to the FBI Prior to June 2016

A. Introduction to Handling Agent 1 and Early Assistance

Steele is a former intelligence officer of [REDACTED] [REDACTED] who, following his retirement, was enrolled by the FBI as a CHS furnishing information to the FBI primarily on matters concerning organized crime and corruption in Russia and Eastern Europe. Steele told the OIG that during his service as an intelligence officer [REDACTED], he developed a particular expertise on Russia and was stationed for a period in Moscow. Steele stated that, after he stopped [REDACTED], he formed a consulting firm specializing in corporate intelligence and investigative services.

Steele's introduction in 2010 to the FBI agent who later became Steele's primary handling agent (Handling Agent 1) was facilitated by Department attorney Bruce Ohr, who was then Chief of the Organized Crime and Racketeering Section in the Department's Criminal Division in Washington, D.C. Ohr told the OIG that he first met Steele in 2007 when he attended a meeting hosted by a foreign government during which Steele addressed the threat posed by Russian organized crime. Ohr said that, after this first meeting with Steele, he probably met with him less than once a year, and after Steele opened his consulting firm, Orbis Business Intelligence, he furnished Ohr with reports produced by Orbis for its commercial clients that he thought may be of interest to the U.S. government. Ohr said that he

²⁰⁰ As we describe below, Steele contends that he was never a CHS for the FBI but rather that his consulting firm had a contractual relationship with the FBI.

eventually put Steele in contact with Handling Agent 1, with whom Ohr had previously worked.

Handling Agent 1 told the OIG that he first met Steele in the spring of 2010 during a trip abroad with Ohr.²⁰¹ He recalled that prior to the meeting, Ohr described Steele's background, including his work as an intelligence officer, assignment to Moscow, and Russia expertise. Based on his past experiences working with Ohr, Handling Agent 1 said he respected Ohr's judgment and had no reason to doubt his representations about Steele. Handling Agent 1 told us that Steele had relationships with reputable clients, and this fact bolstered Handling Agent 1's view of Steele's credibility. He also said that he had met with some of Steele's clients and knew of others, and that a representative of one of Steele's clients informed him that Steele "was solid and that his reporting was very interesting and good." Handling Agent 1 stated, however, that with the exception of Steele's work for Fusion GPS, a Washington, D.C. investigative firm, he did not request information from Steele about his firm's clients.²⁰²

Handling Agent 1 said he came away from his first meeting with Steele favorably impressed. Handling Agent 1 told the OIG that Steele was very professional and knowledgeable and "clearly an expert on Russia," including the activities of Russian oligarchs and Russian criminal networks. Handling Agent 1 told the OIG that although he was interested in the information from Steele, as of 2010 he was not yet prepared to enter into a formal CHS relationship with Steele. Handling Agent 1 explained that it is administratively burdensome to open a CHS who resides overseas and that prior to 2013 he was not receiving a "steady stream" of information from Steele. Handling Agent 1 said that following their initial meeting, Steele would provide information only every couple of months and that he met with him only infrequently, such as when Steele visited the United States. Steele was not compensated by the FBI during this period. Steele told us that this information originated from work performed for Orbis's private clients.

Handling Agent 1 stated that in the summer of 2010 Steele introduced him to a contact who had allegedly obtained information about corruption in the International Federation of Association Football (FIFA). According to Handling Agent 1, but for Steele's assistance in arranging this meeting, the FBI would not have had the impetus to open the FIFA investigation in 2010. The lead FBI agent assigned to the FIFA matter told us that after Russia won the right to host the 2018 World Cup in September 2012, he approached Handling Agent 1 to request permission to examine possible corruption in the bidding process. According to the agent, Handling Agent 1 recalled his earlier interview with the contact that he met through Steele, retrieved a copy of the FBI FD-302 form memorializing the interview, and instructed the agent to open a case. The agent said that Steele's

²⁰¹ Steele told us that he believed he met Handling Agent 1 and Ohr together at a conference in Europe before he left government service. Handling Agent 1 stated that his first meeting with Steele did not occur at a conference.

²⁰² Handling Agent 1 said he expected Steele to alert him if any of the clients were "bad actors," such as organized crime figures or others that would be of concern to the FBI. Handling Agent 1 stated that Steele never provided any such notification to him.

role in the FIFA investigation was limited to recommending to Handling Agent 1 that the FBI talk to the contact, whose information eventually proved valuable and helped predicate the opening of the investigation. The agent said he did not recall having any communication with Steele after the investigation's opening.

Additionally, Handling Agent 1 told us that Steele provided two other investigative leads to the FBI in connection with the FIFA investigation. First, in July 2011, Steele provided a report that summarized an alleged conversation between then Russian President Dmitry Medvedev and then Prime Minister Vladimir Putin in which, according to the report, Putin acknowledged that a Russian oligarch had bribed the President of FIFA so that Russia could win the right to host the World Cup tournament in 2018. Second, in 2012, Steele introduced the FBI to two British officials with information concerning Russia's alleged efforts to bribe FIFA executives. Our review of Steele's Delta file also revealed that Steele furnished the FBI with a report dated June 2015 that quoted a Kremlin official as having admitted that the Kremlin bribed FIFA executives in order to secure rights to host the 2018 World Cup.²⁰³

According to the U.S. Attorney's Office for the Eastern District of New York, as of December 2019, the FIFA investigation has resulted in 26 individual guilty pleas, 2 trial convictions, 4 corporate guilty pleas, and one corporate deferred prosecution agreement. Total forfeitures in the matter exceed \$120 million. The OIG interviewed a prosecutor on the FIFA case who told us that Steele did not provide testimony in any court proceeding. Handling Agent 1 also told the OIG that Steele's information was not used to obtain any compulsory legal process in the FIFA case.

In addition to leads provided for the FIFA investigation, we were advised by the FBI that Steele furnished information about Russian oligarchs, some of whom were under investigation by the FBI. For example, we learned that, in October 2013, Steele provided lengthy and detailed reports to the FBI on three Russian oligarchs, one of whom was among the FBI's most wanted fugitives. According to an FBI document, an analyst who reviewed Steele's reporting on this fugitive found the reporting "extremely valuable and informative" and determined it was corroborated by other information that the FBI had obtained.

B. The FBI Opens Steele as a CHS in October 2013

Handling Agent 1 told the OIG that in late October 2013, he concluded that the FBI needed to enroll Steele as a CHS. By that time, Steele had been providing information to the FBI intermittently for 3 years without compensation. According to Handling Agent 1, the volume of Steele's reporting had increased and involved persons of interest to the FBI, such as the oligarchs noted above, and Handling Agent 1 wanted to task Steele to collect additional information. Handling Agent 1

²⁰³ As described in Chapter Two, the FBI maintains an automated case management system for all CHS records, which the FBI refers to as "Delta." The Delta file for each CHS contains all of the personal and administrative information about the CHS, as well as sub-files for unclassified reporting, classified reporting, validation documentation, and payment records.

said that he also wanted to compensate Steele for his fruitful lead in the FIFA investigation. Another consideration for Handling Agent 1 was Handling Agent 1's pending transfer in late spring 2014 to an FBI office in a European city to serve as the Legal Attaché (Legat). Handling Agent 1 said that the logistics of obtaining and using information from Steele while Handling Agent 1 was stationed abroad would be easier if Steele was formally opened as a CHS.

Steele told us that after Handling Agent 1 indicated he wanted to begin tasking Steele to collect information and provide compensation, Steele explained to Handling Agent 1 that [REDACTED] and that any relationship would need to be between the FBI and Steele's consulting firm. Steele said that Handling Agent 1 contacted [REDACTED] and obtained a "green light" to proceed. Prior to opening Steele as a CHS, Handling Agent 1 contributed information to a memorandum from the FBI's Legal Attaché (Legat) in Steele's home country notifying [REDACTED] of Steele's proposed relationship with the FBI. The memorandum to [REDACTED] included the following:

Our New York Office is currently working with Christopher Steele, [REDACTED]. Mr. Steele is providing the FBI with information to support several ongoing criminal investigations involving transnational organized crime organizations. This information, provided primarily through Mr. Steele's privately owned company, Orbis Business Intelligence, is necessary to support our efforts to fully identify subjects with ties to European, Eurasian and Asian organized crime organizations and whose activities directly impact the United States.

In order to properly protect this information and Mr. Steele's relationship with the FBI, our New York Office will treat any material provided as information obtained through a Confidential Human Source.

Handling Agent 1 told us that he did not recall seeing a draft of the memorandum before it was sent by the Legat. The author of the memorandum, an FBI Assistant Legal Attaché (ALAT 1), told us that Handling Agent 1 probably provided him with the text of the memorandum because he was not familiar with the FBI's use of Steele.

In addition, Steele made available for our review a letter on his consulting firm's letterhead from Steele [REDACTED] dated approximately around the same time as the FBI's memorandum [REDACTED]. The letter explained that Steele's consulting firm is expected to enter into "a proposed commercial relationship" with the FBI. A substantial portion of the letter described the consulting firm and its work, and the letter stated that information furnished to the U.S. government would come from the firm.

On October 30, 2013, Handling Agent 1 and another agent completed the paperwork to open Steele as an FBI CHS. As required by FBI policy, Handling Agent 1 provided the FBI's standard "admonishments" to Steele at the outset of

Steele's enrollment as a CHS and on an annual basis thereafter. The admonishments advised Steele, for example, that he was not authorized to commit illegal acts, that he must provide truthful information to the FBI, and that he must follow the instructions of the FBI. According to FBI records, Steele signed paperwork captioned "CHS admonishments" acknowledging his receipt of the admonishments for the period covering Crossfire Hurricane, and signed CHS payment receipts using an FBI assigned payment codename.²⁰⁴

Handling Agent 1 told the OIG that he instructed Steele not to divulge his relationship with the FBI to others, although the FBI's standard written CHS admonishments do not include such an instruction. According to Handling Agent 1, he told Steele not to share the information he was providing to the FBI with others, with one caveat. Handling Agent 1 explained that Steele would sometimes share with the FBI reports he had generated for his consulting firm's clients, and in that circumstance the clients would also be privy to the information that the FBI had obtained. Handling Agent 1 said he did not provide a specific instruction to Steele that he was not to disclose information that he was sharing with the FBI to the media. According to Handling Agent 1, he did not need to give that specific instruction because that prohibition was addressed by instructing Steele not to share the information he was providing to the FBI with others except for clients.

Steele told us, however, that he was never a CHS for the FBI, and that he advised Handling Agent 1 that he could not be a "clandestine source" due to his prior service as an intelligence officer of another country. Steele made available for the OIG's review documentation referring to such a prohibition. Steele stated that he never recalled being told that he was a CHS and that he never would have accepted such an arrangement, despite the fact that he signed FBI admonishment and payment paperwork indicating that he was an FBI CHS.²⁰⁵ He also said that his relationship with the FBI was not that of a "confidential human source" because he would meet with Handling Agent 1 at Steele's office as well as in the presence of third parties, which included at times his Orbis business partner. Instead, he explained that the relationship with the FBI was "contractual" with his firm and that he was paid by the FBI "on a results basis" for information his firm furnished in response to taskings.²⁰⁶ Steele said that he was told by Handling Agent 1 that such a relationship with the FBI was "unorthodox and groundbreaking," and that Handling Agent 1 was interested in similar relationships with others. Steele told us that he discussed with Handling Agent 1 how the FBI could be a client of his firm.

²⁰⁴ The FBI-1057 memorializing Steele's receipt of admonishments in 2016 states that Handling Agent 1 "verbally admonished the CHS with CHS admonishments, which the CHS fully acknowledged, signed and dated." The FBI could not locate the signed admonishment form, however.

²⁰⁵ During his time as an FBI CHS, Steele received a total of \$95,000 from the FBI. We reviewed the FBI paperwork for those payments, each of which required Steele's signed acknowledgment. On each document, of which there were eight, was the caption "CHS's Payment" and "CHS's [REDACTED]." A signature page was missing for one of the payments.

²⁰⁶ FBI records that we reviewed included an invoice dated January 25, 2016, from Steele's consulting firm requesting payment "[f]or consultancy services, including 7 meetings with contact, briefing, and reports" as well as for travel and accommodations. The FBI paid Steele (not the consulting firm) \$15,000 in May 2016 for services rendered from July 2015 through February 2016.

According to Steele, the issue of the nature of his relationship with the FBI "was never really resolved and both sides turned a blind eye to it. It was not really ideal." However, he said that because the FBI "was keen to stay in touch and draw upon our work" the relationship continued without fully resolving the question of his status.

Among the material that Steele made available to the OIG for review prior to and after his OIG interview were three memoranda written by Steele, that Steele said he maintained in his firm's files, which summarized meetings in 2010 involving Steele, Handling Agent 1, and Ohr. The memoranda reflect that Steele indicated during those meetings that he was not amenable to becoming a CHS and that he wanted the FBI to enter into a consulting agreement with his firm. However, also included in the materials was an undated draft letter from Steele to Handling Agent 1 describing events that post-dated the three earlier memoranda, and stating that although Steele preferred that the FBI enter into a contract with his firm, he was prepared to sign a contract with the FBI as an individual. According to Steele, he did not recall sending the letter but the letter reflected his willingness to accommodate the FBI's administrative requirements. He stated that his firm would not handle the FBI's work as anything other than as an account with the firm. We did not find a copy of these memoranda or the letter in Steele's Delta file. Handling Agent 1 told us that Steele never presented him with copies of these materials.

In light of Steele's assertions, we asked Handling Agent 1 whether Steele ever advised him that he was prohibited from working for the FBI as a CHS and whether the FBI ever had a contract with Steele's firm. Handling Agent 1 responded "no" to both questions. We also asked Handling Agent 1 about the memorandum described above that was sent by ALAT 1 in 2013 to [REDACTED], especially its description that information from Steele would be "provided primarily through [Steele's] privately owned company," and that the FBI would "treat any material provided as information obtained through a Confidential Human Source." We wanted to know the rationale for including these statements if in fact the purpose of the memorandum was to alert [REDACTED] that Steele was going to be working as a CHS for the FBI. Handling Agent 1 told us that he believed the FBI was trying to be as inclusive as possible in its description of Steele and therefore referenced information about Steele's firm, even though the FBI never had a relationship with the firm. Handling Agent 1 said that he did not know why the memorandum stated that material obtained from Steele would be "treated as information from a CHS" if in fact Steele was an FBI CHS. According to Handling Agent 1, there was no ambiguity in Steele's status as a CHS by late 2013. Handling Agent 1 said that he expressly informed Steele that he was a CHS, he provided Steele with CHS admonishments each year, and that Steele signed CHS payment paperwork using his CHS codename on multiple occasions. In the view of Handling Agent 1, Steele's contention that he was not a CHS is not credible.

We also asked ALAT 1 about the memorandum from the FBI to [REDACTED]. He said that the purpose of the memorandum was to notify [REDACTED] that Steele would be a CHS for the FBI, and that the memorandum's reference to the FBI's "working with [Steele]" and explanation that material from him would be handled as information from a CHS were sufficient to

notify [REDACTED] of Steele's status as a CHS. He further stated, however, that the memorandum alerted [REDACTED] that the FBI was going to have "some interaction with [Steele's] firm as well as [Steele]" given that the memorandum states that information from Steele would be furnished primarily through his firm. ALAT 1 said that this language was included in the memorandum to make clear that the information obtained from the firm would be treated as information from a CHS. ALAT 1 did not believe that he received any response to the memorandum from [REDACTED], and we did not find any such response in Steele's Delta file.

C. Steele's Work for the FBI During 2014-2015

Handling Agent 1 said that during 2014 and 2015 he communicated with Steele more regularly and met with him several times in Steele's home country and in a city in Europe. Steele furnished intelligence information that the FBI disseminated, including in four Intelligence Information Reports (IIRs) sent throughout the U.S. Intelligence Community (USIC) concerning the activities of Russian oligarchs.²⁰⁷ Handling Agent 1 recalled receiving positive feedback from the USIC in response to some of the IIRs containing Steele's information before Steele began delivering election related information in 2016. Handling Agent 1 said that the response to the IIRs was that the information was "really good" and there were requests for additional reporting from Steele. By the time Steele was closed by the FBI as a CHS in November 2016, the FBI had disseminated 10 IIRs based on Steele's reporting.

Ohr told us that, during this time period, he and Handling Agent 1 asked Steele to inquire whether Russian oligarchs would be interested in entering into discussions with them. Handling Agent 1 stated that he did not recall tasking Steele to contact Russian oligarchs though he [REDACTED]. According to Handling Agent 1, Steele originally proposed the idea of having him approach Russian oligarchs for the purpose of arranging meetings between the oligarchs and representatives of the U.S. government. In our review of Steele's CHS file, other pertinent documents, and interviews with Handling Agent 1, Ohr, and Steele, we observed that Steele had multiple contacts with representatives of Russian oligarchs with connections to Russian Intelligence Services (RIS) and senior Kremlin officials.²⁰⁸ For example, in

²⁰⁷ Each of the IIRs noted the limitations on the reporting and included the following standard warning: "WARNING: This is a raw information report, not finally evaluated intelligence. It is being shared for informational purposes, but has not been fully evaluated, integrated with other information, interpreted or analyzed."

²⁰⁸ [REDACTED] written by the FBI's Transnational Organized Crime Intelligence Unit (TOCIU) [REDACTED] Steele. [REDACTED] Steele's [REDACTED] recommended that a validation review be completed on Steele [REDACTED]. The FBI's Validation Management Unit did not perform such an assessment on Steele until early 2017 after, as described in Chapter Six, the Crossfire Hurricane team requested an assessment in the context of Steele's election reporting. Handling Agent 1 told us he had seen the TOCIU report and was not concerned about its findings concerning Steele because he was aware of Steele's [REDACTED]. We found

late November 2014, Handling Agent 1 met with Steele who advised Handling Agent 1 that he had received overtures from "interlocutors" for several Russian oligarchs seeking to arrange FBI interviews of the oligarchs.

Handling Agent 1 told the OIG that Steele facilitated meetings in a European city that included Handling Agent 1, Ohr, an attorney of Russian Oligarch 1, and a representative of another Russian oligarch.²⁰⁹ Russian Oligarch 1 subsequently met with Ohr as well as other representatives of the U.S. government at a different location. Ohr told the OIG that, based on information that Steele told him about Russian Oligarch 1, such as when Russian Oligarch 1 would be visiting the United States or applying for a visa, and based on Steele at times seeming to be speaking on Russian Oligarch 1's behalf, Ohr said he had the impression that Russian Oligarch 1 was a client of Steele.²¹⁰

We asked Steele about whether he had a relationship with Russian Oligarch 1. Steele stated that he did not have a relationship and indicated that he had met Russian Oligarch 1 one time. He explained that he worked for Russian Oligarch 1's attorney on litigation matters that involved Russian Oligarch 1 but that he could not provide "specifics" about them for confidentiality reasons. Steele stated that Russian Oligarch 1 had no influence on the substance of his election reporting and no contact with any of his sources. He also stated that he was not aware of any information indicating that Russian Oligarch 1 knew of his investigation relating to the 2016 U.S. elections.²¹¹

Steele's prior reporting to the FBI addressed issues other than Russian oligarchs. For example, we reviewed FBI records reflecting that he provided information on the hack of computer systems of an international corporation, and corruption involving former Ukrainian President Viktor Yanukovich. In addition, Steele told us he introduced Handling Agent 1 to sources with knowledge of Russian athletic doping and obtained samples of material for the FBI to analyze. Handling Agent 1 could not recall meeting with these sources or obtaining samples for analysis, though he did remember obtaining information from Steele concerning Russian athletic doping. Handling Agent 1 said he forwarded the information to the FBI New York Field Office (NYFO) which had an open investigation concerning doping.

Handling Agent 1 also recounted for us a situation involving Steele that reinforced his view that Steele was "very professional" and primarily motivated by a

that the TOCIU report was not included in Steele's Delta file. Handling Agent 1 said that he found preparation of the TOCIU report "curious" because he believed that TOCIU was aware of Steele's [REDACTED] and fully supported them.

²⁰⁹ Handling Agent 1 told us that he was aware that Steele had a relationship with Russian Oligarch 1's attorney and assumed it may have been a business relationship.

²¹⁰ As we discuss in Chapter Six, members of the Crossfire Hurricane team were unaware of Steele's connections to Russian Oligarch 1. [REDACTED]

desire to counter threats posed by Russia. According to Handling Agent 1, on two occasions Steele made arrangements for a meeting between the FBI and a [REDACTED] individual who had potentially important information. In both instances the meetings did not occur due to the FBI's failure to attend. According to Handling Agent 1, the FBI's failure to meet with the individual was the FBI's fault, cost Steele financially in the short term, and likely caused a loss of reputation with the intermediaries who arranged the individual's attendance at the meeting. Handling Agent 1 told the OIG that Steele's professionalism in seeking to arrange the meeting and then not seeking to "nickel and dime" the FBI in the process impressed him. Steele was eventually reimbursed by the FBI for his expenses, but it was over a year later.

We asked Handling Agent 1 about what information the FBI had corroborated from Steele's reporting prior to spring 2016 and whether Steele had been proven to be a reliable source. Handling Agent 1 said that Steele provided reliable information to the FBI in the past, but that not all of the information Steele furnished had been corroborated and verified. Handling Agent 1 cited several examples of information from Steele that the FBI had been able to corroborate prior to the spring of 2016, such as corruption in FIFA's bid selection process, information regarding [REDACTED] Russian oligarchs, and corruption involving Yanukovych, but could not recall more. He also told the OIG that he was not aware of any information Steele provided prior to 2016 that had been shown to be false, inaccurate, or problematic. Handling Agent 1 said that the FBI found Steele's information to be valuable and that it warranted compensation. As a result, in 2014 and 2015, the FBI made five payments to Steele totaling \$64,000. By the time the FBI closed Steele in November 2016, his cumulative compensation totaled \$95,000, including reimbursement for expenses. Steele was not compensated by the FBI for the election reporting we discuss below.

We asked Steele how he would characterize his relationship with the FBI prior to furnishing reports on the 2016 election. He told us it was "good" except for the tardiness of the FBI's payments to him. He stated that he had confidence in Handling Agent 1.

We also inquired whether Steele's work for the FBI intruded on his work for his private clients. Steele told us that overall his work could be categorized in one of two ways. The first was work he performed for other clients of his consulting firm. He called this work "Pipeline 1." Steele stated however that he sometimes provided his work product from these engagements to the FBI at no cost, which he said he did because he believed the information possibly could be helpful to the U.S. government. The second category was work Steele performed for the FBI in response to taskings and for which the FBI provided compensation. Steele referred to this work as "Pipeline 2." According to Steele, Pipeline 1 and Pipeline 2 were mutually exclusive and did not overlap. Steele explained that his Pipeline 1 work for his clients was not affected by his Pipeline 2 work for the FBI, and he therefore was at liberty to discuss his work for his clients with his clients and with third parties, as necessary, without gaining permission from the FBI. He stated that any promises or commitments he made to the FBI did not affect the work of his

consulting firm for its clients and that his FBI commitments only applied to work where the FBI was the client (*i.e.*, Pipeline 2).

II. Steele Provides the FBI with Election Reporting in 2016

A. Steele's Engagement by Fusion GPS in June 2016

Steele said that in approximately June 2016, he was hired for a short-term assignment by Fusion GPS, a Washington, D.C., investigative firm founded by former journalist Glenn Simpson and a partner.²¹² Steele told us that he first met Simpson in 2010 and had completed a number of projects for him, some of which related to Russia. In May 2016, Simpson met Steele at a European airport and inquired whether Steele could assist in determining Russia's actions related to the 2016 U.S. elections, whether Russia was trying to achieve a particular election outcome, whether candidate Donald Trump had any personal and business ties in Russia, and whether there were any ties between the Russian government and Trump and his campaign.²¹³ Steele stated that he began work for Fusion GPS on the 2016 election assignment after Fusion GPS had completed a similar Trump related assignment for an entity connected to the Republican Party.

Steele told us he had a source network in place with a proven "track record" that could deliver on Fusion GPS's requirements. Steele added that this source network previously had furnished intelligence on Russian interference in European affairs.²¹⁴ Steele said he understood from Simpson that his assignment would end with the election in November 2016. He also stated that, prior to this request, he had not conducted any research on Trump.

We asked Steele when he learned who had retained Fusion GPS to obtain information concerning Trump and the Trump campaign. He told us he could not recall when he first learned that it was the law firm Perkins Coie and the Democratic National Committee (DNC), though he was certain that it was not at the outset of the engagement with Fusion GPS. Steele further stated that, by late July 2016, Steele had met with Simpson and an attorney from Perkins Coie, which

²¹² Simpson declined the OIG's request to be interviewed. According to testimony that Simpson provided to Congress, the *Washington Free Beacon* retained Fusion GPS from approximately September or October 2015 to April/May 2016 to take "an open-ended look at Donald Trump's business career and his litigation history and his relationships with questionable people, how much he was really worth, how he ran his casinos, [and] what kind of performance he had in other lines of work." See *Testimony of Glenn Simpson before the House Permanent Select Committee on Intelligence, U.S. House of Representatives* (November 8, 2017) (hereinafter *Simpson House Testimony*) at 7, 12.

²¹³ According to interrogatory responses Steele provided in foreign litigation, Fusion GPS retained Steele "to investigate and report, by way of preparing confidential Intelligence Memorandum, on Russian efforts to influence the U.S. Presidential election process in 2016 and on links between Russia and the then Republican candidate and now President Donald Trump."

²¹⁴ Steele told us that this source network did not involve sources from his time as a [REDACTED] and was developed entirely in the period after he retired from government service.

represented the DNC, and Steele said that by that time he was aware of the DNC's role. He stated that he could not remember whether he provided Perkins Coie's name to the FBI but believed it was probable that he did so, but not in July 2016.

Steele stated that he finalized arrangements with Simpson over the terms of his engagement a few weeks after their meeting at the European airport and that he started to collect information in June 2016. According to FBI records, Steele thereafter produced ■ reports related to the 2016 U.S. elections, ■ of which he provided to the FBI and ■ others that were provided to the FBI by third parties, as described in Chapter Six.²¹⁵ The FBI obtained reports directly from Steele during the time period of July through October 2016.

Steele told us that the reports he generated were not designed to be "finished products" and instead were "to be briefed off of orally versus consumed as a written product." He said that the reports were "mostly single source reporting" and were uncorroborated intelligence "up to a point," but were informed by background research and his judgment as an intelligence professional. Steele explained that it was his firm's practice to faithfully report everything a reliable source provided and not to withhold information because it was controversial. He denied "tailoring" his reporting to meet the needs of his clients and explained that doing so ultimately was not a good business practice because it would result in loss of reputation. We also asked Steele whether his research was "opposition research" and biased. He provided a similar response and explained that his firm would not be in business if it provided biased information.²¹⁶ Steele called the allegation that he was biased against Trump from the start "ridiculous."²¹⁷ He stated that if anything he was "favorably disposed" toward the Trump family before he began his research because he had visited a Trump family member at Trump Tower and "been friendly" with [the family member] for some years. He described their relationship as "personal" and said that he once gifted a family tartan from Scotland to the family member.

²¹⁵ One report that was not provided to the FBI directly or via third parties was published by *BuzzFeed*. One of the reports provided to the FBI by third parties was a near duplicate of a report that Steele previously had furnished to the FBI. Steele also provided the FBI, from July through October 2016, with several reports that addressed Russian activities but were not election related.

²¹⁶ We also asked about obvious errors in the reporting, such as misspellings and the reference to a Russian consulate in Miami which did not exist. Steele told us that such errors are typical in intelligence work and were a function, in part, of the fast turnaround between his receipt of information from his sources and the dissemination of the reporting. He explained that he was accountable for any errors as the election reporting was "his baby."

²¹⁷ As we describe in Chapter Six, however, according to an FBI FD-302, when the FBI interviewed Steele in September 2017, he and a colleague from his firm described Trump as their "main opponent." Ohr also advised SSA 1 that Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President." As we describe in Chapter Nine, SSA 1 met with Ohr on November 21, 2016, and memorialized Ohr's statements in a FBI FD-302 report. When we interviewed Steele, he told us that he did not state that he was "desperate" that Trump not be elected and thought Ohr might have been paraphrasing his sentiments. Steele told us that he was concerned that Trump was a national security risk, and he had no particular animus against Trump otherwise.

The first election report that Steele provided to the FBI, which, as described in Chapters Five and Seven, was one of four of Steele's reports that the FBI relied upon to support probable cause in the Carter Page FISA applications, is captioned "Company Intelligence Report 2016/080—U.S. Presidential Election: Republican Candidate Donald Trump's Activities in Russia and Compromising Relationship with the Kremlin," and is dated June 20, 2016 (Report 80). It was provided to Handling Agent 1 on July 5, 2016, and contains numerous allegations about the presidential candidates, including that: (1) the "Russian regime has been cultivating, supporting, and assisting [Trump] for at least 5 years;" (2) "[Trump] and his inner circle have accepted a regular flow of intelligence from the Kremlin, including on his Democratic and other political rivals;" (3) Trump's activities in Moscow, including "perverted sexual acts," make him vulnerable to blackmail; (4) Russian Intelligence Services have collected "compromising material" on Hillary Clinton; and (5) the Kremlin has been "feeding" information to Trump's campaign for an extended period of time. Steele said that he debated with his business colleague whether to include the sexual material in Report 80 but refused to omit it because he felt that as a matter of professional practice, when reporting information from a source, "we have to be faithful to all of the information the source provided" and not avoid material because it is controversial. Then Director James Comey later described this aspect of Steele's reporting as "salacious and unverified."²¹⁸

Steele explained that shortly after drafting Report 80 he had discussions with his business partner and Simpson about what to do with the information. He said that he and his partner considered the contents of the report to have national security implications and that the report therefore needed to be shared with the FBI. He said that Simpson agreed to Steele's proposal, and thereafter, Steele contacted the FBI.²¹⁹

B. Steele Informs Handling Agent 1 in July 2016 about his Election Reporting Work

Shortly before the Fourth of July 2016, Handling Agent 1 told the OIG that he received a call from Steele requesting an in-person meeting as soon as possible. Handling Agent 1 said he departed his duty station in Europe on July 5 and met with Steele in Steele's office that day. During their meeting, Steele provided Handling Agent 1 with a copy of Report 80 and explained that he had been hired by Fusion GPS to collect information on the relationship between candidate Trump's businesses and Russia. Handling Agent 1 said Steele had become concerned about the possibility of the Russians compromising Trump in the event Trump became

²¹⁸ We further discuss Comey views of this information in Chapter Six.

²¹⁹ Simpson has testified before Congress that he assented to Steele's request to provide the information to the FBI, and that he viewed the situation as "potentially a crime in progress" that needed to be reported. *Simpson House Testimony* at 61; *Testimony of Glenn Simpson before the Senate Judiciary Committee*, United States Senate (August 22, 2017) (hereinafter *Simpson Senate Testimony*) at 160.

President.²²⁰ According to Handling Agent 1, Steele informed him that Fusion GPS had been hired by a law firm to conduct research, though Steele stated that he did not know the law firm's name or its political affiliation.²²¹ Handling Agent 1 told the OIG, however, that he did not have to ask Steele to know that the request for the research was politically motivated as the connection to politics was obvious to Handling Agent 1 from the circumstances. Handling Agent 1 also told us that he asked Steele to try to identify the law firm. However, Handling Agent 1 said that he did not "continually ask" Steele about the firm's identity as his work with Steele progressed. When asked by the OIG about an October 2016 email from a member of the Crossfire Hurricane team stating that Handling Agent 1 had avoided tasking Steele to obtain the name of the law firm, Handling Agent 1 told us that information was incorrect and that he would never avoid asking a material question. When we asked the email's author about the email, he stated that it accurately represented what Handling Agent 1 had told him during a telephone call in October 2016.

We reviewed what Steele represented were his contemporaneous notes of his July 5 meeting with Handling Agent 1. Steele told us these notes were written within a day or two of the meeting. The notes reflect that Steele told Handling Agent 1 that Steele was aware that "Democratic Party associates" were paying for Fusion GPS's research, the "ultimate client" was the leadership of the Clinton presidential campaign, and "the candidate" was aware of Steele's reporting. Steele told us that he was "pretty candid" with Handling Agent 1. He also said it was clear that Fusion GPS was backed by Clinton supporters and senior Democrats who were supporting her. When we asked Handling Agent 1 about the information contained in Steele's notes, Handling Agent 1 told us that he did not recall Steele mentioning these facts to him during their meeting.

After being provided with a copy of Report 80 at the July 5 meeting, Handling Agent 1 said he asked Steele whether he was still collecting information for Fusion GPS. Handling Agent 1 said Steele responded that he was working on another report for Simpson. Handling Agent 1 said that, at that point, he advised Steele that Steele was not working on behalf of the FBI to collect the information Fusion GPS was seeking: "I said we are not asking you to do it and I'm not tasking you to do it." Steele provided the OIG with a similar interpretation of these events. He told us that Report 80, as well as all his other election reports, was "Pipeline 1" information and not subject to FBI controls. Handling Agent 1 said that he also advised Steele that because a law firm was involved there could be privilege issues that Handling Agent 1 would need to evaluate. Handling Agent 1 told the OIG that he returned to his duty station the same day with a copy of the reports Steele provided him, only one of which was election related.

²²⁰ Handling Agent 1's records indicate that, during this meeting, Steele also provided Handling Agent 1 with reporting on Russian doping in athletics, Russian cyber activities, and Russian interference in European political affairs.

²²¹ As described earlier, Steele told us that by late July 2016, he had met with Simpson and an attorney from Perkins Coie, which represented the DNC, and by that time he was aware of the DNC's role.

Steele told us that Handling Agent 1 was "taken aback" by the contents of Report 80, and that Handling Agent 1 said he needed to send the Report back to the U.S. and would contact Steele at a later time after Handling Agent 1 had conferred with others about how to handle it. Steele said that he waited approximately one week and then contacted Handling Agent 1 to inquire whether he wanted to receive additional reports. According to Steele, Handling Agent 1 responded, "[N]ot yet. I'm still dealing with this. I'll get back to you." Steele said it was not until mid-August that he heard back from Handling Agent 1 and that Handling Agent 1 told him at that time that he wanted to receive additional reports.

Handling Agent 1 said he discussed Steele's reporting with his supervisor, the Legat, and both agreed that Handling Agent 1 should try to determine where to send the information in FBI Headquarters. However, due to the sensitivity of the reporting, Handling Agent 1 said that he wanted to be discrete and avoid a situation where he was "broadcasting" the information. Handling Agent 1 said that he informed his supervisor that he wanted to consult with NYFO (where Handling Agent 1 previously had worked) before taking further action, and that his goal was to put the information directly in the hands of people who needed to see it. According to Handling Agent 1, his supervisor approved, stating "Good idea. Call whoever you have to call. Do whatever you have to do."²²²

The Legat told us that he recalled Handling Agent 1's proposal to contact NYFO, which he concurred with, but that his expectation was that Handling Agent 1 would provide Steele's reporting to the Counterintelligence Division (CD) at FBI Headquarters within a matter of days. The Legat stated that he recalled inquiring about the handling of the reporting when Handling Agent 1 obtained another report from Steele, Report 94 described below, on July 19, 2016, as well as prior to a meeting members of the Crossfire Hurricane team had with Steele in October 2016. The Legat said that during this time, "I just assumed [Handling Agent 1] was handling it...[and] had sent it off."

Approximately 1 week after his July 5 meeting with Steele, Handling Agent 1 contacted an Assistant Special Agent in Charge (ASAC 1) in NYFO, whom Handling Agent 1 had known for many years and described as having experience with "sensitive matters." Handling Agent 1 said that he described the "gist" of the situation to ASAC 1, who responded that he would assess what to do and contact Handling Agent 1 later. ASAC 1 told us that the information that Handling Agent 1 explained to him "[c]learly [was] something that needs to be handled immediately" and "definitely of interest to the Counterintelligence folks." ASAC 1 said that after hearing from Handling Agent 1, he spoke with his Special Agent in Charge (SAC 1) the same day. ASAC 1's notes from his July 13 call with Handling Agent 1 closely track the contents of Report 80, identify Simpson as a client of a law firm, and include the following: "law firm works for the Republican party or Hillary and will

²²² Handling Agent 1 said that he did not contact the International Operations Division (IOD) at FBI Headquarters, which supports the Legats, about the reporting.

use [the information described in Report 80] at some point.”²²³ ASAC 1 told us that he would not have made this notation if Handling Agent 1 had not stated it to him.

On July 19, 2016, Steele sent an email to Handling Agent 1 that included another report, Report 94, which was captioned “Company Intelligence Report 2016/94—Russia: Secret Kremlin Meetings Attended by Trump Advisor Carter Page in Moscow (July 2016).” Report 94, which as described in Chapters Five and Seven was one of 4 reports the FBI relied upon to support the probable cause in the Carter Page FISA applications, alleged that during a visit to Moscow in July 2016, Page met with: (1) Igor Sechin, Chairman of Russian energy conglomerate Rosneft, and discussed the “lifting of western sanctions against Russia over Ukraine;” and (2) Igor Divyekin, a staff member in the Russian Presidential Administration, who informed Page of compromising information the Kremlin possessed on Hillary Clinton and its possible release to the Republican campaign. Report 94 further alleged that Divyekin advised Page that the Russians had derogatory information on Trump, which the candidate should bear in mind in future dealings with Russian leadership. Report 94 described conversations involving a limited number of persons (e.g., Sechin confided the details of a secret meeting with Page; Sergei Ivanov confided in a compatriot that Divyekin had met secretly with Page).

Handling Agent 1 said that when he read Report 94 for the first time he recognized Sechin’s name from intelligence reporting but did not recognize the other names, including Carter Page. He told the OIG that he was in no position to assess the reliability of the reporting and for that reason he was eager to forward the reporting to persons who could evaluate it. Steele’s reporting, however, did not reach investigators at FBI Headquarters until 2 months later, a circumstance we describe further below.

C. The Crossfire Hurricane Team Receives Steele’s Reports on September 19

On July 28, 2016, three days prior to the opening of the Crossfire Hurricane investigation, Handling Agent 1 sent Reports 80 and 94 to ASAC 1 in NYFO, who forwarded them to SAC 1.²²⁴ Handling Agent 1’s sharing of the reports with ASAC 1 resulted in a meeting in NYFO on August 3 among ASAC 1, the Chief Division Counsel (CDC), an Associate Division Counsel (ADC), and a Supervisory Special Agent (SSA). Notes taken by the ADC show that the meeting participants discussed

²²³ As we summarize in Chapter Ten, at approximately the same time that Handling Agent 1 was reporting information about Simpson to ASAC 1, an FBI agent from another FBI field office sent an email to his supervisor stating that he had been contacted by a former CHS who “was contacted recently by a colleague who runs an investigative firm. The firm had been hired by two entities (the Democratic National Committee as well as another individual...not name[d]) to explore Donald J. Trump’s longstanding ties to Russian entities.” On or about August 2, 2016, this information was shared by a CD supervisor with the Section Chief of CD’s Counterintelligence Analysis Section I (Intel Section Chief), who provided it that day to members of the Crossfire Hurricane team (then Section Chief Peter Strzok, SSA 1, and the Supervisory Intel Analyst).

²²⁴ ASAC 1 told us that he was not sure why nothing happened with the reports between July 13, the date he first spoke with Handling Agent 1, and July 28.

in general terms the information contained in Reports 80 and 94 and the relationship between Steele, Simpson, and a "law firm."

The ADC told the OIG that he was assigned the responsibility of reading Steele's reports and determining whether they were pertinent to any crimes involving public corruption. The ADC said he spoke with Handling Agent 1 on August 4, and Handling Agent 1 emailed Reports 80 and 94 to him the next day. Handling Agent 1 stated that, prior to sending the reports, ASAC 1 had contacted him to explain that the reports would be placed in a sub-file in NYFO and thereby "walled off" from agents in NYFO, and that the Assistant Director in Charge of NYFO and the "Executive Assistant Director (EAD) level" at FBI Headquarters were aware of the reports' existence. Handling Agent 1 stated that the ADC informed him in August that he was conferring with management in NYFO about how to handle the reports and would notify him after a determination had been made. Handling Agent 1 also stated that the engagement of an EAD was significant to him because he believed that "appropriate people were communicating" about the reports as a result and that he therefore should wait for further guidance about how to handle the reports.

As we discuss in detail in Chapter Nine, Handling Agent 1 also told us that, in mid to late August, he heard from Ohr "out of the blue," who inquired whether Handling Agent 1 had seen Steele's reports. According to Handling Agent 1, Ohr contacted him to confirm that the FBI was aware of the reports and was "handling" them. Handling Agent 1 told the OIG that he advised Ohr that news of the reports had reached the "EAD level" at FBI Headquarters and that executive management at NYFO was aware of the reports and trying to determine where to forward them. Ohr stated that he recalled Handling Agent 1 telling him this, but that at some later date Ohr said he became concerned that the right people at FBI Headquarters did not know about the reporting.

On August 25, 2016, according to a Supervisory Special Agent 1 (SSA 1) who was assigned to the Crossfire Hurricane investigation, during a briefing for then Deputy Director Andrew McCabe on the investigation, McCabe asked SSA 1 to contact NYFO about information that potentially could assist the Crossfire Hurricane investigation.²²⁵ SSA 1 said he reached out to counterintelligence agents and analysts in NYFO within approximately 24 hours following the meeting. Instant messages show that on September 1, SSA 1 spoke with a NYFO counterintelligence supervisor, and that the counterintelligence supervisor was attempting to set up a call between SSA 1 and the ADC.

On September 2, 2016, Handling Agent 1, who had been waiting for NYFO to inform him where to forward Steele's reports, sent the following email to the ADC and counterintelligence supervisor: "Do we have a name yet? The stuff is burning a hole." The ADC responded the same day explaining that SSA 1 had created an electronic sub-file for Handling Agent 1 in the Crossfire Hurricane case and that he

²²⁵ During his interview with the OIG, McCabe told us that he did not remember asking SSA 1 to contact NYFO, and he said he did not remember knowing in August 2016 that NYFO had information relevant to the Crossfire Hurricane investigation.

should forward the Steele reports to it. However, SSA 1 told us that there was a problem with his attempt to send an email to Handling Agent 1 in early September. SSA 1 said he did not recognize the problem until September 13 and emailed Handling Agent 1 that day with the case information necessary to upload the reports.

On September 19, 2016, the Crossfire Hurricane team received the Steele reporting for the first time when Handling Agent 1 emailed SSA 1 six reports for SSA 1 to upload himself to the sub-file: Reports 80 and 94, and four additional reports (Reports 95, 100, 101, and 102) that Handling Agent 1 had since received from Steele.²²⁶ FBI officials we interviewed told us that the length of time it took for Steele's election reporting to reach FBI Headquarters was excessive and that the reports should have been sent promptly after their receipt by the Legat. Members of the Crossfire Hurricane team told us that their assessment of the Steele election reporting could have started much earlier if the reporting had been made available to them.

As described in Chapters Five and Seven, the FBI relied upon Report 95 to support probable cause in the Carter Page FISA applications. Report 95 was entitled "Russia/US Presidential Election: Further Indications of Extensive Conspiracy Between Trump's Campaign Team and the Kremlin" and cited repeatedly to information provided by "Source E." Report 95 alleged the existence of "a well-developed conspiracy of co-operation" between the Trump campaign and Russian leadership, and claimed that the campaign's manager, Manafort, used Carter Page and others as "intermediaries" to further the conspiracy. According to Source E, the "Russian regime" was behind the leak of DNC emails to WikiLeaks with the "full knowledge and support" of Trump and his campaign team, and the WikiLeaks platform was used by Russia to afford it "plausible deniability" of its involvement in the leak. Also, as we describe in Chapter Eight, Report 95 included an allegation that Page and possibly others agreed to sideline Russian intervention in Ukraine as a campaign issue in exchange for Russia's disclosure of hacked DNC emails to WikiLeaks. The FBI used this information in all of the Carter Page FISA applications to support its assessment that Page helped influence the Republican Party to change its platform to be more sympathetic to Russia's interests by eliminating language from the Republican platform about providing weapons to Ukraine.

Report 102, as described in Chapters Five and Seven, was also one of the 4 reports relied upon to support probable cause in the Carter Page FISA applications. The Report was titled, "Russia/US Presidential Election: Reaction in Trump Camp to Recent Negative Publicity About Russian Interference and Likely Resulting Tactics Going Forward." Report 102 alleged that the purpose of the recent DNC email leaks was to shift votes from Bernie Sanders to Trump following Clinton's nomination.

²²⁶ Additional reports included the following information: Report 100 (Premier Medvedev's office was furious over DNC hacking and associated anti-Russian publicity) and Report 101 (The Kremlin is supporting various U.S. political figures and indirectly funding their travel to Moscow). Reports 95 and 102 are described below.

Report 102 also alleged that Carter Page conceived of and promoted the idea that the release of the DNC emails would shift voter support to Trump.

D. The Crossfire Hurricane Team's Initial Handling of the Steele Reporting in September 2016

As described in Chapter Three, by the date the Crossfire Hurricane team received the six Steele reports on September 19, the investigation had been underway for approximately 6 weeks and the team had opened investigations on four individuals: Carter Page, George Papadopoulos, Paul Manafort, and Michael Flynn. In addition, during the prior 6 weeks, the team had used CHSs to conduct operations against Page, Papadopoulos, and a high-level Trump campaign official, although those operations had not resulted in the collection of any inculpatory information. Further, as described in Chapter Five, the team had discussions about the possibility of obtaining FISAs targeting Page and Papadopoulos, but it was determined that there was insufficient information at the time to proceed with an application to the court.

As also described in Chapter Three, the FBI had an ongoing cyber counterintelligence investigation into the Russian hacking of the DNC and was aware of other Russian efforts to interfere with the upcoming 2016 U.S. elections. We were told by several FBI witnesses that certain broad themes of the Steele reporting were consistent with information already known by the FBI and other U.S. government intelligence agencies. These themes included that the Russian government was seeking to sow discord and disunity within the United States and Trans-Atlantic alliance, that the Russian government was working to support Trump's election as President, and that Russian state-sponsored cyber operations were responsible for hacking activity focused on the Clinton campaign. Comey told the OIG that, in his view, the "heart of the [Steele] reporting was that there's a massive Russian effort to influence the American election and weaponize stolen information." Comey said he believed those themes from the Steele reporting were "entirely consistent with information developed by the [USIC] wholly separate and apart from the [Steele] reporting," as well as consistent with what "our eyes and ears could also see."

After obtaining the six Steele reports on September 19, analysts on the Crossfire Hurricane team immediately began to evaluate the information in the reports. By the next day, they had completed a draft Intelligence Memorandum that summarized key points from the reports and identified actions that needed to be taken to assess the information. For example, Report 95 stated that Russian diplomatic staff in the United States were rewarding assets (cooperators) using the émigré pension distribution system as cover, and the Intelligence Memorandum described [REDACTED]

The FBI's analytical efforts also included developing various diagrams, charts, and timelines to document relationships and events pertinent to the Crossfire Hurricane investigation. In order to analyze the Steele election reports, the FBI developed a spreadsheet of excerpts from the reports with analyst notes indicating

the source of the excerpt and verification information, such as whether information contained in the excerpt had been corroborated.²²⁷ We discuss in Chapter Six these efforts by the FBI over time to assess the Steele election reporting.

Assistant Director (AD) E.W. "Bill" Priestap and then Deputy Assistant Director (DAD) Peter Strzok told the OIG that the FBI's assessment of Steele's information was not different from the approach the FBI typically uses in evaluating CHS information. They explained that the assessment involved determining the credibility of Steele, including understanding his record of furnishing reliable information, motivation, and possible biases; and verifying the information he provided through independent sources. Priestap described the FBI's approach to the reporting in the following terms:

[W]e did not ever take the information he provided at face value.... We went to great lengths to try to independently verify the source's credibility and to prove or disprove every single assertion in the dossier.... We absolutely understood that the information in the so-called dossier could be inaccurate. We also understood that some parts could be true and other parts false. We understood that information could be embellished or exaggerated. We also understood that the information could have been provided by the Russians as part of a disinformation campaign.

The Supervisory Intelligence Analyst (Supervisory Intel Analyst) assigned to Crossfire Hurricane told the OIG that an early focus of the FBI's analytical effort to assess Steele's reporting was trying to identify Steele's sources. According to the Supervisory Intel Analyst, it was important to determine whether the reporting of those individuals matched their access to information. The Supervisory Intel Analyst said that, in order to evaluate that issue and fully assess the reporting, the FBI sought assistance from other USIC agencies by, for example, vetting Russian names identified in the reports.

We asked the Supervisory Intel Analyst whether the FBI sought to determine who was financing Steele's election related research. He said that the focus of the analysts was on Russian interference in the campaign and on any connections between Russia and the Trump campaign. He stated that he was aware of the potential for political influences on the reporting. He said that, because of that awareness, whether the reporting was "opposition research" that was politically motivated was not an issue that occupied his or his analysts' attention and that further research on the issue was nearly "immaterial." He explained that because "opposition research can be true, it can be false," his focus was on vetting the reporting to determine whether its contents were accurate.

²²⁷ The OIG was advised that the spreadsheet does not include highly classified material, and therefore its presentation of information known to the FBI about corroboration of the Steele election reporting is partial.

On September 23, 2016, Case Agent 1, the lead case agent for the Carter Page investigation, emailed Handling Agent 1 to inquire about Steele. Handling Agent 1 responded: "[CHS] has been signed up for 3 years and is reliable. [CHS] responds to taskings and obtains info from a network of sub sources. Some of the [CHS'] info has been corroborated when possible."²²⁸ This outreach was followed shortly thereafter by a request to Handling Agent 1 from one of the Crossfire Hurricane investigation supervisors, SSA 1, to participate in a video conference call with members of the Crossfire Hurricane team on September 27. According to participants on the call, the purpose of the call was to set a meeting with Steele to discuss his reports, learn about his source network, and gain his cooperation to collect additional information in support of the Crossfire Hurricane investigation.²²⁹

We asked Strzok who made the decision to use Steele as a source in the Crossfire Hurricane investigation. He said that McCabe and Comey were briefed on Steele's reporting and "okayed" the Crossfire Hurricane team's approach to use Steele in the investigation. Comey told us that he recalled being briefed about Steele but did not have a specific recollection beyond obtaining copies of Steele's reports and learning about Steele's background; his prior record of furnishing information to the FBI, including FIFA; and his work for political entities (first Republican, then Democratic).²³⁰ McCabe told us that although he was sometimes present during discussions about the use of CHSs in Crossfire Hurricane, he left decisions about which sources to use and how to use them to the team.

As we describe below, in early October 2016 a meeting was held between members of the Crossfire Hurricane team and Steele in a European city. Unknown to the FBI at the time, Steele was working with his client, Fusion GPS, to alert select media outlets about his reporting concerning Russian interference with the 2016 U.S. elections and allegations regarding the Trump campaign and candidate Trump. Additionally, the FBI was unaware at the time that Steele had not made available to the FBI all of the reports he prepared as of mid-September concerning Russia.²³¹ As described in Chapter Six, these and other reports were provided to

²²⁸ We did not find this communication in Steele's Delta file.

²²⁹ We found that the first time the Crossfire Hurricane team accessed Steele's Delta file was in November 2016. The Supervisory Intel Analyst told us that the team was in contact with Handling Agent 1 beginning in September and relied on him for information about Steele. Handling Agent 1 expressed surprise that the Crossfire Hurricane team did not access Steele's Delta file earlier. He said that the team should have "turned the file upside down" looking for information 2 months earlier and that he assumed that some members of the team had thoroughly reviewed the file.

²³⁰ As noted earlier, Steele told us that he began work for Fusion GPS on the 2016 election assignment after Fusion GPS had completed a similar Trump related assignment for a Republican Party connected entity.

²³¹ The following are reports with select highlights that Steele did not furnish to the FBI, which range in date from July 30 to September 14, 2016:

- Report 97 (the Kremlin is concerned that political fallout from the DNC hacking operation is spiraling out of control; a source close to the Trump campaign confirms that the regular exchange of intelligence between the Trump team and the Kremlin had existed for at least 8 years; the Kremlin had determined not to use compromising

the FBI in November and December 2016 by a journalist, Senator John McCain, and Ohr. When we asked Steele why he failed to provide all of his then-existing reports to the FBI, he could not provide us with an explanation and said that he should have given them to the FBI at the time.

E. Steele Discusses His Reporting with Third Parties in Late September 2016 and the *Yahoo News* Article

During late September 2016, with Fusion GPS's authorization, Steele met with numerous persons outside the FBI to discuss the intelligence he had obtained, as part of his paid work for Fusion GPS, concerning Russian interference with the 2016 U.S. elections and allegations regarding the Trump campaign and candidate Trump.²³² For example, as we discuss in Chapter Nine, emails exchanged between Steele and Ohr show that Steele visited Washington, D.C., beginning around September 21, 2016, and met with Ohr on September 23, at which time the two discussed multiple issues involving election related intelligence that Steele had collected. Steele told us that during this visit he also met with an attorney from Perkins Coie, who was general counsel to the Clinton campaign.²³³

Steele also met with journalists during his September trip to Washington, D.C. According to a filing that Steele made in 2017 in foreign litigation, at Fusion GPS's instruction, he briefed reporters from *The New York Times*, *The Washington*

information against Trump given how cooperative his team had been over several years and of late);

- Report 105 (during a secret meeting between Putin and ex-Ukrainian President Yanukovych, Yanukovych confided to Putin that he did authorize and order substantial kick-back payments to Manafort but reassured Putin that no documentary trail was left behind; Putin and Russian leadership were skeptical of the ex-President's assurances that there were no traces of the payments; Manafort's departure from the Trump campaign was attributable to Ukrainian corruption revelations as well as infighting with campaign advisors);
- Report 112 (the leading figures of the Alpha group of businesses led by three Russian oligarchs are on very good terms with Putin; Alpha held compromising information on Putin and his corrupt business activities from the 1990s); and
- Report 113 (sources based in St. Petersburg reported that Trump has paid bribes and engaged in sexual activities in St. Petersburg, including participating in sex parties, but that witnesses had been "silenced," i.e., bribed or coerced to disappear).

²³² This was not the first time that information included in Steele's reports concerning the Trump campaign was known to individuals outside the FBI. For example, Handling Agent 1 emailed an FBI supervisor on July 28, 2016, explaining that Steele had advised him that information from Reports 80 and 94 "may already be circulating at a 'high level' in Washington, D.C." Two days earlier, according to a text between Carter Page and a *Wall Street Journal* reporter (that Page has since made public), the reporter contacted Page inquiring whether Page had met with Sechin and Divyekin. The FBI also received correspondence from Members of Congress in August 2016 that described information included in the Steele reports. Additionally, then Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland publicly stated during an interview in 2018 that Steele's election reporting was first provided to the State Department in July 2016.

²³³ Steele told us that he had a second meeting with this attorney in October 2016, and that he had met with another attorney from Perkins Coie in July 2016.

Post, *Yahoo News*, *The New Yorker*, and CNN. The filing states that the briefings were verbal, occurred at the end of September, and “involved the disclosure of limited intelligence regarding indications of Russian interference with the U.S. election process and the possible coordination of members of Trump’s campaign team and Russian government officials.”

Steele told us that the press briefings were taskings from his client, Fusion GPS, that his firm had to honor, and Simpson has testified that Simpson attended the briefings.²³⁴ Steele said that they were “off-the-record” and, while he made mention of the reports, Steele did not distribute them to the journalists. Steele explained that he discussed “general themes” from his reporting that lacked sufficient specificity to identify his sources, and that he avoided answering questions about whether he had reported his findings to authorities.²³⁵

We asked Steele whether he believed his participation in the press briefings was contrary to any admonishments that he had received previously from Handling Agent 1. He said that he did not recall the FBI telling him he could not talk to journalists about work that he performed on behalf of his firm’s clients. According to Steele, the election reporting was a “Pipeline 1” assignment and therefore the FBI did not have a role in setting terms for his interactions with third parties, such as news organizations. He said that if the FBI had tried to interfere in his assignment for Fusion GPS, he would have objected and that such an attempt would have been a “showstopper.” Steele stated that Orbis’ client for the election reporting was Fusion GPS, which controlled and directed the terms for interactions with third parties.

Handling Agent 1 told us that he understood why Steele would believe in September 2016 that he did not have an obligation to discuss his press contacts with him given that: (1) Steele’s work resulted from a private client engagement; and (2) Handling Agent 1 told Steele on July 5 that he was not collecting his election reporting on behalf of the FBI. However, Handling Agent 1’s view was that while it was obvious that Fusion GPS would want to publicize Steele’s election information, it was not apparent that Steele would be conducting press briefings and otherwise interjecting himself into the media spotlight. Handling Agent 1 told us that he would have recommended that Steele be closed in September 2016 if he had known about the attention that Steele was attracting to himself. According to Handling Agent 1, Steele should have had the foresight to recognize this fact and the professionalism to afford Handling Agent 1 an opportunity to assess the situation. However, we are unaware of any FBI admonishments that Steele violated by speaking to third parties, including the press, about work that he had

²³⁴ *Simpson Senate Testimony*, at 207.

²³⁵ According to a book co-authored by a *Yahoo News* reporter who was present for a Steele September 2016 press briefing, Steele told him at the meeting that he had provided his election reporting to the FBI and that there were “people in the [FBI] taking this very seriously.” See *Russian Roulette: The Inside Story of Putin’s War on America and the Election of Donald Trump* (New York: Grand Central Publishing, 2018), 226.

done solely for his firm's clients and where he made no mention of his relationship with the FBI.

On September 23, 2016, *Yahoo News* published an article entitled, "*U.S. Intel Officials Probe Ties Between Trump Advisor and Kremlin*." The September 23 article described efforts by U.S. government intelligence agencies to determine whether Carter Page had opened communication channels with Kremlin officials. Steele told us that because his briefing with *Yahoo News* was "off-the-record," he did not believe that he was the source for the article. He stated that it was his understanding based on discussions with Simpson that the sourcing for the article came from within the U.S. government.²³⁶ However, portions of the article align with information contained in Steele's Report 94. For example, the article stated that U.S. officials had received intelligence reporting that Page had met with Igor Sechin, Chairman of Rosneft, and Igor Divyekin, Deputy Chief in the Russian Presidential Administration. The article cited "a well-placed Western intelligence source" for this information, and the article's author has confirmed that Steele contributed information for the article and that Steele was the "Western intelligence source."²³⁷

We asked FBI agents and analysts assigned to the Crossfire Hurricane investigation whether, following publication of the *Yahoo News* article, they had concerns that Steele was briefing the press about the reports that he had provided to the FBI, and they expressed varying points of view. The Supervisory Intel Analyst told us that it was unclear to him in September 2016 whether Steele was briefing the press. He stated that because Steele was providing his reporting to Fusion GPS, the Supervisory Intel Analyst's view at the time was that it could have been Fusion GPS or its clients who were discussing the reporting with news outlets. The supervisory attorney from the FBI Office of the General Counsel assigned to the Crossfire Hurricane investigation (the OGC Unit Chief) stated that she and others assumed that Steele's clients, or others with whom the clients had shared the information, were responsible for the press stories, but that the Crossfire Hurricane team would not have been surprised if Steele's reporting was the basis for the *Yahoo News* article. In contrast, Case Agent 1 sent instant messages indicating his belief that Steele was the "Western intelligence source" mentioned in the *Yahoo News* article and Steele "was selling his stuff to others." Case Agent 1 told us that the Crossfire Hurricane team later assessed that Simpson or someone else who had the Steele information, rather than Steele himself, was responsible for furnishing the information to *Yahoo News*. However, as we describe below, the team had no factual basis to support this assessment.

SSA 1 told us that his first concern was that someone from inside the FBI had disclosed information to the media. He stated that there was a "paranoia with leaks" inside the FBI in light of recent problems with leaks, and that it seemed

²³⁶ *Yahoo News* has reported that the author of the September 23 article relied on a "senior U.S. law enforcement official" for information. See "*Yahoo News*' Michael Isikoff Describes Crucial Meeting Cited in Nunes Memo," *Yahoo News* (February 2, 2018).

²³⁷ *Russian Roulette*, at 227.

"foreign" that Steele—as [REDACTED]—would be involved in such a breach. However, SSA 1's notes from a meeting on September 30 contain the following notation: "control issues—reports acknowledged in *Yahoo News*." We asked SSA 1 whether he was concerned at the time that there were control issues with Steele. He stated that he was concerned but that he was not sure that Steele was responsible for providing information to *Yahoo News*. In addition, he said he was focused on Steele's discussions with the State Department about his work with the FBI.²³⁸ SSA 1 stated that an important objective of the planned meeting with Steele in early October was to obtain "exclusivity" in Steele's reporting relationship, meaning that Steele would provide his intelligence related to the election exclusively to the FBI.

As we describe in Chapter Five, drafts of the Carter Page FISA application stated, until October 14, 2016, that Steele was responsible for the leak that led to the September 23 *Yahoo News* article. One of the drafts specifically stated that Steele "was acting on his/her own volition and has since been admonished by the FBI." In contrast, the final version of the first FISA application stated:

Given that the information contained in the September 23rd News Article generally matches the information about Page that Source #1 discovered during his/her research, the FBI assesses that Source #1's business associate or the law firm that hired the business associate likely provided this information to the press. The FBI also assesses that whoever gave the information to the press stated that the information was provided by a 'well-placed Western intelligence source.' The FBI does not believe that Source #1 directly provided this information to the Press.

The OI Attorney told us that at some point during the drafting process, the FBI assured him that Steele had not spoken with *Yahoo News* because the source was "a professional." As we discuss in greater detail in Chapter Five, no one at the FBI or the National Security Division (NSD) was able to explain to us the source of the information that resulted in, or supported, either the draft language that existed until October 14 or the final language regarding the *Yahoo News* article.

Steele told us that he did not recall the FBI ever asking him whether he was the source for the *Yahoo News* story, no one from the FBI recalled having asked Steele if he was the source of the *Yahoo News* story, and we found no documentary evidence to suggest that Steele had ever been asked this question by the FBI. As described in Chapters Seven and Eight, even after receiving additional information about Steele's media contacts, the Crossfire Hurricane team did not change the language in any of the three renewal applications regarding the FBI's assessment of Steele's role in the September 23 article.

²³⁸ SSA 1 had been forwarded an email on September 30 from the State Department's Bureau of European and Eurasian Affairs indicating that senior staff there, including Assistant Secretary Nuland, were aware of a planned meeting between Steele and the FBI in early October in a European city, and that FBI officials from Headquarters were flying to Europe to participate in the meeting.

F. The FBI's Early October Meeting with Steele

Handling Agent 1 told us that he took the lead in organizing the logistics for a meeting in early October between Steele and members of the Crossfire Hurricane team in a European city. An Acting Section Chief from CD (Acting Section Chief 1), Case Agent 2, and the Supervisory Intel Analyst, attended the meeting for the Crossfire Hurricane team. Case Agent 2 had extensive experience in counterintelligence and managing CHSs, including previously holding a supervisory training position where he provided instruction on those topics. The Supervisory Intel Analyst was one of the FBI's leading experts on Russia.

Case Agent 2 and SSA 1 told the OIG that the FBI had several objectives for the meeting, the most important of which were learning about Steele's source network; persuading Steele to work collaboratively with the Crossfire Hurricane team in the future; and, as noted above, obtaining assurances from Steele that he would provide the intelligence that the FBI was seeking exclusively to the FBI. According to Case Agent 2, the task for him was a difficult one because he was asking Steele—an experienced intelligence professional—to reveal how he gathered intelligence. Case Agent 2 stated that he needed to be careful to avoid use of heavy-handed tactics that would cause Steele to walk out. We also were told by Case Agent 2 that the team's primary objectives for the meeting came from discussions he had with Strzok and SSA 1. Strzok said that he discussed the goals of the early October meeting with the team and recalled attending meetings where taskings for Steele were discussed in anticipation of the meeting. However, Strzok said he was not involved in developing the taskings and left that effort to the Crossfire Hurricane team. He also stated that he was not asked to authorize the team's taskings for Steele. SSA 1 said that the team had specific objectives for the early October meeting with Steele and that he provided guidance to the team before they left, but he did not recall his specific instructions. SSA 1 stated that he trusted Case Agent 2, Acting Section Chief 1, and the Supervisory Intel Analyst to do their job when meeting with Steele.

The meeting was set for early October. According to Handling Agent 1, Steele contacted him three days prior to the meeting and advised Handling Agent 1 that Steele had previously shared the reports he had given to the FBI with then State Department official Jonathan Winer. Handling Agent 1 said that Steele also informed him that Winer was aware of the upcoming FBI meeting in October.

Handling Agent 1 stated that the Crossfire Hurricane team arrived in the European city the day before the meeting and that he conferred with them about Steele.²³⁹ Handling Agent 1 said he recalled providing advice to the team to ask Steele "anything and everything.... Don't hold back." Handling Agent 1 also remembered that at least one member of the team asked Handling Agent 1 if Steele had said anything about the *Yahoo News* article. Handling Agent 1 said that he responded "no" and that he was not familiar with the article in question.

²³⁹ After reviewing this report, the Supervisory Intel Analyst told us that he believed that the Crossfire Hurricane team arrived in the European city the morning of the meeting with Steele.

Handling Agent 1 also recalled the team discussing that the State Department was aware of the Steele reporting and that the team would need to discuss that with Steele.²⁴⁰ Handling Agent 1 told us that he advised the team that Steele had contacted Jonathan Winer at the State Department. Case Agent 2 said that Handling Agent 1 did not mention to him that Steele had possible connections to Russian Oligarch 1 and that he would have wanted to know that information because it could have indicated that Steele was being used in a Russian "controlled operation" to influence perceptions (*i.e.*, a disinformation campaign). Handling Agent 1 did not recall if he told the Crossfire Hurricane team about Steele's connection to Russian Oligarch 1; however, he said he did inform the team that Steele collected intelligence on Russian oligarchs and had tried to arrange meetings between the FBI and Russian oligarchs.

The day of the meeting, Handling Agent 1 met with Steele prior to introducing him to the Crossfire Hurricane team and explained to Steele that he would be asked questions about his source network. Handling Agent 1 said that he encouraged Steele to be forthcoming with the Crossfire Hurricane team. Handling Agent 1 told the OIG that he attended the meeting but that Case Agent 2 did the majority of the talking for the FBI with the Supervisory Intel Analyst asking questions primarily about the source network.

The meeting lasted approximately 2.5 to 3 hours, according to the Supervisory Intel Analyst. According to Case Agent 2's written summary of the meeting, Case Agent 2 provided Steele with a "general overview" of the Crossfire Hurricane investigation, which included a description of events involving Papadopoulos and the Friendly Foreign Government (FFG) information that furnished the predication for the investigation. Case Agent 2's written summary also states that Case Agent 2 informed Steele that Papadopoulos's actions had resulted in a "small analytical effort" that had expanded to include Manafort, Flynn, and Carter Page.

Case Agent 2 told the OIG that he informed Steele that the FBI was interested in obtaining information in "3 buckets." According to Case Agent 2's written summary of the meeting, as well as the Supervisory Intel Analyst's notes, these 3 buckets were:

- (1) Additional intelligence/reporting on specific, named individuals (such as [Page] or [Flynn]) involved in facilitating the Trump campaign-Russian relationship;²⁴¹
- (2) Physical evidence of specific individuals involved in facilitating the Trump campaign-Russian relationship (such as emails, photos, ledgers, memorandums etc);
- [and] (3) Any individuals or sub sources who [Steele] could identify

²⁴⁰ According to Case Agent 2's written summary of the meeting with Steele in early October, Steele disclosed to the participants that he was furnishing information to the State Department "to ensure that the information was reaching the proper elements of the [U.S. government]."

²⁴¹ The written summary used codenames to identify Page and Flynn.

who could serve as cooperating witnesses to assist in identifying persons involved in the Trump campaign-Russian relationship.²⁴²

Case Agent 2's written summary of the meeting also indicates that Case Agent 2 explained that the FBI was willing to compensate Steele "significantly" for information concerning the "3 buckets" and that Steele would be paid \$15,000 for his trip to the European city for the early October meeting.²⁴³

Case Agent 2 told the OIG that Steele sat throughout the meeting with his arms folded and he could tell from Steele's body language that he was "going to be difficult to handle." According to Case Agent 2, Steele was not "excited" to hear what information the FBI was hoping to obtain, and Case Agent 2's notes indicate that Steele was "caught off guard" with the tasking request. Case Agent 2 stated that Steele was focused instead during the meeting on candidate Trump and recalled that Steele responded to the "3 buckets" by stating "maybe I can go back to the hotel [in Russia] and get the manager for you to meet to talk about the prostitutes being there."

Notes taken by Case Agent 2 and the Supervisory Intel Analyst show that Steele provided some information during the meeting about his source network and furnished several other names that could be of interest to the FBI. For example, Steele identified a sub-source (Person 1) who Steele said was in direct contact with Steele's primary source (Primary Sub-source).²⁴⁴ The notes further reflect that Steele described some of Person 1's reporting but caveated this information by explaining that Person 1 is a "boaster" and "egotist" and "may engage in some embellishment." As described in Chapters Five and Eight, the FBI did not provide this description of Person 1 to NSD's Office of Intelligence (OI) for inclusion in the Carter Page FISA applications despite relying on Person 1's information to establish probable cause in the applications.

The Supervisory Intel Analyst's notes also indicate that Steele explained that the information he obtained about Carter Page resulted from research he had been retained to conduct related to a litigation matter concerning debts allegedly owed by Paul Manafort.²⁴⁵

²⁴² The FBI advised the OIG that the Crossfire Hurricane investigation was a national security investigation, and these activities therefore involved national security [REDACTED] CHS operations [REDACTED].

²⁴³ As we discuss below, after the FBI learned in November that Steele had disclosed information to *Mother Jones* in late October 2016, the FBI declined to make this payment.

²⁴⁴ Person 1 [REDACTED]

²⁴⁵ At the time, according to FBI records that we reviewed, Manafort was involved in litigation with Russian Oligarch 1, and Steele had a relationship with one or more of the attorneys representing Russian Oligarch 1. In his interview with the OIG, Steele denied that his reporting on Carter Page resulted from work he performed on Russian Oligarch 1's behalf. Steele described as "ridiculous" any claim that Russian Oligarch 1 was involved in his reporting or influenced it.

Lastly, Steele provided the name of a Russian national, who he said may have connections with a Russian energy company, and who Steele claimed may be acting as Carter Page's possible "handler" for Russian intelligence. As noted in Chapter Three, Carter Page previously had a relationship with another U.S. government agency; Page had provided that agency with information on the same Russian national that Steele reported was Page's possible handler. According to an Assistant Legal Attaché (ALAT 2), Steele's allegations about the Russian national were investigated [REDACTED], but no information was uncovered to substantiate the allegations.²⁴⁶

We were told by the Crossfire Hurricane team members that Steele refrained from providing the level of detail about his source network that the FBI had hoped to obtain. Steele told the team members that he did not want to identify his sources because he was concerned about their safety and security. He explained that he was [REDACTED] Primary Sub-source, and that due to leaks, his source network was "drying up." According to Case Agent 2, Steele complained to the FBI during the meeting about these leaks.

We were also told by Case Agent 2 that Steele did not disclose information about the identity of Fusion GPS's client, a law firm which was funding Steele's work due to a confidentiality agreement that prevented him from sharing that information.²⁴⁷ We asked Steele what he told the FBI during the meeting about his client. He said that his notes from the meeting, which he told us he prepared two days after the meeting, and are dated that day, were the best source for that information. We reviewed Steele's notes, which show that Steele stated during the meeting that Simpson was an "intermediary" and that Simpson had been retained by "people seeking to prevent Trump becoming President." The notes did not reflect that any additional information had been provided by Steele during the meeting regarding the identity of Fusion GPS's client. Steele told us that the FBI did not press him to identify Fusion GPS's client.

During the meeting, Case Agent 2 said he advised Steele of the need to establish an exclusive reporting relationship with the FBI concerning the information that he was being tasked to collect. Case Agent 2 drafted an Electronic

²⁴⁶ Steele also reiterated some of the information in his election reporting identified other U.S. persons that he believed may be involved in or have knowledge of Russia and Trump connections. Additionally, he told the FBI that he was personal friends with a Trump family member and that the FBI may become aware of email communications concerning their friendship. Steele stated that he could not see the Trump family member being involved in any nefarious activities concerning the Trump-Russia matter.

²⁴⁷ On October 14, 2016, Case Agent 2 wrote in an email to SSA 1, Case Agent 1, the Intel Section Chief, and Strzok, among others stating that Handling Agent 1 did not believe Steele knew the identity of the Fusion GPS client which was responsible for funding Steele's work. As we described in Section II.B. above, Steele told Handling Agent 1 in July that he did not know the precise identity of the client; however, it is unclear whether Handling Agent 1 subsequently asked Steele whether he had acquired that information. Handling Agent 1 told us that he did not "continually ask" Steele about the firm's identity after his meeting with Steele on July 5, 2016.

Communication (EC) following the early October meeting that was serialized into the Crossfire Hurricane case file and described the FBI request for exclusivity:

[T]he CHS was admonished that if the CHS and FBI were going to have a reporting relationship regarding specific items of interest to the CROSSFIRE HURRICANE team (*i.e.*, [Manafort] and [Page]), that the CHS must have an exclusive reporting relationship with the FBI, rather than providing that information to the clients that hired the CHS's firm to provide reporting on Trump and [Manafort].

Recollections of the Crossfire Hurricane team members who attended the meeting varied about Steele's response to this request, except all agreed that Steele did not affirmatively disagree with it. Handling Agent 1 told us that Steele was told at the meeting "you do not talk to anybody else including anybody else in the United States government" about information Steele collected for the three buckets and that Steele agreed. Handling Agent 1 said that Steele left him with the impression that he would assist the FBI following the meeting and would abide by the FBI's instruction on exclusivity, and that he "did not buy for one second" the notion that Steele was not a CHS at this time with an obligation to follow FBI instructions. The Supervisory Intel Analyst said he could not recall Steele's response, but said that by the end of the meeting he was left with the impression that Steele would abide by the FBI's request. He further stated that, if Steele had rejected the FBI's request, it would have been documented. Case Agent 2 said that Steele never committed to share information regarding the "3 buckets" exclusively with the FBI. According to Case Agent 2, Steele's response instead was that he would consider ways to help the FBI.

Steele told us that the FBI indicated at the meeting in early October that the FBI wanted to take over the "election project" and control it, alternatively describing the FBI's actions as an attempt to get Steele to convert a "Pipeline 1" project into a "Pipeline 2" project. Steele recalled that, in response, he made it clear that was not going to happen because he was obligated to his client and was "not dumping the client" in favor of the FBI. He stated, however, that he wanted to be as helpful to the FBI as he could. According to Steele, the FBI accepted his position though they requested that he not share his election intelligence with other U.S. government agencies or with third-party clients (other than the client that retained him initially). Steele said he did not know whether he agreed to this request and pointed out that his notes from the meeting do not reflect his response.²⁴⁸ We asked whether he would have recorded a response in the notes if he had rejected the request. He responded "yes," and said the lack of a response in his notes suggested he did not agree or disagree.

We asked Handling Agent 1 and members of the Crossfire Hurricane team whether it was realistic for the FBI to expect that Steele would abide by the FBI's request given that his consulting firm had been retained by a paying client to perform this work. Handling Agent 1 told us that he thought it was realistic

²⁴⁸ The notes that Steele made available to the OIG to review, which Steele told us he prepared two days after the meeting, were consistent with his testimony to the OIG.

because Steele "was now being offered compensation to go forward from the United States government." Acting Section Chief 1 said he was not sure at the time how realistic the request was because he did not know how many clients Steele had, though he "rationalized" that given Steele's intelligence background his business probably "was wide to a lot of audiences" and he could afford to have an exclusive reporting relationship with the FBI on certain issues.

We also asked the FBI team members who attended whether there was any discussion during the meeting about the September 23 *Yahoo News* article. Case Agent 2 told the OIG that he could not remember asking Steele about the *Yahoo News* article during the meeting, and that he was more focused on getting Steele to "play ball." The Supervisory Intel Analyst also said he did not recall Steele being asked whether he was a source of the *Yahoo News* article. Handling Agent 1 stated that he could not recall if the article was raised during the meeting with Steele. According to Steele, he did not recall any discussion of the media during the early October meeting, and none was reflected in his notes. Steele further told us that if the issue of the media had been raised he would have recorded it in his notes given that he already had met with media groups in September.

According to the Crossfire Hurricane team members, the outcome of the early October meeting was less than desired. Case Agent 2 said he could not recall Steele agreeing to anything during the meeting. Both Case Agent 2 and the Supervisory Intel Analyst told the OIG that, although Steele continued to provide written reports to Handling Agent 1 after the meeting, Steele did not provide information specifically addressing the "3 buckets."²⁴⁹ Case Agent 2 also expressed skepticism after the meeting as to whether Steele would abide by the FBI's request for exclusivity in his reporting. In response to an inquiry in mid-October from the OI Attorney who was drafting the first Carter Page FISA application, about whether Steele was refraining from providing information to Simpson that was relevant to the Crossfire Hurricane investigation, Case Agent 2 responded in an email that "we need to be realistic about that." Case Agent 2 wrote:

We made a good faith effort and admonished the CHS [at the early October meeting] that any further information that s/he developed in regard to our subjects, Page[,], Manafort, Papadopoulos, Flynn should be exclusively provided to the FBI for further evaluation. Whether or not that happens remains to be seen.

Handling Agent 1 told us that after the early October meeting Steele failed to abide by the FBI's instructions when he continued to meet with the media and the State Department about issues over which the FBI had sought to establish an exclusive reporting relationship at the early October meeting. According to Handling Agent 1, while Steele appeared to follow the directions of Fusion GPS, he did not treat his other client – the FBI – fairly. According to Handling Agent 1, if Steele "had been straight with the FBI," he would not have been closed as a CHS. Handling Agent 1 added that it "blew his mind" that, given Steele's intelligence

²⁴⁹ As we describe below, Steele did provide some limited information in mid-October 2016 concerning Carter Page.

background, Steele was meeting with the press and taking actions that endangered the safety of those in his source network. Case Agent 2 told the OIG that he thought it was "terrible" for Steele to complain to the FBI about leaks during the early October meeting given that he had been meeting with media outlets in September and had provided information that was used in the *Yahoo News* article. According to Case Agent 2, in hindsight, "[c]learly he wasn't truthful with us. Clearly."

We asked Steele whether during the early October meeting he lied or otherwise misled the FBI. He responded "no" and that he did not believe he ever lied to the FBI.

G. FBI Disclosures to Steele during the Early October Meeting

In addition to inquiring about Steele's conduct at the early October meeting, we also asked whether the Crossfire Hurricane team members provided too much information to Steele during the meeting, including classified information. According to Case Agent 2's written summary of the meeting, Case Agent 2 provided Steele with a "general overview" of the Crossfire Hurricane investigation, which included a description of events involving Papadopoulos and the FFG, which furnished the predication for the investigation. Case Agent 2's written summary also states that Case Agent 2 informed Steele that Papadopoulos's actions had resulted in a "small analytical effort" that had expanded to include Manafort, Flynn, and Page.²⁵⁰ FBI attendees at the meeting confirmed that Case Agent 2 led the discussion on these points, though Case Agent 2 told us that his written summary does not present the actual words he used in his explanations to Steele. The contents of both the "analytical effort" and the FFG's notice to the U.S. government are classified.

Handling Agent 1 told the OIG that he agreed it was peculiar that Case Agent 2 gave Steele an overview of the Crossfire Hurricane investigation, including providing names of persons related to the investigation. As an example, Handling Agent 1 explained that during the FIFA investigation he never informed Steele that the FBI was investigating FIFA. The Supervisory Intel Analyst told the OIG that he was concerned that Case Agent 2 had divulged too much information to Steele and that he notified his supervisor about his concern upon returning to Washington D.C.

²⁵⁰ The relevant text from Case Agent 2's summary reads:

The CHS was then given a general overview of the FBI's CROSSFIRE HURRICANE investigation and told that it was a small cell that was exploring a small piece of the overall problem of Russian interference in the U.S. Electoral process. CHS was advised that the CH team was made aware of [Papadopoulos's] May 2016 comments in the U.K in late July by a friendly foreign service and that [Papadopoulos] had predicated a small analytical effort that eventually expanded to include [Manafort, Flynn, and Page]. CHS advised that he was not aware of [Papadopoulos].

The Supervisory Intel Analyst stated that he was concerned that Case Agent 2 had shared names as well as information related to the FFG information.²⁵¹

Case Agent 2 said that he believed he had authority from CD to discuss classified information with Steele, though he agreed that in the “heat of the moment” he made a mistake and provided more information than he should have provided about the role of the FFG. He explained that his disclosure resulted from “trying in good faith to accomplish the mission.” He stated that he remembered telling Steele that the FBI was investigating possible Russian penetrations of the Trump campaign but did not recall telling Steele that Papadopoulos, Manafort, Flynn, and Page were being investigated by the FBI. Rather, he recalled asking for information about those persons in light of press coverage that they had received. Steele told us that he did not believe the Crossfire Hurricane team members told him whether there was an open investigation on those persons. Case Agent 2 further stated that there was no effort on his part to conceal what he had said to Steele from his supervisors. After the meeting concluded, Case Agent 2 circulated a written summary of the meeting that included a description of the information he provided to Steele. Acting Section Chief 1 also attended the meeting in the European city and did not object at the time or afterwards to Case Agent 2’s conduct.

We asked Case Agent 2’s supervisors—Strzok and Priestap—about the information that the Crossfire Hurricane team communicated to Steele and whether Case Agent 2 had been authorized to disclose classified information during the early October meeting.²⁵² Priestap said that he did not recall being briefed beforehand about what information the team intended to convey to Steele. He explained, however, that given Steele’s background in intelligence work, it was necessary to provide him with sufficient contextual information to understand the taskings. Priestap also said that there is an “art” to deciding how much information to convey to a CHS so that the CHS can be effective without divulging the sensitive details of an investigation. Strzok stated that he did not recall authorizing Case Agent 2 to disclose the specific information presented in Case Agent 2’s written summary though Strzok said he recalled general discussions with the Crossfire Hurricane team members who were meeting with Steele about how much information to share with Steele. Strzok explained that “[y]ou provide as much information as needed to give effective direction, and as little as possible to compartment and protect what we’re doing.” After reading Case Agent 2’s written summary of the information he presented to Steele, both Priestap and Strzok said that it appeared that Case Agent 2 provided more information than was necessary to Steele.

²⁵¹ Steele informed Simpson about the content of the discussions during the early October meeting, including that the FBI had information from “an internal Trump campaign source” that corroborated Steele’s reporting, according to Simpson’s testimony to the Senate Judiciary Committee. *Simpson Senate Testimony*, at 175.

²⁵² FBI Security staff told us that the Assistant Director for CD can authorize the disclosure of classified information. We found that the CHS Policy Guide (CHSPG) does not address the disclosure of sensitive or classified information to CHSs and that the FBI has not otherwise developed guidance on the issue.

Trump and was an “open secret” in Putin’s government; (2) sex videos existed of Trump; and (3) the FSB funneled payments to Trump through an Azerbaijani family. According to Steele’s notation to the report, Steele did not have a way to verify the source(s) or the information but noted that, even though the reporting originated from a different source network, some of it was “remarkably similar” to Steele’s reporting, especially with regard to the alleged 2013 Ritz Carlton incident involving Trump and prostitutes, Trump’s compromise by the FSB, and the Kremlin’s funding of the Trump campaign by way of the Azerbaijani family. The Supervisory Intel Analyst characterized the report as “yet another report that would need to be evaluated.”

In addition to continuing to provide reporting to the FBI, Steele also was, unbeknownst to the FBI at the time, continuing his outreach to the media concerning alleged contacts between the Trump campaign and the Russian government. According to information from the foreign litigation noted above, Steele returned to Washington, D.C., in mid-October and provided additional briefings to *The New York Times*, *The Washington Post*, and *Yahoo News*. We asked Steele why he did not advise the FBI of his engagements with the media. He stated that he did not alert the FBI because the media briefings were part of his contract with Fusion GPS and were set up and attended by Simpson. As noted above, Steele did not believe that the FBI had raised the issue of media contacts with him at the early October meeting, and his contemporaneous notes from that meeting do not mention the issue.

Further, Steele met on October 11 at the State Department with Winer and Deputy Assistant Secretary Kathleen Kavalec, who was a deputy to then Assistant Secretary Victoria Nuland. Steele told us that Winer had originally contacted him to request that he meet with Nuland, who ultimately did not attend.²⁵⁵ Notes of the meeting taken by State Department staff reflect that Steele addressed a wide array of topics during the meeting, including:

- Derogatory information on Trump;
- Manafort’s role as a “go-between” with the campaign and Kremlin;
- The role of Alfa Bank, one of Russia’s largest privately owned banks, as a conduit for secret communications between Manafort and the Kremlin;
- Manafort’s debts to the Russians;
- Carter Page’s meeting with Sechin;
- The Russian Embassy’s management of a network of Russian émigrés in the United States who carry out hacking and recruiting operations; and

²⁵⁵ Steele told us that he was delayed from the airport and arrived late for the meeting, by which time Nuland had departed.

- The Russian cyber penetration of the DNC.²⁵⁶

The notes also indicate that Steele explained that the information his firm collected on the connection between Trump and Russia came from [REDACTED], [REDACTED]

[REDACTED] According to the notes, Steele stated that [REDACTED]

[REDACTED] The notes also state that Steele's firm had [REDACTED]

We asked Kavalec about the meeting with Steele. She stated that Nuland did not ask to meet with Steele and that Nuland requested she attend the meeting because Nuland did not want to devote time to it. It was Kavalec's understanding that Steele sought the meeting with Nuland as part of a wider effort to disseminate his election report findings to persons in Washington, D.C. She stated that during the meeting Steele expressed frustration that the FBI had not acted on his reporting and explained that when he first offered information to the FBI he found a lack of interest.

Kavalec told us that shortly after the meeting with Steele, she encountered the FBI's liaison to the State Department and mentioned the meeting to him. According to Kavalec, she explained to the liaison that she was willing to be interviewed by the FBI regarding her meeting with Steele, though Steele had informed her that he had already been in contact with the FBI to share his reporting. The FBI liaison told us that Kavalec also informed him that a particular piece of information in Steele's reporting appeared to be incorrect. She explained to the FBI liaison that Russia did not have a consulate in Miami as indicated by Steele's reporting, which claimed that a cyber-hacking operation was being run, in part, out of the Russian consulate in Miami.²⁵⁷ The FBI liaison informed SSA 1 and Case Agent 1 via email on November 18 that Kavalec had met with Steele, she had taken notes of their meeting, the liaison could obtain information from Kavalec about the meeting, and, according to Kavalec, the information from Steele's reporting about a Russian consulate being located in Miami was inaccurate.²⁵⁸ The

²⁵⁶ Much of the information presented by Steele at the State Department briefing can be found in Reports 130 and 132, both of which Steele provided to the FBI in October.

²⁵⁷ Kavalec's typed notes from Steele's October 11, 2016 briefing stated that Steele told her that a Russian cyber hacking operation targeting the 2016 U.S. elections was making payments to involved persons from "the Russian [c]onsulate in Miami." Steele's election Report 95 contained similar, but not fully consistent, information. Report 95 did not explicitly state that there was a Russian consulate in Miami. Instead, Report 95 stated that Russian consular officials and diplomatic staff in Miami were making payments in order to facilitate a secret exchange of intelligence between persons affiliated with Trump and the Russian government.

²⁵⁸ After reviewing a portion of our draft report and his November 18, 2016 email to SSA 1 and Case Agent 1, the FBI liaison told us that he believes that he first learned about Kavalec's meeting with Steele on or about November 18, 2016.

FBI liaison told us that he received no directives from the Crossfire Hurricane team to gather information from Kavalec regarding her contact with Steele.

In anticipation of an FBI interview, Kavalec said she prepared a typewritten summary of the meeting within 1 to 2 weeks after talking with the liaison. The typed summary began by noting that Steele said at the meeting that he had undertaken the investigation "at the behest of an institution he declined to identify that had been hacked." The summary also noted that Steele told the attendees that the "institution...is keen to see this information come to light prior to November 8." However, the FBI did not interview Kavalec nor did they seek her notes.

Two days after the meeting with Steele, Kavalec emailed an FBI CD Section Chief a document that Kavalec received from Winer discussing allegations about a linkage between Alfa Bank and the Trump campaign, a topic that was discussed at the October 11 meeting.²⁵⁹ Kavalec advised the FBI Section Chief in the email that the information related to an investigation that Steele's firm had been conducting. The Section Chief forwarded the document to SSA 1 the same day.

We asked Steele why he did not inform the FBI of the meeting at the State Department and why he did not abide by the FBI's request for exclusivity. He said he did not think it was appropriate to turn down a meeting request from an Assistant Secretary of State, which he said he received on short notice. He also stated that, at the time he received the meeting request, the meeting agenda was unclear, and he was uncertain what topics he would be asked to discuss. He said it was his understanding that the FBI did not object to his discussing general themes with other agencies as opposed to "details" about his intelligence and source network.

Handling Agent 1 told us that he believed Steele should have alerted him to both his media contacts in September and October and his meeting with State Department staff in October. As noted above, the Crossfire Hurricane team first learned of Steele's October meeting with the State Department from the FBI liaison on November 18, by which date the FBI had already closed Steele as a CHS because of his *Mother Jones* disclosure, which we discuss in Chapter Six. Handling Agent 1 explained that Steele should have recognized the need to provide this notice to the FBI, especially given the discussions that took place with the Crossfire Hurricane team in early October.

²⁵⁹ Steele separately wrote in Report 112, dated September 14, 2016, that Alfa Bank allegedly had close ties to Putin. The Crossfire Hurricane team received Report 112 on or about November 6, 2016, from a *Mother Jones* journalist through then FBI General Counsel James Baker. Additionally, Ohr advised the FBI on November 21, 2016, according to an FBI FD-302, that Steele had told Ohr that the Alfa Bank server was a link to the Trump campaign and that Person 1's Russia/American organization in the U.S. had used the Alfa Bank server two weeks prior. Steele told us that the information about Alfa Bank was not generated by Orbis. The FBI investigated whether there were cyber links between the Trump Organization and Alfa Bank, but had concluded by early February 2017 that there were no such links. The Supervisory Intel Analyst told us that he factored the Alfa Bank/Trump server allegations into his assessment of Steele's reporting.

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In the next chapter we describe the first Carter Page FISA application, filed on October 21, 2016, which relied significantly on Steele's reporting.

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CHAPTER FIVE

THE FIRST APPLICATION FOR FISA AUTHORITY ON CARTER PAGE

At the request of the FBI, the Department filed four applications with the Foreign Intelligence Surveillance Court (FISC) seeking FISA authority to conduct electronic surveillance [REDACTED] targeting Carter Page: the first application on October 21, 2016, and three renewal applications on January 12, April 7, and June 29, 2017. A different FISC judge considered each application and issued the requested orders, collectively resulting in approximately 11 months of FISA coverage targeting Carter Page from October 21, 2016, to September 22, 2017.

In this chapter, we describe the first of the four FISA applications, beginning with the early consideration of a potential FISA targeting Carter Page in August 2016, shortly after the FBI opened the Crossfire Hurricane investigation, and the FBI's eventual submission of a FISA request to the Office of Intelligence (OI) in the National Security Division (NSD) in September 2016, a few days after the Crossfire Hurricane team received Christopher Steele's reporting. We discuss the significance of the Steele reporting to the decision of FBI attorneys to proceed with the FISA request. We also describe the development of the first FISA application and the attention it received during the review and approval process from the FBI, OI, NSD management, and the Office of the Deputy Attorney General (ODAG). We further describe the filing of the read copy with the FISC, the feedback OI received from the court, revisions made to the application to address that feedback, and the last steps taken before the final application was filed and the orders were issued. These last steps included the completion of the Woods Procedures described in Chapter Two, then FBI Director James Comey's certification of the application, and the oral briefing provided to, and final approval given by, then Deputy Attorney General (DAG) Sally Yates. Finally, we describe the most significant instances in which information in the FISA application was inaccurately stated, incomplete at the time the application was filed, or unsupported by documentation in the Woods File.

I. Decision to Seek FISA Authority

A. Early Consideration of a Potential FISA

As described in Chapter Three, on August 10, 2016, under the umbrella of Crossfire Hurricane, FBI Headquarters opened a new full counterintelligence investigation on Carter Page. The pre-existing counterintelligence case on Page was then transferred from the FBI's New York Field Office (NYFO) to FBI Headquarters and merged into the new case. At about the same time, the Crossfire Hurricane team began planning for Confidential Human Source (CHS) operations (discussed later in this chapter and in Chapter Ten) targeting Carter Page and George Papadopoulos. Also at about the same time, the case agent assigned to the Carter Page investigation, Case Agent 1, contacted FBI's Office of the General Counsel (OGC) about the possibility of seeking FISA authority targeting Carter Page

to conduct electronic surveillance [REDACTED]. This was the first potential use of FISA authority considered by the Crossfire Hurricane team.

The Crossfire Hurricane team told us that the proposal for FISA coverage targeting Carter Page originated from the team, not an instruction from management. The team also told us that its interest in obtaining a FISA was based upon Page's prior contacts with known Russian intelligence officers, which the team believed made him most receptive to receiving the offer of assistance from the Russians reported in the FFG information (described in Chapter Three) provided to the FBI in late July 2016. Case Agent 1 said that he had hoped that emails and other communications obtained through FISA electronic surveillance would help provide valuable information about what Page did while in Moscow in July 2016 and the Russian officials with whom he may have spoken.

For these reasons, on August 15, 2016, Case Agent 1 emailed a written summary on Carter Page to the OGC Unit Chief, stating that he thought the information provided "a pretty solid basis" for requesting FISA authority. This summary, which a Staff Operations Specialist (SOS) prepared, briefly described Page's Russian business and financial ties, his prior contacts with Russian intelligence officers, and his recent travel to Russia. According to Case Agent 1, both he and the SOS believed that they had enough information to establish the probable cause necessary to request FISA authority on Carter Page. Case Agent 1 told us that Page's contacts with known Russian intelligence officers (described in Chapter Three) provided a "pretty good link" for a FISA.

Later the same day, the OGC Unit Chief responded to Case Agent 1 with requests for additional information about what Page had previously told the FBI regarding his relationship with Russian intelligence officers in order to compare it with information the FBI had from other reporting sources. She said that this information would be helpful to determine whether Page had a clandestine relationship with Russia. The OGC Unit Chief added that she would reach out to her OI counterparts to get their thoughts, "but I think we'll need more for PC," meaning probable cause.

The next day, on August 16, the OGC Unit Chief contacted Stuart Evans, then NSD's Deputy Assistant Attorney General with oversight responsibility over OI, stating:

We have some facts which may lead to a FISA on one of our subjects—mostly past contacts and connections to [Russian Intelligence Services] and a financial interest in [a] Russian-government controlled gas business. I don't think we're quite there yet, but given the sensitivity and urgency of this matter, I would like to get OI involved as early as possible.

The OGC Unit Chief told Evans he had permission to brief a small group of OI attorneys into Crossfire Hurricane, including the Operations Section Chief, Gabriel

Sanz-Rexach; the Deputy Section Chief; the Counterintelligence Unit Chief (OI Unit Chief); and one line attorney.²⁶⁰

The OGC Unit Chief and OGC Attorney assigned to assist the Crossfire Hurricane team met with the OI Unit Chief the same day to brief him on Crossfire Hurricane and the four individual subjects. During his OIG interview, the OI Unit Chief recalled that the OGC attorneys mentioned the possibility of seeking FISA authority targeting Carter Page, but he did not recall a decision being made at the meeting about whether to do so.²⁶¹ The OI Unit Chief said that, at the request of Evans, he advised OGC that the FBI would need to submit a formal FISA request before OI would begin the back-and-forth process with the FBI on a potential application. He told us that it was over a month later when OGC told him for the first time that the FBI was ready to move forward with the request.

While FISA discussions were ongoing, on or about August 17, 2016, the Crossfire Hurricane team received information from another U.S. government agency relating to Page's prior relationship with that agency and prior contacts with Russian intelligence officers about which the agency was aware. We found that, although this information was highly relevant to the potential FISA application, the Crossfire Hurricane team did not engage with the other agency regarding this information until June 2017, just prior to the final Carter Page FISA renewal application.²⁶² As we discuss later in this chapter, when Case Agent 1 was explicitly asked in late September 2016 by the OI Attorney assisting on the FISA application about Page's prior relationship with this other agency, Case Agent 1 did not accurately describe the nature and extent of the information the FBI received from the other agency.

Also in August, while FISA discussions were ongoing, the Crossfire Hurricane team conducted a consensually monitored meeting between an FBI CHS and Carter Page in an attempt to obtain information from Page about links between the Donald J. Trump for President Campaign and Russia. During the operation, which we describe in greater detail below, Page made statements to the CHS that would have, if true, contradicted the notion that Page was conspiring with Russia. Page

²⁶⁰ OI's Operations Section is divided into three units: Counterintelligence, Counterterrorism, and Special Operations. Among other responsibilities, all three units prepare and file FISA applications with the FISC. Because the Carter Page investigation was a counterintelligence matter, the Counterintelligence Unit handled the Carter Page FISA applications.

²⁶¹ The OI Unit Chief did not recall providing specific feedback concerning a potential Carter Page FISA application during or in response to this meeting. He said they did not discuss at that time the specific information the Crossfire Hurricane team had to support a FISA application. He recalled only a general discussion about the case that included a heads up that they believed that at some later point they would want to move forward on a FISA request targeting Carter Page. The OGC Unit Chief and OGC Attorney told us they also did not recall the feedback from OI, if any, at this time. The OGC Attorney did not recall attending the meeting at all, even though the OI Unit Chief's meeting notes indicate he was present.

²⁶² We describe in Chapter Eight the circumstances surrounding the FBI's engagement with the other agency in June 2017 and the FBI's failure to include the information in the final FISA renewal application.

also made statements that contradicted the Steele reporting received by the team in September, in particular the assertion that Manafort was using Page as an intermediary with Russia. However, as we detail later in this chapter, we found no evidence the FBI made Page's statements from this CHS meeting available to OI or NSD until mid-June 2017.

FBI documents reviewed by the OIG indicate that by late August 2016, Case Agent 1 had been told that he had not yet presented enough information to support a FISA application targeting Carter Page. Case Agent 1's handwritten notes dated August 22, 2016 state: "Not there yet: OI" below a reference to a FISA request targeting Carter Page.²⁶³ Case Agent 1 told us that he remembered being told that he had not yet presented enough information to support probable cause, but he could not recall whether OGC or OI, or both, had made that assessment.

Handwritten notes taken by David Laufman, then Chief of NSD's Counterintelligence and Export Control Section (CES), indicate that on August 25, 2016, FBI and NSD officials discussed the status of FISA coverage targeting Carter Page during a weekly Crossfire Hurricane meeting and that someone at the meeting conveyed that there was "[n]o FISA up on Page; currently no PC." Laufman told us that he did not remember who conveyed this information, but he thought it was probably one of the FBI officials in attendance, which included the OGC Unit Chief, the Section Chief of CD's Counterintelligence Analysis Section I (Intel Section Chief), and Assistant Director E.W. "Bill" Priestap.

As discussed below, the FBI OGC Unit Chief contacted the NSD OI Unit Chief on September 21, 2016, two days after the Crossfire Hurricane team received six of Steele's reports, to advise that the FBI believed it was ready to submit a formal FISA request to OI. As the OGC Unit Chief stated in an October 19, 2016 email to members of the Crossfire Hurricane team, "we first raised the issue of [a] potential FISA [targeting Carter Page] early on—maybe the 2nd or 3rd week of the case. But we didn't have serious discussions until we got the actual [Steele] reports (maybe the day after?)."

B. The FBI's Submission of a FISA Request Following Receipt of the Steele Reporting

As described in Chapter Four, the Crossfire Hurricane team received the first set of Steele's reports on September 19, 2016. Upon receipt of these reports, the team immediately began the process of evaluating Steele and the information he provided. For example, that same day, SSA 1 sent an email to Handling Agent 1 and others, stating, "Our team is very interested in obtaining a source symbol number/source characterization statement and specifics on veracity of past reporting, motivations, last validation, how long on the books, how much paid to

²⁶³ It is unclear whether Case Agent 1 took this note during a meeting or at some other time. Case Agent 1 told us that the team had regular discussions during this time period, but did not specifically recall this particular discussion.

date, etc.” SSA 1 told us that he did not receive a response from Handling Agent 1 to this email, and we did not find one during the course of our review.

Also on September 19, the team began discussions with OGC to consider Steele’s reporting as part of a FISA application targeting Carter Page. In an email to the OGC Unit Chief and OGC Attorney, the Supervisory Intelligence Analyst (Supervisory Intel Analyst) forwarded an excerpt from Steele’s Report 94 (described in more detail below) concerning Page’s alleged secret meeting with Igor Divyekin in July 2016 and asked, “Does this put us at least ***that*** much closer to a full FISA on [Carter Page]?” (Emphasis in original). The Supervisory Intel Analyst told us that, earlier that day, he had researched information on Divyekin that “elevated” the significance of this particular allegation. He said that he wondered whether OGC would find that this information, along with the totality of the other information on Carter Page, brought them closer to probable cause on Page. Similarly, Case Agent 1 told us that the team’s receipt of the reporting from Steele supplied missing information in terms of what Page may have been doing during his July 2016 visit to Moscow and provided enough information on Page’s recent activities that Case Agent 1 thought would satisfy OI.

Two days later, on September 21, the OGC Attorney and OGC Unit Chief requested a meeting with the OI Unit Chief to discuss, among other things, a potential FISA application targeting Carter Page. The OGC Unit Chief told the OIG that the receipt of the Steele reporting changed her mind on whether they could establish probable cause. She said that although there could be differing opinions, she thought it was a “close call” when they first discussed a FISA targeting Page in August, and that the Steele reporting in September “pushed it over” the line in terms of establishing probable cause. She explained that the Steele reporting presented information that Page had recent contact with the Russians and that this contact was consistent with the information received from the FFG that someone on the campaign had received an offer or suggestion of assistance from the Russians. She said that before the Steele reporting, the FBI did not have information concerning what Page’s current activities with the Russians might have been or information suggesting a connection between Page and the FFG information. Similarly, the OGC Attorney told us that he thought probable cause was “probably 50/50” before the Steele reporting; however, in his view, it was a combination of the Steele reporting, Carter Page’s historical contacts with Russian intelligence officers, and statements Page made in October 2016 during a consensually monitored meeting with an FBI CHS (described later in this chapter and in Chapter Ten) just before the FISA application was filed with the court, that made the OGC Attorney comfortable about establishing probable cause.²⁶⁴

²⁶⁴ We asked then Deputy Director Andrew McCabe about the testimony attributed to him in the January 18, 2018 House Permanent Select Committee on Intelligence Memorandum from Majority Staff on *Foreign Intelligence Surveillance Act Abuses at the Department of Justice and the Federal Bureau of Investigation* (HPSCI Majority Memorandum) that “Deputy Director McCabe testified before the Committee in December 2017 that no surveillance warrant would have been sought from the FISC without the Steele dossier information.” See HPSCI Majority Memorandum at 3, declassified on February 2, 2018, and available at <https://republicans->

On September 21, the OGC attorneys met with the OI Unit Chief and described the reporting from Steele concerning Carter Page that the team had recently received. According to notes of the meeting, the OGC Attorney and OGC Unit Chief told the OI Unit Chief about the allegations contained in the Steele reporting that Page had a secret meeting with a high-level Russian official in July 2016, that Page may have received a Russian dossier on Hillary Clinton, and that there was a “well-developed conspiracy” between associates of the Trump campaign and Russian leadership being managed, in part, by Carter Page. The OI Unit Chief told us that he recalled that the Steele reporting was “what kind of pushed it over the line” in terms of the FBI being ready to pursue FISA authority targeting Page. He recalled thinking that if the information bears out during the drafting process, there would probably be sufficient information to support a FISA application targeting Page. Conversely, he said that without the Steele reporting concerning Page, he would not have thought they could establish probable cause based on the other information the FBI presented at that time (Page’s historical contacts with Russia).

On September 22, the OI Unit Chief assigned a line attorney (OI Attorney) to work on the Carter Page FISA, and he and the OI Attorney met with the OGC Unit Chief to brief the OI Attorney into the case and discuss the essential points for the FISA. The same day, OGC submitted a FISA request form to OI providing, among other things, a description of the factual information to establish probable cause to believe that Carter Page was an agent of a foreign power, the “facilities” to be targeted under the proposed FISA coverage, and the FBI’s investigative plan.²⁶⁵ Case Agent 1 said he prepared the FISA request form, and the OGC Attorney said he may have provided a “very quick review” before sending it to OI. The OGC Attorney told us that the FISA request form was not as “robust” as it could have been because the FBI wanted to submit it to OI as soon as possible.

The FISA request form drew almost entirely from Steele’s reporting in describing the factual basis to establish probable cause to believe that Page was an agent of a foreign power, including the secret meeting between Carter Page and Divyekin alleged in Steele’s Report 94 and the role of Page as an intermediary between Russia and the Trump campaign’s then manager, Paul Manafort, in the “well-developed conspiracy” alleged in Steele’s Report 95. The only additional information cited in the FISA request form to support a probable cause finding as to Page was (1) a statement that Page was a senior foreign policy advisor for the

intelligence.house.gov/uploadedfiles/memo_and_white_house_letter.pdf (last accessed December 2, 2019). McCabe told us that he did not recall his exact testimony, but that his view was that the FBI would have “absolutely” sought FISA authority on Carter Page, even without the Steele reporting, based upon Page’s historical interactions with known Russian intelligence officers and the fact that Page told known Russian intelligence officers about the FBI’s knowledge of those interactions. However, McCabe also told us that he was not privy to the discussions that took place between attorneys in FBI OGC and Case Agent 1 on the sufficiency of the evidence to establish probable cause before the Crossfire Hurricane team received Steele’s election reports. McCabe said he could not speculate as to whether the FBI would have been successful in obtaining FISA authority from the FISC without the inclusion of the Steele reporting.

²⁶⁵ “Facilities” are [REDACTED]

Trump campaign and had extensive ties to various state-owned or affiliated entities of the Russian Federation, (2) Papadopoulos's statement to the FFG in May 2016, and (3) open source articles discussing Trump campaign policy positions sympathetic to Russia, including that the campaign's tone changed after it began to receive advice from, among others, Manafort and Page.

The FISA request form submitted to OI did not include information that the FBI obtained as a result of CHS meetings in August and September referenced in Chapter Three and summarized in Chapter Ten. These meetings were an attempt by the FBI to better understand what Papadopoulos meant when he advised the FFG about the alleged offer of assistance from the Russians, to probe Page and Papadopoulos about links between the campaign and Russia and to determine whatever Page and Papadopoulos may have known about Russia's use of emails to benefit the Trump campaign. The first meeting involved a consensually monitored conversation between an FBI CHS and Page in August 2016, and the second involved consensually monitored conversations between an FBI CHS [REDACTED] and Papadopoulos in September 2016.

During the meeting in August, Carter Page stated, among other things, that he had "literally never met" or "said one word to" Paul Manafort, and that Manafort had not responded to any of Page's emails. Page made other statements that did not add support to the notion that Page was conspiring with Russia. During the meetings in September, Papadopoulos stated, among other things, that to his knowledge no one associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails. As described in Chapter Eight, the OI Attorney told us that he did not think the FBI told him about these meetings before the FISA application was filed with the court. We found no information suggesting otherwise.

The FISA request form also did not include information the Crossfire Hurricane team received from another U.S. government agency on August 17, 2016, relating to Page's prior relationship with that agency and prior contacts with Russian intelligence officers.

Finally, the FISA request form referred to Steele as a "reliable source, whose previous reporting to the FBI has been corroborated and used in criminal proceedings." As noted later in this chapter, while Steele had previously provided information to the FBI that helped the FBI further criminal investigations, his reporting had never been used in a criminal proceeding.

After receiving clarifying questions from OI in response to the FISA request form, the FBI submitted a revised, formal request for an expedited FISA application on September 30. As described in Chapter Two, an expedited FISA application seeks to have the FISC waive the requirement in its Rules of Procedure that the government submit a proposed application no later than 7 days before it seeks to have the matter considered by the FISC. Requests by the FBI that OI seek an expedited FISA application require the approval of a Deputy Assistant Director (DAD) or higher. In this instance, the expedited request was approved by DAD Strzok. Strzok told the OIG that he approved the request to expedite the FISA

because there was a sense of urgency to complete the investigation as quickly and thoroughly as possible. According to Strzok, the team was not given an explicit instruction to finish the investigation before Election Day or Inauguration Day, but everyone involved understood the importance of moving quickly.

At the same time the Crossfire Hurricane team moved forward with a FISA request targeting Carter Page, FBI documents reflect that the team was also interested in a FISA request targeting George Papadopoulos to further the investigation. However, FBI OGC was not supportive. Instant messages between the OGC Attorney and the OGC Unit Chief indicate that they, the Intel Section Chief and Strzok, agreed that there was not a sufficient basis for FISA surveillance targeting Papadopoulos. The instant messages also show that the Intel Section Chief and Strzok were much more interested in pursuing the request for FISA coverage targeting Page.

The OGC Unit Chief told the OIG that she recalled that the difference between these two subjects with respect to a potential FISA application was that Carter Page had previous connections with Russian intelligence officers as well as the recent allegations in the Steele reporting that Page was an intermediary between Russia and the Trump campaign. With respect to Papadopoulos, the Crossfire Hurricane team had the information from the FFG that mentioned him, but no specific information that Papadopoulos was a person being directed by the Russians. Ultimately, the Crossfire Hurricane team did not seek FISA authority targeting Papadopoulos.

II. Preparation and Approval of the First FISA Application

Following receipt of the FISA request form on September 22, the OI Attorney immediately began work on the FISA application, preparing the initial drafts with information provided by the FBI. The preparation and approval process for the application took four weeks to complete. We were told that the application received more attention and scrutiny than the typical FISA application in terms of additional layers of review and the number of high-level officials who read the application. We describe this process in detail below.

A. Initial Drafts

On or about September 23, the OI Attorney began work on the initial draft FISA application. At this early stage of the drafting process, Evans told us that he instructed the OI Attorney and OI Unit Chief to handle the Carter Page FISA application as they would any other FISA application—to make sure the work was as thorough as possible so that NSD could answer the legal question of whether the facts meet the probable cause standard—and leave any policy questions to the decision makers down the road.

As described in Chapter Two, the read copy of a FISA application is prepared by an OI attorney using information provided by the FBI, primarily the case agent. The OI attorney relies heavily on the case agent to supply the necessary

information and identify significant issues. NSD officials told us that the nature of FISA practice requires that OI rely on the FBI agents who are familiar with the investigation to provide accurate and complete information. Unlike federal prosecutors, OI attorneys are usually not involved in an investigation, or even aware of a case's existence, unless and until OI receives a request to initiate a FISA application. Once they receive a request, OI attorneys generally interact with field offices remotely and do not have broad access to FBI case files or sensitive source files. According to NSD officials, even if OI received broader access to FBI case files, the number of FISA requests that OI attorneys are responsible for handling makes it impracticable for an OI attorney to become intimately familiar with an FBI case file, particular one about which they have had little to no prior awareness.²⁶⁶ In addition, NSD told us that OI attorneys are not in the best position to sift through a voluminous FBI case file because they do not have the background knowledge and context to meaningfully assess all the information.

In this case, based upon the information the FBI initially provided in the September 22 draft FISA request, the OI Attorney sent his first questions to the OGC Attorney on September 23. Case Agent 1 sent back responses the same day. Over the course of the next two weeks, the OI Attorney exchanged various emails and telephone calls with the FBI and prepared initial drafts using information principally provided by Case Agent 1 and, in a few instances, by the OGC Attorney or other Crossfire Hurricane team members. The culmination of this process led to the first drafts of the FISA application being shared with OI and NSD management on October 5 and 6, 2016.

In these initial drafts, the statement of facts in support of probable cause asserted that the Russians were attempting to undermine and influence the upcoming U.S. presidential election, and that the FBI believed Carter Page was acting in conjunction with the Russians in those efforts. The statement of facts supporting probable cause was broken down into four main elements:

- (1) The efforts of Russian Intelligence Services (RIS) to influence the upcoming 2016 U.S. presidential election;
- (2) The Russian government's attempted coordination with members of the Trump campaign, which was based on the FFG information concerning the alleged offer or suggestion of assistance from the Russians to someone associated with the Trump campaign;
- (3) Page's historical connections to Russia and RIS, which included his business dealings with the Russian energy company Gazprom, his professional relationships with known Russian intelligence officers, and his disclosure to the FBI and a Russian Minister that he was Male-1 in an indictment against Russian intelligence officers; and

²⁶⁶ NSD officials cautioned further that it is not unusual for OI to receive requests for emergency authorizations with only a few hours to evaluate the request.

(4) Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities, based on some of the reporting from Steele.

In addition, the statement of facts described Page's denials of coordination with the Russian government as reported in two news articles and as asserted by Page in a September 25 letter to the FBI Director. Except for the addition of new information from an October 2016 CHS operation discussed later, the read copy and final application submitted to the FISC were organized in the same way.

In support of the fourth element concerning Carter Page's alleged coordination with the Russian government on 2016 U.S. presidential election activities, the drafts of the application—and later the read copy and final application—relied entirely on information from Steele that Steele said was provided to him by his Primary Sub-source. Specifically, the following aspects of Steele's Reports 80, 94, 95, and 102 were used to support the application:

- Compromising information about Hillary Clinton had been compiled for many years, was controlled by the Kremlin, and the Kremlin had been feeding information to the Trump campaign for an extended period of time (Report 80);
- During his July 2016 trip to Moscow, Carter Page attended a secret meeting with Igor Sechin, Chairman of Rosneft and close associate of Putin, to discuss future cooperation and the lifting of Ukraine-related sanctions against Russia; and a secret meeting with Igor Divyekin, another highly placed Russian official, to discuss sharing compromising information about Clinton with the Trump campaign (Report 94);
- Page was an intermediary between Russia and the Trump campaign's then manager (Manafort) in a "well-developed conspiracy" of cooperation, which led, with at least Page's knowledge and agreement, to Russia's disclosure of hacked DNC emails to WikiLeaks in exchange for the Trump campaign's agreement to sideline Russian intervention in Ukraine as a campaign issue (Report 95);²⁶⁷ and
- Russia released the DNC emails to WikiLeaks in an attempt to swing voters to Trump, an objective conceived and promoted by Carter Page and others (Report 102).

The development of the statement of facts concerning Steele's reporting resulted from the back-and-forth exchange described above between the OI Attorney and the FBI, during which the OI Attorney asked many questions about

²⁶⁷ In further support of this allegation from Report 95, the FISA application described two news articles from July and August 2016 reporting that the Trump campaign had worked behind the scenes to change the Republican Party's platform on providing weapons to Ukraine to fight Russian and rebel forces and that candidate Trump appeared to have adopted a "milder" tone on Russia's annexation of Crimea.

Page, as well as about Steele's reporting and the structure and access of his source network.

Among the questions regarding Carter Page, on September 29, the OI Attorney asked the Crossfire Hurricane team, "do we know if there is any truth to Page's claim that he has provided information to [another U.S. government agency]—was he considered a source/asset/whatever?" According to the OI Attorney, it would have been a significant fact to disclose to OI if Page had interactions with the other U.S. government agency that overlapped in time with his interactions with known Russian intelligence officers described in the FISA applications because it would raise the issue of whether Page interacted with the Russian intelligence officers at the behest of the other U.S. government agency or with the intent to assist the U.S. government. In response to the OI Attorney's question, Case Agent 1 advised him that Page did meet with the other U.S. government agency, but that the interactions took place while Page was in Moscow (which was between 2004 and 2007) and were "outside scope." Based upon this response, the OI Attorney did not include information about Page's prior interactions with the other U.S. government agency in the application. However, as fully described later in this chapter, the information Case Agent 1 provided to the OI Attorney was incomplete, inaccurate, and in certain respects contrary to the information the other agency provided to the Crossfire Hurricane team on August 17, 2016 and that Carter Page had provided to the FBI in 2009 and 2013. This information indicated that Page had a prior relationship with the other U.S. government agency and that his interactions with the other agency occurred more recently than the 2004-2007 time period and actually overlapped with information alleged in the FISA application concerning his alleged ties to Russian intelligence officers.

With respect to Steele, when the drafting process began, the Crossfire Hurricane team had only just begun the process of conducting the evaluation process (described in Chapters Four and Six) to assess Steele, his source network, and the information provided in his reports. That source evaluation process and the FISA drafting process were taking place simultaneously, and the FBI had not corroborated the Steele information being considered for the FISA application. Evans and other witnesses told us that the fact that the source information in the FISA application had not yet been corroborated was not unusual in the FISA context.²⁶⁸ Officials told us that a significant fact in their consideration of the Steele information for the FISA application was that the Steele reporting on Carter Page appeared to be consistent with the information from the FFG that came from an independent reporting stream.²⁶⁹

²⁶⁸ As described in Chapter Two, corroboration of source information is not required by the FBI's Woods Procedures. Although the Woods Procedures require that every fact in a FISA application be "verified," when a particular fact is attributed to a source, an agent must only verify that the fact came from the source and the application accurately states what the source said. The Woods Procedures do not require that the FBI have a second source for the same information.

²⁶⁹ The Crossfire Hurricane team had information available to it by early October 2016 that the two reporting streams could have connectivity because they had learned that Person 1, an

Evans and other witnesses also emphasized that in the absence of corroboration, it was particularly important for the FISA application to articulate to the court the reliability of the source as assessed by the FBI. As the OGC Unit Chief advised Case Agent 1 on September 22 during the drafting of the FISA request form, "One last thing—we probably need a little bit more on the source—[REDACTED] Since this is essentially a single source FISA, we have to give a fulsome description of the source." Therefore, on September 29, during the early drafting phase, Case Agent 1 provided OI with the following characterization of Steele for inclusion in the FISA application:

This information comes from a sensitive FBI source whose reporting has been corroborated and used in criminal proceedings, and who obtains information from a number of ostensibly well-positioned sub-sources. The scope of the source's reporting is from 20 June 2016 through 20 August 2016.

The OI Attorney incorporated this information with other information the case agent provided to draft the following in the application:

[Steele] has been an FBI source since in or about October 2013. [Steele's] reporting has been corroborated and used in criminal proceedings and the FBI assesses [Steele] to be reliable. [Steele] has been compensated approximately \$95,000 and the FBI is unaware of any derogatory information pertaining to [Steele].

The final Carter Page application included this source characterization statement:

[Steele] is a former [REDACTED] [REDACTED] and has been an FBI source since in or about October 2013. [Steele's] reporting has been corroborated and used in criminal proceedings and the FBI assesses [Steele] to be reliable. [Steele] has been compensated approximately \$95,000 by the FBI and the FBI is unaware of any derogatory information pertaining to [Steele].

The OI Attorney told us that he does not have access to the CHS files of FBI sources and, therefore, tries to adhere closely to what a case agent sends him when he drafts a source characterization statement for a FISA application. He stated that he also relies on the fact that the Woods Procedures require that the source handling agent approve the language. However, as described later in this chapter, the source characterization statement in the application overstated the significance of Steele's past reporting and was not approved by the FBI agent who served as Steele's handling agent.

To further address reliability, the OI Attorney sought information from the FBI to describe the source network in the FISA application. On multiple occasions, the OI Attorney asked the FBI questions about the sub-sources, including in a September 30, 2016 email in which he asked Case Agent 1 and the Crossfire

important Steele election reporting sub-source, had been engaging in "sustained" contact with Papadopoulos since at least August 2016.

Hurricane team: "If the reporting is being made by a primary source, but based on sub-sources, why is it reliable—even though second/third hand?" The OIG did not find a written response to this specific question, and the OI Attorney did not recall a response. However, the OI Attorney told us that the Crossfire Hurricane team eventually briefed him on the sub-source information they learned from Steele after their early October meeting with him (described in Chapter Four). He also received a written summary of this information that the Supervisory Intel Analyst prepared shortly after the October meeting. The OI Attorney told us that based on the information the FBI provided, he thought at the time that some of the sub-sources were "definitely" in a position to have had access to the information Steele was reporting.

Ultimately, the initial drafts provided to OI management, the read copy, and the final application submitted to the FISC contained a description of the source network that included the fact that Steele relied upon a Primary Sub-source who used a network of sub-sources, and that neither Steele nor the Primary Sub-source had direct access to the information being reported. The drafts, read copy, and final application also contained a separate footnote on each sub-source with a brief description of his/her position or access to the information he/she was reporting. The Supervisory Intel Analyst assisted the case agent in providing information on the sub-sources and reviewed the footnotes for accuracy. According to the OI Attorney, the application contained more information about the sources than is typically provided to the court in FISA applications. According to Evans, the idea was to present the source network to the court so that the court would have as much information as possible.

B. Review and Approval Process

As described in Chapter Two, once an FBI case agent affirms the accuracy of the information in the read copy of an application, an OI Unit Chief or Deputy Unit Chief is usually the final and only approver before a read copy is submitted to the FISC. The Unit Chief or Deputy is also usually the final approver that "signs out" the final application (cert copy) to the FBI for completion of the Woods Procedures and Director's certification before presentation to either the Assistant Attorney General (AAG) of NSD, the DAG, or Attorney General for final signature. The final signatory receives an oral briefing, the cert copy, and a cover memorandum (cert memo) describing each application. In most cases, the start of the oral briefing, or shortly beforehand, is the first time the application is presented to the final signatory. According to NSD, most FISA applications do not get singled out for additional review and, to place that in perspective, there are approximately 1,300 applications submitted to the FISC each year and roughly 25-40 final applications go to the AAG, DAG, or the Attorney General for signature in any given week.

However, in some cases, according to NSD, a FISA application will receive additional review and scrutiny, particularly if it presents a novel or complicated issue or otherwise has been flagged for further review. In this case, as described immediately below, documents and witness testimony reflect that the first Carter Page FISA application underwent a lengthy review and editing process within NSD, the FBI, and ODAG. According to Evans and other witnesses, this application had

heightened sensitivity and therefore received additional attention because of the apparent effort by a foreign power to influence the upcoming 2016 U.S. elections and the prior connection of the FISA target (Carter Page) to one of the presidential campaigns.

1. Initial Feedback and NSD Concerns over Steele's Potential Motivation and Bias

Sanz-Rexach, Chief of OI's Operations Section, and his Deputy Section Chief were the first layers above the OI Unit Chief to receive a draft of the Carter Page application. After they provided feedback, the OI Attorney provided the draft on October 6, 2016 to Evans and, at the request of FBI OGC, to FBI General Counsel James Baker for concurrent review.

Baker told us that a review by the General Counsel was not a necessary step in the FBI's FISA approval process, but said that he would sometimes review an application when he thought it was warranted. Baker said that in this case, he asked to read the application because he recognized its sensitivities, including that the target had been associated with a presidential campaign and that the whole case was about Russian efforts to influence the presidential election and whether those efforts included any interactions with the Trump campaign. He said that he expected that the FBI would be called upon after-the-fact to justify its actions, and he wanted to ensure that his significant FISA experience was "brought to bear" on the application.²⁷⁰

For these reasons, Baker said he asked his Deputy General Counsel, Trisha Anderson, to give him the draft application before it was "too gelled" so that he could have influence over the drafting without disrupting the process. FBI documents indicate that Baker reviewed the draft on October 6 or 7. Baker told us that he read the probable cause section of the application, as well as the description in the Director's certification section of the foreign intelligence purpose of the requested FISA authority. He said that he thought it was important that the foreign intelligence purpose of the FISA authority was made clear in the application by focusing on the FBI's objective of learning the capabilities and tradecraft of Russia. He stated that he remembered being satisfied that the foreign intelligence purpose was properly articulated in the draft he reviewed.

Baker told us that he also remembered being satisfied at the time that there was probable cause articulated in the draft application to believe that Carter Page was an agent of a foreign power. He said that it was difficult for him to fully explain to us the basis for his assessment without reviewing the entire application again, but that he recalled Page's continuing relationships with Russian intelligence officers, even after the FBI made Page aware that they were Russian intelligence

²⁷⁰ In addition to serving as the FBI's General Counsel from 2014 to 2018, Baker had held positions in OI's predecessor office, the Department's Office of Intelligence Policy and Review, from 1996 to 2007, and later as an Associate Deputy Attorney General in ODAG responsible for national security matters from 2009 to 2011.

officers, being “key” facts in his mind.²⁷¹ Further, he said that, in retrospect, he thought that Page’s knowing interactions with Russian intelligence officers could have established probable cause even without reliance on the reporting from Steele. However, Baker did not recall being involved in the FISA discussions the team was having before the Steele reporting came in, and because of the redactions in the public version of the FISA application, he was unable to speak to how recent Page’s interactions with Russian intelligence officers had been at the time the application was filed.

Baker said that he did not recall his specific line edits to the draft, but that another theme of his comments was to ensure that the court was fully apprised of all material factual information regarding Steele and his reliability as well as any derogatory information about Steele, so that the court could make its own assessment of the Steele reporting. Questions attributed to Baker in an October 7 draft reflect that he, among other things, asked the FBI to provide more information about Steele’s prior employment to help establish his credibility and explain why he would have a source network. He also asked questions regarding Carter Page in an apparent attempt to clarify some of the facts regarding Page’s travel history and past relationships with Russian intelligence officers. According to Baker, he did not read the application a second time before it was submitted to the court, but Anderson told him that his comments were adequately addressed.

Anderson also reviewed a draft of the application; however, we could not determine the timing of her review. Documents indicate that Anderson requested the draft on October 5 and received it the next day, but Anderson told us she recalled reading the draft after Baker, and closer in time to ODAG’s review of the draft, which was almost 2 weeks later. Anderson said that she did not recall providing feedback on the draft and explained that Baker and the OGC Unit Chief were directly involved in the review process. Anderson did recall that she made sure the draft incorporated Baker’s previous edits in some fashion, but she did not recall what those edits were.²⁷²

Review or approval of the FISA application by senior Counterintelligence Division (CD) officials was not a required step in the FBI’s FISA procedures. Priestap, Strzok, and the Intel Section Chief told us that they did not play roles in the preparation or approval of the Carter Page FISA application. These officials told us that they were aware that FISA authority was being sought and, as described previously, Strzok provided DAD approval of the team’s request for an expedited FISA application, as required by FBI procedures. Further, as described later in this chapter, Strzok had conversations with Evans about the status of the application.

²⁷¹ Because Baker requested not to have his security clearance reinstated for his OIG interview, Baker was unable to review the entire FISA application before or during the interview, and we were unable to ask questions that would reveal classified information.

²⁷² Similar to Baker, Anderson did not typically review FISA applications. The OGC Unit Chief said that she worked with the OGC Attorney and OI during the FISA process and was more involved in this FISA application than she was in some others. She told us that she did not recall providing or suggesting specific edits for this application.

However, we found no information suggesting that senior CD officials contributed to the substance of the application.

Evans shared his own feedback with the OI Unit Chief and OI Attorney, which included, among other issues, asking the Crossfire Hurricane team whether Steele "is affiliated with either campaign and/or has contributed to either campaign." On October 7, the OI Unit Chief emailed Evans's question to the team, and on October 10, Case Agent 1 addressed the second part of Evans's question, stating that Steele was most likely a foreign national and therefore unable to contribute to either campaign. Because Case Agent 1 did not fully address Evans's question, the OI Unit Chief asked the agent again, on October 11, whether Steele was affiliated with and/or had contributed to either presidential campaign. Again the case agent answered only the second part of the question, confirming that Steele had not contributed to any campaign and was not a U.S. person. Evans told us that he remembered being somewhat frustrated and annoyed by this answer and asked the question a third time to be sure that nothing was missed in terms of any potential political bias on the part of the source.

According to Evans, later in the day on October 11, after OI circulated a new draft application and, in response to his questions, he and OI learned for the first time from the FBI that Steele had been paid to develop political opposition research. He told us that he recalled that he, the OI Unit Chief, and the OI Attorney were all quite surprised by this new information and that it was frustrating that they had not been informed sooner. Evans said that the new information, coupled with the sensitive nature of the case, made him concerned that the source might have a bias that needed to be disclosed to the court. Consequently, Evans placed a temporary hold on the application so that OI could further explore and evaluate with the FBI the information OI had just learned.

Evans told the OIG, and emails and instant and text messages reflect, that over the next three days, he and OI asked additional questions about Steele to better understand his potential motivations, bias, and overall reliability. Before being asked these questions, the Crossfire Hurricane team had expected that the October 11 draft would be the final version submitted to the court as the read copy. However, on the evening of October 11, Evans had a telephone conversation with his counterpart at the FBI, DAD Strzok, to discuss Evans's concerns and let him know that OI needed more time to understand and evaluate the information it had just learned concerning Steele.²⁷³ According to Evans, there was frustration expressed on both sides, with Strzok frustrated that the FISA process was not moving at the desired pace and Evans responding to the effect that "it doesn't help that just now, at the eleventh hour, I have for the first time learned that information about Steele." As detailed below, text messages between Strzok and the OGC Attorney reflect that Strzok believed the FBI had previously informed OI

²⁷³ Evans said he also contacted Baker to let him know that OI needed time to explore the new information. Baker told us that he did not specifically recall whether Evans told him that OI needed more time to explore the FBI's information regarding Steele. However, Baker said that he remembered having a telephone conversation with Evans about this particular application, the substance of which we describe in the next section.

about Steele's source of payment. The conversation ended with Strzok agreeing to allow the Crossfire Hurricane team to answer whatever questions about the source OI needed to ask. Similarly, during her OIG interview, then NSD Principal Deputy Assistant Attorney General Mary McCord recalled that she had a telephone conversation with then Deputy Director Andrew McCabe during which she advised him that she believed the FISA application needed to include more information about who hired Steele, and that McCabe did not push back.²⁷⁴ McCabe told us that he did not recall any specific conversations with McCord about this FISA application.

Internal FBI emails, as well as instant messages and text messages, reflect the FBI's discussions with Evans and reactions to his concerns. For example, following his telephone call with Evans on the evening of October 11, Strzok reached out to Lisa Page and advised her that support from McCabe might be necessary to move the FISA application forward:

6:21 p.m., Strzok to Lisa Page: "Currently fighting with Stu [Evans] for this fisa."

6:50 p.m., Strzok to Page: "Hey—The FISA will probably not go forward without a call from the [Deputy Director]. Even as is, the court may not hear it this week."

At the same time, Strzok also had communications with the OGC Attorney:

6:56 p.m., Strzok to OGC Attorney: "Stu is nervous. Didn't help that he just found out today about [Steele's] source of payment/direction for this particular reporting. I thought we had told OI earlier?"

6:56 p.m., OGC Attorney to Strzok: "Yes, we absolutely informed [OI Unit Chief] and [OI Attorney] about the source." "Multiple meetings, actually, with [Case Agent 1] and [the SOS]."

6:57 p.m., Strzok to OGC Attorney: "Ok—including the named intermediary, with the unnamed client (presumed to be connected to the campaign in some way)? Well, they didn't tell Stu..."

6:59 p.m., OGC Attorney to Strzok: "Yes, we provided source descriptions for all of the sub-sources, sources, etc. That is confusing because that seemed to be what put [OI Unit Chief] and [OI Attorney] at ease."

6:59 p.m., OGC Attorney to Strzok: "Is he going to hold the FISA?"

7:06 p.m., Strzok to OGC Attorney: "no, but I'm concerned about how they preload the Court/court advisor"

7:06 p.m., Strzok to OGC Attorney: "I think he wants more words in there about it...."

²⁷⁴ McCord became the Acting AAG for NSD upon the departure of AAG John Carlin, which occurred in this timeframe.

7:07 p.m., OGC Attorney to Strzok: "Roger. I'll reach out to [OI Unit Chief] to see if he is in the office by chance.

Later the same evening, Strzok communicated with the OGC Unit Chief:

7:34 p.m., OGC Unit Chief to Strzok: "So Stu called you about his concerns about the [Page] FISA? Not sure why he didn't reach out to the [FBI General Counsel/Deputy General Counsel] or the [Deputy Director]/Director, as they've all approved moving forward with this. What was the point of his [sic]? Was he trying to get you to pull it?"

7:53 p.m., OGC Unit Chief to Strzok: "I got further clarification from [OI Unit Chief]. I think it's all good. We should have more from DOJ tomorrow."

7:53 p.m., Strzok to OGC Unit Chief: "Ok. Stu is very nervous."

7:54 p.m., Strzok to OGC Unit Chief: "He said he wasn't aware of the fact until a few hours ago that [Steele] was employed to find this information by a named client, in turn hired by an unnamed client presumably affiliated with the Clinton campaign in some manner."

Between 7:54 p.m. and 7:59 p.m., [Strzok and the OGC Unit Chief exchanged messages on an unrelated topic.]

7:59 p.m., Strzok to OGC Unit Chief: "Is OI still sending copy to FISC tomorrow?"

7:59 p.m., Strzok to OGC Unit Chief: "I'm worried about what Stu whispers in Court Advisors ear."

7:59 p.m., OGC Unit Chief to Strzok: "Yeah. I think so. Stu's going to think about it overnight. Not for attribution, but apparently he's the only one over there worried about it."

7:59 p.m., OGC Unit Chief to Strzok: "Yeah, me too."

8:00 p.m., Strzok to OGC Unit Chief: "Jim [Baker] or [Deputy Director] or someone may need to weigh in with [NSD Assistant Attorney General John] Carlin."

8:00 p.m., Strzok to OGC Unit Chief: "I'll bring it up at the prep SVTC tomorrow."

8:00 p.m., OGC Unit Chief to Strzok: "If it goes beyond noon, I would tend to agree."

The next morning, at 7:44 a.m., the OGC Attorney sent the following text message to Strzok:

Pete, I talked to [OI Unit Chief] last night. It doesn't sound like Stu is concerned about the FISA itself, but more of fleshing out the details of [Steele] (e.g., how he began his reporting). All of that information was obtained from [Case Agent 1]. We should be in good shape once OI bats it around a little more internally this AM.

Although the OGC Attorney stated in these text messages that the OI Unit Chief and the OI Attorney had been briefed before October 11 on who had commissioned Steele's reporting, the OI Unit Chief told the OIG that he believed they did not learn about the potential political connections to Steele's reporting until after Evans raised his questions. The OI Attorney told us that he did not recall exactly when he learned about them, but that it was later in the drafting process, and that Evans's inquiries led to a better understanding of the nature of Steele's research. The OI Attorney told us that he did not recall asking the agent any specific questions about who Steele's clients were. Case Agent 1 told us that he did not recall any conversations with the OI Attorney about the source reporting's connection to political opposition research before OI asked questions about it. He explained that the Crossfire Hurricane team only suspected, but did not know in mid-October 2016, that Steele's reporting was generated through political opposition research.

The OIG did not find any written communications indicating that anyone on the Crossfire Hurricane team advised OI about the potential or suspected political connections to Steele's reporting before Evans raised his questions on October 11, and nothing to that effect appeared in the October 11 draft FISA application. Further, the emails described above containing Evans's questions about Steele's campaign affiliation or contributions suggest that OI did not have prior knowledge.

2. FBI Leadership Supports Moving Forward with the FISA Application and OI Drafts Additional Disclosures Concerning Steele

On October 12, 2016, Evans's concerns about Steele were briefed to Comey and McCabe in a meeting attended by at least Priestap, Strzok, Lisa Page, and the OGC Unit Chief. According to notes of the meeting, the group discussed that Evans was concerned Steele may have been hired by someone associated with Hillary Clinton or the Democratic National Committee (DNC) and that the read copy of the FISA application would not be filed with the court that day so that Evans could further assess the potential bias. The notes reflect that the group discussed that Evans was also concerned that the foreign intelligence to be collected through the FISA would not be "worth [the] risk." Following the meeting, the OGC Unit Chief emailed Anderson and the OGC Attorney on October 12 and advised them that the concerns Evans had raised were discussed with Comey and McCabe and that both were "supportive" of moving forward despite those concerns.

During his OIG interview, Evans told us that he thought he did not raise the concern about the potential value of the collection outweighing the risk until sometime after OI worked through the bias issue with the FBI. According to Evans, he raised on multiple occasions with the FBI, including with Strzok, Lisa Page, and later McCabe, whether seeking FISA authority targeting Carter Page was a good idea, even if the legal standard was met. He explained that he did not see a compelling "upside" to the FISA because Carter Page knew he was under FBI investigation (according to news reports) and was therefore not likely to say anything incriminating over the telephone or in email. On the other hand, Evans saw significant "downside" because the target of the FISA was politically sensitive

and the Department would be criticized later if this FISA was ever disclosed publicly. He told the OIG that he thought there was no right or wrong answer to this question, which he characterized as a prudential question of risk vs. reward, but he wanted to make sure he raised the issue for the decision makers to consider. According to Evans, the reactions he received from the FBI to this prudential question were some variations of—we understand your concerns, those are valid points, but if you are telling us it's legal, we cannot pull any punches just because there could be criticism afterward.

Baker told us that he recalled having a telephone conversation with Evans after learning about Evans's prudential concerns from Anderson and the OGC Unit Chief. According to Baker, he told Evans that he understood the matter was sensitive but that he (Baker) thought there was probable cause and that the FBI was seeking the FISA for a legitimate purpose and thought the application should go forward. Baker told us that he did not think he had persuaded Evans, and Baker said he was left with the impression that Evans planned to raise the issue with others in the Department.

Evans told us that he discussed this prudential question with Tashina Gauhar, the Associate Deputy Attorney General responsible for ODAG's national security portfolio, and McCord. According to Evans, Gauhar seemed to share his concern, but Gauhar said that she did not think anyone was going to tell the FBI not to pursue the FISA if the legal standard was met. Gauhar told us that ODAG's position was first to ensure that the legal standard for the FISA application was met, and that everyone, including NSD, thought that it was. She said that there was a separate question about the "policy decision to go forward," and on that question she understood that FBI leadership believed strongly that the application should go forward. She said that although it was possible, she did not remember stating ODAG's position in terms of deferring to the FBI or not being inclined to overrule the FBI if the FBI wanted to move forward.

According to Evans, McCord said that she would discuss the prudential issue with McCabe, but the discussion did not happen before Evans raised the issue directly with McCabe after a regularly scheduled meeting on October 19.²⁷⁵ According to Evans, McCabe told Evans on October 19 something to the effect of, "I hear you. I understand. [B]ut we can't pull any punches and we've got to do it, and...let the chips fall where they may." McCabe told us that he did not recall the specific words he used with Evans, but he believed he conveyed to Evans that the FBI "felt strongly" that the FISA application should move forward. McCabe said that he understood at the time that the FBI would likely be criticized no matter what the

²⁷⁵ McCord told us that she spoke to McCabe almost every day on various matters and had more than one conversation with him about the Carter Page FISA application, but she did not specifically recall whether she had a conversation with McCabe on or about October 17, and if she did, what specific issue would have prompted a conversation at that time. She said that she believed her most significant conversation with McCabe about the first FISA occurred in October. She said it was the telephone call described earlier, before or during the drafting of the Steele footnote, in which she and McCabe discussed Steele and the need to include more information about the source in the application. McCabe told us that he did not specifically recall any conversations with McCord about this application.

team did or did not do, but he believed that the team had to get to the bottom of this potentially serious threat to national security. He said that if the FBI had not sought FISA authority under the circumstances presented here simply because the team was afraid of the "political nature" of the information, the FBI would have failed to do its job.

The email on October 12, referenced above, from the OGC Unit Chief to Anderson and the OGC Attorney following the meeting with Comey and McCabe, said that Lisa Page would inform Evans of the FBI's decision to move forward with the FISA application. Text messages from Lisa Page to McCabe indicate that Page communicated with Evans later that same day:

3:11 p.m., Lisa Page to McCabe: "OI now has a robust explanation re any possible bias of the chs in the package. Don't know what the holdup is now, other than Stu's continued concerns. Strong operational need to have in place before Monday if at all possible, which means ct tomorrow.²⁷⁶ I communicated you and boss's green light to Stu earlier, and just sent an email to Stu asking where things stood. This might take a high-level push. Will keep you posted.

3:13 p.m., Page to McCabe: "If I have not heard back from Stu in an hour, I will invoke your name to say you want to know where things are, so long as okay with you."

Later the same day, Page sent a text message to McCabe stating that she "[s]poke to Stu. Let's talk in the morning." Available text message records are unclear as to whether McCabe responded directly to this text or to the previous text message at 3:13 p.m., but to one or the other, McCabe responded, "Ok."²⁷⁷

Shortly before Lisa Page's first text to McCabe above, the Crossfire Hurricane team provided to OI additional information regarding Steele that the OI Attorney had requested. In an email on October 12, OI asked the FBI team what Steele had been specifically hired to do, what the FBI knew about the motivation of the individual who hired Steele, including whether that individual was a supporter of Hillary Clinton or the Democratic Party, and if the FBI could "articulate why it deems [Steele's] reporting to be credible notwithstanding [Steele] did the investigation based on [a] private citizen's motivation to help [Hillary Clinton/Democratic Party]." Through SSA 1, the team advised OI that based on information from Steele, Steele was specifically hired by an individual to provide information on candidate Trump's business affairs and contacts in Russia, Steele was never advised of the motivation of the individual who hired him, the individual who hired him was hired by an unidentified law firm in Washington, D.C., and

²⁷⁶ As described below, it appears the desire to have FISA authority in place before [REDACTED], was due, at least in part, to the fact that [REDACTED], and the Crossfire Hurricane team wanted FISA coverage targeting Carter Page [REDACTED].

²⁷⁷ We did not find evidence of any further involvement by Lisa Page in the FBI's efforts to file the FISA application, other than receiving a telephone call on October 18 from ODAG, described later in this chapter, to advise FBI leadership regarding the status of ODAG's review of the application.

"anything further would be speculation." In response to OI's final question about Steele's credibility, SSA 1 responded that: (1) the FBI has had an established relationship with the source since 2013; (2) the source was generating reporting well before the opening of Crossfire Hurricane and the leaks concerning the DNC emails, and therefore this was not a situation where a source was attempting to steer an ongoing investigation; and (3) Steele was not a U.S. citizen and therefore had no vested interest in the outcome of the election. The OI Attorney forwarded this information to the OI Unit Chief, noting that, "This creates more questions for me now...."

During further back and forth over a 3-day period, the Crossfire Hurricane team advised OI that Steele was hired by Glenn Simpson of Fusion GPS, they did not know Simpson's motivations, and they did not know the name of the law firm that retained Fusion GPS or its connections to Hillary Clinton or the Democratic Party because Steele did not believe asking Simpson about his client was appropriate. However, we found no evidence that Steele advised the FBI that he believed asking Simpson about the name of his client would be inappropriate. Rather, as described in Chapter Four, we obtained conflicting testimony as to whether Steele was even requested by the FBI to ask Simpson for the name of the law firm. Steele's FBI handler (Handling Agent 1) told us that he informed Steele during their July 5 meeting that the FBI would be interested in finding out the name of the law firm. SSA 2 told us that he understood Handling Agent 1 "stayed away from tasking [Steele] about the identity of the U.S. law firm." During his OIG interview, Steele told us that he did not know the identity of the law firm when he met with Handling Agent 1 on July 5. Steele said that he learned of it later in July and probably told the FBI the law firm's name at some later date, but he did not specifically recall.

The Crossfire Hurricane team further advised OI that Steele's Primary Sub-source recently provided unrelated information that was found by [REDACTED] to be consistent with other reporting on the same topic. OI asked the team what the FBI knew about the September 23, 2016 *Yahoo News* article that quoted a "well-placed Western intelligence source" for information ostensibly coming from Steele's reporting about Carter Page's alleged meetings with Sechin and Divyekin. The team responded that they did not have any additional details regarding the leak.

On October 14, the OI Attorney consolidated in writing for Evans and OI management the additional details concerning Steele, described above, that the FBI provided over the previous 3 days. According to Evans, at this point, he and the others in OI believed that they had received all the information the FBI had on Steele.²⁷⁸ The OI Attorney and the OI Unit Chief then revised the footnote in the draft application on Steele to address the potential that Steele, or those who hired

²⁷⁸ This is consistent with an instant message from Strzok to Lisa Page on October 14, 2016, 11:45 a.m.: "I'm going to email Stu and let him know we've gotten all the info we're going to get re [Steele] and sourcing questions."

him, had a bias. Specifically, they added the following paragraph, which became part of Footnote 8 in the read copy and final application:

[Steele], who now owns a foreign business/financial intelligence firm, was approached by an identified U.S. person, who indicated to [Steele] that a U.S.-based law firm had hired the identified U.S. person to conduct research regarding Candidate #1's ties to Russia (the identified U.S. person and [Steele] have a long-standing business relationship). The identified U.S. person hired [Steele] to conduct this research. The identified U.S. person never advised [Steele] as to the motivation behind the research into Candidate #1's ties to Russia. The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign.²⁷⁹

According to Evans, the use of the term "speculates" in the footnote was intended to convey that even though the FBI did not know at the time who Simpson's and the U.S. law firm's ultimate client was, the FBI believed it was likely that it was someone who was seeking political opposition research against candidate Trump. The FBI represented to Evans and OI that the Crossfire Hurricane team assumed, but did not know, that someone associated with the Hillary Clinton campaign or the Democratic Party paid for the research.²⁸⁰ According to Evans, the use of "speculates" in a FISA application was unusual, but, in this context, he believed it was necessary to fully advise the court of the potential for bias. Evans told us that this additional information made him comfortable with the way that Steele was described in the application, specifically by making clear to the court that Steele had conducted opposition research on behalf of someone who appeared to have the intention of discrediting the Trump campaign.²⁸¹

²⁷⁹ The Carter Page FISA application did not identify by name Steele's clients or the presidential candidates, which is consistent with the Department's general practice of not disclosing the true identities of U.S. persons who are not the surveillance targets in FISA applications.

²⁸⁰ McCabe told us that he thought he had heard by the time of the first FISA application that Simpson had been working first for a Republican client and then later for a Democratic client. However, McCabe also told us that his memory on the timing of events is not always reliable, and other FBI officials told us that the team did not know who hired Simpson until after the first FISA application. As described in Chapter Nine, documentation we reviewed indicates that FBI officials obtained greater clarity on who Glenn Simpson was working for through interviews with Bruce Ohr in November and December 2016. Documentation indicates that by February and March 2017 it was broadly known among FBI officials that Simpson was hired first by a candidate during the Republican primaries and then later by someone related to the Democratic Party. Further, at least some team members knew by early 2017 that Simpson was hired by the DNC and another unidentified entity to research candidate Trump's ties to Russia.

²⁸¹ As described in Chapter Ten, in early August 2016, before the Crossfire Hurricane team became aware of Steele's election reports, information from a former FBI CHS was shared with members of the Crossfire Hurricane team indicating that the former CHS was recently contacted "by a colleague who runs an investigative firm. The firm had been hired by two entities (the Democratic National Committee [DNC] as well as another individual he did not name) to explore Donald Trump's

Evans told us that sources often have “baggage” and can have a bias, but that does not necessarily make their information unreliable, especially if the FBI has a long history of assessing the source’s reporting as reliable. In his experience, the important thing is to make sure that enough information is presented to the court so that the judge understands the issue. His general approach with this particular footnote was to exceed “what was even legally required and just mak[e] sure there was nothing...left on the table about this source that we could be open to criticism on afterwards, based on what the FBI was giving us.”

After OI made this revision to the footnote, OI submitted an updated draft application to McCord for her review on October 14.²⁸² McCord remembered reading an early draft of the probable cause section and believed she probably read an updated probable cause section at least one more time before the read copy was filed focused on the questions OI asked the FBI and the revisions that were made to address those questions. Based upon our review of relevant emails, it appears that McCord provided comments on the October 14 draft. She said her strongest memory was asking about Steele’s fee arrangement with Fusion GPS, which is also reflected in an October 18 email from the OI Unit Chief to his supervisors. McCord also remembered discussions within NSD and with ODAG about the prudential question described earlier as to whether to file the application even if it was legally supportable. She said the collective thinking was that filing the application was a legitimate investigative step even though it may later be criticized unfairly.

3. Other Substantive Changes to the Application before ODAG Review

In addition to the revisions made to the Steele footnote, the October 14 draft application contained another substantive change from earlier drafts, concerning the FBI’s assessment of whether Steele was the source for the September 23 *Yahoo News* article described earlier in this chapter.

The draft FISA applications, and later the read copy and final application, advised the court that the *Yahoo News* article reported that U.S. intelligence officials were investigating Carter Page’s involvement in suspected efforts by the Russian government to influence the U.S. presidential election and that a “well-placed Western intelligence source” told *Yahoo News* about Carter Page’s alleged secret meetings with Sechin and Divyekin. The applications stated that, based on statements made in the *Yahoo News* article and in other news articles, individuals affiliated with the Trump campaign made statements distancing the campaign from

longstanding ties to Russian entities.” The Supervisory Intel Analyst told us that he did not recall making a connection when the Steele reporting came in between this investigative firm hired by the DNC and the firm that hired Steele to conduct his election-related research. FBI emails reflect that he and SSA 1 made that connection by January 11, 2017, at the latest. We found no evidence that this information was shared with OI.

²⁸² As noted previously, on or about October 17, 2016, McCord became the Acting AAG for NSD. She replaced AAG John Carlin who left the Department on October 14, 2016. Evans told us that Carlin had very limited involvement in the Carter Page FISA prior to his departure and did not review a draft of the application. We found no information suggesting otherwise and therefore did not seek to interview Carlin.

Carter Page. Further, the applications noted that Page himself denied the accusations in the *Yahoo News* article and reiterated that denial in a September 25 letter to the FBI Director and in a September 26 media interview.

Evans told the OIG that OI included the reference to the September 23 *Yahoo News* article in the FISA application solely because it was favorable to Carter Page and not as corroboration for the Steele reporting in the application. According to Evans, the application's treatment of the article was favorable to Page in three respects: (1) the application described statements in the article that the campaign distanced itself from Page and minimized his role as an advisor; (2) the application stated that Page denied the allegations in the news article in a letter to the Director; and (3) as described below, the application made clear that the people who financed Steele's reporting were likely the same source for the information in the article.

The drafts of the FISA application that preceded the October 14 draft—including the October 11 draft that the FBI expected would be submitted to the FISC as the final read copy—stated that the FBI “believes that the ‘well-placed Western intelligence source’ is Steele.” After reviewing the initial drafts, Evans asked OI to “drill down” on why Steele disclosed information to the media. For example, in an October 11 email to OI staff, Evans asked “does the FBI know why the source provided this info to the press.... Is there anything about his decision to speak to the press that suggests he’s got a bias?”

The result of this effort culminated in new language in the October 14 draft stating that the FBI believed it was Glenn Simpson or the law firm who hired Simpson, and not Steele, who provided Steele's reporting to the media. With respect to the basis for the FBI's assessment, the language that appeared in Footnote 18 of the read copy and final application stated the following:

As discussed above, [Steele] was hired by a business associate to conduct research into Candidate #1's ties to Russia. [Steele] provided the results of his research to the business associate, and the FBI assesses that the business associate likely provided this information to the law firm that hired the business associate in the first place. [Steele] told the FBI that he/she only provided this information to the business associate and the FBI. Given that the information contained in the September 23rd News Article generally matches the information about Page that [Steele] discovered during his/her research, the FBI assesses that [Steele's] business associate or the law firm that hired the business associate likely provided this information to the press. The FBI also assesses that whoever gave the information to the press stated that the information was provided by a “well-placed Western intelligence source.” The FBI does not believe that [Steele] directly provided this information to the press.

Case Agent 1 told the OIG that he did not recall why the October 11 draft stated that Steele was the “well-placed Western intelligence source” or the reason the language was changed in the updated draft to state that the FBI did not believe

Steele directly provided the information in the article. He said he did not recall the details regarding what he was told, or what he told OI, about whether Steele was the source for the *Yahoo News* article leak. The OGC Attorney told us that he was not familiar with how the change between drafts occurred.

The OI Attorney said he could not recall the circumstances that led to the change in the drafts, including whether the Crossfire Hurricane team originally told him that Steele had disclosed the information to *Yahoo News*. The OI Attorney said that it was possible he had assumed that that was the case and wrote the initial drafts in that manner for the FBI's consideration. The OI Attorney told us that at some point during the drafting process, the FBI assured him that Steele had not spoken with *Yahoo News* because the source was "a professional."

We did not find any evidence that the FBI asked Steele whether he was a source for the information in the September 23 *Yahoo News* article. As described later in this chapter, the basis the FBI asserted in the application for its assessment that Steele was not a source was inaccurate and the documentation in the Woods File did not support it.

Another change from the early drafts of the first FISA application was the addition of particularized minimization procedures (PMPs) at the request of Evans. The final PMPs restricted access to the information collected through FISA authority to the individuals assigned to the Crossfire Hurricane team and required the approval of a DAD or higher before any FISA-derived information could be disseminated outside the FBI. In normal circumstances, the FBI is given more latitude to disseminate FISA-derived information that appears to be foreign intelligence information or evidence of a crime. Evans told us that he believed these added restrictions were warranted here because of the possibility that the FISA collection would include sensitive political campaign related information.

4. October Meeting between Page and an FBI CHS

As we summarize in Chapter Ten, in October 2016, before the FBI obtained the initial FISA authority targeting Carter Page, an FBI CHS had a consensually monitored meeting with Page. During the meeting, among other things, Page said that he wanted to develop a research institute and, in talking about how he would fund the institute, Page said, "I don't want to say there'd be an open checkbook, but the Russians would definitely...." According to the partial transcript, the sentence trailed off as Carter Page laughed. The CHS then stated "they would fund it—yeah you could do alright there" and Page responded "Yeah, but that has its pros and cons, right?" At another point in the conversation, Page noted that he had "a longstanding constructive relationship with the Russians going back throughout" his life. When asked about the link between the Russians and WikiLeaks, Page said that, "[as he has] made clear in a lot of...subsequent discussions/interviews...I know nothing about that—on a personal level, you know no one's ever said a word to me." With regard to the platform committee during the Republican National Convention, Page said that he "stayed clear of that—there was a lot of conspiracy theories that I was one of them...[but] totally off the record...members of our team

were working on that, and...in retrospect it's way better off that I...remained at arms length."

Carter Page also told the CHS during the meeting that the "core lie" against him in the media "is that [Page] met with these sanctioned Russian officials, several of which I've never met in my entire life." Page said that the "core lie" concerned "Sechin [who] is the main guy, the head of Rosneft...[and] there's another guy I had never even heard of, you know he's like, in the inner circle." When asked about that person's name, Page said "I can't even remember, it's just so outrageous."

The Crossfire Hurricane team provided to OI some, but not all, of the information obtained during this meeting for inclusion in the first FISA application. According to the description in the FISA application, Page met with the FBI CHS on a particular date in October and made statements that led the FBI to believe that Page continued to be closely tied to Russian officials, including the suggestion that "the Russians" would be giving him an "open checkbook" to fund a foreign policy think tank project. The description also stated that Page told the CHS that he may be appearing in a televised interview to discuss the potential for change in U.S. foreign policy toward Russia and Syria in the event Trump wins the presidential election. However, as discussed later in this chapter, the application filed with the court did not fully or accurately describe the information obtained by the FBI as a result of this meeting because the FBI did not advise OI that Page denied meeting with Sechin and Divyekin, as alleged in Report 94, or that Page denied knowing anything about the disclosure by WikiLeaks of hacked DNC emails, as alleged in Report 95.

In addition, the FBI did not advise OI that Carter Page denied having been involved with the Republican Platform Committee. Page's statements to the FBI CHS, if true, would have been inconsistent with the FBI's assessment in the FISA application that Page helped influence the Republican Party to change its platform to be more sympathetic to Russia's interests by eliminating language in the Republican platform about providing weapons to Ukraine. The FBI's assessment was based in part on Report 95's allegation that Page and possibly others agreed to sideline Russian intervention in Ukraine as a campaign issue in exchange for Russia's disclosure of hacked DNC emails to WikiLeaks. The assessment also drew upon news articles in July and August 2016 reporting that the Trump campaign influenced the Republican Party to change its platform to not call for giving Ukraine weapons to fight Russian and rebel forces.

5. Feedback from ODAG and Submission of the Read Copy

At the time OI submitted the October 14 draft application to McCord, OI simultaneously sent the draft to ODAG for review. Over the next few days, the application was reviewed by Gauhar, an OI attorney on detail in ODAG, Principal Associate Deputy Attorney General Matthew Axelrod, and later Yates, who ultimately approved and signed the final application.

As noted previously, in instances where the DAG approves and signs FISA applications, OI typically submits the application package to ODAG as a finished product after the read copy has been filed with the court and shortly before or during the oral briefing on the final application. However, in cases with heightened sensitivity, which can occur for a variety of reasons, OI may proactively flag the application for ODAG earlier in the process for special attention, which OI did in this case. Further, although sometimes NSD will ask ODAG whether it wants to read a flagged application in advance, Evans told us that in this case NSD decided that it would not submit the read copy to the FISC until Yates had personally read it and said she was comfortable moving forward.

Gauhar and the OI attorney on detail, both of whom had prior FISA experience in OI before joining ODAG, were the first to review the draft Carter Page application.²⁸³ On October 18, the two met with OI to discuss specific suggestions they had for the probable cause section, and later in the day, OI circulated an updated draft incorporating new edits to address ODAG's suggestions. According to Gauhar, and as reflected in the October 18 updated draft, her office had suggested edits to add more emphasis and focus on Carter Page in the probable cause section, while at the same time making changes in tone to characterize the Trump campaign in a more neutral manner.²⁸⁴ She explained that ODAG wanted to make sure that the court was not left with the misimpression that the FBI had information indicating that there were current members of the Trump campaign who were wittingly conspiring with Russia. Gauhar said she did not think that OI intentionally drafted the application in that direction, and she thought that some additional changes would help ensure that there was no misimpression.

Axelrod said he read the October 18 draft the next morning and had some suggested edits to further address the theme of the edits from the day before. ODAG sent NSD the additional suggested changes, and NSD and the FBI accepted the changes and incorporated them into the read copy.

ODAG's edits did not suggest significant changes to the Steele information in the application. Gauhar said that she was in communication with Evans when he

²⁸³ Immediately before Gauhar joined ODAG, from 2009 to 2014, she was the Deputy Assistant Attorney General in NSD with responsibility over OI (the position Evans held at the time of the Page FISA applications). Gauhar joined the Department in 2001 as an attorney in OIPR, which, as described previously, was OI's predecessor office. In OIPR, she was responsible for preparing FISA applications and later oversaw the FISA process as a supervisor and Deputy Chief of OI's Operations Section. The OI attorney on detail had served as an attorney in OIPR starting in late 2006 where she prepared FISA applications and then later oversaw the FISA process when she became the Deputy Chief and then Chief of the Counterterrorism Unit in OI's Operations Section.

²⁸⁴ Examples of the edits addressing tone included describing Carter Page as *an individual associated with* the Trump campaign, rather than as a member of the Trump campaign, and describing the conspiracy alleged in Steele's Report 95 as between Russia and *individuals involved in* the Trump campaign, rather than the campaign itself.

was asking his questions about Steele and by the time that she reviewed the draft, she knew that Evans and others had drilled down on the source.²⁸⁵

On October 18, Gauhar reached out to Lisa Page, her contact in the Deputy Director's office, to advise her that the Carter Page FISA application was under review in ODAG. According to Gauhar, she was aware at the time that the FBI had been pushing OI to complete the process on the application, and she wanted McCabe to know that the application was now with ODAG and they were working on it.²⁸⁶ Page advised Gauhar that it was possible that McCabe might ask Yates about the status of application during a regularly scheduled meeting the following morning on October 19. We did not find any evidence reflecting that McCabe asked Yates during that morning meeting on October 19 about the status of the application, and McCabe told us that he did not have a specific recollection of having done so.

As noted earlier, Evans told the OIG that he discussed the issue of whether this FISA application was a good idea with McCabe after a regularly scheduled meeting on October 19. Gauhar told us that sometime around this date, she believes that Yates may have had a similar discussion with McCabe. According to Gauhar, she advised Axelrod that Evans had raised his prudential question with the FBI, and she said she had a general recollection that Yates may have had direct conversations with McCabe to discuss FBI leadership's position on moving forward with the application. Gauhar said she was not present during any such conversations between Yates and FBI leadership and did not recall the details, but she believed Yates was told that FBI leadership felt strongly that the FISA was an important investigative step.

Yates told the OIG that she did not specifically recall any conversations with either McCabe or Comey about the Carter Page FISA application, but that such conversations could have happened. Yates said she had a general recollection that the FBI believed that they really needed to take this investigative step, but whether that understanding was the result of a specific conversation or just by virtue of the fact that Comey was prepared to sign off on the FISA application, she did not recall. Comey and McCabe told us that they did not recall a discussion with Yates about the FISA application.

On October 19, after incorporating Axelrod's edits, OI finalized the read copy of the Carter Page FISA application and sent it to the Crossfire Hurricane team for final review. Late in the evening, Strzok notified Evans that the FBI was

²⁸⁵ Emails indicate that on October 17, Gauhar asked a question about Steele, specifically how the FBI reconciled its belief that Steele did not disclose information in the September 23 *Yahoo News* article given the article's reference to a "well-placed Western intelligence source." OI advised that Steele told the FBI that he only provided information to his business associate and the FBI, and that the FBI believed that the business associate or the law firm disclosed the information to the media.

²⁸⁶ For example, on October 17, Strzok had emailed Evans to advise him of upcoming operations in the investigation of Carter Page that would be assisted by the requested FISA coverage. Case Agent 1 told us that he became frustrated with the pace of the FISA application process and asked Strzok to do whatever he could to help move it along.

comfortable with its accuracy and content. Separately, Evans received notice from ODAG that, as he requested, Yates had read the application and had cleared NSD to file the read copy with the court. OI filed the read copy with the FISC the next day.

The OIG found no indication that then Attorney General Loretta Lynch or anyone in the Office of the Attorney General (OAG) was involved in the preparation, review, or approval of the Carter Page FISA application. Gauhar told us that she had brief conversations with Lynch's National Security Counselor and Chief of Staff to advise them for their situational awareness that a FISA application targeting Carter Page was expected to be filed. Neither the National Security Counselor nor the Chief of Staff read the application prior to its filing with the court. Lynch also said she did not read the application and did not recall any conversations about it.

III. Feedback from the FISC on the Read Copy, Completion of the Woods Procedures, and Final Briefing and Signatures

A. Feedback from the FISC and Revisions to the Application

On October 20, 2016, the FISC legal advisor assigned to the Carter Page application provided OI with four comments and questions regarding the read copy. Two related to information in the footnote about Steele, and two related to certain facilities believed to be used by Carter Page:

- The FISC legal advisor inquired about a sentence in the footnote that stated, "In addition to the specific information pertaining to Page reported in this application, [Steele] has provided other information, which the FBI is currently investigating." To clarify, the final application was revised to state, "In addition to the specific information pertaining to Page reported in this application, [Steele] has provided other information relating to the Russian Government's efforts to influence the election that do not directly pertain to Page, including the possibility of the Russian's [sic] also possessing a dossier on Candidate #1, which the FBI is currently investigating."
- The legal advisor asked how it was that Steele had a network of sub-sources, and the OI Attorney provided additional information to him regarding Steele's past employment history. At the request of the legal advisor, OI included the additional information in the final application, including the identity of [REDACTED]
- The legal advisor asked OI for clarification regarding the information used to establish Carter Page's use of a particular email account, and OI corrected an error in the description of the supporting documentation.
- The legal advisor requested additional information to establish the [REDACTED] of Carter Page's [REDACTED]. The FBI provided the OI Attorney with some additional information; however, the information was somewhat stale, and the FBI elected instead to remove [REDACTED]

[REDACTED], rather than hold up the final application to investigate [REDACTED] further.

According to the OI Attorney, the FISC legal advisor raised no other issues and did not further question the application's reliance on Steele's reporting.

B. The FBI's Completion of the Factual Accuracy Review ("Woods Procedures")

On October 19, the OI Unit Chief "signed out" the cert copy of the application and cert memo, so that the FBI could complete the FISA verification process known as the Woods Procedures, described in Chapter Two. Case Agent 1 was the agent responsible for compiling the supporting documentation into a Woods File, performing the field office database checks on Carter Page, and completing the accuracy review of each fact asserted in the FISA application. His supervisor for the Carter Page investigation, SSA 1, was responsible for confirming that the Woods File was complete and for double checking the factual accuracy review to confirm that the file contained appropriate documentation for each of the factual assertions in the FISA application.

With respect to the factual accuracy review, Case Agent 1 told us that he personally compiled the supporting documentation in the Woods File and then went through the factual statements in the cert copy one-by-one and made sure that each factual assertion was verified by a corresponding document in the Woods File. After he completed his review of all the factual information, he said he turned the Woods File over to SSA 1, and SSA 1 and Case Agent 1 then performed a second factual accuracy review of the same information together. SSA 1 said he found that each factual assertion was supported by documentation in the Woods File, and he had no concerns with how the Woods Procedures were completed. SSA 1 told us that he relied on Case Agent 1 to highlight each relevant fact in the supporting document in the Woods File, and that once he verified that each highlighted fact corresponded to a factual assertion in the application, he would move on to the next fact, without necessarily reviewing the entire document.²⁸⁷ On the evening of October 20, Case Agent 1 and SSA 1 signed the "FISA Verification Form" or "Woods Form" affirming the verification and documentation of each factual assertion in the application.²⁸⁸

²⁸⁷ We do not believe that this process, even when faithfully executed, is sufficient to ensure that all factual assertions in the application had adequate supporting documentation.

²⁸⁸ As discussed in detail in Section IV below, we examined the completeness of the Woods File by comparing the facts asserted in the first FISA application to the documents maintained in the Woods File. Our comparison identified instances in which facts asserted in the application were not supported by documentation in the Woods File. Specifically, we found facts asserted in the FISA application that have no supporting documentation in the Woods File, facts that have purported supporting documentation in the Woods File but the documentation does not state the fact asserted in the FISA application, or facts that have purported supporting documentation in the Woods File but the documentation shows the fact asserted is inaccurate. The three most significant Woods errors, which are among the five problematic issues we describe later in Section IV, were: (1) the failure to seek and document Handling Agent 1's approval of the source characterization statement for Steele; (2)

After Case Agent 1 and SSA 1 signed the Woods Form, they passed the Woods Form, cert copy, and cert memo (collectively referred to as the FISA or application "package") to a Headquarters Program Manager assigned the responsibility of signing the final application under oath attesting that the factual information was true and correct. The Headquarters Program Manager was an SSA in the CD's Counterespionage Section. His official duties at the time did not include supervising the Carter Page investigation, contrary to what was stated in boilerplate language in the FISA application. Instead, he was briefed into the Crossfire Hurricane investigation on or about September 23 for the purpose of swearing out the Carter Page FISA.²⁸⁹ The Headquarters Program Manager told us that after he was briefed, he attended some of the team meetings and had multiple conversations with Case Agent 1, SSA 1, and the OGC attorneys for updates on the status of and changes to the application. He said he read the entire application before it was final and, as changes were made to the application, he reviewed the changes. He said he had no specific memory of reviewing the Woods Form or Woods File (as described in Chapter Two, the Woods Procedures do not require the affiant to review the Woods File), but he believes that he would have done both since the Woods File was compiled at Headquarters, and thus he would have had access to it. However, he said he trusted that the case agent verified the accuracy of the factual assertions, as the case agent was required to do as part of the Woods Procedures. Further, the Headquarters Program Manager said that he was not independently aware of any information suggesting that the information in the application was inaccurate. After the Headquarters Program Manager signed the affidavit in the application declaring under penalty of perjury that the information in the application was true and correct, he submitted the application package to the OGC Attorney.

The OGC Attorney and Deputy General Counsel Anderson reviewed the application package on behalf of OGC's National Security and Cyber Law Branch. However, as discussed in Chapter Two, FBI procedures do not specify what steps must be taken during the final OGC legal review.²⁹⁰ The OGC Attorney, who had participated in the drafting process and was familiar with the content of the application, told us that he reviewed the Woods Form with the Headquarters Program Manager. After the OGC Attorney confirmed that all of the Woods Procedures had been completed, he signed the cert memo below the OI Unit Chief's signature and submitted the package to Anderson.

the fact that documentation in the Woods File used to support the FBI's statement that Steele only shared his election related information with Glenn Simpson actually stated that Steele also shared the information with the State Department; and (3) the fact that documentation in the Woods File used to support the FBI's assertion that Carter Page did not refute his alleged contacts with Sechin and Divyekin to an FBI CHS in actuality stated that Page specifically denied meeting with Sechin and Divyekin to the CHS. We provide examples of other Woods related errors in Appendix One.

²⁸⁹ According to the Headquarters Program Manager, because the investigation was closely-held and being run out of Headquarters, it was initially not assigned to a specific unit in the Counterintelligence Division and therefore did not have an assigned program manager.

²⁹⁰ We make a recommendation in Chapter Eleven that addresses this issue.

Anderson told us that she reviewed the cert memo and Woods Form and determined that the application package was complete, all the steps of the Woods Procedures were represented to have been taken, the probable cause standard was met, and there were no outstanding issues. She then signed the cert memo below the other signatures, signifying that the application was ready for certification, and she gave the application package to the OGC Unit Chief for submission to the FBI Director.²⁹¹

C. FBI Director's Certification

Comey certified the Carter Page application on behalf of the FBI. In Chapter Two, we described the elements of the certification required by the FBI Director or Deputy Director, including that the information sought through the requested FISA authority is foreign intelligence information that cannot reasonably be obtained by normal investigative techniques and is necessary to protect the United States against clandestine intelligence activities. In this regard, the Director's certification is different from the approval of the NSD AAG, DAG, or the Attorney General, which requires that the signatory find that the application satisfies the FISA's statutory requirements.

Comey told the OIG that when he was Director his practice varied in terms of whether he would read a FISA application itself before certifying an application, or whether he would rely solely on the description of the application in the cert memo. He said that he would read applications if they required special attention, but that from time to time he would also select others to read for quality control purposes. In this instance, Comey said he read the application because of its sensitivity. He further stated that he read the application once, after Baker presented the final package to him. He said he did not recall any conversations with Baker or with others about the application.

Baker told us that he presented the final package to Comey because he wanted to discuss the foreign intelligence purpose with Comey before Comey signed the certification. Baker said that in addition to explaining the foreign intelligence purpose to Comey, he wanted to make sure that Comey knew that he (Baker) had read the FISA and was satisfied that the probable cause standard was met. According to Baker, Comey told him that he understood, was satisfied with the foreign intelligence purpose, and was glad Baker read the application.

Comey told us that the application seemed factually and legally sufficient when he read it, and he had no questions or concerns before he signed. When we

²⁹¹ Anderson told us that she did not read the FISA application at this stage in the process, which she said was not unusual. She said that her general practice was to rely upon the cert memo's description of the probable cause, unless there was a reason to dig deeper into the application based on her review of the cert memo or if she was familiar with the case from an earlier stage. As described previously, in this case, Anderson had read the Carter Page FISA application once before during the review process and she believed that both Baker and the OGC Unit Chief had also read and provided feedback on the application. As described previously, Baker provided comments on a draft of the application. The OGC Unit Chief told us that she read the application and was involved in discussions about it, but she said she did not recall requesting edits.

asked him why the FBI moved forward with an application on a target who was formerly connected to a presidential campaign, based in part on source reporting that may have been funded by the opposing political party and had not yet been corroborated, Comey said that the reason was because there was probable cause to believe that Page was an agent of a foreign power. He said that simply because the information regarding Page was uncorroborated at the time of the application did not mean that it was unreliable. He stated that in this case, he understood that the FBI assessed that Steele was a credible source, with a network of sub-sources in positions to receive information, and the core of the Steele reporting was consistent with other information the FBI had at the time.

Comey signed the application on October 20, and the application package was presented to Yates on October 21.

D. DAG Oral Briefing and Approval

Yates told the OIG that she did not recall the discussion that took place at the October 21 oral briefing when NSD presented the final application package to her. Evans said that he recalled that because Yates had already read the FISA application and was familiar with its contents, the OI Attorney used the oral briefing to advise her of the FISC legal advisor's questions and the changes made in the final application to address those questions. Evans said that he recalled little discussion during the oral briefing on this application before Yates signed the application.

The OIG asked Yates about her views on the application. Yates told us that, in her view, the application did not present a close call from a legal sufficiency standpoint, and she was comfortable that it was an appropriate investigative step to take. In terms of the specific reasons she approved the application, Yates stated:

Well, several things here. First, the context of the issue that we're talking about here, which is the Russian attempt to interfere in the 2016 presidential election, and the potential involvement of U.S. persons in that, is obviously a critically important topic. This is not some tangential run-of-the-mill crime. This is, to state the obvious here, critically important to the country. So we start sort of with the premise of, this is a topic that we need to get to the bottom of.

Secondly, Carter Page is not someone who just popped up out of the blue on the FBI's radar, with respect to his relationship with the Russian government. He is someone who had been on the radar for quite some time, both in terms of, and I think it's laid out in the FISA, the attempts to recruit him that had been laid out in a prior criminal case, and the FBI's knowledge of interaction that he had had in the past, and was continuing to have, with high-level people in the Russian government. So, it's not as if, just some guy who had never had any relationship with Russia has been alleged to be involved in the Russians' interference in the election.

[T]hat's also against the backdrop of the information that Papadopoulos had provided, and that then was corroborated to the extent that then WikiLeaks did do the email dump, as predicted there, and identified that a person in the campaign that was coordinating that.

Combined with [Steele], who had been someone with whom the FBI had worked for many years, both in an official capacity at [REDACTED], and then afterwards, whom they had found to be credible. I believe criminal cases had been made, or he had participated in criminal cases[.] So again, not just somebody out of the blue. And he was also very knowledgeable of Russia, which is not an easy place to break into, in terms of getting information.

...[I]t may have been, the information that [Steele] had acquired, may have been at the behest of the Clinton campaign or the DNC. I guess I would emphasize the word "may" there. That again, my understanding was that the FBI did not know who he was working for. In fact, and this is one of these things I have a hard time teasing out, what I knew then versus what I may know now, or have learned since, is that [Steele], my understanding is at one point, was actually working for someone connected with the Republican Party. I don't know, again, whether I knew that at the time, or not. I'm not at all sure about that. So, while certainly there was [an] implication that he was doing opposition research, it's gotta be for somebody. I mean, he's been hired by someone. My understanding was that the FBI didn't know who. And that is a factor to consider in this.²⁹²

But that was not the determinative factor, when you're talking about gathering foreign intelligence, not when it's against the backdrop of all of the other information there. And the FBI, who are experts in this, who have people who do this all day, every day, and the folks in DOJ who work with them on that, all believed that this was an important FISA to get, and to get now. So it's against the back-drop of that, of believing that it met the legal standards for a FISA, which appear to be borne out, given that it's been signed and reauthorized a number of times through the FISA court. It, I believed then and I believe now, it was the appropriate step to take. They're not all easy decisions that you make when you're DAG.

²⁹² FBI officials told us that the Crossfire Hurricane team did not know who hired Fusion GPS (which hired Steele) until after the first FISA application was filed, though, as described previously, the Crossfire Hurricane team and Steele's handling agent suspected Steele had been hired to conduct political opposition research. Documents indicate that by February and March 2017 it was broadly known among FBI officials involved with the investigation, and shared with senior NSD and ODAG officials, that Fusion GPS was hired first by a candidate during the Republican primaries and then later by someone related to the Democratic Party. Yates was removed as Acting Attorney General on January 30, 2017.

Following OI's presentation, Yates signed the application, and OI submitted the application to the FISC the same day. By her signature, and as stated in the application, Yates found that the application satisfied the criteria and requirements of the FISA statute and approved its filing with the court.²⁹³

E. Final Orders

The final FISA application included proposed orders, which were signed by then Chief Judge of the FISC, Rosemary Collyer, on October 21, 2016. According to NSD, the Chief Judge signed the final orders as proposed by the government in their entirety, without holding a hearing.

The primary order and warrant stated that the court found, based upon the facts submitted in the verified application, that there was probable cause to believe that Russia is a foreign power and that Carter Page was an agent of Russia under 50 U.S.C. § 1801(b)(2)(E). The court also found that the [REDACTED]

[REDACTED]. The court authorized the requested electronic surveillance [REDACTED] for 90 days [REDACTED]

[REDACTED] to effectuate the electronic surveillance [REDACTED] authorized by the court. The authorization permitted the government to, among other things, [REDACTED] by Carter Page. This included [REDACTED]

[REDACTED] during the 90-day period. The authorization also permitted the government to [REDACTED]

IV. Inaccurate, Incomplete, or Undocumented Information in the First FISA Application

Our review revealed instances in which factual assertions relied upon in the first FISA application targeting Carter Page were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the application was filed. We describe the most significant instances below and provide additional examples in a chart in Appendix One. We found no evidence that the OI Attorney, NSD supervisors, ODAG officials, or Yates were made aware of these issues by the FBI before the first FISA application was submitted to the court. Although we also found no evidence that Comey had been made aware of these issues at the time he certified the application, as more fully discussed in our analysis in Chapter Eleven, multiple factors made it difficult for us to precisely determine the extent of Comey's or

²⁹³ Her signature also specifically authorized [REDACTED]

McCabe's knowledge as to each fact that was not shared with OI and not included, or inaccurately stated, in the FISA applications. These factors included, among other things, limited recollections, the inability to question Comey about classified material because of his lack of a security clearance, and the absence of meeting minutes that would show the specific details shared with Comey and McCabe during briefings they received, beyond the more general investigative updates that we know they were provided.

A. Information about Page's Prior Relationship with Another U.S. Government Agency and Information Page Provided to the Other Agency that Overlapped with Facts Asserted in the FISA Application

The OI Attorney told us that it is relevant to know if the target of a FISA is or had been working on behalf of another U.S. government agency to "make sure that the left hand knows what the right hand is doing" when seeking FISA authority. As noted previously, according to the OI Attorney, it would have been a significant fact if Page had a relationship with the other U.S. government agency that overlapped in time with his interactions with known Russian intelligence officers described in the FISA applications because it would raise the issue of whether Page interacted with the Russian intelligence officers at the behest of the other agency or with the intent to assist the U.S. government. Evans told us that information about a FISA target's relationship with another U.S. government agency is typically included in a FISA application. Evans also stated that OI would work with the FBI to fully understand any such relationship and describe it accurately in the relevant application.

Toward that end, on September 28, 2016, the OI Attorney emailed Case Agent 1 a draft of the FISA application, copying other members of the Crossfire Hurricane team. In a comment in the draft application, the OI Attorney asked "do we know if there is any truth to Page's claim that he has provided information to [another U.S. government agency]—was he considered a source/asset/whatever?" In response to the OI Attorney's question, on September 29, Case Agent 1 inserted the following comment in the draft:

"He did meet with [the other U.S. government agency], however, it's dated and I would argue it was/is outside scope, I don't think we need it in. It was years ago, when he was in Moscow. If you want to keep it, I can get the language from the [August 17 Memorandum] we were provided [by the other U.S. government agency]."²⁹⁴

Based upon this response, the OI Attorney did not include information about Page's prior relationship with the other agency in the FISA application.

However, the information Case Agent 1 provided to the OI Attorney was inaccurate. As described in the August 17 Memorandum from the other U.S.

²⁹⁴ As noted previously, on or about August 17, 2016, the Crossfire Hurricane team received information from another U.S. government agency detailing Carter Page's relationship with that other agency.

government agency to the FBI, Page first met with the other agency in April 2008, after he left Moscow (Page had lived in Moscow from 2004 to 2007), and he had been approved as an operational contact for the other agency from 2008 to 2013. Additionally, rather than being outside the scope of the FISA application, the FISA application included allegations about meetings that Page had with Russian intelligence officers that Page had disclosed to the other agency. Specifically, according to the August 17 Memorandum, Page provided information to the other agency in October 2010 about contacts he had with a Russian intelligence officer (Intelligence Officer 1), which the other agency assessed likely began in 2008. Page's contacts with Intelligence Officer 1 in 2007 and 2008 were among the historical connections to Russian intelligence officers that the FBI relied upon in the first FISA application (and subsequent renewal applications) to help support probable cause.²⁹⁵ The August 17 Memorandum stated that Page told the other agency that he met with Intelligence Officer 1 four times, characterized him as a "compelling, nice guy," and described Intelligence Officer 1's alleged interest in contacting an identified U.S. person. According to the August 17 Memorandum, the employee of the other U.S. government agency who met with Page assessed that Page "candidly described his contact with" Intelligence Officer 1. Page's relationship with the other agency was not mentioned in any of the four FISA applications.

Further, the FBI had information in its own files indicating that Page had told the FBI about meeting with the other U.S. government agency after the period he lived in Moscow and during the period alleged in the FISA application. For example, according to the FBI Electronic Communication (EC) documenting a June 18, 2009 FBI interview of Page, Page had informed the FBI agents that "due to his work and overseas experiences, he has been questioned by and provides information to representatives of the [other U.S. government agency] on an ongoing basis," and that the "interviewing agents acknowledged this fact, and stated to Page that no questions would be asked about Page's dealings with the other U.S. government agency during the interview." According to another FBI EC, Page told the FBI during a June 2013 interview that, although he had not spoken to the other U.S. government agency for "about a year or so" Page had spoken to them "since his last interview with the FBI."

The Woods File for the first FISA application, which was prepared by Case Agent 1, included the EC documenting the 2009 FBI interview of Page. Additionally, Case Agent 1 received an email on August 10, 2016, containing an attachment titled "Carter Page-Profile," which had been prepared by a Crossfire Hurricane Staff Operations Specialist (SOS). The profile, dated August 1, 2016, quoted the 2009 EC regarding Page's statements to the FBI about his contact with the other U.S. government agency. We did not find any electronic communications indicating that the FBI provided OI with this Carter Page profile.

²⁹⁵ The other agency did not provide the FBI with information indicating it had knowledge of Page's reported contacts with another particular intelligence officer. The FBI also relied on Page's contacts with this intelligence officer in the FISA application.

We asked Case Agent 1 about his knowledge in 2016 of Page's historical contacts with the other U.S. government agency and Case Agent 1's response to the OI Attorney's question on September 29, 2016, about any such contacts. Case Agent 1 told us that he did not recall his state of knowledge in 2016 regarding Page's history with the other U.S. government agency, but said he believed that he likely would have reviewed the August 17 Memorandum about Page sent to the Crossfire Hurricane team by the other U.S. government agency. He said he recalled believing that Page's involvement with the other U.S. government agency was "dated." After reviewing a synopsis of the information contained in the August 17 Memorandum during his OIG interview, Case Agent 1 reiterated to the OIG that he believed the information was dated, but also said that he "probably saw it." According to Case Agent 1, "I think I would have reviewed it with the team. I think that it would have been, you know, as we looked at it. It wasn't just me. But, we, you know, there was a determination made that it was dated." Case Agent 1 also said it was possible that he never reviewed the August 17 Memorandum from the other U.S. government agency.

The OI Attorney told us that he could not recall much about the issue of Page's historical contacts with the other U.S. government agency. After being shown his exchange with Case Agent 1 on September 29, 2016, the OI Attorney stated that if Case Agent 1 told him that Page's contacts with the other U.S. government agency were "out of scope" and dated, then he would have deferred to Case Agent 1's assessment on this issue. The OI Attorney also told us, after being informed about information in the August 17 Memorandum from the other U.S. government agency, that if OI had been aware of this information at the time the application was being prepared, OI would have discussed it internally and likely would have disclosed the information to the FISC to "err on the side of disclosure." When we discussed the information in the August 17 Memorandum with Evans, he responded similarly and told us "I think it would go in the application somewhere, be it in a footnote or elsewhere, if for no other reason than it also goes to the question of where the person's loyalties lie."

As described later in Chapters Seven and Eight, none of the three renewal applications described Page's prior historical contacts and relationship with the other U.S. government agency, even after the FBI received additional information from the other agency in June 2017. In April and May 2017, following news reports that the FBI had obtained a FISA targeting Carter Page, Page gave interviews to news outlets denying that he had collected intelligence for the Russian government and asserting instead that he had previously shared information that he had learned with the U.S. intelligence community. In mid-June 2017, in response to concerns expressed by members of the Crossfire Hurricane team, the OGC Attorney contacted the other U.S. government agency by email to seek clarification about Page's past status with that agency. The other U.S. government agency responded by email to the FBI OGC attorney by directing the attorney to memoranda previously sent to the FBI by the other U.S. government agency that informed the FBI that Page did previously have a relationship with that other agency and that the last contact occurred in July 2011. The email also stated, using the other agency's terminology, that Page had a relationship with that other agency. However, when

asked about Page's prior status with that other agency by a Crossfire Hurricane supervisor, SSA 2, who was going to be the affiant on the final FISA renewal application, the OGC Attorney told SSA 2 that Page had never had a relationship with the other U.S. government agency. In addition, the OGC Attorney altered the email that the other U.S. government agency had sent to the OGC Attorney so that the email stated that Page had not been a source for the other agency; the OGC Attorney then forwarded the altered email to SSA 2, who told us he relied on the email. Shortly thereafter, SSA 2 served as the affiant on the final renewal application, which was again silent on Page's prior relationship with the other U.S. government agency.

B. Source Characterization Statement

As described earlier, because the FBI did not have information corroborating the Steele reporting relied upon in the Carter Page FISA application, it was particularly important for the application to articulate to the court the FBI's assessment of the reliability of the source. Toward that end, the final application included in a footnote the following source characterization statement regarding Steele:

[Steele] is a former [REDACTED] [REDACTED] and has been an FBI source since in or about October 2013. [Steele's] reporting has been corroborated and used in criminal proceedings and the FBI assesses [Steele] to be reliable.²⁹⁶ [Steele] has been compensated approximately \$95,000 by the FBI and the FBI is unaware of any derogatory information pertaining to [Steele].²⁹⁷

The OIG found no documentation in the Woods File indicating that Steele's handling agent, Handling Agent 1, approved this language, as required by Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA SMP PG) discussed in Chapter Two. Case Agent 1, who as described earlier compiled the Woods File and completed the Woods Procedures, told us that he was not aware of this requirement.²⁹⁸ Handling Agent 1 told the OIG that he did not approve this language, and that his OIG interview was the first time he ever saw it. Further, Handling Agent 1 said that although he found Steele to be reliable in the past, only "some" of Steele's past reporting had been corroborated and most of it

²⁹⁶ Although Case Agent 2's summary of the early October meeting with Steele states that Steele described his [REDACTED] in a manner consistent with the footnote in the FISA application, other documentation (discussed in Chapter Eight) indicates that Steele's [REDACTED] told the FBI in November 2016, after the first application was filed, that Steele had [REDACTED].

²⁹⁷ As described later in Chapter Seven, after Steele admitted to a disclosure of information to *Mother Jones* in late October 2016, the renewal applications removed the reference to no derogatory information concerning Steele and stated that the FBI continued to assess that Steele was reliable "as previous reporting from Steele has been corroborated and used in criminal proceedings."

²⁹⁸ Case Agent 1 told us that his experience with previous FISA applications had always involved CHSs for whom he (Case Agent 1) was the handling agent, and that, therefore, he never had the need to seek approval from a separate handling agent.

had not. He also stated that Steele's reporting had never been used in a criminal proceeding.

Handling Agent 1 also told us, and FBI emails and instant messages reflect, that he had provided language on September 23 to Case Agent 1 for the source characterization statement that was substantively different from the final language used in the FISA application:

CHS has been signed up for 3 years and is reliable. CHS responds to taskings and obtains info from a network of sub sources. Some of the chs' info has been corroborated when possible.

Case Agent 1 provided this language from Handling Agent 1 to the OGC Unit Chief, who had requested that he reach out to the handling agent for a description of Steele's reliability and corroboration. However, the language Case Agent 1 provided to the OI Attorney on September 29, which was later used to draft the reliability footnote 8, differed from the language provided by Handling Agent 1 and instead stated the following:

This information comes from a sensitive FBI source whose reporting has been corroborated and used in criminal proceedings, and who obtains information from a number of ostensibly well-positioned sub-sources. The scope of the source's reporting is from 20 June 2016 through 20 August 2016.

Case Agent 1, the OGC Unit Chief, and the OGC Attorney told us that they did not recall or know the specific circumstances that led to the use of "corroborated and used in criminal proceedings" in the final application instead of language that more closely tracked what Handling Agent 1 had provided. Emails and other FBI documents reflect that Case Agent 1 borrowed the exact language used in the final application from an Intelligence Memorandum on the Steele reporting, which the Supervisory Intel Analyst and Staff Operations Specialist (SOS) had prepared in late September 2016.²⁹⁹ Case Agent 1 told us that he most likely wanted to make sure that the language in the FISA application was consistent with how Steele was described in that document, which he believed had been vetted by analysts.

The Supervisory Intel Analyst told us that the phrase "corroborated and used in criminal proceedings" was a reference to Steele's reporting in the FIFA investigation. He said that neither he nor anyone else on the team reviewed any of the documents or court filings in the FIFA case file, and he did not "dig into" exactly how Steele's reporting was used in the FIFA case. He said that his entire knowledge about Steele's role in and significance to the FIFA investigation came from Handling Agent 1, though he said he did not recall what he specifically learned from Handling Agent 1 regarding how Steele's information was used in the FIFA

²⁹⁹ The Supervisory Intel Analyst told us that he did not specifically recall developing this specific language for the Intelligence Memorandum, but he said that metadata on the document itself reflected that he personally added the information.

investigation. Handwritten notes documenting conversations with Handling Agent 1 indicate that the Crossfire Hurricane team was left with the understanding that Steele was the original source for the FIFA investigation. SSA 1 told the OIG that the team “speculated” that Steele’s information was corroborated and used in criminal proceedings because they knew Steele had been “a part of, if not predicated, the FIFA investigation” and was known to have an extensive source network into Russian organized crime. SSA 1 told us that the email he sent to Handling Agent 1 and others on September 19, requesting a “source characterization statement,” among other information on Steele, reflected his “intent” as the case supervisor to provide accurate information in the FISA application about Steele’s history with the FBI. As noted in Chapter Four, in connection with the FIFA matter, Steele had provided leads to the FBI, namely that the FBI should talk to a contact who had information on corruption in the FIFA organization. It was the contact’s information, in part, that led to the opening of the FIFA investigation. However, the FIFA case agent and a prosecutor on the case told us that, to their knowledge, Steele did not have any role in the investigation itself, he did not provide court testimony, and his information did not appear in any indictments, search warrants, or other court filings. According to Handling Agent 1, he was clear with the Crossfire Hurricane team concerning Steele’s role and that Steele had provided leads and not evidence in the FIFA case.

Witnesses gave us different understandings as to the meaning and scope of the phrase, “used in criminal proceedings.” Handling Agent 1 told us that he never told the Crossfire Hurricane team that Steele’s past reporting was “used in criminal proceedings,” and he was bothered that the team used that phrase. Other witnesses said that the phrase could include providing a lead that helped bring about a criminal investigation, such as Evans who told us that a tip that leads to evidence of criminal wrongdoing could meet the “spirit” of “used in criminal proceedings.” However, some witnesses, including attorneys who served in FBI OGC, NSD, and ODAG, interpreted the phrase to mean that the source information was used in some sort of formal court proceeding or legal process. In particular, Baker told us that, in his view, the phrase implies that the information “wasn’t just a tip,” but that it was used as evidence in a trial, in an affidavit, or in some other court filing or legal process.

Given the importance of a source’s bona fides to a court’s determination of credibility—particularly in cases where, as here, the source information supporting probable cause is uncorroborated—we believe the failure to comply with FBI policy requiring that Steele’s handling agent review and approve the language in the source characterization statement was an important one. This failure may have resulted in the court being left with the misimpression that Steele’s past reporting (or at least some of it) had been deemed worthy by prosecutors of being relied upon in court or that more of his information had been corroborated than was actually the case. Further, as we describe in Chapters Six and Eight, additional documentation became available to the Crossfire Hurricane team subsequent to the first FISA application that provided information contrary to the characterization of Steele in the first FISA application, including the finding of a formal FBI source validation review in March 2017 that Steele’s past reporting on criminal matters,

which included the FIFA case, was “minimally corroborated.” Despite this information, the description of Steele in the FISA renewal applications did not change.

C. Information about a Steele Sub-Source Relied Upon in the FISA Application (Person 1)

As described earlier in this chapter, the information in the FISA application relied upon to establish probable cause to believe that Carter Page was coordinating with the Russian government on 2016 U.S. presidential election activities was based upon certain aspects of Steele’s reporting. This reporting included the alleged secret meetings between Page and Russian officials in July 2016 described in Steele’s Report 94. We found that the most descriptive information in the FISA application of alleged coordination between Page and Russia came from Steele’s Report 95, which attributed the information to “Source E.”

The FISA application stated that, according to this sub-source, Carter Page was an intermediary between Russian leadership and an individual associated with the Trump campaign (Manafort) in a “well-developed conspiracy of co-operation” that led to the disclosure of hacked DNC emails by WikiLeaks in exchange for the Trump campaign team’s agreement, which the FBI assessed included at least Carter Page, to sideline Russian intervention in Ukraine as a campaign issue. The application also stated that this same sub-source provided information contained in Steele’s Report 80 that the Kremlin had been feeding information to Trump’s campaign for an extended period of time and that the information had reportedly been “very helpful,” as well as information contained in Report 102 that the DNC email leak had been done, at least in part, to swing supporters from Hillary Clinton to Donald Trump.³⁰⁰ Because the FBI had no independent corroboration for this information, as witnesses have mentioned, the reliability of Steele and his source network was important to the inclusion of these allegations in the FISA application.

Before the initial FISA application was filed, FBI documents and witness testimony indicate that the Crossfire Hurricane team had assessed, particularly following the information Steele provided in early October, that Source E was most likely a person previously known to the FBI, referred to hereinafter as Person 1.³⁰¹ The Supervisory Intel Analyst’s written summary of the early October meeting with Steele specifically attributed the information in Report 95 to Person 1 and also described information that Steele provided to the FBI team about Person 1, including that Person 1 “is a ‘boaster’ and an ‘egoist’ and may engage in some embellishment.” The day after the early October meeting, the Supervisory Intel Analyst emailed this written summary to the Crossfire Hurricane team, as well as Strzok and the Intel Section Chief. The OIG found no documents or written communications in which the Crossfire Hurricane team evaluated Steele’s statement characterizing Person 1 as a boaster or embellisher. SSA 1, who received the

³⁰⁰ In Report 80, this sub-source was referred to as “Source D” and in Report 102 as an “associate” of candidate Donald Trump.

³⁰¹ As discussed in Chapter Four, Person 1 [REDACTED]

written summary from the Supervisory Intel Analyst, told us that he did not recall any such conversations.

The footnote describing this sub-source in the FISA application did not include any information about how Steele had described Person 1 as a booster or embellisher. Documents reflect that, on or about October 12, the OI Attorney received the Supervisory Intel Analyst's written summary of the early October meeting that attributed the information in Report 95 to Person 1 and stated that Steele had described Person 1 as a booster and embellisher. The OI Attorney made handwritten notes on the written summary when he met with members of the Crossfire Hurricane team to learn more about the source network. The OI Attorney told us that he did not recall the team flagging this issue for him or that he independently made the connection between the sub-source in the FISA application and Steele's characterization of Person 1. Case Agent 1 and the OI Attorney told the OIG that they did not recall any conversations about Steele's statement about Person 1 at the time of the FISA application. We found no evidence that Steele's characterization of Person 1 was shared with Evans or the OI managers involved in the FISA application, and they told us that they did not recall being made aware of it. Evans and the OI Attorney told us that they would have wanted to discuss the issue internally in NSD and with the FBI and likely would have, at a minimum, disclosed the information to the court.

In addition, we learned that Person 1 was at the time the subject of an open FBI counterintelligence investigation.³⁰² We also were concerned that the FISA application did not disclose to the court the FBI's belief that this sub-source was, at the time of the application, the subject of such an investigation. We were told that the Department will usually share with the FISC the fact that a source is a subject in an open case. The OI Attorney told us he did not recall knowing this information at the time of the first application, even though NYFO opened the case after consulting with and notifying Case Agent 1 and SSA 1 prior to October 12, 2016, nine days before the FISA application was filed. Case Agent 1 said that he may have mentioned the case to the OI Attorney "in passing," but he did not specifically recall doing so.³⁰³

We believe the FBI should have specifically and explicitly advised OI about the FBI's assessment that this particular sub-source relied upon in the FISA application was Person 1, that Steele had provided derogatory information

³⁰² According to a document circulated among Crossfire Hurricane team members and supervisors in early October 2016, Person 1 had [REDACTED]. The document described reporting [REDACTED].

[REDACTED] In addition, in late December 2016, Department Attorney Bruce Ohr told SSA 1 that he had met with Glenn Simpson and that Simpson had assessed that Person 1 was [REDACTED] who was central in connecting Trump to Russia.

³⁰³ Although an email indicates that the OI Attorney learned in March 2017 that the FBI had an open case on Person 1, the subsequent renewal applications did not include this fact. According to the OI Attorney, and as reflected in Renewal Application Nos. 2 and 3, the FBI expressed uncertainty about whether this sub-source was Person 1. However, other FBI documents in the same time period reflect that the ongoing assumption by the Crossfire Hurricane team was that this sub-source was Person 1.

regarding Person 1, and that the FBI had an open counterintelligence investigation on Person 1. Those facts were relevant to OI's assessment of the strength of the information in the FISA application and, based on what we were told was the Department's practice, likely would have been included by OI in the application so that the FISC could consider the information in deciding whether to grant the requested FISA authority.

D. September 23 Media Disclosure

As described earlier, the final FISA application included the FBI's assessment in Footnote 18 that the FBI "does not believe that [Steele] directly provided...to the press" the information in the September 23 *Yahoo News* article concerning the investigation of Carter Page and his alleged meetings with Sechin and Divyekin. The basis for this assessment, as asserted in the application, was that Steele told the FBI that he "only provided this information to the business associate and the FBI." However, this assertion of what Steele said was inaccurate, and the documentation in the Woods File did not support it.

The documentation in the Woods File relied upon for this assertion was a written summary of the meeting in early October with Steele. The summary was drafted by Case Agent 2 and, as noted above, was emailed to the Crossfire Hurricane team a day after the meeting. This Woods document, however, did not state or otherwise indicate that Steele only provided the information to his business associate and the FBI. Indeed, the Woods document noted that Steele told the team that he also had provided his election reports to his contacts at the State Department. Neither Case Agent 1 nor SSA 1, who performed the Woods Procedures on this application, noted this error, and it is not clear upon what basis they believed they had verified the factual assertion in the footnote about the FBI's assessment of who provided information to the media for the September 23 news article. Both Case Agent 1 and SSA 1 told the OIG that they may have mistakenly been thinking the footnote said Steele gave the information to the "U.S. government" rather than "the FBI."

As described in Chapter Six, during his OIG interview, Steele told us that in September he and Simpson gave an "off-the-record" briefing to a small number of journalists about his reporting. Steele said he did not have permission to disclose to the OIG who attended this briefing but acknowledged that *Yahoo News* was identified in one of the court filings in the foreign litigation as having been present.³⁰⁴ The author of the *Yahoo News* article reported publicly in February 2018 that he received a briefing from Steele on the information discussed in the article

³⁰⁴ Steele told us that he did not know if the "Western intelligence source" cited in the September 23 *Yahoo News* article was a reference to him. He said he had understood that the media briefing he gave was "off-the-record." He said that he believed that *Yahoo News* had a source in the FBI or otherwise in the U.S. government who provided the information in the article. As we described in Chapter Four, the author of the *Yahoo News* article has written that Steele was the "Western intelligence source." See *Russian Roulette: The Inside Story of Putin's War on America and the Election of Donald Trump* (New York: Grand Central Publishing, 2018), 227.

before the article was published, although the author also stated that he did not rely solely on Steele in his reporting.³⁰⁵

Neither of the FBI's two written summaries of the meeting in early October 2016 with Steele indicate that Steele was asked specifically about the article or generally about contacts with the media. During our interview with Steele, he told us that he was "fairly sure" the FBI team did not ask him at the meeting or at any other time, but that had they asked, he would have told them about his interactions with the media. The OI Attorney surmised in an October 14 email to the OI Unit Chief that the FBI team had not asked Steele those questions. The OI Attorney told us that he did not recall whether he sought or received clarity on whether the FBI team had specifically asked Steele about the *Yahoo News* disclosure. He said that he probably would have included more information in the application if he had additional clarity on that point.

As detailed in Chapter Four, we found no documentation demonstrating that Steele was asked by the FBI whether he was the source of the *Yahoo News* article disclosure or told the FBI he was not. Handling Agent 1 told us that he had no idea how the FBI made its assessment that Steele's business associate or the law firm likely provided the information to the media. We found that the basis for that assessment was neither accurate nor supported by appropriate documentation, demonstrating a failure in the Woods process. Further, as we describe in Chapter Seven, as the FBI learned new information about Steele's disclosures to the media—from the source himself, from Department attorney Bruce Ohr, and from media reports of the source's admissions in court filings in the foreign litigation—the FBI did not make changes in any of the three later FISA renewal applications to reflect this new information.

E. Papadopoulos's Denials to an FBI CHS in September 2016

As described earlier, one of the main elements relied upon by the FBI in support of its probable cause showing was the FFG information concerning George Papadopoulos and the reported offer or suggestion of assistance from the Russians to someone associated with the Trump campaign. Specifically, the government stated the following in the FISA application:

In or about March 2016, George Papadopoulos [footnote omitted] and Carter Page (the target of this application) were publicly identified by Candidate #1 as part of his/her foreign policy team. Based on reporting from a friendly foreign government, which has provided reliable information in the past...the FBI believes that the Russian Government's efforts are being coordinated with Page and perhaps other individuals associated with Candidate #1's campaign. In or about July 2016, the above-referenced friendly foreign government provided information to a senior official within the U.S. [government]

³⁰⁵ See "*Yahoo News*' Michael Isikoff Describes Crucial Meeting Cited in Nunes Memo," *Yahoo News*, February 2, 2018, www.yahoo.com/news/yahoo-news-michael-isikoff-describes-crucial-meeting-cited-nunes-memo-231005733.html (accessed Dec. 2, 2019).

regarding efforts made by the Russian Government to influence the 2016 U.S. Presidential election. Specifically, according to this information, during a meeting in or about April 2016 between officials of the friendly foreign government and George Papadopoulos...Papadopoulos suggested that Candidate #1's campaign had received some kind of suggestion from Russia that Russia could assist with the anonymous release of information during the campaign that would be damaging to another candidate for U.S. President (Candidate #2). It was unclear whether Papadopoulos or the Russians were referring to material acquired publicly or through other means. It was also unclear from this reporting how Candidate #1's campaign reacted to the alleged Russian offer. Nevertheless, as discussed below, the FBI believes that election influence efforts are being coordinated between the RIS and Page, and possibly others.³⁰⁶

However, during a September 2016 CHS meeting conducted by the FBI, which was consensually monitored, Papadopoulos told an FBI CHS that, to his knowledge, no one associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails. The FISA application did not include the statements Papadopoulos made to this CHS that were in conflict with information included in the FISA application.

Case Agent 1 told us that he did not recall whether he advised the OI Attorney about Papadopoulos's denial in September 2016 but that, if he did not, it may have been an oversight. He also said that the Crossfire Hurricane team's assessment was that the Papadopoulos denial was a rehearsed response, and that he did not view the information as particularly germane to the investigation of Carter Page.³⁰⁷ We were advised by NSD that it did not know about this denial by Papadopoulos until May 2018, after ODAG found the information while reviewing documents for possible production to Congressional committees. The OI Attorney told us that he had no memory of being aware of this CHS meeting at any time before May 2018.

As described in Chapter Eight, in July 2018, after learning this information, NSD submitted a letter to the FISC under Rule 13(a) of the Court's Rules of Procedure, notifying the court of additional information relevant to the Carter Page FISA applications. The Rule 13(a) letter included Papadopoulos's statements to the

³⁰⁶ Although the application stated that the meeting between the FFG and Papadopoulos occurred in April 2016, FBI documents indicate the meeting occurred in May 2016.

³⁰⁷ After reviewing a draft of this report, Case Agent 1 told the OIG that he and the team discounted Papadopoulos's denials for several reasons, but that, in hindsight, he now realizes that those denials, and the team's assessment of those denials, should have been shared with OI "in order for [OI] to make the determination whether [those denials] should be in the application."

FBI CHS in September 2016, as well as similar statements Papadopoulos made to a CHS in late October 2016, after the first application was filed.³⁰⁸ The letter stated:

The above-described additional background information concerning Papadopoulos's September 2016 meeting with [an FBI CHS] and October 2016 discussion with a separate CHS would have been included in the applications had it been known to NSD at the time, as Papadopoulos's statements relate to the question of whether Papadopoulos was aware of or involved in coordination of election influence efforts between the RIS and members of Candidate #1's campaign. Even had this information been included, the totality of information submitted in these applications concerning Page's activities was sufficient to support the Court's finding of probable cause that Page was acting as an agent of a foreign power. [Footnote omitted].

Evans told the OIG that a FISA target's denial of facts asserted in a FISA application should be included in the application, even in instances where the FBI makes an assessment that the target making the denial is not being candid or truthful. According to Evans, there was no question in his mind that the Papadopoulos denial to the CHS in September 2016 was relevant to the court's consideration of the first application. In fact, later renewal applications advised the court of denials made by Papadopoulos to the FBI over the course of several interviews in 2017, as well as the FBI's belief that Papadopoulos provided misleading and incomplete information.³⁰⁹

F. Carter Page's Denials to an FBI CHS in August and October 2016

As described earlier in this chapter, the FBI conducted CHS meetings involving Carter Page in August and October 2016. We found that statements made by Page during these meetings, which conflicted with information included in the first FISA application, were not provided by the FBI to OI, and were not disclosed in the first FISA application.

In August 2016, as we describe in Chapter Ten, the FBI consensually monitored and recorded a meeting between Carter Page and an FBI CHS, during which Page said that he had "literally never met" or "said one word to" Paul Manafort, and that Manafort had not responded to any of Page's emails. Page

³⁰⁸ In a footnote, the letter also advised the court that Papadopoulos made similar statements to the FBI during an interview in late January 2017, after Renewal Application No. 1 was filed and before Renewal Application No. 2.

³⁰⁹ As described later in Chapter Eight, in February 2017, the FBI interviewed Joseph Mifsud who the FBI believed communicated to Papadopoulos the alleged offer from the Russians. According to FBI documents, Mifsud denied having advance knowledge that Russia was in possession of DNC emails and denied passing any offers or proffers to Papadopoulos. As described in Chapter Eight, this information was not included in the later renewal applications.

made similar statements during one of his interviews with the FBI in March 2017.³¹⁰ Although the first Carter Page FISA application and subsequent renewal applications alleged that Page was acting as an intermediary between Manafort and the Russian government as part of a "well-developed conspiracy" (from Report 95), none of the applications included statements from Carter Page to the CHS that conflicted with the conspiracy allegation.

The statements made by Page in August 2016 were not provided to OI prior to the filing of the first FISA application. The OI Attorney told us that, like the September 2016 CHS meeting involving Papadopoulos, he had no memory of being made aware of Page's August 2016 statements regarding Manafort before the first FISA application was filed. Case Agent 1 told us that he did not discuss these statements with the OI Attorney because he did not view them as contrary to the allegations in Report 95, in that it was possible that Manafort used Page as an intermediary without communicating directly with Page.³¹¹

We found that information about the August 2016 meeting was first shared with the OI Attorney on or about June 20, 2017, when Case Agent 6 sent the OI Attorney a 163-page document containing the statements made by Page during the meeting. As described in Chapter Seven, Case Agent 6, to bolster probable cause, had added to the draft of FISA Renewal Application No. 3 statements that Page made during this meeting about an "October Surprise" involving an "email dump" of "33 thousand" emails. The OI Attorney told us that he used the 163-page document to accurately quote in the final renewal application Page's statements concerning the "October Surprise," but that he did not read the other aspects of the document and that the case agent did not flag for him the statements Page made about Manafort. The OI Attorney told us that these statements, which were available to the FBI before the first application, should have been flagged by the FBI for inclusion in all of the FISA applications because they were relevant to the court's assessment of the allegations concerning Manafort's use of Page as an intermediary with Russia. Case Agent 6 told us that he did not know that Page made the statement about Manafort because the August 2016 meeting took place before he was assigned to the investigation. He said that the reason he knew about the "October Surprise" statements in the document was that he had heard about them from Case Agent 1 and did a word search to find the specific discussion of that topic.

Regarding the similar statement Page made during one of his March 2017 interviews with the FBI, the OI Attorney told us that Case Agent 6 also did not flag this statement for him, but added that he (OI Attorney) should have noticed the

³¹⁰ According to Evans, Page's statement concerning Manafort in August 2016 "arguably carries more significance" than Page's later statements because the August 2016 statements took place before Page would have learned from the media that he was under investigation by the FBI.

³¹¹ After reviewing a draft of this report, Case Agent 1 told the OIG that, because the Crossfire Hurricane team did not receive Report 95 until several weeks after Page told the CHS that he had "literally never met" Manafort, Case Agent 1 "may have overlooked" this statement when the FISA application was being prepared. He acknowledged that he should have provided the information to the OI attorney.

statement himself in the interview summary Case Agent 6 forwarded to him on March 24, 2017, since it was only five pages, and the OI Attorney had read the entire document.

As described previously, the FISA application contained several statements Carter Page made to an FBI CHS during a consensually monitored and recorded meeting in October 2016, before the first FISA application was filed. In an email sent the same day as the CHS meeting to Case Agent 1 and other members of the Crossfire Hurricane team, the OGC Attorney asked the team to promptly send OI information about the meeting, including, among other things, any "exculpatory" statements made by Carter Page during this meeting, which was "probably the most important" information to provide to OI. Case Agent 1 thereafter provided to OI, on the same day as the October 2016 meeting, some of the statements made by Page to the CHS.

We determined, however, that the information Case Agent 1 provided to OI, which was incorporated into the first FISA application, did not fully or accurately describe the information obtained by the FBI as a result of the meeting. According to the first FISA application, Page told the CHS during the meeting that the Russians would be giving him an "open checkbook." The application further stated that Page did not "provide [the CHS] any specific details to refute, dispel, or clarify the media reporting" regarding Page's contacts with Russian officials Sechin and Divyekin, but that he made "vague statements that minimized his activities." However, the application failed to include Page's statement during the meeting in which Page specifically denied meeting with Sechin and Divyekin, and denied even knowing who Divyekin was. The application did not contain these denials even though the application relied upon the allegations in Report 94 that Page had secret meetings with both Sechin and Divyekin while in Moscow in July 2016. The application also failed to include the fact that Page denied to the CHS knowing anything about the disclosure by WikiLeaks of hacked DNC emails, which was contrary to the information from Report 95 in the application. Further, the application alleged that "Page helped influence" the Republican Party "to alter [its] platform to be more sympathetic to the Russian cause." However, it did not reference the fact that Page said to the CHS during their meeting that he "stayed clear of that—there was a lot of conspiracy theories that I was one of them...[but] totally off the record...members of our team were working on that, and...in retrospect it's way better off that I...remained at arms length."³¹²

When we asked Case Agent 1 why he failed to provide this information from the October CHS meeting to the OI Attorney in advance of the first FISA application, he told us that he did not think that Page's statements on these issues were specific. We noted, however, Case Agent 1 used the transcripts of the recording as the support in the Woods File for the statements in the FISA

³¹² Page made other statements denying culpability to a FBI CHS during a consensually recorded meeting in January 2017, in which he generally criticized the Steele reports that had recently been published by *BuzzFeed*, calling them "complete lies," and said that the FBI was provided "false" evidence against him. We found no evidence that the FBI provided this information to OI for its consideration.

applications. We further noted that the documents in the Woods File specifically stated that Page "denied meeting with Sechin/Divyekin," and said he "stayed clear" of the efforts of the Republican platform committee and knew "nothing about" WikiLeaks. Neither Case Agent 1 nor SSA 1 noted the inconsistency during the Woods Procedures, even though instant messages show that SSA 1 also knew as of October 17 that Page denied ever knowing Divyekin. This inconsistency was also not noted during the Woods Procedures on the subsequent FISA renewal applications, and none of the three later FISA renewal applications included Page's denials to the CHS.

We found no information indicating that the FBI provided OI with the documents containing Page's denials before finalizing the first FISA application. Instead, Case Agent 1 provided a summary that did not contain those denials to the OI Attorney and that the OI Attorney relied upon that summary in drafting the first application. Evans told us that had NSD known of Page's denials regarding Sechin and Divyekin, it was the kind of information that would have been included in the application.

Before FISA Renewal Application No. 1, was filed in January 2017, the OI Attorney did receive the documents containing the denials Page made to the CHS in October 2016. Yet, the information about the meeting remained unchanged in the renewal applications. The OI Attorney told us that he did not recall the circumstances surrounding this, but he acknowledged that he should have updated the descriptions in the renewal applications to include Page's denials.

In the next chapter, we describe the FBI's activities involving Steele after the first FISA application, including the FBI's decision to close Steele as a CHS and the FBI's efforts to assess Steele's election reporting in 2016 and 2017.

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CHAPTER SIX

FBI ACTIVITIES INVOLVING CHRISTOPHER STEELE AFTER THE FIRST FISA AND FBI EFFORTS TO ASSESS STEELE'S ELECTION REPORTING

As detailed in this chapter, shortly after the Foreign Intelligence Surveillance Court (FISC) issued orders under FISA authorizing surveillance of Carter Page by the FBI, the FBI closed Steele as a Confidential Human Source (CHS) because Steele disclosed his relationship with the FBI to a reporter. Following the FBI's closure of Steele, which we describe below, several other individuals provided the FBI with reports prepared by Steele, some of which the FBI had not previously received. Among the individuals who provided Steele's information to the FBI were Department attorney Bruce Ohr, who we discuss below and in more detail in Chapter Nine.

Additionally, following Steele's closure, the FBI disseminated the Steele election reporting to the U.S. Intelligence Community (USIC) and sought to have it included in the January 2017 Intelligence Community Assessment (ICA) relating to Russian interference with the U.S. elections, in large part because the FBI believed the information in Steele's reports to be credible, although the FBI made clear to the USIC that the information in the reports had not been fully corroborated. The FBI also made attempts in 2016 and 2017 to further assess the reliability of Steele's reports. Through those efforts, as we discuss in this chapter, the FBI discovered discrepancies between Steele's reporting and statements sub-sources made to the FBI, which raised doubts about the reliability of some of Steele's reports. The FBI also assessed the possibility that Russia was funneling disinformation to Steele, and the possibility that disinformation was included in his election reports.

As we describe in this chapter, the FBI concluded, among other things, that although consistent with known efforts by Russia to interfere in the 2016 U.S. elections, much of the material in the Steele election reports, including allegations about Donald Trump and members of the Trump campaign relied upon in the Carter Page FISA applications, could not be corroborated; that certain allegations were inaccurate or inconsistent with information gathered by the Crossfire Hurricane team; and that the limited information that was corroborated related to time, location, and title information, much of which was publicly available.

I. Steele's Briefing to *Mother Jones* and the FBI's Closure of Steele as a CHS in November 2016

At the end of October 2016, Steele provided a briefing to a *Mother Jones* reporter in which Steele disclosed that he had provided the FBI with information showing connections between candidate Trump and his campaign and the Russian government. On October 31, 2016, three days after then FBI Director James Comey's public announcement that the FBI was reopening its investigation into then Secretary Clinton's use of a private email server based on the receipt of new

evidence, *Mother Jones* published an article titled "A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump." The article described the work of a "well-placed Western intelligence source" with a background in Russian intelligence who was sharing information with the FBI. The article presented information contained in Report 80, and quoted the officer as stating that, based on his interactions with the FBI, "[i]t's quite clear there was or is a pretty substantial inquiry going on."

Steele's handling agent, Handling Agent 1, told the OIG that he first learned of the *Mother Jones* article on November 1 when SSA 1 emailed him a copy. Handling Agent 1 telephoned Steele that day and asked him if he had spoken with the author of the article. According to Handling Agent 1's records, Steele confirmed that he had spoken with the author. Handling Agent 1's notes state that Steele was "concerned about the behavior of [the FBI] and was troubled by the actions of [the FBI] last Friday" (i.e., Comey's announcement concerning the discovery of additional Clinton emails). The notes also state that Handling Agent 1 advised Steele that he must cease collecting information for the FBI, and it was unlikely that the FBI would continue a relationship with him. Handling Agent 1 told us he had no further contact with Steele after the November 1 telephone call.

Upon learning of Steele's actions, then Assistant Director E.W. "Bill" Priestap decided that Steele had to be closed immediately. Senior leaders in the FBI's International Operations Division concurred with this decision during a meeting on November 3 and advised the FBI's Legal Attaché (Legat) in the European city where, as described in Chapter Four, members of the Crossfire Hurricane team met with Steele in early October, that the decision to close Steele was "non-negotiable." Handling Agent 1 finalized the necessary paperwork on November 17, 2016, which stated that Steele was closed on November 1 and was being closed for cause due to his disclosure of his confidential relationship with the FBI to a third party.³¹³ Strzok told the OIG that the FBI closed Steele "because he was a control problem. We did not close him because we thought he was [a] fabricator." According to Strzok, Steele's decisions to discuss his reporting with the media and to disclose his relationship with the FBI were "horrible and it hurt what we were doing, and no question, he shouldn't have done it."

As a consequence of his closing, Handling Agent 1 halted payment of \$15,000 to Steele. Handling Agent 1 told the OIG that the FBI never paid Steele for information related to the 2016 U.S. elections. FBI records show that Steele's last payment occurred on August 12, 2016, and was for information furnished to the FBI's Cyber and Counterintelligence Divisions (CD) that was unrelated to the 2016 U.S. elections.

Steele told us that by the time of the *Mother Jones* interview, he and Glenn Simpson of Fusion GPS had decided not to continue with the FBI because the FBI

³¹³ The Source Closing Communication document included the following: "Was the individual aware of his/her status as a CHS? Yes." As we described in Chapter Four, Steele told us he was not a CHS for the FBI and was never advised by Handling Agent 1 that he was a CHS—a claim that Handling Agent 1 disputes.

"was being deceitful." In particular, Steele stated that he had asked Ohr and possibly Handling Agent 1 prior to late October 2016 why the U.S. government had not announced that the FBI was investigating allegations concerning the Trump campaign. Steele said that he was told in response that the Hatch Act made it a criminal offense for a federal official to make a public statement within 90 days of an election to the detriment or benefit of a candidate.³¹⁴ Both Ohr and Handling Agent 1 told us that they had no recollection of discussing the Hatch Act with Steele. Steele explained that he became frustrated with the FBI at the end of October when Comey notified Congress close to the election that the FBI was reopening the Clinton email investigation and *The New York Times* quoted law enforcement officials as saying that they had found no direct link between Trump and the Russian government.³¹⁵ Steele said that he, his firm, and his clients believed it was not appropriate for the FBI to make announcements in violation of the Hatch Act while at the same time not disclosing its investigative activity concerning the Trump campaign. According to Steele, the FBI's conduct compelled him to choose between his client and the FBI, and he chose his client because he believed that the FBI had misled him. Steele said that Simpson arranged for the video conference interview with *Mother Jones* and Simpson actively participated in the call along with Steele. Steele told us that he believed the interview was "off the record" and under the same rules as his other interviews arranged by Simpson. He does not know whether Simpson either before or after the interview may have changed the rules.

According to FBI officials, knowledge of Steele's disclosure to *Mother Jones* did not cause the team to reassess whether Steele was also the source of the disclosures to *Yahoo News* in September 2016. As described in Chapter Seven, the language in the Carter Page FISA Renewal Application No. 1 regarding the September 23 *Yahoo News* article remained unchanged, again stating that the FBI "does not believe that Source #1 [Steele] directly provided this information to [Yahoo News]." The National Security Division's (NSD) Office of Intelligence (OI) Unit Chief's notes from a November 29 meeting with the OI Attorney drafting the Carter Page FISA renewal application and the FBI Office of the General Counsel (OGC) Attorney stated "[Steele] was not the leaker to *Yahoo*" and noted "DD [Deputy Director] has signed off on requesting the FISA renewal."³¹⁶ The OI Unit Chief told us that the OGC Attorney made this statement, but that the OGC Attorney did not provide a basis for the assertion regarding the *Yahoo News* article. During his OIG interview, we asked the OGC Attorney if he knew the reason for the FBI's belief that Steele was not the leaker to *Yahoo News* and he said he was under the impression that Simpson was sharing the information with other entities. SSA 1

³¹⁴ The Hatch Act is codified at 5 U.S.C. §§ 7321-7326. Section 7323(a)(1) provides that "an employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election."

³¹⁵ "Investigating Donald Trump, F.B.I. Sees No Clear Link to Russia," *The New York Times*, October 31, 2016.

³¹⁶ As described in Chapter Seven, then Deputy Director Andrew McCabe told us that as Deputy Director he did not approve FISA requests before they were submitted to OI, but following the disclosures to *Mother Jones*, the FBI was comfortable seeking a FISA renewal targeting Carter Page.

and Case Agent 1 told us they did not recall any discussions about changing the FBI's assessment in the FISA application concerning the *Yahoo News* disclosure after learning Steele was responsible for the disclosure to *Mother Jones*. On December 19, 2016, Case Agent 1 interviewed then FBI General Counsel James Baker regarding his interactions with a *Mother Jones* reporter and Baker told Case Agent 1 that the reporter advised Baker that a former intelligence official "was passing information 'around town'" about Trump. Case Agent 1 said that by this time, the team had also heard rumors that Steele's reporting had been "floated around," so it was not clear to them who made the *Yahoo News* disclosure. Further, we were told that, after the FBI closed Steele as a CHS, the team was not going to have further communications with Steele.

II. The FBI Receives Additional Steele Reporting Post-Election

Following the November 2016 U.S. elections, several third parties provided the FBI with additional Steele election reporting, which the FBI included in its validation efforts. Baker told the OIG that a *Mother Jones* reporter contacted him and furnished him with nine reports from Steele, four of which Steele had not previously provided to the FBI.³¹⁷ As described above, Baker was interviewed by Case Agent 1 and Baker's discussion with the *Mother Jones* reporter was documented in an FBI FD-302 report. According to the FD-302, Baker received a collection of Steele's reports from the *Mother Jones* reporter, which Baker forwarded to Priestap for analysis.³¹⁸

Several weeks later, on December 9, 2016, Senator John McCain provided Comey with a collection of 16 Steele election reports, 5 of which Steele had not given the FBI.³¹⁹ McCain had obtained these reports from a staff member at the McCain Institute. The McCain Institute staff member had met with Steele and later acquired the reports from Simpson. Steele told the OIG that a former European Ambassador to Russia who generally was familiar with Steele's election reporting informed Steele that the former Ambassador would be meeting with Senator McCain at a conference in Nova Scotia in November, and asked Steele whether he wanted the former Ambassador to talk with McCain about the election reporting. Steele said he replied that he did, which resulted in the McCain Institute staff member visiting Steele in Europe in late November. According to deposition testimony the McCain Institute staff member provided in foreign litigation, during

³¹⁷ The nine Steele reports were Reports 80, 94, 95, 97, 105, 111, 112, 134, and 136. The FBI had not previously obtained Reports 97, 105, and 112 from Steele. According to an FBI FD-302, in a conversation later that month, the *Mother Jones* reporter advised Baker that the Steele reports also had been furnished to two Members of Congress, and that Steele was surprised that his reporting had not received more attention in the media.

³¹⁸ The *Mother Jones* reporter has stated publicly that he provided Steele reports to Baker. See "A New Right-Wing Smear Campaign Targets a Former FBI Official to Distract From Russia Scandal," *Mother Jones*, www.motherjones.com/politics/2019/01/a-new-right-wing-smear-campaign-targets-a-former-fbi-official-to-distract-from-russia-scandal/ (accessed November 22, 2019).

³¹⁹ These were Steele Reports 80, 86, 94, 95, 97, 100, 101, 102, 105, 111, 112, 113, 130, 134, 135, and 136. FBI records show that the FBI had not previously received Reports 86, 97, 105, 112 and 113 from Steele.

this visit Steele discussed his reporting with the staff member and showed the staff member a piece of paper on which Steele had written the true names of his sub-sources, although the staff member could not recall them. Steele told us that he shared some of the sub-source names with the staff member because the staff member was a "Russia expert" and had been tasked by Senator McCain to determine whether Steele's reporting was serious. The staff member also testified that Steele explained to him that the information in the reports needed to be corroborated and verified and that Steele was not in a position "to vouch for everything that was produced...."

Additionally, as we detail in Chapter Nine, on December 10, Department attorney Bruce Ohr received a thumb drive from Simpson containing some of Steele's election reports and provided the thumb drive to the FBI.³²⁰ Included among the reports on the thumb drive was a document that the Crossfire Hurricane team had not previously seen, which recounted that a senior official in the Russian Ministry of Foreign Affairs had reported that a rumor was circulating that President-elect Trump's delay in appointing a new Secretary of State was the result of an "intervention" by Putin and the Kremlin, and that they had requested Trump appoint a "Russia-friendly" figure who was prepared to lift sanctions against Russia.

Finally, by early January 2017, *BuzzFeed* had obtained copies of some of the Steele election reports during a meeting with the McCain Institute staff member and published them as part of an article titled "These Reports Allege Trump Has Deep Ties to Russia."³²¹ Included in this collection was Report 166, another report that previously had not been shared with the FBI. It included allegations that Trump attorney Michael Cohen had held secret discussions in Prague in late summer 2016 with representatives of the Kremlin and "associated operators/hackers," and that the "anti-Clinton hackers" had been paid by the "[Trump] team" and Kremlin.³²² The FBI eventually concluded that these allegations against Cohen and the "Trump team" were not true.

³²⁰ These were the same Steele reports that Senator McCain gave to Comey on December 9, except that the thumb drive did not include Report 130.

³²¹ Steele testified in foreign litigation that he did not provide his reports to journalists or media organizations and did not authorize anyone to share them. According to the McCain Institute staff member's testimony in the same litigation, Steele requested that the staff member meet with *BuzzFeed*, and that Steele neither requested nor prohibited the staff member from sharing the reports with *BuzzFeed*. Additionally, the staff member testified that Steele was aware that the staff member was furnishing Steele's reports to *The Washington Post*. Steele told the OIG that he trusted the staff member to handle his reports discretely and that the staff member betrayed that trust. Steele explained that the staff member had spent his career handling sensitive intelligence. Steele also said he understood from a former Ambassador that Senator McCain requested that Steele trust the staff member. Steele said he was "absolutely flabbergasted" when *BuzzFeed* published his election reports.

³²² On January 10, 2017, following the media release of the Steele election reports, Strzok texted Lisa Page:

6:09 p.m.: "Sitting with Bill watching CNN. A TON more out."

III. The FBI Disseminates the Steele Reporting to the U.S. Intelligence Community and Seeks to Have It Included in the January 2017 Intelligence Community Assessment

According to the Supervisory Intelligence Analyst (Supervisory Intel Analyst), the FBI first shared Steele's reporting with other U.S. government intelligence agencies in December 2016, when the FBI provided it to an interagency ICA drafting team that was set up in response to a request from President Obama to complete a comprehensive assessment of the Russian government's intentions and actions concerning the 2016 elections.³²³ Members of the interagency ICA drafting team from the FBI, National Security Agency (NSA), and Central Intelligence Agency (CIA), with oversight from the Office of the Director of National Intelligence (ODNI), worked jointly to prepare a report known as the Intelligence Community Assessment (ICA). As part of these efforts, both Priestap and the FBI's Section Chief of CD's Analysis Section 1 (Intel Section Chief) wrote to the CIA in separate correspondence and described Steele as "reliable."

Whether and how to present Steele's reporting in the ICA was a topic of significant discussion within the FBI and with the other agencies participating in drafting the ICA. On December 16, 2016, the Intel Section Chief explained in an email to the FBI:

DD [Deputy Director] wants the [Steele] reporting included in the submission with some level of detail, to include the newest stuff that [Supervisory Intel Analyst] can send you on the red side. Include details like the potential compromising material, etc. Can you please add a section (characterizing [Steele] obviously) in coordination with [Supervisory Intel Analyst]?

The Intel Section Chief told us that he asked then Deputy Director Andrew McCabe whether McCabe wanted to limit the FBI's submission to information concerning Russian election interference or to also include allegations against candidate Trump. The Intel Section Chief said that McCabe understood President Obama's request for the ICA to require the participating agencies to share all information relevant to Russia and the 2016 elections, and the Steele election reporting qualified at a minimum due to concerns over possible Russian attempts to blackmail Trump. That same day, the Intel Section Chief sent to Priestap, Strzok, and another senior official in CD an updated draft of the FBI's submission for the

6:18 p.m.: "Hey let me know when you can talk. We're discussing whether, now that this is out, we use it as a pretext to go interview some people."

Strzok told the OIG that he believed these texts were referencing the possibility of interviewing one of Trump's attorneys, Michael Cohen, and Manafort using the release of the Steele reports as the stated reason for seeking the interview, without revealing the ongoing investigation. Strzok said the media release of the reports would be a logical reason for the FBI to interview Cohen and Manafort without alerting them to the Crossfire Hurricane investigation.

³²³ Strzok said that he believed that the FBI also may have furnished the Steele election reports to the intelligence service of a friendly foreign government but he did not have a specific recollection of it.

ICA with the following explanation: "Attached is the updated draft of [the] FBI's submission to the POTUS-tasked election targeting study. It now incorporates the [Steele] reporting at the DD's [Deputy Director's] request. This has obviously increased the sensitivity of the attached document." The Intel Section Chief said that the heightened sensitivity resulted from the reporting's allegations of collusion: "The minute we put the [Steele election reporting] in there, it goes from what you'd expect the FBI to be collecting in a counterintelligence context to direct allegations about collusion with the Trump campaign."

The following day, December 17, Comey completed his review of the FBI's draft submission for the ICA and emailed Priestap, McCabe, Strzok, the Intel Section Chief, the FBI Director's Chief of Staff, and Baker describing a call he had with then Director of National Intelligence (DNI) James Clapper:

Thanks. Looks okay to me. FYI: During a secure call last night on this general topic, I informed the DNI that we would be contributing the [Steele] reporting (although I didn't use that name) to the IC [Intelligence Community] effort. I stressed that we were proceeding cautiously to understand and attempt to verify the reporting as best we can, but we thought it important to bring it forward to the IC effort. I told him the source of the material, which included salacious material about the President-Elect, was a former [REDACTED] [REDACTED] who appears to be a credible person with a source and sub-source network in position to report on such things, but we could not vouch for the material. (I said nothing further about the source or our efforts to verify).

I added that I believed that the material, in some form or fashion, had been widely circulated in Washington and that Senator McCain had delivered to me a copy of the reports and Senator Burr had mentioned to me the part about Russian knowledge of sexual activity by the President-Elect while in Russia. The DNI asked whether anyone in the White House was aware of this and I said "not to my knowledge." He thanked me for letting him know and we didn't discuss further.

According to the Intel Section Chief and Supervisory Intel Analyst, as the interagency editing process for the ICA progressed, the CIA expressed concern about using the Steele election reporting in the text of the ICA. The Supervisory Intel Analyst explained that the CIA believed that the Steele election reporting was not completely vetted and did not merit inclusion in the body of the report. The Intel Section Chief stated that the CIA viewed it as "internet rumor."

On December 28, 2016, McCabe wrote to the then ODNI Principal Deputy Director objecting to the CIA's proposal to present the Steele information in an appendix to the ICA. McCabe wrote:

I would also like to speak with you tomorrow about my concerns about where the [Steele] references will appear in the joint report, notwithstanding the fact that it is officially part of the assessment. We

oppose CIA's current plan to include it as an appendix; there are a number of reasons why I feel strongly that it needs to appear in some fashion in the main body of the reporting, and I would welcome the chance to talk to you about it tomorrow.

McCabe told the OIG that he had three reasons for believing that the Steele election reporting needed to be included in the ICA: (1) President Obama had requested "everything you have relevant to this topic of Russian influence"; (2) the Steele election reporting was not completely vetted, but was consistent with information from other sources and came from a source with "a good track record" that the FBI had "confidence in"; and (3) McCabe believed the FBI, as an institution, needed to advise the President about the Steele election reporting because it had been widely circulated throughout government and media circles, and was likely to leak into the public realm. McCabe said he felt strongly that the Steele election reporting belonged in the body of the ICA, because he feared that placing it in an appendix was "tacking it on" in a way that would "minimiz[e]" the information and prevent it from being properly considered.

McCabe's view did not prevail. The final ICA report was completed early in the first week of January 2017, and included a short summary and assessment of the Steele election reporting, which was incorporated in an appendix. In the appendix, the intelligence agencies explained that there was "only limited corroboration of the source's reporting" and that Steele's election reports were not used "to reach analytic conclusions of the CIA/FBI/NSA assessment." The Intel Section Chief told us that the reference to "limited corroboration" was addressed to the "whole body" of Steele's reporting and not just those portions concerning Trump. He said that there was corroboration of certain facts as well as "the thrust" of the reporting regarding Russia's actions to disrupt the election and cause discord in the western alliance.

We asked Comey whether he recalled having any conversations with then CIA Director John Brennan or other members of the USIC about how the Steele election reports should be presented to the President. Comey stated:

I remember being part of a conversation, maybe more than one conversation, where the topic was how the [Steele] reporting would be integrated, if at all, into the IC assessment. And I don't remember participating in debates about that. I think I was just told, in, I think, in a meeting with Clapper and Brennan and Rogers [then NSA Director], that the IC analysts found it credible on its face and gravamen of it, and consistent with our other information, but not in a position where they would integrate it into the IC assessment. But they thought it was important enough and consistent enough that it ought to be part of the package in some way, and so they had come up with this idea to make an [appendix]. I remember, I don't think I was part of a debate about that, as I said, but I remember a conversation where I was told that's how it would be handled and my reaction was, okay, that's reasonable.

According to Comey, the inclusion of the Steele election reporting as an appendix to the ICA was not a value judgment about the quality of the information. Instead, it reflected the relatively uncorroborated and incomplete status of the FBI's assessment. Comey told the OIG that the Steele election reporting was "not ripe enough, mature enough, to be in a finished intelligence product."

On January 5, 2017, Clapper, then NSA Director Michael Rogers, Brennan, and Comey briefed the ICA report to President Obama and his national security team, followed by a briefing for Congressional leadership on the morning of January 6, 2017, and finally a briefing for then President-elect Trump and his national security team on the afternoon of January 6, 2017. Comey told the OIG that the plan for the ICA briefing of President-elect Trump had two parts. The first part of the briefing, jointly conducted by Clapper, Brennan, Rogers, and Comey, involved advising Trump and his national security team of the overall conclusions of the ICA. The second part of the briefing involved notifying the President-elect of information from Steele's reporting that concerned Trump's alleged sexual activities in Moscow several years earlier. Comey stated that the other USIC Directors agreed that Trump had to be briefed on this information, and Clapper decided the briefing should be done by Comey in a small group or alone with the President-elect.

According to an email Comey sent to FBI officials on January 7, 2017, Comey mentioned during the initial portion of the briefing a piece of Steele's reporting that indicated Russia had files of derogatory information on both Clinton and the President-elect. Comey's email stated that a member of Trump's national security team asked during the briefing whether the FBI was "trying to dig into the sub-sources" to gain a better understanding of the situation, and Comey responded in the affirmative.

Comey's email reflects that, after the first portion of the meeting ended, Comey stayed behind to speak with President-elect Trump alone about the part of the Steele election reporting that dealt with Trump's alleged sexual activity. Comey's email reflects that he explained that according to Steele's sub-sources, the Russians had a file on the President-elect's alleged sexual activities while in Russia and possessed tapes of him with prostitutes at the Presidential Suite at the Ritz Carlton hotel in Moscow. The email further states that Comey explained that the material was "inflammatory stuff" and that a news organization "would get killed for reporting straight up from the source reports." In testimony before Congress, Comey has described this part of his email as communicating that "it was salacious and unverified material that a responsible journalist wouldn't report without corroborating in some way." Comey told the OIG that he informed President-elect Trump that the FBI did not know whether the allegations were true or false and that the FBI was not investigating them.³²⁴

³²⁴ In the OIG's *Report of Investigation of Former Federal Bureau of Investigation Director James Comey's Disclosure of Sensitive Investigative Information and Handling of Certain Memoranda* (August 2019), we described Comey's creation of the January 7, 2017 email that memorialized his January 6, 2017 meeting with Trump. Prior to this meeting, Comey met with senior leaders of the FBI and the Crossfire Hurricane investigation and discussed a number of concerns about Comey meeting

After *BuzzFeed* published the Steele election reports on January 10, 2017, and news reports began describing the January 6 ICA briefing of President-elect Trump, Clapper informed Comey by email on January 11 that he had a telephone conversation with President-elect Trump that included discussion of the Steele "[election reporting]." Clapper included in the email to Comey a draft media statement by Clapper for public release, which stated that "[t]he IC [Intelligence Community] has not made any judgment that the information in [the Steele election reporting] is reliable, and we did not rely upon it in any way for our conclusions" in the ICA. Comey responded to the email with proposed revisions to Clapper's text:

I just had a chance to review the proposed talking points on this for today. Perhaps it is a nit, but I worry that it may not be best to say "The IC has not made any judgment that the information in the document is reliable." I say that because we HAVE concluded that the source [Steele] is reliable and has a track record with us of reporting reliable information; we have some visibility into his source network, some of which we have determined to be sub-sources in a position to report on such things; and much of what he reports in the current document is consistent with and corroborative of other reporting included in the body of the main IC report. That said, we are not able to sufficiently corroborate the reporting to include in the body of the [ICA] report.

That all rings in my ears as more complicated than "we have not made a judgment that the information in the document is reliable." It might be better to say that "we have not be [sic] able to sufficiently corroborate the information to include it in the body of our Russia report but, for a variety of reasons, we thought it important to include it in our report to our senior-most audience.

The ODNI released Clapper's media statement on January 11, 2017, which was captioned "DNI Clapper Statement on Conversation with President-elect Trump."³²⁵ The sentence that Comey had raised concerns about in his email to Clapper remained unchanged and thus Clapper's statement included the following sentence regarding Steele's election reporting: "The IC has not made any

alone with Trump. One of the topics discussed was Trump's potential responses to being told about the "salacious" information, including that Trump might make statements, or provide information of value, to the Crossfire Hurricane investigation. Witnesses recalled agreeing that Comey should memorialize his meeting with Trump immediately after it occurred. Comey told the OIG that, in his view, it was important for the FBI executive managers to be "able to share in [Comey's] recall of the...salient details of those conversations" with Trump, and that if the meeting became "a source of controversy" it would be important to have a clear, contemporaneous record because Comey was concerned that Trump might "misrepresent what happened in the encounter."

³²⁵ The statement can be found at <https://www.dni.gov/index.php/newsroom/press-releases/item/1736-dni-clapper-statement-on-conversation-with-president-elect-trump> (accessed Dec. 8, 2019).

judgment that the information in [the Steele election reporting] is reliable, and we did not rely upon it in any way for our conclusions" in the ICA.

IV. FBI Validation Efforts Following Steele's Closure as a CHS

As described in Chapter Four, the FBI closed Steele as a CHS in November 2016 after he disclosed his relationship with the FBI to a news outlet. Although Steele was no longer a CHS, the FBI continued with its efforts to validate his reporting. This section describes those efforts.

A. Information from Persons with Direct Knowledge of Steele's Work-Related Performance in a Prior Position

In mid-November and December 2016, FBI officials travelled abroad and met with persons who previously had professional contacts with Steele or had knowledge of his work.³²⁶ According to Strzok, one of the purposes of the trips was to obtain information regarding Steele from persons with direct knowledge of Steele's work-related performance in a prior position in order to help the FBI assess Steele's reliability. Priestap said that it was not standard practice to take such a trip to assess a CHS, but in this case he believed it was important due to the nature of the information that the CHS provided and because the FBI was under a great deal of scrutiny. In his view, "[t]he bottom line is we had concerns about the reporting the day we got it.... [S]ome of it was so sensational, that we just, we did not take it at face value."

Priestap and Strzok took notes of the feedback that they received about Steele, some of which was positive and some of which was negative.³²⁷ Their notes included positive comments such as "smart," "person of integrity," "no reason to doubt integrity" and "[i]f he reported it, he believed it." Priestap told us that his impression was that Steele's former colleagues considered Steele to be a "Russia expert" and very competent in his work. However, Priestap and Strzok also were provided with various negative comments concerning Steele's judgment. Their notes stated: "[d]emonstrates lack of self-awareness, poor judgment;" "[k]een to help" but "underpinned by poor judgment;" "Judgment: pursuing people with political risk but no intel value;" "[d]idn't always exercise great judgment—sometimes [he] believes he knows best;" and "[r]eporting in good faith, but not clear what he would have done to validate." Priestap told us that he understood the commentary on Steele's judgment to mean that Steele strongly believed in his convictions, which did not always align with management's convictions, leading to conflicts over priorities. Strzok described the feedback as follows:

And many of them...almost without exception said, look, he is truthful. He has never been accused of, nor did anybody think he is an

³²⁶ Strzok and Priestap traveled in November; Strzok, Lisa Page, the Supervisory Intel Analyst, SSA 1, and the OGC Unit Chief traveled in December.

³²⁷ We discuss Priestap's and Strzok's impressions of this feedback in greater detail in Chapter Eight.

embellisher, let alone a fabricator. That, if anything, he, to the extent there were negatives, it was that he was the type of person who would sometimes follow the shiny object without, perhaps, a deep set of judgment about the risk that may or may not be there in terms of following the shiny object. But in any event, he was not the type of person who would fabricate something or make something up or mischaracterize it, either intentionally or unintentionally.

Priestap said he interpreted the comments about Steele's judgment to mean that "if he latched on to something...he thought that was the most important thing on the face of this earth" and added that this personality trait doesn't necessarily "jump out as a particularly bad or horrible [one]" because, as a manager, it can be helpful if the "people reporting to [you] think the stuff they're working on is the most important thing going on" and use their best efforts to pursue it. Information from these meetings was shared with the Crossfire Hurricane team. However, we found that it was not memorialized in Steele's Delta file and therefore not considered in a validation review conducted by the FBI's Validation Management Unit (VMU) in early 2017.³²⁸ In addition, as described in Chapter Eight, some of the relevant details about Steele's work-related performance in a prior position were not shared with OI and were not included in any of the Carter Page FISA renewal applications, even though the applications relied upon Steele's reporting.

B. The FBI's Human Source Validation Review of Steele in March 2017

Another method that the FBI utilized to evaluate Steele was the FBI's standard validation process. As we described in Chapter Two, the validation process [REDACTED]

[REDACTED]. Throughout the FBI's operation of Steele as a CHS, Handling Agent 1 regularly submitted [REDACTED] source reports that furnished information relevant to these factors. With the exception of Steele's last annual report, which described his disclosure of information to the media and resulted in his closure for cause, the reports depict Steele positively with no derogatory information noted. For example, the 2015 annual report states that "[s]ource provided relevant and significant intel on activities of Eurasian criminals to include OC [organized crime] members and associates, businessmen/oligarchs and politicians." The annual reports also noted that some of Steele's information had been corroborated.

The FBI continued its validation efforts into 2017 after SSA 1 requested that VMU perform a Human Source Validation Review (HSVR) on Steele.³²⁹ SSA 1

³²⁸ Priestap told the OIG that he recalled that he may have made a commitment to [REDACTED]

³²⁹ SSA 1 initially requested the HSVR in November 2016, which the Unit Chief of VMU confirmed. However, CD delayed the initiation of the HSVR due to the sensitivity of the subject matter and concerns over leaks. Strzok stated that another consideration was uncertainty about whether the assessment would add significant value. The HSVR was restarted in early February 2017.

explained that "I wanted to ensure that an independent asset validation was conducted by our Directorate of Intelligence, and not just the people that were working the Crossfire Hurricane case, to ensure the totality of his information was being looked at." SSA 3, who started work on the Crossfire Hurricane investigation in January 2017, and others recalled that there were multiple discussions about the need to complete an HSVR and that initiation of the review had been delayed for several weeks. VMU completed its report on March 23, 2017 after evaluating Steele's Delta file, conducting various database searches, and engaging in a limited email exchange with Handling Agent 1 as well as an agent on the Crossfire Hurricane team. The VMU assessment did not independently corroborate information in the Steele election reporting, but it did include searching inside FBI and U.S. government holdings, including Delta, for such corroboration.³³⁰

The validation report made a number of findings. The VMU found no issues regarding Steele's reliability or nothing to suggest that he had fabricated information, and determined that he was "suitable for continued operation" based on his authenticity and reliability. The report noted, however, that Steele was closed due to his disclosure of his FBI relationship to an online publication. The report also noted two compliance issues. First, [REDACTED] . Second, the report noted that [REDACTED]

The "Summary" portion of the validation report included the following text:

VMU assesses it is likely [Steele] has contributed to the FBI's Criminal Program. VMU makes this assessment with medium confidence, based on the fact that [Steele's] reporting has been minimally corroborated; his or her access and placement is commensurate with his or her reporting; and on the presence of one major control issue [the disclosure to the media] noted in [Steele's] Delta file.

Handling Agent 1 told us that the finding that Steele's past criminal reporting was "minimally corroborated" was consistent with his understanding of the entire collection of Steele's reporting to the FBI. However, Priestap, who previously oversaw the work of VMU in his capacity as Deputy Assistant Director in the Directorate of Intelligence, explained that when he reviewed the Steele validation report it "jump[ed] out" to him that the report indicated that Steele's reporting was "minimally corroborated." He stated: "I had always understood that [Steele] had a long, successful track record of reporting, that had withstood, in effect, judicial or

³³⁰ As noted above, Steele's Delta file did not include the views of persons with direct knowledge of Steele's work-related performance in a prior position, obtained by Strzok and Priestap in December 2016, or information generated by the Transnational Organized Crime Intelligence Unit, as described in Chapter Four, that raised questions about the extent of Steele's apparent connections to Russian oligarchs.

court-of-law scrutiny, and so when I saw 'minimally corroborated,' that was different than I had understood it."³³¹

The validation report summary did not appear to assess Steele's counterintelligence and election reporting. We asked the Unit Chief of VMU (Validation SSA), about this and he told us "[w]e did not find corroboration for the [Steele election reporting]" from the holdings that VMU examined. He explained that, within the validation context, the term "corroboration" means that the FBI has received the same information from a separate source, and added that "uncorroborated" does not mean the information is untrue or provide a basis for closing the source. We asked why that finding did not appear in the validation report. The Validation SSA explained that "it's not common practice for us to go in and state the negative upfront," and "what we do is we speak to what we positively find."³³² He added: "I think it is a logical way to stay within the bounds of staying with what we know. As opposed to telling you all the things we don't know."

The VMU's decision to not include in the validation report that it did not find corroboration for Steele's election reporting came as a surprise to the FBI officials we interviewed. For example, Priestap told us that omitting that the "[Steele election reporting]" information was uncorroborated "defeats the whole purpose of us asking them to do the validation reporting." Priestap continued:

[T]hat makes no sense to me. The whole point of having a human source validation section outside of the operational divisions is to provide an absolutely independent, unbiased, completely unbiased, look at the human sources. They have to do a report at the end. It's simply the way in which they document their findings. It is beyond me how somebody would undertake that effort and then not document their findings in that regard. That, to me, that goes against everything I stand for. It goes against what my organization stands for, it's like you are burying the results.

Strzok said that the validation report's lack of clarity was consistent with his past experience with VMU, and that VMU's work is "frequently ambiguous or perhaps not written with the level of precision and specificity and expertise that might be desired." He also stated that validation reports are "rarely helpful." Both the Intel Section Chief and Supervisory Intel Analyst said that they did not agree with the Validation SSA's conclusion that the Steele [election reporting] was "uncorroborated." They explained that there is a distinction between facts and

³³¹ We discuss in Chapters Five and Eight the FISA application's source characterization statement that Steele's reporting had been "corroborated and used in criminal proceedings."

³³² The OIG's Audit Division recently completed a review of the FBI's CHS validation processes finding, among other things, that FBI validation personnel were discouraged from documenting conclusions from CHS validation reviews in their written reports. The OIG report made numerous recommendations to the FBI to revise and improve the validation process. See U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes*, Audit Report 20-009 (November 2019), at 24-26.

Lastly, the validation report included a recommendation that

³³⁴ When interviewed by the FBI, the Primary Sub-source stated that

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Application No. 1 and months prior to Renewal Application No. 2, raised doubts about the reliability of Steele's descriptions of information in his election reports. During the FBI's January interview, at which Case Agent 1, the Supervisory Intel Analyst, and representatives of NSD were present, the Primary Sub-source told the FBI that he/she had not seen Steele's reports until they became public that month, and that he/she made statements indicating that Steele misstated or exaggerated the Primary Sub-source's statements in multiple sections of the reporting.³³⁶ For example, the Primary Sub-source told the FBI that, while Report 80 stated that Trump's alleged sexual activities at the Ritz Carlton hotel in Moscow had been "confirmed" by a senior, western staff member at the hotel, the Primary Sub-source explained that he/she reported to Steele that Trump's alleged unorthodox sexual activity at the Ritz Carlton hotel was "rumor and speculation" and that he/she had not been able to confirm the story. A second example provided by the Primary Sub-source was Report 134's description of a meeting allegedly held between Carter Page and Igor Sechin, the President of Rosneft, a Russian energy conglomerate.³³⁷ Report 134 stated that, according to a "close associate" of Sechin, Sechin offered "PAGE/TRUMP's associates the brokerage of up to a 19 percent (privatized) stake in Rosneft" in return for the lifting of sanctions against the company.³³⁸ The Primary Sub-source told the FBI that one of his/her sub-sources furnished information for that part of Report 134 through a text message, but said that the sub-source never stated that Sechin had offered a brokerage interest to Page.³³⁹ We reviewed the texts and did not find any discussion of a bribe, whether as an interest in Rosneft itself or a "brokerage."³⁴⁰

³³⁶ David Laufman, then Chief of NSD's Counterintelligence and Export Control Section (CES), covered the first portion of the January interview and his Deputy Section Chief covered the remaining portions of the January interview. Laufman told us that he negotiated with the Primary Sub-source's counsel to facilitate the FBI's interview and sought to "build a cooperative relationship that could...result in the Bureau's being in a position to assess the validity of information in the [Steele election reporting] resulting from [the Primary Sub-source's] activities or the collection of [his/her] sub-sources. So I saw my role as a broker to get that relationship consolidated." Laufman said that the portion of the interview he attended established the line of communication with the Primary Sub-source and, as he recalled, generally covered the facts in a "superficial" way. He said that after the completion of the interview, he never saw the FBI's written summary of the interview.

³³⁷ According to the Supervisory Intel Analyst, the FBI was not able to prove or disprove Page's meeting with Sechin. The Analyst explained that Page did meet with a Rosneft official—André Baranov, during his July 2016 trip to Moscow and that Page told the FBI that Baranov might have mentioned the possible sale of a stake in Rosneft. The Analyst stated that Report 134's mention of Sechin could be a "garble" for Baranov.

³³⁸ Report 134 contained differing information on the alleged bribe offered by Sechin to Page. The Report first stated that Sechin offered Page a "large stake in Rosneft in return for lifting sanctions on Russia." Later, the same report stated that Sechin had offered Page a much smaller sum of money, "the brokerage of up to a 19 per cent (privatized) stake in Rosneft."

³³⁹ The Primary Sub-source also told the FBI at these interviews that the sub-source who provided the information about the Carter Page-Sechin meeting [REDACTED]

³⁴⁰ According to a press report prior to the date of Report 134, a 19-percent stake in Rosneft could have sold for more than \$10 billion. See <https://www.cnn.com/2016/06/08/russias-oil-giant->

The Primary Sub-source was questioned again by the FBI beginning in March 2017 about the election reporting and his/her communications with Steele. The Washington Field Office agent (WFO Agent 1) who conducted that interview and others after it told the OIG that the Primary Sub-source felt that the tenor of Steele's reports was far more "conclusive" than was justified. The Primary Sub-source also stated that he/she never expected Steele to put the Primary Sub-source's statements in reports or present them as facts. According to WFO Agent 1, the Primary Sub-source said he/she made it clear to Steele that he/she had no proof to support the statements from his/her sub-sources and that "it was just talk." WFO Agent 1 said that the Primary Sub-source explained that his/her information came from "word of mouth and hearsay;" "conversation that [he/she] had with friends over beers;" and that some of the information, such as allegations about Trump's sexual activities, were statements he/she heard made in "jest."³⁴¹ The Primary Sub-source also told WFO Agent 1 that he/she believed that the other sub-sources exaggerated their access to information and the relevance of that information to his/her requests. The Primary Sub-source told WFO Agent 1 that he/she "takes what [sub-sources] tell [him/her] with a grain of salt."

In addition, the FBI interviews with the Primary Sub-source revealed that Steele did not have good insight into how many degrees of separation existed between the Primary Sub-source's sub-sources and the persons quoted in the reporting, and that it could have been multiple layers of hearsay upon hearsay. For example, the Primary Sub-source stated to WFO Agent 1 that, in contrast to the impression left from the election reports, his/her sub-sources did not have direct access to the persons they were reporting on. Instead, the Primary Sub-source told WFO Agent 1 that their information was "from someone else who may have had access."

The Primary Sub-source also informed WFO Agent 1 that Steele tasked him/her after the 2016 U.S. elections to find corroboration for the election reporting and that the Primary Sub-source could find none. According to WFO Agent 1, during an interview in May 2017, the Primary Sub-source said the corroboration was "zero." The Primary Sub-source had reported the same conclusion to the Crossfire Hurricane team members who interviewed him/her in January 2017.

Following the January interview with the Primary Sub-source, on February 15, 2017, Strzok forwarded by email to Priestap and others a news article referencing the Steele election reporting; Strzok commented that "recent interviews and investigation, however, reveal [Steele] may not be in a position to judge the reliability of his sub-source network." According to the Supervisory Intel Analyst, the cause for the discrepancies between the election reporting and explanations

[just-saw-its-profits-drop-75.html](#) (accessed Dec. 8, 2019). We discuss below the issue of Steele or the sub-sources presenting their analyses as statements of Kremlin officials or others.

³⁴¹ According to WFO Agent 1, the Primary Sub-source told him that he/she spoke with at least one staff member at the Ritz Carlton hotel in Moscow who said that there were stories concerning Trump's alleged sexual activities, not that the activities themselves had been confirmed by the staff member as stated in Report 80.

later provided to the FBI by Steele's Primary Sub-source and sub-sources about the reporting was difficult to discern and could be attributed to a number of factors. These included miscommunications between Steele and the Primary Sub-source, exaggerations or misrepresentations by Steele about the information he obtained, or misrepresentations by the Primary Sub-source and/or sub-sources when questioned by the FBI about the information they conveyed to Steele or the Primary Sub-source.³⁴²

Another factor complicating the FBI's assessment of the Steele election reporting was the Primary Sub-source's statement to the FBI that he/she believed that information presented as fact in the reporting included his/her and Steele's "analytical conclusions" and "analytical judgments," and not just reporting from sub-sources. For example, Report 80 provides that:

Speaking separately in June 2016, Source B (the former top-level Russian intelligence officer) asserted that TRUMP's unorthodox behavior in Russia over the years had provided the authorities there with enough embarrassing material on the now Republican presidential candidate to be able to blackmail him if they so wished.

The Primary Sub-source told the FBI that "the ability to blackmail Trump was [the sub-source's] 'logical conclusion' rather than reporting," even though it is presented as a statement from a sub-source. The Primary Sub-source noted another example of this practice in Report 135, which states:

Referring back to the (surprise) sacking of Sergei IVANOV as Head of PA [Presidential Administration] in August 2016, his replacement by Anton VAINO and the appointment of former Russian premier Sergei KIRIYENKO to another senior position in the PA, the Kremlin insider repeated that this had been directly connected to the TRUMP support operation and the need to cover up now that it was being exposed by the USG and in the western media.

Report 111 also contains similar information to Report 135, namely that Ivanov was "sacked" due to his association with the Russian's U.S. election operation. The Primary Sub-source explained to the FBI that the connection between Ivanov's replacement and "fallout over Russia's influence efforts against the U.S. election" was the Primary Sub-source's "analytical conclusion." The Primary Sub-source told the FBI that he/she was careful to identify his/her

analytical conclusions to Steele and to offer a confidence level in them (e.g. possible vs. likely). We took note of the fact that, on December 1, 2016, [REDACTED]

[REDACTED]

The Supervisory Intel Analyst, as well as Steele, told us that blending judgments with assertions is not an appropriate way to report intelligence. Steele told us that he would hope that his reports were clear on what a source stated, what was assumed by the source, and what was analysis. However, Strzok told the OIG that the blending in Steele's reporting of analysis with statements from the sub-sources "posed problems" for the FBI. Strzok explained that "to understand what the individual source said we can no longer assume this guy said all of this. It's really [Steele] added on or [the Primary Sub-source] added on."

As discussed in Chapter Eight, Carter Page FISA Renewal Application Nos. 2 and 3 advised the court that following the January interview with the Primary Sub-source, "the FBI found the Russian-based sub-source to be truthful and cooperative." Renewal Application Nos. 2 and 3 continued to rely on the Steele information, without any revisions or notice to the court that the Primary Sub-source contradicted the Steele election reporting on key issues described in the renewal applications. We found no evidence that the Crossfire Hurricane team ever considered whether any of the inconsistencies warranted reconsideration of the FBI's previous assessment of the reliability of the Steele election reports, or notice to OI or the court for the subsequent renewal applications.

D. The FBI Obtains Additional Information about the Reliability of Steele's Reporting after FISA Renewal Application No. 3

Crossfire Hurricane team members told us that in the spring 2017 they determined that they needed to interview Steele more extensively about his election reporting and ask questions to account for new information that the Primary Sub-source had provided during his/her interview. The Supervisory Intel Analyst explained that the team members believed that an interview with Steele "would be a good way of potentially looking to see whether or not [the Primary Sub-source] is giving us accurate information [or] did [the Primary Sub-source] tell [Steele] something different." The FBI sought to obtain additional information about Steele's sub-sources prior to the interview and encountered some logistical delays in arranging it. The interview ended up occurring during two days in September 2017, following the Carter Page FISA Renewal Application No. 3.

The FBI's interview with Steele in September 2017 further highlighted discrepancies between Steele's presentation of information in the election reporting

and the views of his Primary Sub-source.³⁴³ For example, Steele told the interviewing agent and analyst that Reports 80, 95, 97, and 102, which range in date from June 20 to August 10, 2016, included information from a sub-source who was "close" to Trump.³⁴⁴ Steele further advised the FBI staff that this sub-source was the same person who originally provided the Primary Sub-source with the information concerning Trump's alleged sexual activities at the Ritz Carlton hotel in Moscow, and that the Primary Sub-source met with this sub-source two or three times. However, we were told by WFO Agent 1 that the Primary Sub-source stated that he/she never met this sub-source and that other sub-sources were responsible for the Ritz Carlton reporting. The Primary Sub-source also told the FBI interviewers as well as WFO Agent 1 that he/she received a telephone call from an individual he/she believed was this sub-source but was not certain of the person's identity and that the person never identified him/herself during the call.³⁴⁵ The FBI's written summary of the Primary Sub-source's interview describes this call as follows:

[The Primary Sub-source] recalls that this 10-15 minute conversation included a general discussion about Trump and the Kremlin, that there was "communication" between the parties, and that it was an ongoing relationship. [The Primary Sub-source] recalls that the individual believed to be [Source E in Report 95] said that there was "exchange of information" between Trump and the Kremlin, and that there was "nothing bad about it." [Source E] said that some of this information exchange could be good for Russia, and some could be damaging to Trump, but deniable. The individual said that the Kremlin might be of help to get Trump elected, but [the Primary Sub-source] did not recall any discussion or mention of Wiki[L]eaks.

Report 95, however, attributes to this sub-source information concerning the release of DNC emails to WikiLeaks. Report 95 states: "Source E, acknowledged that the Russian regime had been behind the recent leak of embarrassing e-mail messages, emanating from the Democratic National Committee (DNC), to the WikiLeaks platform." Report 95 describes the relationship between the Trump campaign and "the Russian leadership" as a "well-developed conspiracy of co-operation." As described in Chapters Five, Seven, and Eight, all four Carter Page FISA applications relied on Report 95 to support probable cause.³⁴⁶

³⁴³ The September interview was conducted by an FBI agent and analyst on assignment to the Special Counsel's Office.

³⁴⁴ The reports describe this sub-source in varying ways: Report 80 ("Source D, a close associate of TRUMP...."); Report 95 ("Source E, an ethnic Russian close associate of Republican US presidential candidate Donald TRUMP...."); Report 97 ("a Russian émigré figure close to the Republican U.S. presidential candidate Donald TRUMP's campaign team...."); and Report 102 ("[A]n ethnic Russian associate of Republican US presidential candidate Donald TRUMP...").

³⁴⁵ The Primary Sub-source told WFO Agent 1 that he/she found a YouTube video of the sub-source speaking and that it sounded like the person on the telephone call.

³⁴⁶ The FISA applications also relied upon Reports 80, 94, and 102.

Report 97 contains four paragraphs of information with numerous allegations attributed to the sub-source (and hence is purportedly derived from the Primary Sub-source's 10-15 minute call). The information attributed to the sub-source includes that (1) the Kremlin was concerned that "political fallout from the DNC email hacking operation is spiraling out of control," (2) the Kremlin had intelligence on Clinton and her campaign but that the sub-source did not know when or if it would be released, and (3) that derogatory material possessed by the Russians would not be used against Trump "given how helpful and co-operative his team had been over several years, and particularly of late." Report 102 likewise contains numerous insights about the Trump campaign and Russian tactics. It includes allegations that the "aim of leaking the DNC e-mails to WikiLeaks during the Democratic Convention had been to swing supporters of Bernie SANDERS away from Hillary CLINTON and across to TRUMP," and that Carter Page "conceived and promoted" this "objective" and had discussed it directly with the sub-source.

The Supervisory Intel Analyst told the OIG that he found the Primary Sub-source's explanations about his/her contacts with this sub-source "peculiar" and that the Primary Sub-source could have been minimizing his/her relationship with the sub-source. The Supervisory Intel Analyst agreed that press reports discussing the sub-source's alleged contacts with the Trump campaign may have motivated the Primary Sub-source to minimize the extent of his/her relationship with the sub-source. We asked the Supervisory Intel Analyst whether he thought the Primary Sub-source had been truthful during his/her interview with the FBI. He said that he believed that there were instances where the Primary Sub-source was "minimizing" certain facts but did not believe that he/she was "completely fabricating" events. The Supervisory Intel Analyst stated that he did not know whether he could support a "blanket statement" that the Primary Sub-source had been truthful.

In Steele's September 2017 interview with the FBI, Steele also made statements that conflicted with explanations from two of his sub-sources about their access to Russian officials. For example, Steele explained that the Primary Sub-source had direct access to a particular former senior Russian government official and that they had been "speaking for a while." The Primary Sub-source told the FBI, however, that he/she had never met or spoken with the official. Steele also stated that one sub-source was [REDACTED]

[REDACTED] one of a few persons in a "circle" close to a particular senior official. The FBI obtained information from the sub-source that contradicted Steele's interpretation.

FBI documents reflect that another of Steele's sub-sources who reviewed the election reporting told the FBI in August 2017 that whatever information in the Steele reports that was attributable to him/her had been "exaggerated" and that he/she did not recognize anything as originating specifically from him/her.³⁴⁷ The

Primary Sub-source told the FBI that he/she believed this sub-source was "one of the key sources for the 'Trump dossier'" and the source for allegations concerning Michael Cohen and events in Prague contained in Reports 135, 136, and 166, as well as Report 94's allegations concerning the alleged meeting between Carter Page and Igor Divyekin. The Supervisory Intel Analyst told us that he believed this Steele sub-source may have been attempting to minimize his/her role in the election reporting following its release to the public.

Steele's September 2017 interview with the FBI, which was conducted 2 months after the final Carter Page FISA renewal application was submitted to the court, also revealed bias against Trump. According to the FBI FD-302 of the interview, Steele and his business colleague described Trump as their "main opponent" and said that they were "fearful" about the negative impact of the Trump presidency on the relationship between the United States and United Kingdom. The Supervisory Intel Analyst stated that he viewed Steele's description of Trump as the "main opponent" as an expression of "clear bias." Steele told us that he did not begin his investigation with any bias against Trump, but based on the information he learned during the investigation became very concerned about the consequences of a Trump presidency.

E. Crossfire Hurricane Team's Assessment of Potential Russian Influence on the Steele Election Reporting

Although an investigation into whether Steele's election reports, or aspects of them, were the product of a Russian disinformation campaign was not within the scope of this review, or within the scope of the OIG's oversight role, we examined the extent to which the Crossfire Hurricane team considered this possibility in its assessment of Steele's reporting. Priestap told us that he recognized that the Russians are "masters at disinformation" and that the Crossfire Hurricane team was aware of the potential for Russian disinformation to influence Steele's reporting. According to Priestap:

[W]e had a lot of concurrent efforts to try to understand, is [the reporting] true or not, and if it's not, you know, why is it not? Is it the motivation of [Steele] or one of his sources, meaning [Steele's] sources?... [Or were they] flipped, they're actually working for the Russians, and providing disinformation? We considered all of that....

Steele told us that Russian intelligence is "sophisticated" and relies on disinformation. He said it can involve "planted information," which he described as "controlled information," and that often the information is true but with "bits missing and changed." For his part, Steele told us that he had no evidence that his reporting was "polluted" with Russian disinformation.

[REDACTED]

The Intel Section Chief told the OIG that the FBI's efforts to identify possible Russian disinformation in the Steele election reporting included trying to corroborate the reporting, learning as much as possible about Steele's sub-sources, and fully assessing Steele. According to an FBI memorandum prepared in December 2017 for a Congressional briefing, by the time the Crossfire Hurricane investigation was transferred to the Special Counsel in May 2017, the FBI "did not assess it likely that the [Steele] [election reporting] was generated in connection to a Russian disinformation campaign." Priestap told us that the FBI "didn't have any indication whatsoever" by May 2017 that the Russians were running a disinformation campaign through the Steele election reporting. Priestap explained, however, that if the Russians, in fact, were attempting to funnel disinformation through Steele to the FBI using Russian Oligarch 1, he did not understand the goal. Priestap told us that what he has

tried to explain to anybody who will listen is if that's the theory [that Russian Oligarch 1 ran a disinformation campaign through [Steele] to the FBI], then I'm struggling with what the goal was. So, because, obviously, what [Steele] reported was not helpful, you could argue, to then [candidate] Trump. And if you guys recall, nobody thought then candidate Trump was going to win the election. Why the Russians, and [Russian Oligarch 1] is supposed to be close, very close to the Kremlin, why the Russians would try to denigrate an opponent that the intel community later said they were in favor of who didn't really have a chance at winning, I'm struggling with, when you know the Russians, and this I know from my Intelligence Community work: they favored Trump, they're trying to denigrate Clinton, and they wanted to sow chaos. I don't know why you'd run a disinformation campaign to denigrate Trump on the side.

As discussed in Chapter Four, Steele performed work for Russian Oligarch 1's attorney on Russian Oligarch 1's litigation matters, and, as described later in Chapter Nine, passed information to Department attorney Bruce Ohr advocating on behalf of one of Russian Oligarch 1's companies regarding U.S. sanctions.³⁴⁸ Priestap, the Intel Section Chief, and other members of Crossfire Hurricane told us that they were unaware of Steele's connections to Russian Oligarch 1, who was the subject of a Crossfire Hurricane case, and that they would have wanted to know about them.³⁴⁹ Priestap, for example, told us "I don't recall knowing that there was

³⁴⁸ An FBI FD-302 dated February 15, 2017, and written by an FBI agent assigned to the Crossfire Hurricane investigation, documented the FBI's interview of Ohr on February 14, and specifically stated that Steele's company was continuing to work for a particular attorney of Russian Oligarch 1.

³⁴⁹ The Supervisory Intel Analyst and SSA 2 told us that they did not recall reviewing information in Steele's Delta file documenting Steele's frequent contacts with representatives for multiple Russian oligarchs in 2015. The Supervisory Intel Analyst explained that he did not recall doing a "deep dive" on Steele's past history as a source and relied in part on Handling Agent 1 for information about Steele. The first access of Steele's Delta file by a Crossfire Hurricane team member (the Supervisory Intel Analyst) occurred on November 18, 2016, after Steele had been closed as a CHS and a month after submission of the first Page FISA application. As described in Chapter Five,

any connectivity between [Steele] and [Russian Oligarch 1]." Priestap told us that he believed it was "completely fair" to say that the FBI should have assessed Steele's relationship with Russian Oligarch 1.

Stuart Evans, NSD's Deputy Assistant Attorney General who oversaw OI, stated that if OI had been aware of the information about Steele's connections to Russian Oligarch 1, it would have been evaluated by OI. He told us: "Counterintelligence investigations are complex, and often involve as I said, you know, double dealing, and people playing all sides.... I think that [the connection between Steele and Russian Oligarch 1] would have been yet another thing we would have wanted to dive into."³⁵⁰

V. The FBI's Efforts to Assess Steele's Election Reporting in 2016 and 2017

The FBI's assessment of the Steele election reporting began in mid-September 2016 and concluded approximately 1 year later, roughly 3 months after the submission of Carter Page FISA Renewal Application No. 3 to the Foreign Intelligence Surveillance Court (FISC). The FBI acquired the vast majority of its information about the Steele election reporting prior to the end of September 2017, when FISA surveillance of Carter Page expired.

To evaluate Steele's election reporting, intelligence analysts on the Crossfire Hurricane team created a spreadsheet identifying each statement that appeared in the Steele election reports in order to have a record of what the FBI learned during

the FISA application relied in part on Steele's reporting. In Chapter Four we noted that Steele's frequent contacts with Russian oligarchs in 2015 had raised concerns in the FBI Transnational Organized Crime Intelligence Unit. SSA 1 told us that he was unaware of these concerns, but said he would have found this information useful and would have wanted to know about it while supervising the Crossfire Hurricane investigation. Handling Agent 1 expressed surprise that the Crossfire Hurricane team did not access Steele's Delta file earlier. He said that the team should have "turned the file upside down" looking for information 2 months earlier and that he assumed that some members of the team had thoroughly reviewed the file.

³⁵⁰ In addition to the information in Steele's Delta file documenting Steele's frequent contacts with representatives for multiple Russian oligarchs, we identified reporting the

[REDACTED]

its assessment regarding those statements.³⁵¹ The intelligence analysts also attempted to determine the true identities of the sub-source(s) responsible for each statement in Steele's election reporting, and made assessments of each sub-source's likely access to the type of information described. FBI CD officials also travelled abroad and met with persons who previously had professional contacts with Steele to gather information about his reliability and the quality of his work.

According to FBI officials, it was challenging to corroborate the information in the Steele election reporting because much of it was "singular source intelligence," and thus could not be verified given the manner in which the events took place. For example, officials told us that a meeting or conversation between just a few people in Russia may only be known to the individuals involved. According to a Supervisory Special Agent who investigated the Steele election reporting, the Crossfire Hurricane team could not independently verify those types of allegations "without speaking to...folks that are high-level in Russia..." [REDACTED] Strzok told us that, for this kind of information, the "frustration of it was...[the FBI] couldn't necessarily prove it and couldn't disprove it either."

Despite the FBI's efforts to corroborate and evaluate the Steele election reporting, we were told by the Supervisory Intel Analyst that, as of September 2017, the FBI had corroborated limited information in the Steele election reporting, and much of that information was publicly available.³⁵² Most relevant to the Carter Page FISA applications, the specific substantive allegations contained in Reports 80, 94, 95, and 102, which were relied upon in all four FISA applications, remained uncorroborated and, in several instances, were inconsistent with information gathered by the Crossfire Hurricane team. For example, as detailed in Chapters Five and Seven, these allegations included, among other things, that Page had secret meetings with Igor Sechin and Igor Divyekin in July 2016 and served as an "intermediary" between Manafort and the Russian government. As we describe in Chapters Five and Eight, certain information the FBI had obtained did not support these allegations or the theory in Steele's election reporting that Page was coordinating, or had coordinated, with Russian government officials on 2016 U.S. election activities. Additionally, the FBI determined that some of the allegations in the Steele reporting, including that Trump attorney Michael Cohen had traveled to Prague in late summer 2016 to meet with Kremlin representatives and that "anti-Clinton hackers" had been paid by the "[Trump] team" and Kremlin, were not true.

In the next two chapters, we describe the FBI's use of the Steele election reporting in the three Carter Page FISA renewal applications and the changes that were made, and not made, to the applications to reflect the additional information the FBI developed about Steele and his reporting.

³⁵¹ As we described in Chapter Four, the spreadsheet omitted certain highly classified information and therefore its scope was partial.

³⁵² Examples included that Carter Page was in Moscow as reported, that other individuals mentioned in the reporting existed, and that some individuals held the positions in the Russian government that were attributed to them in the reporting.

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CHAPTER SEVEN

THE THREE RENEWAL APPLICATIONS FOR CONTINUED FISA AUTHORITY ON CARTER PAGE

In this chapter, we describe the three FISA renewal applications to continue surveillance [REDACTED] targeting Carter Page between January 13, 2017, when the FISA authority granted by the first FISA orders expired, and September 22, 2017, when the last renewal's authority expired. As described in Chapter Two, the Foreign Intelligence Surveillance Court (FISC) may approve FISA surveillance and physical searches targeting a U.S. person for a period of up to 90 days, subject to renewal, if the government's FISA application establishes probable cause to conclude that the targeted individual is an agent of a foreign power. A renewal permits the government to continue FISA authority targeting a U.S. person for an additional 90 days if the facts of the investigation continue to support a finding that there is probable cause to believe the targeted individual is an agent of a foreign power.³⁵³

The process to renew FISA authority, including who reviews and approves the renewal application, is the same process as with an initial application, which we described in Chapters Two and Five. When conducting the Woods Procedures for a renewal, the agent conducting the accuracy review must re-verify that factual assertions repeated from the prior FISA application remain true and must obtain supporting documentation for any new factual assertions. The National Security Division's (NSD) Office of Intelligence (OI) relies upon the FBI to accurately update the prior FISA application and conduct the accuracy review to determine whether factual information carried over from the prior FISA application remains true.

We describe in this chapter the facts asserted in the three renewal applications submitted to the FISC to demonstrate probable cause that Carter Page was an agent of a foreign power, including new information the FBI intercepted and collected during surveillance of Page. We also describe other factual assertions added to or modified in the renewal applications for the court's consideration. Finally, we discuss the completion of the Woods Procedures, including who reviewed, certified, and approved each of the three renewal applications, and the court's final orders. As we describe in Chapter Eight, we found instances in which factual representations made in the three Carter Page renewal applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the applications were filed.

I. FISA Renewal Application No. 1 (January 12, 2017)

On January 12, 2017, a day before the initial FISA authority targeting Carter Page was set to expire, and at the request of the FBI, the Department filed an application with the FISC requesting an additional 90 days of FISA coverage

³⁵³ The Office of Intelligence (OI) in the National Security Division (NSD) expects that the FBI will request a renewal on a targeted individual 45 days prior to the expiration of the existing FISA authority.

targeting Carter Page. A FISC judge reviewed and issued the requested orders resulting in an additional 90 days of surveillance [REDACTED] targeting Carter Page from January 13, 2017 to April 7, 2017.

A. Investigative Developments and Decision to Seek Renewal

Emails and other communications reflect that in the first week of surveillance on Carter Page [REDACTED], following the granting of the first FISA application in October 2016, the Crossfire Hurricane team collected [REDACTED].³⁵⁴ Based on our review of the Woods Files and communications between the FBI and OI, we identified a few emails between Page and members of the Donald J. Trump for President Campaign concerning campaign related matters. Emails between Supervisory Special Agent 1 (SSA 1) and Case Agent 1 show that during the initial weeks of FISA surveillance, they discussed several [REDACTED] they believed were significant, including references to [REDACTED]

[REDACTED]. The analysts and agents who reviewed the FISA [REDACTED] prepared a packet [REDACTED] that they believed demonstrated Carter Page's contacts with and references to Russia or Russian officials for OI to consider for a renewal application.

In addition to reviewing the FISA collection, the team continued its efforts (described in Chapter Six) to assess the accuracy of the information in Steele's election reports. According to the Supervisory Intelligence Analyst (Supervisory Intel Analyst), the team had not corroborated the reporting concerning Carter Page's activities by the time of Renewal Application No. 1 (or subsequent renewal applications), other than confirming Carter Page's travel to Russia in July 2016.

As detailed in Chapter Six, in November 2016, the FBI closed Steele as a Confidential Human Source (CHS) for his disclosures to *Mother Jones* concerning his election reports and relationship with the FBI. FBI officials told us that after these disclosures, they continued to assess that Steele was reliable. They said that they viewed the *Mother Jones* disclosure as a "control" issue, based on their understanding that it was a reaction to the letter then FBI Director James Comey sent to Congress in late October about the Clinton email investigation. Then Deputy Director Andrew McCabe recalled that Steele's disclosure to *Mother Jones* was viewed by the Crossfire Hurricane team as a control issue rather than a reliability issue, and the team was comfortable going forward with seeking a FISA renewal targeting Carter Page. SSA 1 told us that he believed the reason Steele provided for his disclosure to *Mother Jones* "politicized" Steele and identified an agenda. SSA 1 said that after Steele's disclosure to *Mother Jones*, he thought the team needed to have an independent validation review completed, which we discussed in Chapter Six.

³⁵⁴ We did not review the entirety of FISA [REDACTED] obtained through FISA surveillance [REDACTED] targeting Carter Page. We reviewed only those [REDACTED] under FISA authority that were relevant to our review.

However, to further assess Steele's reliability, as described in Chapters Six and Eight, senior Counterintelligence Division (CD) officials met with persons with direct knowledge of Steele's work-related performance in a prior position in mid-November 2016, and told us that they were reassured by the fact that the former employer said that Steele had no history of fabricating, embellishing, or otherwise "spinning" information in his reporting.³⁵⁵ In addition, FBI officials told us that they were reassured by statements from Department attorney Bruce Ohr (described in Chapters Eight and Nine) that Ohr believed Steele was never untruthful in his reporting.

Case Agent 1's handwritten notes from a December 2016 Crossfire Hurricane team meeting reflect that the team discussed the information about Steele's prior work-related performance and Ohr and decided that they "can continue to rely on reporting for FISA." Case Agent 1 told us he did not recall this discussion or who said that they could continue to rely on Steele's reporting in the next FISA application.

Before this team meeting, and around 45 days prior to the expiration of the first FISA authority, Case Agent 1 notified the FBI's Office of the General Counsel (OGC) and OI that the Crossfire Hurricane team was interested in an additional 90 days of FISA authority targeting Carter Page. Case Agent 1 told us that the Crossfire Hurricane team sought a renewal to determine whether Carter Page had ongoing contact with Russia beyond the 90-day period covered by the first FISA orders. Case Agent 1 said that while it is not automatic to seek a renewal after a first application, there is an "understanding" that the FBI will typically seek a renewal because at the time they are required to notify OI, they have only had 45 days of surveillance, which is usually not sufficient time to gather enough information, or review the information collected, to determine whether or not there is evidence to continue the investigation. Case Agent 1 told us that the team had not reviewed all of the emails the first FISA application yielded and believed there were additional emails not yet collected. The OGC Unit Chief told us that unless there is no evidence collected with an initial FISA application, the FBI will usually seek a renewal to obtain more information.

B. Preparation and Approval of Renewal Application No. 1

1. Draft Renewal Application

Similar to the first Carter Page FISA application, Case Agent 1 and the OGC Attorney assisted the OI Attorney with the preparation of Renewal Application No. 1. However, the OGC Attorney told us that he was less involved in the preparation of this application as compared to the first application, which he said was typical of OGC involvement in renewal applications.

³⁵⁵ We describe in Chapters Six and Eight the negative feedback received concerning Steele, including comments about his judgment. We found that the team did not share all relevant details about this feedback with OI.

Emails between OI, the OGC Attorney, and Case Agent 1 following the FISC's approval of the first FISA application on October 21, 2016, reflect that Case Agent 1 provided updates to OI on relevant FISA collections and case activities in the Carter Page investigation throughout the fall. The OI Attorney reviewed this information for inclusion into a renewal application and began drafting Renewal Application No. 1 in December. The OI Attorney told the OIG that, when drafting a renewal application, he relies on the FBI to provide him information relevant to the ongoing investigation, including any new information that may contradict or may be different from information presented to the FISC in prior FISA applications.

NSD officials told us that the drafting of Renewal Application No. 1 followed the same process and received the same level of scrutiny as the first FISA application signed in October, but because OI's questions about Steele and his election reporting were addressed in the first application, there were fewer discussions about the renewal application, as compared to the first application, and Renewal Application No. 1 was completed in less time. By December 28, 2016, the OI Attorney had completed a draft of Renewal Application No. 1, described below, and selected relevant FISA intercepts and results of the ongoing investigation to incorporate in the draft.

As in the first FISA application, the statement of facts in support of probable cause for the renewal stated that the Russians attempted to undermine and influence the 2016 presidential election, and that the FBI believed Carter Page was acting in conjunction with the Russians in those efforts. The statement of facts supported this assessment with the five main elements enumerated in the first application (described in Chapter Five) and added recent investigative results. Specifically, the elements that carried over from the first FISA application were:

- (1) The efforts of Russian Intelligence Services (RIS) to influence the 2016 presidential election—the renewal application stated that although the elections had concluded, the FBI believed that the Russian government would continue efforts to use U.S. persons, such as Carter Page, to covertly influence U.S. foreign policy and support Russia's perception management efforts;
- (2) The Russian government's attempted coordination with members of the Trump campaign, which was based on the Friendly Foreign Government (FFG) information concerning the offer or suggestion of assistance from the Russians to someone associated with the Trump campaign;
- (3) Carter Page's historical connections to Russia and RIS, which included his business dealings with the Russian energy company Gazprom, his relationships with known Russian intelligence officers, and his disclosure to the FBI and a Russian Minister that he was Male-1 in an indictment against Russian intelligence officers;
- (4) Carter Page's alleged coordination with the Russian government in 2016 U.S. presidential election activities, based on some of the reporting from Steele; and

(5) Carter Page's continued connections to Russian officials, based on the FBI's assessment of a consensually monitored October 17, 2016 conversation between Page and an FBI CHS.³⁵⁶

In addition, the recent investigative results section of the application included references to the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] Page traveled [REDACTED] to Russia in December 2016;
- [REDACTED];
- [REDACTED]
- In December 2016, Carter Page made statements to an FBI CHS (summarized in Chapter Ten), distancing himself from his October suggestion of establishing a Russian-funded think tank, citing funding issues as a reason, which the FBI assessed was an indication that Page

³⁵⁶ The statement of facts in Renewal Application No. 1 also carried over from the first application the description of Carter Page's denials of coordination with the Russian government, as reported in two news articles and asserted by Page in his September 25 letter to then FBI Director James Comey.

was likely trying to distance himself from Russia as a result of media reporting that continued to tie Page to Russia.

The renewal application stated that the FBI believed the recent investigative results demonstrated that Carter Page continued to try to influence U.S. foreign policy on behalf of Russia. The renewal application, like the first FISA application, failed to include information provided to the FBI by another U.S. government agency in August 2016 that Carter Page had a prior relationship with that other agency and had provided information to the other agency.

Renewal Application No. 1 included the same information from Steele's reporting that appeared in the first FISA application. However, the renewal application advised the court of Steele's disclosure to *Mother Jones* and that the FBI had "suspended" its relationship with Steele. Specifically, the source characterization statement for Steele in the renewal application stated the following:

[Steele] is a [REDACTED] and has been an FBI source since in or about October 2013. [Steele] has been compensated approximately \$95,000 by the FBI. **As discussed below in footnote 19, in or about October 2016, the FBI suspended its relationship with [Steele] due to [Steele's] unauthorized disclosure of information to the press. Notwithstanding the suspension of its relationship with [Steele], the FBI assesses [Steele] to be reliable as previous reporting from [Steele] has been corroborated and used in criminal proceedings. Moreover, the FBI notes that the incident that led to the FBI suspending its relationship with [Steele] occurred after [Steele] provided the reporting that is described herein.**³⁵⁷ (Emphasis in original).

Later in the renewal application, footnote 19 referenced both the *Yahoo News* article, with the unsupported language from the first FISA application unchanged, and the *Mother Jones* article, and stated:

As discussed above, [Steele] was hired by a business associate to conduct research into Candidate #1's ties to Russia. [Steele] provided the results of his research to the business associate, and the FBI assesses that the business associate likely provided this information to the law firm that hired the business associate in the first place. [Steele] told the FBI that he/she only provided this information to the business associate and the FBI. Given that the information contained in the September 23rd News Article generally matches the information about Page that [Steele] discovered during his/her research, the FBI assesses that [Steele's] business associate or the law firm that hired

³⁵⁷ OI often indicates new information in a renewal application to the FISC by using a bold font. The text from the applications cited in this chapter is cited as it appears in the renewal FISA applications.

the business associate likely provided this information to the press. The FBI also assesses that whoever gave the information to the press stated that the information was provided by a "well-placed Western intelligence source." The FBI does not believe that [Steele] directly provided this information to the identified news organization that published the September 23rd News Article.

In or about late October 2016, however, after the Director of the FBI sent a letter to the U.S. Congress, which stated that the FBI had learned of new information that might be pertinent to an investigation that the FBI was conducting of Candidate #2, [Steele] told the FBI that he/she was frustrated with this action and believed it would likely influence the 2016 U.S. Presidential election. In response to [Steele's] concerns, [Steele] independently, and against the prior admonishment from the FBI to speak only with the FBI on this matter, released the reporting discussed herein to an identified news organization. Although the FBI continues to assess [that] [Steele's] reporting is reliable, as noted above, the FBI has suspended its relationship with [Steele] because of this disclosure. (Emphasis in original).

We found no evidence that the FBI "suspended" its relationship with Steele; rather, FBI paperwork reflects that Steele was closed for cause as an FBI CHS in November 2016.³⁵⁸ However, as we describe in Chapters Six and Nine, as a practical matter, the FBI continued to collect information from Steele over a period of months through a conduit, Department attorney Bruce Ohr.

Additionally, as discussed in Chapter Five, contrary to FBI policy, the characterization of Steele's prior reporting had not been approved by his handling agent, who told us that the characterization was inaccurate—according to the handling agent, only some of Steele's prior reporting had been corroborated, most of it had not, and Steele's information had never been used in a criminal proceeding. This inaccuracy was not corrected in Renewal Application No. 1 or in the subsequent renewal applications, even after a formal FBI human source validation review of Steele in March 2017 found that his past contributions to the FBI's criminal program had been "minimally corroborated." Further, as described in Chapter Eight, the FBI did not reassess Steele's reliability in the renewal applications, or advise OI, after the Crossfire Hurricane team obtained additional information that was highly relevant to the reliability of his election reporting. This included information received before Renewal Application No. 1 about Steele's work-related performance in a prior position and before Renewal Application Nos. 2

³⁵⁸ As described in Chapter Six, Handling Agent 1 told us that he informed Steele on November 1, 2016, that it was unlikely that the FBI would continue a relationship with him and that Steele must cease collecting information for the FBI. Handling Agent 1 completed a Source Closing Communication document on November 17, 2016, indicating that Steele had been closed for cause on November 1, 2016.

The disclosures of Steele's reports are further discussed in Chapters Four and Six.

and 3 from Steele's Primary Sub-source that contradicted the source reporting in the FISA applications. In addition, as we also discuss in Chapter Eight, Renewal Application No. 1 and the subsequent renewal applications did not describe information that the FBI obtained from Department attorney Bruce Ohr regarding Steele's possible motivations and bias.

Finally, the information in Renewal Application No. 1 regarding early CHS meetings remained unchanged from the prior application. The renewal application also did not include information about the August 2016 meeting between Carter Page and an FBI CHS or the September 2016 meetings between Papadopoulos and an FBI CHS, discussed in Chapters Five and Ten. It also did not include an accurate description of the October 2016 meeting between Page and an FBI CHS, also discussed in Chapters Five and Ten. In addition, as described in Chapters Eight and Ten, Renewal Application No. 1 and the subsequent renewal applications did not include information about an October 2016 CHS meeting involving an FBI CHS and Papadopoulos during which Papadopoulos said that he knew "for a fact" that the Trump campaign was not involved in releasing emails from the DNC.

2. Review and Approval Process

As described previously, according to Department and FBI procedures, once an FBI case agent affirms the accuracy of the information in the proposed FISA application (read copy), an OI Unit Chief or Deputy Unit Chief is usually the final and only approver before a read copy is submitted to the FISC. The Unit Chief or Deputy is also usually the final approver who "signs out" the final application (cert copy) to the FBI for completion of the Woods Procedures and Director's certification, before presentation to either the Assistant Attorney General (AAG) of NSD, the Deputy Attorney General (DAG), or the Attorney General for final signature. However, as reflected in Chapter Five, in some instances, FISA applications presenting novel issues or otherwise deemed to have heightened sensitivity will receive additional supervisory review within the FBI, the Department, or both. As described below, FISA Renewal Application No. 1 did not receive the same level of review in FBI OGC as the first Carter Page FISA application, but it did receive additional review within NSD and the Office of the Deputy Attorney General (ODAG).

a. Supervisory Review and Finalization of Read Copy

Unlike the first FISA application, then FBI General Counsel James Baker and then Deputy General Counsel, Trisha Anderson, did not review FISA Renewal Application No. 1 before the read copy was submitted to the court. Baker told us that he did not review any of the renewal applications. He said that, in general, if none of the relevant factual information had changed from the first application, and the foreign intelligence purpose for the FISA remained the same, he did not believe it was necessary to review renewal applications. In addition, he told us that in at least one instance, he did not know that the FBI was planning to seek a renewal on Carter Page until the application was already with the Director for certification. According to the OGC Unit Chief, OGC is usually less involved in renewal applications because they generally only require updates to the factual information

already asserted in an initial FISA application. She said that the interactions on renewal applications mostly take place at the OI attorney and case agent levels. McCabe told us that, as the Deputy Director, he did not approve requests before they were submitted to OI for FISA application renewals, but he would have been briefed on the collections from the ongoing FISA surveillance. McCabe said that he understood that the first Carter Page FISA was "very productive" and the team wanted to pursue a renewal.

Within NSD, Renewal Application No. 1 received additional supervisory review above the OI Unit Chief. On December 28, after reviewing the draft, the OI Unit Chief emailed the OI Attorney to approve of the new information and assessments included in the draft. On December 29, the OI Attorney emailed a draft of Renewal Application No. 1 to Stuart Evans, NSD's then Deputy AAG for Intelligence, Gabriel Sanz-Rexach, the Chief of OI's Operations Section, and OI's Deputy Operations Section Chief for their review, advising them that the draft was "about 95% complete" and that an additional update would be added before the final draft was completed.

Sanz-Rexach told the OIG that he reviewed Renewal Application No. 1, but did not recall any specific comments he made to the read copy. He said that he recalled that prior to the renewal, the FBI [REDACTED]

[REDACTED]. He also said that the evidence collected during the first FISA application time period demonstrated that Carter Page had access to individuals in Russia and he was communicating with people in the Trump campaign, which created a concern that Russia could use their influence with Carter Page to effect policy. The Deputy Operations Section Chief told us that she reviewed the new factual information in the renewal application, but did not recall as many meetings or discussions about the renewals and did not recall making any comments on any of the renewal applications.

Emails reflect that Evans reviewed the draft renewal application and provided two minor edits, one of which added more detail concerning Carter Page's December 2016 meeting with an FBI CHS. Evans told us that he focused his attention primarily on the footnote describing Steele's *Mother Jones* disclosure that led to a change in Steele's relationship with the FBI, and did not edit the footnote following his review.

On January 3, Evans emailed the read copy to NSD's then Acting AAG Mary McCord for her review with a request to discuss a few points in the renewal. Although the emails did not specify the points for discussion, McCord told us she recalled a discussion with Evans about the information the FBI collected from the FISA coverage targeting Carter Page up to that point and whether it was sufficient to sustain a renewal. McCord told us she also wanted to make sure that the renewal application described the closure of Steele after his disclosures to the media, which was already included in the read copy she reviewed.

b. ODAG Review and Approval of Read Copy

Although not a required step in the FISA procedures, ODAG officials reviewed the read copy for Renewal Application No. 1 before it was submitted to the court. Similar to the first application, the renewal application was reviewed by Tashina Gauhar, the Associate Deputy Attorney General responsible for ODAG's national security portfolio, an OI attorney on detail in ODAG, Principal Associate Deputy Attorney General (PADAG) Matthew Axelrod, and DAG Sally Yates, who ultimately approved and signed the final application.

On December 30, 2016, the OI Unit Chief emailed the read copy of Renewal Application No. 1 to Gauhar, and the OI attorney on detail advising that it was "95% complete" with one question for ODAG to consider. Documents do not indicate that ODAG made any edits to the December 30 draft. The question for ODAG was whether to include an expansion to the particularized minimization procedures, or PMPs, restriction on who could access the FISA collections to include the agents and analysts investigating the ongoing perception management activities by Russia.³⁵⁹ The final renewal application included the expanded PMPs, restricting access to the FISA collection to only those individuals assigned to investigate Russia's efforts to influence the 2016 U.S. elections and Russia's attempts at perception management and influence activities against the U.S.

On January 4, the OI attorney on detail in ODAG advised OI that the OI attorney had provided "a couple of suggestions...which we did not think (and hopefully are not) significant" and advised that Axelrod would want to review the read copy. We did not find documentation showing the suggestions ODAG recommended for the draft. According to Gauhar, ODAG did not make significant edits or have many questions after it reviewed Renewal Application No. 1. Gauhar also told us that she believed the first renewal was significant because it demonstrated that, despite the questions about whether to seek a Carter Page FISA prior to the first application, the surveillance yielded relevant and useful information. Gauhar said she recalled that the FISA collection included, among other things, [REDACTED]

As with the first FISA application, NSD decided that although it was not a required step, it would not submit the read copy to the FISC until Yates had personally read it and said she was comfortable moving forward. According to Gauhar, Yates and Axelrod reviewed Renewal Application No. 1, and following Yates's review, OI submitted the read copy to the FISC. Yates and Axelrod told us that they did not have a specific recollection of reviewing Renewal Application No. 1 but said they may have done so.

³⁵⁹ As described in Chapter Five, the PMPs in the first FISA application restricted access to the information collected through the FISA authority to the individuals assigned to the Crossfire Hurricane team and required the approval of a Deputy Assistant Director or higher before any FISA-derived information could be disseminated outside the FBI.

3. Feedback from the FISC, Completion of the Final Renewal Application and Woods Procedures, and Final Legal Review

On January 10, 2017, the OI Attorney advised Evans and OI management that the FISC judge reviewed the renewal application, had "no issue" with the application, and would sign the application without an appearance.

The day before, the OI Unit Chief "signed out" the cert copy of the application and cert memo to the FBI, so that the FBI could complete the Woods Procedures (previously described in Chapters Two and Five). Case Agent 1 was the agent responsible for compiling the supporting documentation into the Woods File and performing the field office database checks on Carter Page and the accuracy review of each fact asserted in the FISA application. His new supervisor at FBI Headquarters for the Carter Page investigation, SSA 3, was responsible for confirming that the Woods File was complete and double checking the factual accuracy review to confirm that the file contained appropriate documentation for the factual assertions in the FISA application.

As noted previously, in the case of renewal applications, the FISA Standard Minimization Procedures Policy Guide (FISA SMP PG) requires that a case agent re-verify the accuracy of each factual assertion from an initial application that is repeated in a renewal application and verify and obtain supporting documentation for any new factual assertions that are added to a renewal application. Case Agent 1 did not recall whether he reviewed every factual assertion or just the newly added information when he conducted the accuracy review for Renewal Application No. 1. Case Agent 1 told us that his general practice on a renewal application is not to necessarily review the factual information carried over from the prior application. He said that if the factual information does not materially change from the prior FISA application, he will review just the newly added information. According to Case Agent 6, Case Agent 1 told him that when he (Case Agent 1) performed the factual accuracy review on Renewal Application No. 1, he only reviewed the new factual assertions in the application, not the factual assertions that carried over from the prior application. At the time Case Agent 1 conducted the accuracy review of Renewal Application No. 1, he had been transferred back to the New York Field Office (NYFO) and was conducting the Carter Page investigation from that office. After he completed his review, he faxed the signed FISA Verification Form (Woods Form) to SSA 3 at FBI Headquarters.

SSA 3 reviewed the Woods File at Headquarters, signed the Woods Form on January 10, affirming the verification and documentation of each factual assertion in the application, and then sent the FISA application package containing the Woods Form, cert copy, and a cover memorandum (cert memo) to the Headquarters Program Manager assigned the responsibility, as the affiant, of signing the final application under oath that the factual information was true and correct. SSA 3 told us that when he signed the Woods Form, he was verifying that every fact contained in Renewal Application No. 1 had a supporting document confirming the accuracy of the statement. However, like Case Agent 1, SSA 3 also told us that, when he performs a Woods review, he does not re-verify the factual assertions

carried over from previous applications, but only checks the new information, which is noted in bold font.³⁶⁰

The Headquarters Program Manager assigned as the affiant was SSA 2, who was assigned to the Crossfire Hurricane investigation in late December 2016.³⁶¹ He told us he received the renewal package from the OI Attorney and reviewed the first FISA application and the newly added information to Renewal Application No. 1. SSA 2 told us that he did not recall reviewing the Woods Form, but that it was his practice at the time to do so before signing a FISA application (as described in Chapter Two, the Woods Procedures do not require the affiant to review the Woods File, only the case agent and his or her supervisor). SSA 2 said that he believed everything in the application to be true and correct based on the Woods Verification completed by Case Agent 1 and SSA 3. SSA 2 told us that he identified no issues or questions after reviewing Renewal Application No. 1 and signed the affidavit affirming under penalty of perjury that the information in the package was true and correct. He then submitted the FISA application package to either the OGC Attorney or the OGC Unit Chief for final legal review.

As described in Chapter Two, after the affiant signs the affidavit, the application package is submitted to the FBI's National Security and Cyber Law Branch (NSCLB) for final legal review and approval by both a line attorney and Senior Executive Service-level supervisor. Once they approve the application, the line attorney and supervisor sign the cert memo. The OGC Attorney told the OIG that he did not recall reviewing any prior drafts of the application before he received the cert copy on January 10. He said that when he received the cert copy, he focused his legal review on the newly added material. We were advised that the FBI and NSD were unable to locate a fully signed copy of the cert memo that accompanied Renewal Application No. 1, and we were unable to independently determine who reviewed the FISA application package on behalf of OGC's NSCLB. Instant messages suggest that the OGC Attorney performed the line attorney review for NSCLB and submitted the package to Anderson for her review and signature.

4. FBI Director's Certification

Comey reviewed and certified the Carter Page FISA Renewal Application No. 1 on behalf of the FBI on January 12. Chapter Two describes the elements of the

³⁶⁰ The OIG examined the completeness of the Woods File by comparing the facts asserted in Renewal Application No. 1 to the documents maintained in the Woods File. Our comparison identified instances in which facts asserted in the application were not supported by documentation in the Woods File. Specifically, we found facts asserted in the FISA application that have no supporting documentation in the Woods File, facts that have purported supporting documentation in the Woods File but the documentation does not state the fact asserted in the FISA application, or facts that have purported supporting documentation in the Woods File but the documentation shows the fact asserted is inaccurate. We provide examples of specific errors in Appendix One.

³⁶¹ As described in Chapters Two and Five, the affiant for a FISA application is the Headquarters Program Manager in the relevant Operations Branch and Section. In the case of this renewal application, the investigation was conducted from Headquarters, and SSA 2 was one of the Supervisory Special Agents supervising aspects of the investigation.

certification required by the Director or Deputy Director, including that the information sought through the requested FISA authority is foreign intelligence information that cannot reasonably be obtained by normal investigative techniques and is necessary to protect the United States against clandestine intelligence activities. Comey told the OIG that he had no specific memory of reviewing or signing any of the Carter Page FISA renewal application packages. As we discussed in Chapter Five, Comey recalled reading the first Carter Page application before he certified it and being satisfied that the application seemed factually and legally sufficient when he read it, and he had no questions or concerns before he signed.

5. DAG Oral Briefing and Approval

Yates did not specifically recall the oral briefing on Renewal Application No. 1. OI's Deputy Operations Section Chief conducted the briefing and told the OIG that she did not recall anyone having any questions about Renewal Application No. 1. Yates told the OIG she did not recall if she read the entire renewal or just the additions and changes.

Yates told us that she did not have any concerns with the FBI seeking renewal authorization for the Carter Page FISA, although she wanted to make sure that the representation to the FISC was that the focus remained on Carter Page. Yates also told us that she had been briefed by McCabe prior to reviewing Renewal Application No. 1 on Steele's closure due to his disclosure to the media, and was aware that information would be included in the renewal. Yates said it was a brief discussion and she did not recall if McCabe told her whether there was an additional reason the FBI closed Steele or anything further about Steele. On January 12, Yates signed the application, and the application was submitted to the FISC the same day. By her signature, and as stated in the application, Yates found that the application satisfied the criteria and requirements of the FISA statute and approved its filing with the court.³⁶²

6. Final Orders

The final FISA application included proposed orders, which were signed by FISC Judge Michael W. Mosman, on January 12, 2017. According to NSD, the judge signed the final orders, as proposed by the government in their entirety, without holding a hearing.

The primary order and warrant stated that the court found, based upon the facts submitted in the verified application, that there was probable cause to believe that Russia is a foreign power and that Carter Page was an agent of Russia under 50 U.S.C. § 1801(b)(2)(E). The court also found that the [REDACTED]

[REDACTED] The court authorized the requested electronic surveillance [REDACTED] for 90

³⁶² Her signature also specifically authorized [REDACTED]

days and [REDACTED] necessary to effectuate the electronic surveillance [REDACTED] that the court authorized.

II. FISA Renewal Application No. 2 (April 7, 2017)

On April 7, 2017, the day FISA coverage targeting Carter Page was set to expire, and at the request of the FBI, the Department filed an application with the FISC requesting an additional 90 days of FISA coverage targeting Carter Page. A FISC judge reviewed and issued the requested orders resulting in an additional 90 days of electronic surveillance [REDACTED] targeting Carter Page from April 7, 2017 to June 30, 2017.

A. Case Reorganization, Investigative Developments, and Decision to Seek Renewal

As described in Chapter Three, in January 2017, CD reorganized the Crossfire Hurricane investigation and divided the cases among two of the three branches in CD. As a result of the reorganization, there were new supervisory special agents and case agents working on the Carter Page investigation. Deputy Assistant Director (DAD) Jennifer Boone and SSA 3 were the supervisors at Headquarters overseeing the Carter Page investigation, which was transferred to NYFO when the cases were reorganized. In March 2017, Case Agent 1 was promoted to a supervisory position, and Case Agent 6 became the new case agent handling the Carter Page investigation in NYFO, with assistance from Case Agent 1 and SSA 5.

Email communications reflect that the Crossfire Hurricane team continued to review evidence from the FISA collections after the court reauthorized FISA authority in January 2017, targeting Carter Page. In January and February 2017, the FBI provided updates to the OI Attorney, which were passed on to his supervisors and ODAG. These updates included:

1. [REDACTED]
[REDACTED];
2. [REDACTED]
[REDACTED]; and
3. Page met with an FBI CHS regarding Page's think tank idea and wanted help/insight from the CHS. Page revealed to the CHS that he wanted the think tank to focus on countering anti-Western views on Russia. He also revealed that a senior Russian government official pledged a million dollars toward the project.

In addition, the team continued its efforts to corroborate the information in Steele's reports, including identifying Steele's sub-sources. As described in Chapter

Six, after the FBI identified Steele's Primary Sub-source and in January 2017 (after Renewal Application No. 1 was signed), Case Agent 1 and the Supervisory Intel Analyst interviewed him/her. Following the January interview, the Supervisory Intel Analyst, with assistance from Case Agent 1, wrote a lengthy summary of the interview. As described in Chapter Six, the Primary Sub-source told the FBI that he/she provided Steele with some of the information in Steele's reports. The Supervisory Intel Analyst said that the information from the interview with the Primary Sub-source provided details used to identify sub-sources referenced in Steele's reports, which assisted the investigation. However, in some instances, statements the Primary Sub-source made about what his/her sources told him/her—and what he/she then provided to Steele—were inconsistent with information attributed to his/her sources in Steele's reporting, as well as in the first Carter Page FISA application and Renewal Application No. 1. As described in Chapter Eight, most team members told us that they either were not aware of the inconsistencies or, if they were aware, did not make the connection that the inconsistencies affected aspects of the FISA applications. Further, Case Agent 1 and the Supervisory Intel Analyst told us that the Primary Sub-source may have been "minimizing" certain aspects of what he/she told Steele.

Further, in March 2017, Case Agent 1 and Case Agent 6 conducted five voluntary interviews with Carter Page. During those interviews, Carter Page provided the following: information about his July and December 2016 trips to Moscow; individuals he denied meeting to include Igor Sechin and Paul Manafort; a trip to Singapore in February 2017 for Gazprom Investor Day; and his lack of involvement in the Republican National Committee's (RNC) platform change on assistance to Ukraine. Carter Page also discussed his contacts with Gazprom, his assumption that he was under FBI surveillance, and he denied that anyone from Russia asked him to relay any messages to anyone in the campaign. Carter Page told the agents that he knew he had previously communicated with Russian intelligence officers in New York but stated his interactions were not a "back-channel," and he wanted nothing to do with espionage. He said that because of his interactions with these Russian intelligence officers, he knew he was "on the books" and understood that this meant RIS considered him a source, witting or unwitting. He also said that in mid-October 2016, while crossing a street in New York City, his cell phone fell out of his pocket and was smashed by a car, resulting in a loss of encrypted communications.

Following the interviews with Carter Page and review of the FISA collections, agents working on the Carter Page investigation discussed and had differing opinions about seeking a second renewal. Case Agent 6 told us that although he reviewed the FISA collections when he was assigned to the Carter Page investigation in February 2017, he had not reviewed enough information to make a determination as to whether seeking a renewal was necessary. He told us that he reviewed [REDACTED] in which Carter Page [REDACTED]

[REDACTED] Case Agent 6 told us that although this email and Page's statement in an interview caused him to question whether it was worth seeking Renewal Application No. 2, he ultimately did not disagree with Case Agent 1 and SSA 5 who

told him they wanted to continue the surveillance of Page. He also said that he discussed seeking the renewal with his NYFO Special Agent in Charge and did not recall any disagreement about seeking a second renewal from anyone working on the investigation.

SSA 3 told the OIG that there were discussions at Headquarters among members of the Crossfire Hurricane team, including SSA 2 and Boone, about Carter Page and whether he was a significant target at that point in the investigation. According to SSA 3, he and SSA 2 believed at the time they approached the decision point on a second FISA renewal that, based upon the evidence already collected, Carter Page was a distraction in the investigation, not a key player in the Trump campaign, and was not critical to the overarching investigation. SSA 2 told us that he questioned whether seeking a second renewal was the best use of FBI resources as Carter Page had "deviated from a consistent pattern of life" and was no longer communicating in the same way as he had in 2016. SSA 2 and SSA 3 told us that they did not know or recall who at the FBI ultimately made the decision to seek the second renewal or the reasons why.

Boone told us that the team discussed what further steps to take in the investigation of Carter Page and not solely whether or not to seek a second FISA renewal. Boone recalled a conversation with SSA 2 about whether a second renewal was necessary, but did not recall if she was directed from management to pursue a second renewal or if the team decided to seek a renewal after discussing whether it would add any value to the investigation. Boone did not recall who ultimately decided to move forward with Renewal Application No. 2, and available documents do not indicate.

B. Preparation and Approval of Renewal Application No. 2

1. Draft Renewal Application

Case Agent 6 and the OGC Attorney assisted the OI Attorney in the preparation of Renewal Application No. 2. On March 20, Case Agent 6 sent the OI Attorney an email with an attachment that included "my first round of additions so you can get started." The additions that Case Agent 6 sent included information Carter Page provided in his FBI interviews in March 2017 about his involvement with a Russian business, Page's discussion with Russian officials about a Southern District of New York (SDNY) indictment, Page's denials about meeting a Russian government official, and his lack of involvement in the drafting of the RNC's platform provision on Ukraine.³⁶³ Emails reflect that on March 23 and March 29, Case Agent 6 sent a draft of Renewal Application No. 2 to Case Agent 1 for his review; however, we did not find a response from Case Agent 1 to Case Agent 6 about the draft.

³⁶³ As discussed in Chapter Eight, all of the Carter Page FISA applications alleged that Page participated in drafting the RNC's platform change on providing lethal assistance to Ukraine. The FISA applications alleged that the platform change on Ukraine would not include a provision to provide weapons to Ukraine to fight Russian and rebel forces, contravening Republican Party policy.

On March 23, Case Agent 6 emailed the OI Attorney additional information from recent FISA collections, recent Carter Page interviews, and other information derived from the ongoing investigation for inclusion in Renewal Application No. 2. Case Agent 6 did not provide the OI Attorney with the written summary of the Primary Sub-source's interview in January 2017, but instead included in his March 20 write-up for the OI Attorney two brief references to aspects of the January interview, neither of which identified the key inconsistencies between the Primary Sub-source and Steele that we address in Chapter Eight. The OI Attorney completed an initial draft of Renewal Application No. 2 on March 23 and emails reflect that, over the next few days, Case Agent 6 and the OI Attorney edited the initial draft. On March 29, the OI Attorney sent the OGC Attorney a draft for his review and advised that, following the OGC Attorney's review, the OI Attorney would finalize the draft for an "up the chain review."

The statement of facts in the draft and final second renewal application contained the same information used to support probable cause as in Renewal Application No. 1. This included the assessment that post-election, the FBI believed that the Russian government would continue efforts to use U.S. persons, such as Carter Page, to covertly influence U.S. foreign policy and support Russia's perception management efforts. In addition, Renewal Application No. 2 advised the court of recent investigative results, including:

- [REDACTED];
- The results of recent FBI interviews with Carter Page in which he revealed that during his December 2016 travel to Russia, he met the Russian Deputy Prime Minister who asked him how to connect for "future cooperation," and in which Page also revealed that during travel to Singapore, he met a Vice President of Gazprombank, which the FBI assessed revealed Russia's continued interest in Page;³⁶⁴
- Carter Page's denial during a March 2017 FBI interview that he told Russian officials that he was "Male-1" in the indictment of three Russian intelligence officers, described in Chapter Three. When asked a second time about this statement, Page said he "forgot the exact statement," which the FBI assessed showed that Page was not completely forthcoming during this interview;
- [REDACTED];
- [REDACTED]

³⁶⁴ As with other denials made by Carter Page (described in Chapters Five and Ten), Renewal Application No. 2 did not include denials Carter Page made during a meeting with an FBI CHS in January 2017 concerning Steele's election reports. During that recorded meeting, Carter Page characterized the Steele election reporting as "just so false" and "complete lies and spin."

[REDACTED];

- [REDACTED] and

- A February 2017 letter Carter Page sent to the Department of Justice, Civil Rights Division's Voting Section, urging the review of "severe election fraud in the form of disinformation, suppression of dissent, hate crimes and other extensive abuses" by members of the Clinton campaign, which the FBI assessed was self-serving and untrue.

Renewal Application No. 2 also included a new footnote stating that the FBI conducted several interviews of Papadopoulos, during which Papadopoulos confirmed he met with officials from the FFG but denied discussing anything related to the Russian government, which the FBI assessed were misleading or incomplete statements. The footnote did not include that Papadopoulos made other statements during these interviews, including statements that minimized Carter Page's role in the Trump campaign and a claim that Person 1 (whom the FBI assessed was the likely source for some of the Steele reporting relied upon in the applications, including the allegations against Page) told Papadopoulos that he/she (Person 1) had no knowledge of the information reported in "the recent Trump Dossier." Renewal Application Nos. 2 and 3 did advise the court of a news article claiming that Person 1 was a source for some of the Steele reports and that Person 1 denied having any compromising information regarding the President.³⁶⁵

The source characterization statement for Steele, reliance on Steele's reporting, and the information concerning the positions and access of the sub-sources remained the same as in the first FISA application and Renewal Application No. 1, with the exception of changing Steele's status with the FBI from "suspended" to "closed" as a result of the *Mother Jones* disclosure. The OI Attorney told us that there had been prior instances in other investigations where the FBI has closed a source, and OI disclosed it to the FISC as they did in the Carter Page Renewal Application No. 2. The OI Attorney told us that OI expects the FBI to assess the information provided by a closed source, and how closure of the source impacts the information from the source cited in an application. In this instance, he said the FBI told him that it continued to believe Steele was reliable.

³⁶⁵ In Chapter Five, we describe how the FBI did not specifically and explicitly advise OI about the FBI's assessment before the first FISA application that Person 1 was the sub-source who provided the information relied upon in the application from Steele Reports 80, 95, and 102; that Steele had provided derogatory information regarding Person 1; and that the FBI had an open counterintelligence investigation on Person 1. As noted previously, in the next chapter, we describe the information from the Primary Sub-source interview concerning Person 1 and the information that was not shared with OI about inconsistencies between the Primary Sub-source and Steele concerning information provided by Person 1.

Finally, the draft and final FISA Renewal Application No. 2 advised the court in a footnote that the FBI interviewed Steele's Primary Sub-source and found him/her to be "truthful and cooperative." [REDACTED]

[REDACTED] the application did not otherwise describe the information the Primary Sub-source provided to the FBI or identify any statements made by Primary Sub-source that contradicted or were inconsistent with information from Steele's reports relied on in the application. Emails reflect that on March 31, the OI Attorney drafted this footnote with feedback from the OGC Attorney. The OGC Attorney edited the footnote to reflect that the FBI was undertaking "additional investigative activity to further corroborate the information provide [sic] by [Steele]." The descriptor that the Primary Sub-source was "truthful and cooperative" was not edited by the OGC Attorney, who told us that although he did not receive a full briefing on the interview of the Primary Sub-source, he was present at meetings where the interview was discussed. The OGC Attorney said he recalled that he learned during these meetings that the information from the Primary Sub-source "echoed what the reporting was that [Steele] provided to us." We asked why the application did not include the information the Primary Sub-source provided during the interview and the OGC Attorney told us that he did not believe the OI Attorney was "looking to provide that level of detail in the application."

2. Review and Approval Process

As described below, FISA Renewal Application No. 2 received supervisory review similar to Renewal Application No. 1, including review by NSD supervisors and ODAG.

a. Supervisory Review and Finalization of Read Copy

As with Renewal Application No. 1, Baker told us that he did not review Renewal Application No. 2. Anderson was on leave during this time, and we found no evidence that anyone in OGC above the OGC Unit Chief level reviewed Renewal Application No. 2.

On March 30, the OI Attorney emailed a draft of Renewal Application No. 2 to Evans, Sanz-Rexach, OI's Deputy Operations Section Chief, and the OI Unit Chief for their review. Sanz-Rexach told us that he read Renewal Application No. 2 and did not have any concerns with the probable cause stated in the application. He said that with each renewal application, the FBI was obtaining "nuggets" of additional information that furthered the probable cause. The Deputy Operations Section Chief told us that she reviewed this renewal application and may have provided comments, but she did not recall any specific discussions about Renewal Application No. 2.

On April 3, Evans emailed McCord the draft application for her review and advised her that the read copy would be filed with the FISC later that day. McCord told us that while she did not have a specific recollection of Renewal Application No. 2, she did recall that after the first FISA renewal, there were [REDACTED]

██████████ and more information developed in the investigation. Specifically, she recalled that the team had developed information confirming Carter Page's July trip behavior by Page that was "at least suspicious," and that he made self-serving statements.

b. ODAG Review and Approval of Read Copy

On January 30, 2017, Dana Boente became the Acting Attorney General. On February 9, 2017, following the confirmation of Jefferson Sessions to be the Attorney General, Boente became the Acting DAG, a position in which he served until April 25, 2017. On March 31, 2017, Boente became the Acting Attorney General with respect to the Crossfire Hurricane investigation by virtue of then Attorney General Sessions's recusal. Some of the personnel in ODAG also changed after January 30, and James Crowell became Acting PADAG. Gauhar remained in ODAG and continued in her position as the Associate Deputy Attorney General responsible for ODAG's national security portfolio.

On April 2, Gauhar gave the draft application to Boente and Crowell, along with a memorandum containing questions and notations to assist in their review of the renewal application. Gauhar said that because this was Boente's first review of a FISA application targeting Carter Page, Boente wanted to ensure he had "good visibility" into the application. Boente told us that he did not specifically recall reading the Gauhar memorandum or reviewing the read copy, although contemporaneous documents and emails reflect that Boente did, in fact, review the read copy prior to it being filed with the court.

Gauhar told us, and notes reflect, that after Boente reviewed the footnote in the renewal application concerning the closure of Steele as an FBI CHS, Boente asked whether there was concern about the potential bias of Steele. Gauhar told us that she did not recall the specific discussions they may have had on this issue, but she recalled that Boente was very engaged on the issue of Steele's potential bias, and said they had multiple discussions on that specific issue. Boente told us that he did not recall what information he was provided about Steele or what Boente knew about Steele or his reporting when Boente considered the second renewal application.

As with the previous two Carter Page FISA applications, OI waited for approval from ODAG before submitting the read copy to the FISC. On April 3, Gauhar notified Evans that Boente approved sending the read copy to the FISC.

3. Feedback from the FISC, Completion of the Final Renewal Application and Woods Procedures, and Final Legal Review

On April 3, the read copy was filed with the FISC. On April 6, the OI Attorney advised Evans and the OI supervisors that the FISC judge reviewed the renewal application, had one non-substantive edit to a signature page, and would sign the application without an appearance.

On April 3, the OI Unit Chief "signed out" the cert copy of the application and cert memo to the FBI, so that the FBI could complete the Woods Procedures. Case Agent 6 asked Case Agent 1 to assist with the Woods Procedures because Case Agent 6 recently joined the investigation and was not familiar with all of the historical facts related to Carter Page. Case Agent 6 provided documents to Case Agent 1, who was the agent responsible for compiling the supporting documentation into the Woods File and performing the field office database checks on Carter Page and the accuracy review of each fact asserted in the FISA application. SSA 5 was responsible for confirming that the Woods File contained appropriate documentation for the factual assertions in the FISA application.

As noted previously, Case Agent 1 told us that his general practice on a renewal application is not to necessarily review the factual assertions carried over from the prior application. He said that if the factual information does not materially change from the prior FISA application, he will just review the newly added information. However, in this case, Case Agent 1 told us that he was "pretty sure" he reviewed the factual assertions from the prior renewal application in addition to the new factual assertions to confirm the Woods File contained the appropriate documentation for Renewal Application No. 2.³⁶⁶ After Case Agent 1 completed the Woods process, he signed the Woods Form and gave the Woods Form and Woods File to SSA 5 who was his supervisor in NYFO. SSA 5 told us he made sure every fact in the application had a supporting document in the Woods File. SSA 5 then signed the Woods Form on April 4, affirming the verification and documentation of each factual assertion in the application, and sent the FISA application package containing the Woods Form, cert copy, and cert memo to the Headquarters Program Manager assigned the responsibility of signing the final application as the affiant under oath that the factual information was true and correct.³⁶⁷

As in the case of Renewal Application No. 1, SSA 2 served as the affiant for Renewal Application No. 2. SSA 2 told us that he reviewed the newly added information in Renewal Application No. 2 and identified no issues with any of the information in the application. SSA 2 told us that he believed everything in the application was true and correct. SSA 2 told us that he did not recall reviewing the Woods Form, but that it was his practice at the time to do so before signing a FISA application (as described in Chapter Two, the Woods Procedures do not require the

³⁶⁶ As we noted previously, according to Case Agent 6, Case Agent 1 told him that when he (Case Agent 1) performed the factual accuracy review on Renewal Application No. 1, he only reviewed the new factual assertions in the application, not the factual assertions that carried over from the prior application. Case Agent 6 told us that they did not discuss how Case Agent 1 performed the factual accuracy review on Renewal Application No. 2.

³⁶⁷ The OIG examined the completeness of the Woods File by comparing the facts asserted in Renewal Application No. 2 to the documents maintained in the Woods File. Our comparison identified instances in which facts asserted in the application were not supported by documentation in the Woods File. Specifically, we found facts asserted in the FISA application that have no supporting documentation in the Woods File, facts that have purported supporting documentation in the Woods File but the documentation does not state the fact asserted in the FISA application, or facts that have purported supporting documentation in the Woods File but the document shows the fact asserted is inaccurate. We provide examples of specific errors in Appendix One.

affiant to review the Woods File, only the case agent and his or her supervisor). After doing so, SSA 2 signed the affidavit affirming under penalty of perjury that the information in the package was true and correct before he submitted it to an OGC Attorney.

The OGC Attorney said that while he was aware of the FBI seeking renewal authority for the Carter Page FISA, he had less awareness of the specific issues in Renewal Application No. 2 and did not recall reviewing any drafts other than the cert copy. We were advised that the FBI and NSD were unable to locate a fully signed copy of the cert memo that accompanied Renewal Application No. 2, and we were therefore unable to independently determine who reviewed the FISA application package on behalf of OGC's NSCLB.

4. FBI Director's Certification

Comey signed FISA Renewal Application No. 2 on behalf of the FBI on April 5, 2017, certifying that the information sought was foreign intelligence information that could not reasonably be obtained by normal investigative techniques and was necessary to protect the United States against clandestine intelligence activities. Although Comey did not specifically recall reviewing FISA Renewal Application No. 2, for the reasons described in Chapter Five, Comey told us that he reviewed the first Carter Page application and was satisfied that the requested FISA authority had a sufficient foreign intelligence purpose.

5. Oral Briefing and Approval

Sanz-Rexach briefed Boente on Renewal Application No. 2 and told us that it was a short briefing, and Boente did not raise any questions before he signed the application. Boente had requested regular briefings on the investigation after he became the Acting Attorney General and was familiar with the case at the time he reviewed and approved Renewal Application No. 2.

Although, as noted above, contemporaneous documents and emails reflect that Boente read the application prior to it being filed with the court, Boente told us that he did not have an independent recollection of having read the application. After showing him the documentation indicating that he had read it, Boente said that he was sure he would have read the application provided to him. Boente told us that although he did not recall specific discussions about Steele in connection with this application, he remembered being aware that the origin of Steele's reports was opposition research, and he thought the footnote identifying Steele's reporting as political opposition research was "very clear." Boente told us when he signed the application following NSD's short oral briefing, he was satisfied that there was sufficient probable cause to believe Page was an agent of a foreign power. He also told us that he knew at the time that two different judges had previously found probable cause, and that it was important to acquire whatever evidence the Department could regarding Russia's interference with the 2016 U.S. elections.

On April 7, Boente signed the application as Acting Attorney General, and the application was submitted to the FISC the same day. By his signature, and as

stated in the application, Boente found that the application satisfied the criteria and requirements of the FISA statute and approved its filing with the court.³⁶⁸

6. Final Orders

The final FISA application included proposed orders, which were signed by FISC Judge Anne C. Conway on April 7, 2017. According to NSD, the judge signed the final orders, as proposed by the government in their entirety, without holding a hearing.

The primary order and warrant stated that the court found, based upon the facts submitted in the verified application, that there was probable cause to believe that Russia is a foreign power and that Carter Page was an agent of Russia under 50 U.S.C. § 1801(b)(2)(E). The court also found that [REDACTED]

[REDACTED] The court authorized the requested electronic surveillance [REDACTED] for 90 days and [REDACTED] necessary to effectuate the electronic surveillance [REDACTED] authorized by the court.

III. FISA Renewal Application No. 3 (June 29, 2017)

On June 29, 2017, a day before FISA coverage on Carter Page was going to expire, and at the request of the FBI, the Department filed an application with the FISC requesting an additional 90 days of FISA coverage targeting Carter Page.³⁶⁹ A FISC judge reviewed and issued the requested orders resulting in an additional 90 days of electronic surveillance [REDACTED] targeting Carter Page from June 29, 2017 to September 22, 2017.

A. Investigative Developments and Decision to Seek FISA Renewal

After the second renewal of FISA authority, the FBI continued its FISA collection of communications and other evidence pertaining to Carter Page. In addition, available documents indicate that one of the focuses of the Carter Page investigation at this time was obtaining his financial records. NYFO sought compulsory legal process in April 2017 for banking and financial records for Carter Page and his company, Global Energy Capital, as well as information relating to two encrypted online applications, one of which Page utilized on his cell phone.

³⁶⁸ Boente's signature also specifically authorized [REDACTED]

³⁶⁹ On May 17, 2017, the Crossfire Hurricane cases were transferred to the Office of the Special Counsel. Although agents and analysts were working with the Special Counsel, the FISA application was still subject to Department approval and notification requirements.

Documents reflect that agents also conducted multiple interviews of individuals associated with Carter Page.

Case Agent 6 told us, and documents reflect, that despite the ongoing investigation, the team did not expect to renew the Carter Page FISA before Renewal Application No. 2's authority expired on June 30. Case Agent 6 said that the FISA collection the FBI had received during the second renewal period was not yielding any new information. The OGC Attorney told us that when the FBI was considering whether to seek further FISA authority following Renewal Application No. 2, the FISA was "starting to go dark." During one of the March 2017 interviews, Page told Case Agent 1 and Case Agent 6 that he believed he was under surveillance and the agents did not believe continued surveillance would provide any relevant information. Case Agent 6 said [REDACTED]

SSA 5 and SSA 2 said that further investigation yielded previously unknown locations that they believed could provide information of investigative value, and they decided to seek another renewal. Specifically, SSA 5 and Case Agent 6 told us, and documents reflect, that [REDACTED]

[REDACTED] they decided to seek a third renewal. [REDACTED]

B. Preparation and Approval of Renewal Application No. 3

1. Draft Renewal Application

Case Agent 6 assisted the OI Attorney in the preparation of Renewal Application No. 3. Emails reflect that Case Agent 6 and the OI Attorney exchanged information on recent investigative findings and relevant FISA collections for the draft of Renewal Application No. 3.³⁷⁰ On June 16, the OI Attorney emailed the OGC Attorney and Case Agent 6 the first draft of Renewal Application No. 3 for their review. On June 18, Case Agent 6 responded to the email by providing answers to the remaining questions in the draft application. Emails reflect that on June 19, the Supervisory Intel Analyst and SSA 2 received a copy of the renewal draft from Case Agent 6 for review; however, the Supervisory Intel Analyst did not recall reviewing the renewal application. SSA 2 said he had no comments, and we found no documentation indicating one way or the other.

The statement of facts in the third renewal application contained the same information used to support probable cause as in Renewal Application No. 2. This

³⁷⁰ Although there were no recent relevant FISA collections the team found useful, we were told that the FBI was still reviewing FISA collections identified prior to Renewal Application No. 2.

included the assessment that post-election, the FBI believed that the Russian government would continue efforts to use U.S. persons, such as Carter Page, to covertly influence U.S. foreign policy and support Russia's perception management efforts. In addition, Renewal Application No. 3 advised the court of recent investigative results, including:

- A June 2017 interview by the FBI of an individual closely tied to the President of the New Economic School in Moscow who stated that Carter Page was selected to give a commencement speech in July 2016 because he was candidate Trump's "Russia-guy." This individual also told the FBI that while in Russia in July 2016, Carter Page was picked up in a chauffeured car and it was rumored he met with Igor Sechin. However, the FD-302 documenting this interview, which was included in the Woods File for Renewal Application No. 3, does not contain any reference to a chauffeured car picking up Carter Page. We were unable to locate any document or information in the Woods File that supported this assertion.³⁷¹
- A June 2017 interview by the FBI of a different individual closely tied to the New Economic School in Moscow who told investigators that he did not think it likely that Carter Page and Sechin met during Page's visit to Moscow in July 2016. The FBI assessed that, because this individual was unaware of a meeting that Carter Page had with a different Russian official while in Moscow in July 2016, the individual did not know about all the meetings that Page had while in Moscow in July 2016, and the FBI assessed that, based on the rumored meeting between Page and Sechin described in the prior bullet point, Page likely met with Sechin prior to the time that Page joined this individual at the New Economic School;

- [REDACTED] ,³⁷²
- [REDACTED];

³⁷¹ We asked both agents that interviewed this individual, Case Agent 6 and Case Agent 7, if this individual stated during the interview that Page was picked up in a chauffeured car. Case Agent 6 told us he did recall the individual making this statement; Case Agent 7 did not recall and stated he may have made the statement during a telephone interview that occurred later.

³⁷² The third renewal application stated that [REDACTED]

- [REDACTED];
- A statement by Carter Page during a March 30 interview with the FBI about the loss and destruction of his cell phone at the same time media reports were discussing the FBI's possible investigation of Page; and
- Carter Page's meetings with media outlets, which the FBI assessed may have been undertaken to promote his theories on U.S. foreign policy and refute claims of involvement with the Russian government's efforts to influence the 2016 U.S. election. The FBI believed Page was instructed by Russian officials to deny in the media Russian involvement with the election.

The application also stated the following:

[REDACTED]

Additionally, based on Page's history of willingness to assist Russian IOs, which as discussed above the FBI believes began as early as 2007..., and his comment to the FBI that he believes he is "on the [SVR] books," the FBI believes that Page remains favorable to future RIS taskings.

Steele's source characterization statement, reliance on Steele's reporting, and the information concerning the positions and access of Steele's sub-sources remained the same as in Renewal Application No. 2. The short description of the FBI's January 2017 interview with Steele's Primary Sub-source also remained the same. Renewal Application No. 3 also added [REDACTED]

In support of probable cause, the FBI added statements Carter Page made during his first consensually monitored meeting with an FBI CHS in August 2016 (summarized in Chapter Ten). These statements included Page's response to a reference to "the 1980 October Surprise," where Page stated that there would be a "different October Surprise" this year and later stated that "well I want to have the conspiracy theory about the, uh, the Ru- the next email dump with these, uh, 33 thousand, you know." In the application, the FBI assessed that these statements, along with other evidence, indicated that Page was aware of the pending leak of DNC emails.³⁷³ As previously described in Chapter Five, none of the applications advised the court of other statements Page made during this meeting, including

³⁷³ On or about November 6, 2016, WikiLeaks released a second set of DNC emails.

that he had “literally never met” Manafort, had “never said one word to him,” and that Manafort had not responded to any of Carter Page’s emails.

As described in Chapter Five, we found that information about the August 2016 meeting was not included in any of the three prior FISA applications because it was not shared with the OI Attorney until on or about June 20, 2017, when Case Agent 6 sent the OI Attorney a 163-page document containing the statements made by Carter Page during the meeting. The OI Attorney told us that he used the 163-page document to accurately quote Page’s statements concerning the “October Surprise” in the final renewal application but that the OI Attorney did not read the other aspects of the document and that the case agent did not flag for him the statements Page made about Manafort. The OI Attorney told us that these statements, which were available to the FBI before the first application, should have been flagged by the FBI for inclusion in the FISA applications at that time because the statements were relevant to the court’s assessment of the allegations concerning Manafort using Page as an intermediary with Russia. Case Agent 6 told us that he did not know that Page made the statement about Manafort because the August 2016 meeting took place before he was assigned to the investigation. He said that the reason he knew about the “October Surprise” statements in the document was that he had heard about them from Case Agent 1 and did a word search to find the specific discussion on that topic. Case Agent 6 further told us that he added the “October Surprise” statements in consultation with the OI Attorney after the OI Attorney asked him if there was other information in the case file that would help support probable cause.

Case Agent 1 assisted in the preparation of the first application and told us that he did not recall why he did not include the “October Surprise” statements in the first application. He told us that he remembered that he thought it was an “odd exchange” between Page and the CHS at the time, and he said may have thought that it would have been difficult to convey to the court what Page’s words meant.

Similar to the previous applications, Renewal Application No. 3 did not advise the court of information provided to the FBI in August 2016 regarding Carter Page’s relationship with another U.S. government agency and information Page had shared with the other agency about his contacts with Russian intelligence officers, contacts that overlapped with facts asserted in the FISA application. This was so even though the FBI re-engaged with the other U.S. government agency in June 2017, following interviews that Page gave to news outlets in April and May 2017 during which Page stated that he had assisted the USIC in the past. SSA 2, who was to be the affiant for the third renewal and had been the affiant for the first two renewals, told us that he wanted a definitive answer as to whether Page had ever been a source for the other U.S. government agency before the final renewal application because he was concerned that Page could claim that he had been acting on behalf of the U.S. government in engaging with certain Russians. As we describe in Chapter Eight, this led to interactions between the FBI OGC Attorney and a liaison from the other U.S. government agency, who reconfirmed the information that the other agency had provided to the FBI in August 2016 that Page did have a prior relationship with that other agency. However, for reasons we detail in Chapter

Eight, that information was not accurately provided to either SSA 2 or OI by the OGC Attorney and was therefore not included in the third renewal application.

2. Review and Approval Process

As with Renewal Application Nos. 1 and 2, Baker told us he did not review Renewal Application No. 3. Baker told us that he questioned whether it was worthwhile to seek another renewal because Carter Page was no longer using the facilities the FBI was monitoring, and that from a management perspective, an additional renewal was not worth the expenditure of resources. Baker recalled discussions about whether the FISA was still productive and providing any foreign intelligence, but the decision was made to continue with the renewal because there was still an opportunity to obtain foreign intelligence information. Anderson did not recall whether she reviewed the third renewal application, and we found no evidence that anyone else in OGC above the OGC Unit Chief level did so.

On June 21, the OI Unit Chief sent the OI Attorney, Case Agent 6, and the OGC Attorney questions after reviewing the draft application. The OI Unit Chief's questions focused on whether there were updates to assessments from the prior renewals. On June 22, following email communications with Case Agent 6 to finalize the edits and questions from the OI Unit Chief, the OI Attorney emailed the read copy to Evans, Sanz-Rexach, the Deputy Operations Section Chief, and Case Agent 6. The OI managers and Evans told us that they did not recall their feedback, and Evans said he was not sure whether he reviewed this final application before it was filed.

On June 23, the same day the read copy was submitted to the court, Evans emailed Gauhar the application for ODAG's review. Unlike the read copy for the three prior Carter Page FISA applications, we found no information indicating that ODAG received and approved the read copy in advance of OI filing it with the court. With Renewal Application No. 3, it appears NSD followed the more typical practice of submitting the application to ODAG shortly before the DAG approved and signed the final application.

3. Feedback from the FISC, Completion of the Final Renewal Application and Woods Procedures, and FBI Director Certification

On June 28, the OI Attorney advised Evans, Sanz-Rexach, and OI's Deputy Operations Section Chief that, based on the read copy, the judge would approve Renewal Application No. 3. According to the OI Attorney's email to his supervisors, the judge "believed there was enough to let us go one more time and he will approve without a hearing." The OI Attorney told the OIG that the words, "let us go one more time" were his words and not the words of the judge. He said that he was not trying to imply that the judge said that the court would not approve another renewal.

Before the court's feedback, the OI Unit Chief "signed out" the cert copy of the application and cert memo to the FBI, so that the FBI could complete the

Woods Procedures. Emails reflect that a few additional minor edits were made to the cert copy after the read copy was filed and prior to the completion of the Woods Procedures.

Case Agent 7 was a relatively new FBI special agent who was responsible for compiling the supporting documentation into a Woods File and performing the field office database checks on Carter Page and the accuracy review of each fact asserted in the FISA application. Case Agent 7 told us that he had been assigned to assist in the Carter Page investigation sometime in spring 2017. Case Agent 7 was responsible for confirming that the file contained appropriate documentation for the factual assertions in the FISA application. Case Agent 7 told us that when he conducted the factual accuracy review on Renewal Application No. 3, he reviewed every fact to re-verify the accuracy of factual assertions carried over from prior applications and made sure every factual assertion had appropriate documentation in the Woods File. During the Woods process, Case Agent 6 and Case Agent 7, identified some documents that were missing from the Woods File, and added them in order to provide support for the pertinent factual assertions in Renewal Application No. 3. After Case Agent 7 completed the Woods process, he signed the Woods Form and gave the Woods Form and Woods File to SSA 5, who was Case Agent 7's supervisor in NYFO. SSA 5 told us he made sure every factual assertion in the application had a supporting document in the Woods File. SSA 5 signed the Woods Form on June 27, affirming the verification and documentation of each factual assertion in the application, and then sent the FISA application package containing the Woods Form, cert copy, and cert memo to the Headquarters Program Manager assigned the responsibility of signing the final application, as the affiant, under oath that the factual information was true and correct.³⁷⁴

As with the prior renewal applications, the Headquarters Program Manager assigned as the affiant for the final renewal application was SSA 2. SSA 2 told us that he believed he reviewed the newly added information in the renewal. In addition, SSA 2 said that as the affiant, it was his practice to review the Woods Form to make sure it was completed by the case agent and an SSA before signing off on the application and submitting it to an OGC attorney (as described in Chapter Two, the Woods Procedures did not require the affiant to review the Woods File, only the case agent and his or her supervisor). SSA 2 told us that he believed everything in the application was true and correct. SSA 2 signed the affidavit affirming under penalty of perjury that the information in the package was true and correct. He then submitted the FISA application package to the OGC Attorney for legal review.

³⁷⁴ The OIG examined the completeness of the Woods File by comparing the facts asserted in Renewal Application No. 3 to the documents maintained in the Woods File. Our comparison identified instances in which facts asserted in the application were not supported by documentation in the Woods File. Specifically, we found facts that are asserted in the FISA application that have no supporting documentation in the Woods File, facts that have purported supporting documentation in the Woods File but the documentation does not state the fact asserted in the FISA application, or facts that have purported supporting documentation in the Woods File but the documentation shows the fact asserted is inaccurate. We provide examples of specific errors in Appendix One.

The OGC Attorney, who had participated in the drafting process and was familiar with the content of the application, told us that he reviewed the Woods Form with the Headquarters Program Manager. After the OGC Attorney confirmed that all of the Woods Procedures had been completed, he signed the cert memo below the OI Unit Chief's signature and submitted the package to OGC Unit Chief 2 who was assigned to perform the supervisory legal review.³⁷⁵

OGC Unit Chief 2 told us that he could not recall whether he read Renewal Application No. 3 in its entirety or just the probable cause portion. He said that his general practice is to rely upon the cert memo's description, and if something "triggers" his inclination to go further, he will read some or all of the application. OGC Unit Chief 2 told us that he was sure he reviewed the cert memo and Woods Form and, based on those documents, determined that the application package was complete, all the steps of the Woods Procedures were represented to have been taken, the probable cause standard was met, and there were no outstanding issues. He then signed the cert memo, signifying that the application was ready for certification and for submission to the FBI Director.

Then Acting Director McCabe signed Renewal Application No. 3 on June 28, certifying that the information sought was foreign intelligence information that could not reasonably be obtained by normal investigative techniques and was necessary to protect the United States against clandestine intelligence activities. McCabe told us that he did not recall whether he reviewed the entire FISA application package or whether he relied primarily upon the cert memo and his familiarity with the Carter Page investigation before he made the required certification. He told us that he understood at the time he signed the application that the FBI, Department, and FISC were comfortable with the application such that it was not "a great stretch" for him to sign the certification.

4. DAG Oral Briefing and Approval

On April 26, 2017, Rod Rosenstein was confirmed as the Deputy Attorney General. Gauhar remained the Associate Deputy Attorney General (ADAG) responsible for ODAG's national security portfolio and told us that she worked primarily with Crowell to complete the ODAG review of Renewal Application No. 3. Crowell told us he read the application but relied on Gauhar and NSD to advise Rosenstein on this application.

Shortly after he was sworn in as DAG, Rosenstein received briefings about the Crossfire Hurricane investigation. Rosenstein told us that, as a result, he was more familiar with the facts of the case than is typical for FISA applications. Rosenstein received a copy of the application in advance of NSD's oral briefing, and told us he "would have looked through it." Although he could not recall whether he

³⁷⁵ Chapter Two describes the signature from NSCLB necessary for approval on the cert memo as Senior Executive Service (SES) level. Witnesses told us that usually the SES-level supervisor is an NSCLB section chief or a Deputy General Counsel, but that, on occasions, the role is delegated to a GS-15 Unit Chief.

reviewed the application in its entirety, he recalled reading enough to understand the substance of the allegations involved.

Rosenstein told us that he had reviewed FISA applications almost every day after his confirmation, and he believed Renewal Application No. 3 was “above average” in terms of the justification for the continued coverage in the renewal. He said that he was in a different position than those who considered the previous applications because by the time he received the application, many different Department officials had approved the prior ones and three different federal judges had found probable cause. He also said he had a conversation with Boente about the application in which Boente expressed the view that a DAG should not refuse to sign a FISA application that establishes probable cause, and when there is a legitimate basis for conducting the investigation, just because it could end up becoming “politically embarrassing” at some later point.³⁷⁶ Further, Rosenstein told us that he did not view the application as being “particularly sensitive” when he received it in June 2017 because at that time the campaign was over, and Carter Page did not have any connection to the Trump Administration.

On June 29, OI’s Deputy Operations Section Chief provided a briefing on the June renewal application to Rosenstein, and, according to Gauhar, Rosenstein brought his copy of Renewal Application No. 3 to the briefing. Gauhar and the Deputy Operations Section Chief did not recall any significant questions during the briefing about the renewal. However, Rosenstein told us that he recalled raising a question (at this briefing or immediately before it) about whether continued FISA coverage was going to produce useful information given that the FISA coverage targeting Carter Page had been leaked to the media. He said that he remembered being told that this renewal would likely be the last one unless new evidence was uncovered.

On June 29, Rosenstein signed the application, and the application was submitted to the FISC the same day. By his signature, and as stated in the application, Rosenstein found that the application satisfied the criteria and requirements of the FISA and approved its filing with the court.³⁷⁷

5. Final Orders

The final FISA application included proposed orders, which were signed by FISC Judge Raymond J. Dearie, on June 29, 2017. According to NSD, the judge signed the final orders, as proposed by the government in their entirety, without holding a hearing.

The primary order and warrant stated that the court found, based upon the facts submitted in the verified application, that there was probable cause to believe

³⁷⁶ On June 26, Boente, who at the time was serving as the Acting Assistant Attorney General for NSD, received the read copy of Renewal Application No. 3. Boente told us he had no recollection of reading the application.

³⁷⁷ Rosenstein’s signature also specifically authorized [REDACTED]

that Russia is a foreign power and that Carter Page was an agent of Russia under 50 U.S.C. § 1801(b)(2)(E). The court also found that [REDACTED]

[REDACTED] The court authorized the requested electronic surveillance [REDACTED] for 90 days and [REDACTED] necessary to effectuate the electronic surveillance [REDACTED] authorized by the court.

Approximately 1 year after this final FISA application, in July 2018, NSD submitted a letter to the FISC, advising the court of certain factual omissions in the Carter Page FISA applications that came to NSD's attention after the last renewal application was filed. In the next chapter we describe this compliance letter to the FISC and the omissions detailed in it, as well as other instances, not known to NSD at the time but identified by the OIG during this review, in which factual assertions relied upon in the three Carter Page renewal applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the applications were filed.

CHAPTER EIGHT

MISSTATEMENTS, OMISSIONS, AND ERRORS IN THE FISA RENEWAL APPLICATIONS

As we describe in this chapter, the three Carter Page renewal applications contained a number of factual representations that were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the applications were filed. On July 12, 2018, approximately one year after the final FISA renewal application, the National Security Division (NSD) sent a letter to the Foreign Intelligence Surveillance Court (FISC) advising the court of certain factual omissions in the Carter Page FISA applications that came to NSD's attention after the last renewal application was filed. The information, which had been in the FBI's possession, included certain statements made by George Papadopoulos to FBI confidential human sources (CHSs), information provided to the FBI by Department attorney Bruce Ohr as a result of Ohr's conversations with Christopher Steele, and admissions Steele made in court filings in foreign litigation regarding his interactions with the media. We found no evidence that officials in NSD had been told of this information or were aware of these omissions at the time the four FISA applications were filed with the court. Further, we found no evidence suggesting that the senior Department officials who approved the various FISA applications—Deputy Attorney General (DAG) Sally Yates (the first application and first renewal), Acting Attorney General Dana Boente (the second renewal), or DAG Rod Rosenstein (the third renewal)—were aware of these issues at the time they signed the FISA applications.

We also detail instances not described in the July 2018 letter to the FISC, but identified by the OIG during the course of this review, in which factual assertions made in the three renewal applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the applications were filed. These included inconsistencies between Steele's reporting and information provided by his Primary Sub-source to the FBI; information provided to the FBI by another U.S. government agency about Page's prior relationship with that agency; information concerning Steele's past work-related performance; information regarding the connection between Steele's reporting and the Democratic Party, the Democratic National Committee (DNC), and the Hillary Clinton campaign; information from the FBI's human source validation report concerning Steele; denials by Joseph Mifsud to the FBI; and information about Carter Page's lack of involvement in the change in the Republican Party platform concerning Russia and Ukraine. We found no evidence that Yates was aware of these issues at the time she approved the first FISA renewal application. We found that Boente was also unaware of these issues when he approved the second renewal application, with one exception concerning information regarding the ties between Steele's reporting and the Democratic Party. Boente recalled knowing the information at the time he approved the second renewal. We found that Rosenstein was unaware of the issues we identified at the time he approved the third renewal application. With respect to the ties between Steele's reporting and the Democratic Party, Rosenstein told us he believes he

learned that information from news media accounts, but did not recall whether he knew it at the time he approved the third renewal.

I. Omissions in the FISA Applications, as NSD Reported to the FISC in July 2018

Under Rule 13(a) of the FISC Rules of Procedure, the government has an obligation to correct any and all misstatements or omissions of material fact in its submissions to the court. Although the Rules do not define or otherwise explain what constitutes "material" facts or omissions, the FBI's Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA SMP PG) states that a fact or omission is "material" if it is relevant to the court's probable cause determination. According to NSD supervisors, NSD will consider a fact or omission material if the information is capable of influencing the court's probable cause determination, but NSD will err on the side of disclosure and advise the court of information that NSD believes the court would want to know.

On July 12, 2018, about 1 year after the last Carter Page FISA application was filed with the FISC, the NSD Assistant Attorney General submitted a letter to FISC Presiding Judge Rosemary Collyer under Rule 13(a), advising the court of certain factual omissions in the Carter Page FISA applications. These omissions included:

1. Statements made by George Papadopoulos to FBI CHSs in September and October 2016 denying that anyone involved in the Donald J. Trump for President Campaign was coordinating with Russia in the DNC hack or release of emails;
2. Information Department attorney Bruce Ohr provided to the FBI in November and December 2016 relevant to Steele's motivations and reliability; and
3. Admissions Steele made in April and May 2017 regarding his interactions with the news media in the summer and fall of 2016.

According to NSD supervisors, the Rule 13 Letter was initially prompted by NSD's receipt and review of the Ohr information in late January 2018. At about the same time, the FBI advised NSD and the Office of the Deputy Attorney General (ODAG) of admissions Steele made in court filings in foreign litigation in April and May 2017 concerning his media contacts. Later, in May 2018, while a draft of the letter was under review, NSD learned of Papadopoulos's September 2016 denial from ODAG, which ODAG had recently identified during a review of FBI documents. Then, in June 2018, NSD learned of Papadopoulos's October 2016 denial from the FBI, after asking the FBI to recheck its files for any other information that should be disclosed to the court.

In the Rule 13 Letter, NSD stated that, after the filing of the Carter Page FISA applications, NSD became aware of additional information relevant to the applications, and that some of this information was subject to Rule 13(a). The letter did not specify which information the government believed was material and

therefore subject to Rule 13(a), and which information it believed was not. However, the letter stated that some of the additional information had been discussed publicly and that the government was providing all of the information "out of an abundance of caution" to ensure that the court had a complete understanding of the additional information.³⁷⁸ The letter concluded by asserting that "even considering the additional information regarding Papadopoulos'[s] conversations with [an FBI CHS] and others, and regarding [Steele], the applications contained sufficient predication for the Court to have found probable cause that Page was acting as an agent of the Government of Russia."

According to NSD supervisors, as of October 2019, NSD had not received a formal response from the FISC to the Rule 13 Letter.³⁷⁹ According to then Deputy Assistant Attorney General Stuart Evans, in his experience, although not in every case, there have been occasions in which the FISC has responded to Rule 13 letters, either by issuing a supplemental order, asking the government for more information, or holding a hearing. On January 31, 2019, Evans told the OIG that NSD had advised FISC Presiding Judge Rosemary Collyer that, through participation in OIG interviews, NSD Office of Intelligence (OI) officials learned of additional information that was possibly material to the Carter Page FISA applications, and that NSD planned to wait until after the OIG completed its review and provided its findings to the Department before determining whether to submit another Rule 13 letter to the court.³⁸⁰ NSD supervisors told us that they believe the court may be waiting for the completion of the OIG's review, and the submission of any potential supplemental filings by NSD, before taking responsive steps, if any.

³⁷⁸ Regarding the public discussion referenced in the letter, NSD cited to the memoranda from the House Permanent Select Committee on Intelligence (HPSCI) majority and HPSCI minority regarding the Carter Page FISA applications, and a memorandum from Senators Charles Grassley and Lindsey Graham to DAG Rosenstein and FBI Director Christopher Wray concerning Steele and his reporting, which were all publicly released in February 2018.

³⁷⁹ On May 10, 2019, NSD sent a second letter to the FISC concerning the Carter Page FISA applications, advising the court of two incidents in which the FBI failed to comply with the Standard Minimization Procedures (SMPs) applicable [REDACTED] pursuant to the final FISA orders issued by the court on June 29, 2017. According to the letter, the FBI took and retained on an FBI-issued cell phone [REDACTED] which NSD assessed did not comport with the SMPs. In addition, in a separate incident [REDACTED] to an electronic folder on the FBI's classified secret network, which NSD assessed also did not comport with the SMPs. According to NSD, court staff contacted an NSD official in response to this letter and asked when the information at issue would be removed from non-compliant FBI systems, and asked about other cases that might be impacted by the same problem. On October 9, 2019, NSD sent another letter to the FISC advising the court that the FBI completed the remedial process for the information associated with the Page FISA applications and information from other cases impacted by the same problem.

³⁸⁰ Later in the chapter, we discuss other instances, not described in the July 2018 Rule 13 Letter, in which the three Carter Page renewal applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the applications were filed.

A. Papadopoulos's Denials to FBI Confidential Human Sources

In Chapter Five, we described how the first Carter Page FISA application did not include statements Papadopoulos made to an FBI CHS in September 2016 that were in tension with other information included in the application.³⁸¹ Specifically, in September 2016, Papadopoulos told the CHS that, to his knowledge, no one associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails. We were advised by NSD that it did not know about this denial by Papadopoulos until May 2018, after ODAG found the information while reviewing documents in response to Congressional information requests. Upon learning the information, NSD incorporated Papadopoulos's denial into the Rule 13 Letter.³⁸²

As described in Chapter Five, Case Agent 1 told us that he did not recall whether he advised the OI Attorney about Papadopoulos's denial in September 2016 but that, if he did not, it may have been an oversight. He also told us that the Crossfire Hurricane team's assessment was that Papadopoulos's denial to the CHS was a rehearsed response, and Case Agent 1 did not view the information as particularly germane to the investigation of Carter Page.³⁸³ However, Evans told us that because Papadopoulos's denial was inconsistent with the theory that Papadopoulos had received (or was aware of) an offer from the Russians involving the release of emails, there was no question in Evans's mind that the information was material and would have been disclosed to the court had NSD known about it at the time of the FISA applications.

After NSD incorporated Papadopoulos's statements into the Rule 13 Letter, and before the final letter was submitted to the court, the FBI advised NSD of similar, previously undisclosed statements made by Papadopoulos to a CHS after the first Carter Page FISA application was filed but before the renewal applications.³⁸⁴ Specifically, in October 2016, when asked if the Trump campaign was involved in the DNC email hack, Papadopoulos told the CHS that the campaign was not involved and that it would have been illegal to have done so. Papadopoulos also said that he did not think Russia was "playing" with the election

³⁸¹ We summarize the information this CHS obtained from Papadopoulos in Chapter Ten.

³⁸² In a footnote, NSD advised the court that Papadopoulos made similar statements directly to the FBI in a January 2017 interview. The renewal applications did not advise the court of these January 2017 statements, but did advise the court that Papadopoulos had been interviewed by the FBI and denied that he discussed anything related to the Russian government with FFG officials. As discussed in Chapter Seven, the renewal applications did not include that Papadopoulos made other statements during his interviews with the FBI, including statements that minimized Carter Page's role in the Trump campaign and statements that Person 1 (whom the FBI assessed was the likely source for some of the Steele reporting relied upon in the applications, including the allegations against Page) told Papadopoulos that he/she (Person 1) had no knowledge of the information reported in "the recent Trump Dossier."

³⁸³ As noted previously, after reviewing a draft of this report, Case Agent 1 told us that he and the team discounted Papadopoulos's denials for several reasons, but that, in hindsight, he now realizes that the denials, and the team's assessment of those denials, should have been shared with OI.

³⁸⁴ We summarize the information the CHS obtained from Papadopoulos in Chapter Ten.

or had any interest in it. Case Agent 1 received a document with these Papadopoulos statements included in it a few days after the October 2016 meeting (well before Renewal Application No. 1 was filed). Case Agent 1 told us that he was familiar with this CHS meeting at the time and probably reviewed the summary of the interview containing these statements, but Case Agent 1 said he did not recall why the statements were not shared with OI or included in the subsequent renewal applications. He said that the information would not have been purposely withheld from OI, but it may have been accidentally omitted from the information provided to OI for the renewal application.

In the Rule 13 Letter, NSD advised the court of these statements and added that Papadopoulos told the CHS in October 2016 that [REDACTED]

The letter further stated that by March 2017, Papadopoulos had denied any campaign involvement in the release of DNC emails on WikiLeaks during interviews conducted by the FBI and that those denials were included in Renewal Application Nos. 2 and 3.

The Rule 13 Letter stated that NSD would have included Papadopoulos' denials to the FBI CHSs in the Carter Page FISA applications had NSD known about them at the time. The letter further stated that, even if the information had been included in the FISA applications, it was the government's position that the "totality of information submitted in these applications concerning Page's activities was sufficient to support the Court's finding of probable cause that Page was acting as an agent of a foreign power." The letter included a footnote advising the court that Papadopoulos had been charged and pled guilty to making false statements and omissions that impeded the FBI's investigation. Evans told the OIG that the government's position was based in part on the fact that the FFG information concerning Papadopoulos was only one of many different pieces of information that supported the court's probable cause determination as to Carter Page. Further, according to Evans, this new information concerning Papadopoulos's denials was "cumulative" in that Renewal Application Nos. 2 and 3 had already advised the court that Papadopoulos had denied informing the FFG of any campaign involvement in the release of DNC emails on WikiLeaks during interviews with the FBI.

B. Information the FBI Received From Bruce Ohr Concerning Steele and His Reporting

In Chapter Nine, we describe the relationships and communications Ohr had with Steele and Glenn Simpson whose company, Fusion GPS, hired Steele to conduct the research on Trump's ties to Russia. We also describe the information Ohr passed to then Deputy Director Andrew McCabe in mid-October 2016 about Steele and his reporting, as well as the information Ohr passed to the Crossfire Hurricane investigative team beginning in November 2016 and continuing until the Special Counsel's appointment in mid-May 2017. At the time of these

communications, Ohr was an Associate Deputy Attorney General (ADAG) and Director of the Organized Crime and Drug Enforcement Task Force (OCDETF) within ODAG. However, as we describe in the next chapter, Ohr's interactions with Steele and Simpson were outside Ohr's areas of responsibility, and he did not advise anyone in ODAG that he was meeting with Steele, Simpson, or the FBI about Steele's election reporting.

As described in Chapter Nine, the FBI interviewed Ohr on multiple occasions in 2016 and 2017 and those interviews were memorialized in FD-302s. Of particular relevance to the Carter Page FISA renewal applications, during the first interview of Ohr on November 21, 2016, which was attended by FBI officials overseeing the Crossfire Hurricane investigation—including Deputy Assistant Director (DAD) Peter Strzok, the Chief of the Counterintelligence Division's (CD) Analysis Section 1 (Intel Section Chief), and SSA 1—and by the FBI's Office of the General Counsel (OGC) Unit Chief, Ohr advised the FBI of the following:³⁸⁵

- Ohr met with Steele in July and September 2016 during which Steele advised Ohr of Steele's election reporting and who had hired him;
- Simpson, who hired Steele, was himself hired by a lawyer "who does opposition research," and Steele's reporting was going to Hillary Clinton's presidential campaign, an identified State Department official, and the FBI;
- Simpson was passing Steele's reporting to "many individuals or entities," and at times Steele would attend meetings with Simpson;
- Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President;"
- Steele and Simpson could have met with *Yahoo News* or the author of the September 23 news article jointly, but Ohr did not know if they met jointly; and
- Ohr never believed Steele was "making up information or shading it."

Further, during subsequent interviews on December 5 and 12, 2016, Ohr advised members of the Crossfire Hurricane team that:

- Simpson directed Steele to speak to the press, which was part of what Simpson was paying Steele to do. Ohr did not know whether speaking with *Mother Jones* was Simpson's idea or not; and
- Simpson asked Steele to speak to *Mother Jones* as it was Simpson's "Hail Mary attempt."

³⁸⁵ The FD-302 documenting this November 2016 interview stated that the interview took place on November 22, 2016, which SSA 1 told us was incorrect. Because the date noted on the FD-302 incorrectly stated that the interview took place on November 22, the Rule 13 Letter also incorrectly stated that the interview took place on November 22.

None of the Carter Page FISA renewal applications included any information obtained from Ohr during the course of the Crossfire Hurricane investigation, even though the interviews described above took place before Renewal Application No. 1 was filed in January 2017. In the Rule 13 Letter, NSD advised the court that NSD officials were not aware of the FBI's interviews of Ohr at the time of the renewal applications, and we found no documentation indicating otherwise. Further, Evans, the OI supervisors, and the OI Attorney who drafted the applications told us that they were not aware at the time of the renewal applications that Ohr had provided information to the FBI related to the Crossfire Hurricane investigation. Similarly, Yates, Boente, Rosenstein, and the ODAG officials who reviewed the renewal applications told us that they were also not aware that Ohr had provided the FBI with information related to the Crossfire Hurricane investigation.

As described in Chapter Nine, handwritten notes of an FBI briefing Boente received in February 2017 indicate that the FBI advised Boente and others at that time—including Evans, then Acting Assistant Attorney General Mary McCord, then Deputy Assistant Attorney General George Toscas from NSD, ADAG Tashina Gauhar, ADAG Scott Schools, and Principal ADAG James Crowell—that Ohr knew Steele for several years and remained in contact with him, and that Ohr's wife worked for Simpson as a Russian linguist. However, none of these handwritten notes—which include separate notes taken by Boente, Schools, and Gauhar—stated that the FBI had interviewed Ohr or that Ohr had provided the FBI with information regarding Steele's election reporting or Steele's feelings toward candidate Trump. Schools told us that he recalled a meeting in which the OGC Unit Chief referenced Ohr having contact with Simpson, but Schools was not sure if it was during this February 2017 briefing or another briefing. Further, he said that it was a "passing reference," and he never would have imagined that Ohr was having regular contact with the Crossfire Hurricane team and providing the information that appeared in the FD-302s. Boente and the other attendees of the February 2017 briefing told the OIG that they did not recall the FBI mentioning Ohr at any time during the investigation, and that they did not know about the FBI's interviews with Ohr at the time of the FISA applications. According to Gauhar, she was surprised to find a reference to Ohr in her notes, and, regardless, she "would never have dreamt" back then what she knows now concerning the extent of Ohr's interactions with Steele, Simpson, and the FBI on Steele's election reporting.

According to Gauhar, she first learned of Ohr's connections to the Crossfire Hurricane investigation from media reports in early January 2018. She said that around this same time, Schools gave her a copy of a January 4, 2018 letter from Senators Grassley and Graham to the Department, which referenced the FBI's interviews of Ohr. Emails reflect that on January 8, Gauhar forwarded this letter to Evans, and 2 days later Evans forwarded the letter to OI. According to Evans, this was the first time he learned about Ohr's interactions with the FBI on the Crossfire Hurricane investigation. Evans also said that when he consulted with the OI supervisors and OI Attorney who had worked on the Carter Page FISA applications, he learned that Ohr's involvement was "a surprise to all of us." Shortly thereafter, Evans requested and obtained the FD-302s documenting the Ohr interviews, and days later OI completed a first draft of the Rule 13 Letter.

Handwritten notes taken during a meeting in late January 2018 indicate that OGC's Deputy General Counsel Trisha Anderson told Gauhar, Evans, and OI supervisors that it had been reported to her that the FBI's New York Field Office (NYFO), which at the time had responsibility for the Carter Page investigation, had reviewed the FD-302s contemporaneously with Renewal Application No. 1 and decided that the information from Ohr was not relevant to the Carter Page FISA request. The notes further stated that the case agent handling the FISA request had been focused at that time on information relating to Carter Page's own activities and the FBI's termination of its source relationship with Steele.

Case Agent 1, who, as described previously in Chapter Seven, worked with OI in preparing Renewal Application No. 1 and later assisted Case Agent 6 with Renewal Application No. 2, told the OIG that he did not attend any of the interviews with Ohr. He also said that the information coming from Ohr was not a main focus for him personally. He told us, and documents reflect, that he received information about the Ohr interviews during at least one team meeting in December 2016 and through instant messages with SSA 1 that same month. Case Agent 1 told us that he recalled hearing about Steele being "desperate" about Trump, possibly during the team meeting in December 2016, but Case Agent 1 said he was unable to explain why that information was not included in the renewal applications. He said that he could not recall why he did not share the FD-302s of the Ohr interviews with OI. He said that he did not recall the details very well about the "desperate" comment or the discussions the team had about it, but he remembered thinking that the comment reflected the same potential bias as political opposition research, which was already articulated to the court. He further stated that, with respect to Ohr, he was primarily concerned with whether Ohr had any additional reports from Steele that the FBI did not possess. Because Case Agent 1 understood that there were no differences in the reporting Ohr and the FBI possessed, he said his thought was "unless [Ohr] gets more information that's germane to the investigation," he was going to keep his attention focused on other aspects of the investigation.

Other FBI officials responsible for helping OI draft the renewal applications or performing the Woods Procedures were also unable to explain why the FBI did not include any information from Ohr about Steele. SSA 3, who, as described previously, performed the supervisory factual accuracy review for Renewal Application No. 1 after Case Agent 1 completed the initial review, told us that he had just joined the case at the time he performed the Woods Procedures. SSA 3 said he had not been part of any discussions about what information to include or not to include in the renewal application and did not know why information from the Ohr interviews was not included. Case Agent 6, who helped OI draft the final two renewal applications, told us that he could not explain why information from Ohr was not included in the applications. Case Agent 6 said that no one told him about the Ohr interviews when he joined the case after Renewal Application No. 1 was filed. He said that he saw the FD-302s in the case file and glanced at them, but he did not think he knew at the time about the "desperate" comment or the information from Ohr about Steele's media contacts. His supervisor, SSA 5, who also joined the case after Renewal Application No. 1, said that he did not recall being aware at the time he performed the supervisory factual accuracy review on

Renewal Application Nos. 2 and 3 that Ohr had been interviewed by the FBI and had provided information about Steele.

The OGC Attorney did not attend the Ohr interviews or read the FD-302s, but he told us, and documentation reflects, that he attended the team meeting in December 2016 during which the first two Ohr interviews were discussed. He told us that although he recalled learning about the “desperate” comment, he did not believe at the time that it needed to be included in the renewal applications because the comment was only Ohr’s opinion of Steele’s feelings toward Trump. In addition, he said he believed that the renewal applications already addressed Steele’s personal motivations through the new footnote advising the court of the circumstances that led to Steele’s disclosures to *Mother Jones* and his closure as a CHS.

The OGC Unit Chief attended the first interview of Ohr in November 2016 and heard the information Ohr provided first hand. She said that the information did not change her perspective on Steele or cause her to believe the renewal applications needed to be updated. In particular, she explained that she was given the impression during Ohr’s interview that Steele’s research led to his views about Trump being elected president, rather than the other way around. She said she was reassured by Ohr’s statements about Steele’s truthfulness. She told the OIG that she believed at the time that the FBI had provided the FISC with all necessary information concerning Steele’s potential bias and motivations through the footnotes describing the genesis of his research and the reasons the FBI eventually closed him as a CHS. For these reasons, she said it did not occur to her at the time to advise OI of the information Ohr provided, and that in any event, she would have deferred to the agents on the investigative team who were responsible for assisting OI with the application to advise OI. However, she said that given the “second-guessing” that occurred on that point after the Ohr interviews became more broadly known, she now believes that the investigative team should have provided the information to OI at the time of the renewal applications.

In the Rule 13 Letter, NSD advised the court that some of the information Ohr provided to the FBI during his November and December 2016 interviews

goes beyond what was included in the applications. In particular, the Ohr information states specifically that the source’s work was “going to” Candidate #2’s [Hillary Clinton’s] campaign. This information is consistent with, although goes somewhat further than the applications, which informed the Court, that “the FBI speculates that the identified U.S. person [who hired Source #1] was likely looking for information that could be used to discredit Candidate #1’s [Donald Trump’s] campaign.” With respect to Ohr’s statements concerning the strength of the Source’s desire to see Candidate #1 lose and the Source’s October 2016 media engagement, this information is additional to but consistent with the applications, already informing the Court that Source #1 spoke with the press in October 2016, in violation of the FBI’s admonishment, and was motivated to do so because he was “frustrated” that the FBI Director’s actions “would likely influence the

2016 U.S. Presidential election.” The applications further stated that the FBI had suspended, and then closed its relationship with Source #1, and then closed him as a source, due to these actions. Moreover, during the November 22nd interview Ohr also stated that in his dealings with Source #1 he “never believed [Source #1] was making up information or shading it.” Ultimately, none of the additional information altered the FBI’s assessment of Source #1’s reliability.

According to Evans, there was no question that OI would have included the Ohr information in the renewal applications had OI been made aware of it, because of its practice of erring on the side of disclosing information to the FISC. However, Evans told us that NSD ultimately did not believe that any of the information was material to the court’s probable cause determination because the information was “largely cumulative” of other information in the applications concerning Steele’s potential bias. He agreed, however, that the “desperate” comment provided “another strain of potential bias” because the “desperate” comment pertained specifically to Steele’s own potential bias and motivations, whereas the disclosures in the FISA applications concerning the origins of Steele’s research focused on the motivation of Simpson, who hired Steele, not Steele specifically.

C. Inaccuracies Regarding Steele’s Disclosures to Third Parties and Admissions Concerning Steele’s *Yahoo News* Contact

In Chapter Five, we described the footnote in the first Carter Page FISA application providing the FBI’s assessment that Steele was not the direct source of the disclosure to *Yahoo News* in September 2016 about the FBI’s investigation of Carter Page and Page’s alleged meetings with Igor Sechin and Igor Divyekin. The basis for this assessment—that Steele told the FBI that he “only provided his information to [Simpson] and the FBI”—was neither accurate at the time nor supported by appropriate documentation. Nevertheless, the FBI repeated this error in all three renewal applications. In the Rule 13 Letter, NSD advised the FISC of this error, noting that the FBI knew before the first application that Steele also provided his information to a State Department official and knew before the first renewal that Steele provided his information to Ohr and Senator John McCain’s office.

The Rule 13 Letter also advised the court of additional information the FBI obtained after the first FISA application—but that was not included in any of the renewal applications—that further undermined the FBI’s assessment that Steele was not a direct source of the *Yahoo News* disclosure. Specifically, the Rule 13 Letter advised the court that in November 2016, Ohr told the FBI that it was possible that Steele and Simpson, who hired Steele, met jointly with *Yahoo News*, based on information Ohr learned from Steele in late September 2016. In addition, the letter advised that in December 2016, Ohr told the FBI that part of the work Simpson was paying Steele to do included speaking with the media. We found no evidence that the Crossfire Hurricane team, or any FBI officials overseeing the investigation, considered advising the court or OI of this information at the time of the renewal applications. As referenced above, FBI personnel involved in the FISA

applications said they did not believe at the time that information from Ohr warranted any changes to the application.

However, by the time of Renewal Application No. 3, the FBI had learned information that more strongly indicated that Steele had directly provided information to *Yahoo News* around the time of the September 23 article. Yet, no revisions were made to the FBI's assessment, contained in Renewal Application No. 3, that Steele had not directly provided the information to the press. Media reporting in late April 2017 described statements Steele made in a court filing (pertinent to a lawsuit filed against him and others in a foreign court) concerning his interactions with the media. Specifically, one article excerpted a sworn statement dated April 3, 2017, in which Steele admitted that he gave "off-the-record briefings to a small number of journalists about the pre-election memoranda in late summer/autumn 2016." Emails reflect that on April 26, 2017, Strzok circulated this article to the Intel Section Chief and the Unit Chief assigned to take over the Crossfire Hurricane investigation in April 2017 (Unit Chief 1).

Other documentation indicates that the foreign lawsuit against Steele was discussed during a meeting with then Director James Comey on May 1, 2017.³⁸⁶ The OGC Unit Chief took handwritten notes during the meeting, which stated "did not change our assessment, no need to update FISA" below references to the lawsuit. The OGC Unit Chief told us that she did not recall this discussion or who concluded that the FISC did not need to be updated with information from the foreign litigation. She also said that she did not recall specifically discussing or knowing prior to January 2018 that Steele admitted to talking to the media in these court filings and therefore she did not believe that the FBI advised OI of this information at the time of the Carter Page FISA applications. Comey told the OIG that he did not recall being advised of the court filings.

Approximately two weeks after the May 1, 2017 meeting, in a separate court filing submitted on his behalf, Steele admitted that he and Fusion GPS briefed journalists from five media outlets, including *Yahoo News*, at the end of September 2016, and also admitted the briefings involved "the disclosure of limited intelligence regarding indications of Russian interference in the U.S. election process and the possible co-ordination of members of Trump's campaign team and Russian government officials."

According to the Rule 13 Letter and FBI officials, although there had been open source reporting in May 2017 about Steele's statements in the foreign litigation, the FBI did not obtain Steele's court filings until the receipt of Senators Grassley and Graham's January 2018 letter to DAG Rosenstein and FBI Director Christopher Wray with the filings enclosed. We found no evidence that the FBI made any attempts in May or June 2017 to obtain the filings to assist a determination of whether to change the FBI's assessment concerning the

³⁸⁶ The OGC Unit Chief's notes of the meeting do not reflect who else attended the meeting, but she told us that this meeting with the Director would have included a large group of FBI officials.

September 23 news article in the final renewal application.³⁸⁷ However, the OGC Unit Chief's notes suggest that on May 1, without consulting OI, and relying only upon open source reporting concerning the filings, the FBI decided that Steele's April 3, 2017 sworn statement in the foreign litigation did not warrant any changes to Renewal Application No. 3.

We were unable to determine whether FBI personnel responsible for assisting OI on Renewal Application No. 3 were told about Steele's admissions in the foreign litigation regarding his media contacts. Case Agent 6 and the OGC Attorney told us that they did not recall whether they were aware of Steele's admissions in the foreign litigation before the final renewal application was filed. We are not aware of any other evidence on this point. The Supervisory Intelligence Analyst (Supervisory Intel Analyst) told us that although he was aware at the time, he did not recall making a connection between the open source reporting about Steele's court filings and the information in the FISA application concerning Steele's media contacts. He told us that if he had made such a connection, he would have made sure Case Agent 6 and the OGC Attorney were advised.

According to Evans, the failure to include this information in the prior FISA renewals was not the most significant error identified in the Rule 13 Letter. Evans told us that he was not sure an updated assessment would have been particularly relevant to the court's probable cause determination because whether Steele or the people who hired him were the source of the disclosure, the applications made clear that Steele's research was relied upon in the article. In addition, Evans said that as a result of the disclosure in the renewal applications concerning the *Mother Jones* article in October 2016, the court was already on notice that Steele had talked to one media organization when it approved the renewal of FISA authority.

In the Rule 13 Letter, NSD advised the court that the FBI should have updated its assessment in Renewal Application No. 3 about the source of the *Yahoo News* disclosure. The letter further stated that "irrespective of whether Source #1 directly spoke with the press in connection with the September 23 News Article, or was forthright with the FBI regarding his contacts with the press in September 2016," for the reasons described in the letter and in the FISA applications, "the FBI continued to assess that [Steele's] prior reporting was reliable."

II. Other Inaccurate, Incomplete, or Undocumented Information in the Three FISA Renewal Applications

In addition to the issues raised in the July 2018 Rule 13 Letter to the FISC, our review revealed other instances in which the three Carter Page renewal applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information in the FBI's possession at the time the

³⁸⁷ The OGC Attorney told us that a later (unsuccessful) attempt to obtain the court filings may have been made in the summer of 2017, probably in August, as part of a continuing effort to validate Steele's reporting.

applications were filed. We describe the more significant instances below and identify other instances in Appendix One.

A. Inconsistencies between Steele's Reporting and Information His Primary Sub-source Provided to the FBI


As described previously, all four Carter Page FISA applications relied upon the following aspects of Steele's reporting to support the government's position that there was probable cause to believe that Carter Page was an agent of a foreign power:

- From Report 80: Derogatory information about Hillary Clinton had been compiled for many years, was controlled by the Kremlin, and the Kremlin had been feeding information to the Trump campaign for an extended period of time;
- From Report 94: During his July 2016 trip to Moscow, Carter Page attended a secret meeting with Igor Sechin, Chairman of Rosneft and a close associate of Putin, and discussed future cooperation and the lifting of Ukraine-related sanctions against Russia; and a separate meeting Page attended with Igor Divyekin, a highly-placed Russian government official, and discussed sharing derogatory information about Clinton with the Trump campaign;
- From Report 95: Carter Page was an intermediary between Russia and the Trump campaign in a "well-developed conspiracy of co-operation," managed by Trump's then campaign manager, Paul Manafort, using Page as an intermediary, which led to Russia's disclosure of hacked DNC emails to WikiLeaks in exchange for the Trump team's agreement, to include at least Page, to sideline Russian intervention in Ukraine as a campaign issue; and
- From Report 102: Russia released the DNC emails to WikiLeaks in an attempt to swing voters to Trump, an objective conceived of and promoted by Page and others.

All four FISA applications clearly stated that Steele did not obtain the information described above directly from his source network. Instead, as described in the FISA applications, Steele received the information from a Primary Sub-source who obtained the information from his/her own source network.

In Chapter Six, we described the FBI's interview of the Primary Sub-source in January 2017, after FISA Renewal Application No. 1 was filed but before the last two renewal applications were filed. After the interview, the Supervisory Intel Analyst and Case Agent 1 memorialized the information in a lengthy written summary. As described in Chapter Six, the Primary Sub-source confirmed for the FBI that he/she provided Steele with some of the information in Steele's reports. However, in some instances, the information the Primary Sub-source told the FBI about what his/her sources told him/her—and what he/she then provided to Steele—was inconsistent with information attributed to his/her sources in Steele's reporting. Of particular relevance to the FISA applications, we found that the

Primary Sub-source's account to the FBI (based on the written interview summary) differed from Steele's reporting on the following points:

- With respect to the information from Reports 95 and 102 that the FBI assessed had come from Person 1 (described in prior chapters) concerning the alleged "conspiracy" between Russia and individuals associated with the Trump campaign, and Russia's release of DNC emails to WikiLeaks in an attempt to swing voters to Trump: the Primary Sub-source said, among other things, that he/she did not recall any discussion with Person 1 concerning WikiLeaks and that there was "nothing bad" about the communications between the Kremlin and the Trump team;
 - With respect to the alleged secret meeting between Carter Page and Sechin in July 2016: the Primary Sub-source said he/she was not told by his/her sub-source that this meeting had taken place until October 2016, well after Steele prepared and circulated Report 94, and that he/she only told Steele in July 2016 that he/she had heard that the meeting would be taking place; and
 - With respect to the positions and access of the sub-sources: the Primary Sub-source's description of each of his/her sources indicated that their position and access to the information they were reporting was more attenuated than represented by Steele and described in the FISA applications.
- 

Regarding the information in the first bullet above, in early October 2016, the FBI learned the true name of Person 1 (described in Report 95 as "Source E"). As described in Chapter Six, the Primary Sub-source told the FBI that he/she had one 10- to 15-minute telephone call with someone he/she believed to be Person 1, but who did not identify him/herself on the call. We found that, during his/her interview with the FBI, the Primary Sub-source did not describe a "conspiracy" between Russia and individuals associated with the Trump campaign or state that Carter Page served as an "intermediary" between Manafort and the Russian government. In addition, the FBI's summary of the Primary Sub-source's interview did not describe any discussions between the parties concerning the disclosure of DNC emails to WikiLeaks in exchange for a campaign platform change on the Ukrainian issue. To the contrary, according to the interview summary, the Primary Sub-source told the FBI that Person 1 told him/her that there was "nothing bad" about the communications between the Kremlin and Trump, and that he/she did not recall any mention of WikiLeaks. Further, although Steele informed the FBI that he had received all of the information in Report 95 from the Primary Sub-source, and Steele told the OIG the same thing when we interviewed him, the Primary Sub-

source told the FBI that he/she did not know where some of the information attributed to Source E in Report 95 came from.³⁸⁸

Despite the inconsistencies between Steele's reporting and the information his Primary Sub-source provided to the FBI, the subsequent FISA renewal applications continued to rely on the Steele information, without any revisions or notice to the court that the Primary Sub-source had contradicted the Steele reporting on key issues described in the renewal applications. Instead, as described previously, FISA Renewal Application Nos. 2 and 3 advised the court:

In an effort to further corroborate [Steele's] reporting, the FBI has met with [Steele's] [REDACTED] sub-source [Primary Sub-source] described immediately above. During these interviews, the FBI found the [REDACTED] sub-source to be truthful and cooperative. [REDACTED]

[REDACTED] The FBI is undertaking additional investigative steps to further corroborate the information provide [sic] by [Steele] and [REDACTED]

NSD cited this language from the renewal applications in its July 2018 Rule 13 Letter as an example of information "corroborating" Steele's reporting, noting that "the FBI met with [Steele's] [Primary] sub-source, whom the FBI found to be truthful and cooperative." Evans and the OI officials who participated in the preparation of the renewal applications and Rule 13 Letter told us that they were not advised of the inconsistencies between Steele's reporting and the Primary Sub-source's interview, and that they did not believe that the FBI provided them with the lengthy written summary of the interview. We did not find any evidence indicating otherwise.

We found no evidence that the Crossfire Hurricane team ever considered whether any of the inconsistencies warranted reconsideration of the FBI's previous assessment of the reliability of the Steele reports or notice to OI or the court in the subsequent renewal applications. As described below, team members told us that they either were not aware of the inconsistencies or, if they were, did not make the connection that the inconsistencies affected aspects of the FISA applications.

Case Agent 1, who led the January 2017 interview of the Primary Sub-source, was closely familiar with the Carter Page FISA applications because, as described previously, he originally requested FISA authority targeting Carter Page and assisted OI with drafting the first two FISA applications. In addition, after the Carter Page investigation was reassigned to Case Agent 6 in early 2017, Case Agent 1 assisted Case Agent 6 with the completion of the Woods Procedures for Renewal

³⁸⁸ According to Steele and his reports, Report 80 (dated June 20, 2016), Report 95 (dated July 28, 2016), Report 97 (dated July 30, 2016), and Report 102 (dated August 10, 2016) all contain information from Person 1. If these reports were accurate regarding Person 1's contributions to the reporting and the Primary Sub-source's estimate was accurate concerning his/her debrief of Person 1, then all of the information attributed to Person 1 came from a single, 10-to-15-minute telephone call between the Primary Sub-source and Person 1.

Application No. 2 by performing the factual accuracy review. The Woods File used during that review contained the interview summary of the Primary Sub-source. Case Agent 1 told us that he could not explain why changes had not been made to the renewal applications to account for the inconsistencies between the Primary Sub-source and Steele on facts asserted in the applications. Case Agent 1 said that although he thought the Primary Sub-source may have been minimizing the extent of his/her interactions with Person 1, it did not occur to Case Agent 1 at the time that the information from the Primary Sub-source contradicted information in the FISA applications. In particular, Case Agent 1 said that he did not know enough about some of the details concerning Person 1 to necessarily understand that the Primary Sub-source's account potentially conflicted with information in the FISA applications. For example, he said he did not know whether Steele had his own relationship with Person 1 such that Steele could have had another basis for attributing all the information in Report 95 to Person 1. Case Agent 1 added that he believed that someone else should have highlighted the issue for the agents working on the FISA application.

Case Agent 6 told us that he read the written summary of the Primary Sub-source's January 2017 interview before he assisted the OI Attorney with FISA Renewal Application No. 2, and Case Agent 6's written contributions to the draft application contain two references to information the FBI learned during the interview. However, Case Agent 6 did not identify for OI inconsistencies between the Primary Sub-source and Steele on the facts asserted in the FISA application. Case Agent 6 did not participate in the Primary Sub-source's interview, which took place before he took over the Carter Page case from Case Agent 1. Case Agent 6 told us that he read the written summary of the interview after he took over and realized that he did not yet understand all the details of the case. He said that for this reason, he asked Case Agent 1 to assist him with the Woods Procedures for Renewal Application No. 2. Case Agent 6 told us that he did not recall Case Agent 1 or Supervisory Intel Analyst advising him during the Woods process of the inconsistencies.

Analytical documents prepared by, or with the assistance of, the Supervisory Intel Analyst after the Primary Sub-source interview identified inconsistencies between Steele and the Primary Sub-source regarding some of the information contained in Reports 94 and 95. The Supervisory Intel Analyst told us that, after the January 2017 interview, his impression was that the Primary Sub-source's account did not line up completely with Steele's reporting, but the Supervisory Intel Analyst said he did not have any "pains or heartburn" about the accuracy of the Steele reporting based on what the Primary Sub-source had said. The Supervisory Intel Analyst said that his thinking at the time was focused instead on using the additional information learned from the Primary Sub-source, particularly the identity of his/her sub-sources, to see what other investigative leads could be generated for the team.

The Supervisory Intel Analyst told us that he played a supportive role for the agents preparing the FISA applications, including reading the probable cause section of the first application and providing the agents with some of the information on the identity of the sub-sources noted in the application. He said that

he had some interaction with the agents preparing the renewal applications, but he believed those interactions were less extensive than his involvement in the first application. The Supervisory Intel Analyst did not recall anyone asking him whether he thought the Primary Sub-source was "truthful and cooperative," as noted in the renewal applications.³⁸⁹ He told us it was his impression that the Primary Sub-source may not have been "completely truthful" and may have been minimizing certain aspects of what he/she told Steele. However, the Supervisory Intel Analyst told the OIG that, on the whole, he did not see any reason to doubt the information the Primary Sub-source provided about who he/she received his/her information from, which was the Supervisory Intel Analyst's focus.

SSA 5, who performed the supervisory factual accuracy review during the Woods Procedures for Renewal Application Nos. 2 and 3, told us that he did not recall whether he was briefed on the Primary Sub-source's interview, and he did not appear during his OIG interview to know anything about the Primary Sub-source. Similarly, Case Agent 7, who performed the Woods Procedures for Renewal Application No. 3, told us that he did not know, or have the case knowledge necessary to determine, that the Primary Sub-source provided information inconsistent with facts asserted in the FISA application.

Program managers supervising the investigation from FBI Headquarters—SSA 2 and SSA 3—were aware of the Primary Sub-source's interview and had read the written summary of it. However, we found no evidence that either of them identified issues with or raised any questions about how the Primary Sub-source's interview may have impacted the information in the FISA applications. As described previously, SSA 3 did not play a direct role in Renewal Application No. 2, but he was familiar with the prior FISA applications, having performed the supervisory factual accuracy review during the Woods Procedures for Renewal Application No. 1. SSA 3 told us that he did not recall noticing any information from the Primary Sub-source's interview that was inconsistent with information in the FISA application. SSA 2 was the affiant who declared, based on the completion of the Woods Procedures, that the information in Renewal Application Nos. 2 and 3 was true and correct. He told us that he did not recall any discussion about whether the Primary Sub-source's interview warranted revisions to the FISA applications, but said he had some recollection that the investigators believed at the time that the Primary Sub-source was holding something back about his/her interaction with Person 1.

The OGC Unit Chief and the OGC Attorney told us that they did not review or receive the written summary of the Primary Sub-source's January 2017 interview at

³⁸⁹ Email communications reflect that in March 2017—after the first FISA application and first renewal were filed and before the last two renewals—the Supervisory Intel Analyst reviewed the first FISA application and the first renewal at OGC's request to assist with potential redactions before the Department responded to Congressional information requests. The Supervisory Intel Analyst provided comments to the OGC Attorney, including advising him that the Primary Sub-source was not [REDACTED] as stated in the FISA applications, and asking whether a correction should be made. The Supervisory Intel Analyst did not provide any other comments relating to the Primary Sub-source, and he told us that he did not notice anything else potentially inaccurate or incomplete in the applications at that time.

any time before Renewal Application No. 2 was submitted to the court. However, they said that they knew the interview had taken place and had the general understanding from the team that the information provided to the FBI by the Primary Sub-source “essentially echoed,” “was consistent with,” or “corroborated” the information in Steele’s reporting. The OGC Unit Chief said that her understanding was that the Primary Sub-source raised some questions about how Steele wrote his reports or the wording Steele used, and that the agents and analysts had looked into it but did not think the wording choices were substantively different. The OGC Attorney said that he had some vague recollection that the team thought Steele may have conflated some of his sourcing on WikiLeaks based on information provided by the Primary Sub-source. However, they both said that they did not recall the details of these discussions.

Although documents provided to the OIG indicate that senior FBI officials were told about some aspects of the Primary Sub-source’s interview, the documents do not reflect that senior FBI officials were advised of the inconsistencies. For example, in late February 2017, the Supervisory Intel Analyst circulated a 2-page Intelligence Memorandum to CD Assistant Director E.W. “Bill” Priestap and other CD officials highlighting aspects of the Primary Sub-source’s interview. In March 2017, Priestap forwarded the memorandum to Comey’s and McCabe’s offices. The memorandum stated that the Primary Sub-source told the FBI that Steele’s reporting contained “some of [his/her] reporting, what appear to be [his/her] analytical conclusions, and what [he/she] believes to be [Steele’s] analytical judgments.” The memorandum provided some details concerning what the Primary Sub-source said about his/her own sources, but the memorandum did not describe the inconsistencies we noted earlier.³⁹⁰

Senior CD officials overseeing the Crossfire Hurricane investigation—including Priestap, Strzok, the Intel Section Chief, and CD DAD Jennifer Boone—told us that they did not recall being advised that the information from the Primary Sub-source significantly differed from the information in Steele’s reporting. Boone told us that she recalled being told after the Primary Sub-source’s interview that the team assessed that Steele may have gotten some of his information from a source other than the Primary Sub-source. Boone said that she did not recall being advised that the interview created inconsistencies between Steele and his Primary Sub-source as to facts relied upon in the FISA applications. Boone further stated that she would have expected to have been told that information. Strzok told us that he did remember learning as a result of the Primary Sub-source interview that Steele did not receive his reporting directly from the sub-sources, but rather solely through

³⁹⁰ For example, the memorandum stated that, according to the Primary Sub-source, a particular person told the Primary Sub-source that the secret meeting between Carter Page and Sechin had taken place. However, the memorandum failed to note that the Primary Sub-source told the FBI that he/she was not told until October 2016 that the meeting had occurred, which was well after Steele drafted Report 94 in July 2016 (Report 94 asserted that the meeting had taken place, that Page and Sechin discussed the lifting of sanctions, and that Page reacted positively but was noncommittal). As the Primary Sub-source described to the FBI, he/she had only told Steele in July that he/she was aware of a rumor that Page was going to be meeting with Sechin. As noted previously, Page denied to an FBI CHS that he had met with Sechin in July 2016, and the FBI was unable to determine whether a meeting between Sechin and Page took place.

the Primary Sub-source as the intermediary. Strzok said he recalled having a “little bit of concern” about that. He later wrote to Comey’s Chief of Staff, Priestap, and others that “[r]ecent interviews and investigation, however, reveal Steele may not be in a position to judge the reliability of his sub-source network.”

Comey told us that he did not know whether the team interviewed any of Steele’s sub-sources. Because Comey decided not to have his security clearance reinstated for his OIG interview, we were unable to question him further or refresh his recollection with relevant, classified documentation.

The NSD’s Counterintelligence and Export Control Section (CES) representatives who attended the Primary Sub-source’s January 2017 interview—Section Chief David Laufman and his Deputy Section Chief—told us that they did not recall discussing the interview with OI officials afterward. They told us that they did not have knowledge of the information in the Carter Page FISA applications at the time, and that they were not sufficiently familiar with the Steele reports to have understood that there were inconsistencies between the Primary Sub-source and Steele. We did not find any information to the contrary. They told us that they attended the interview because CES had helped negotiate the terms of the interview with the Primary Sub-source’s attorney, and, as noted previously, their role during the interview was primarily to address any issues or concerns raised by the attorney during the interview.

The OI Attorney told the OIG that if had he known about the inconsistencies between the Primary Sub-source and Steele on the facts asserted in the FISA applications, he would have wanted an opportunity to ask questions and gather more information. In particular, after we asked the OI Attorney to read the written summary of the Primary Sub-source’s interview regarding the telephone call with Person 1, the OI Attorney was surprised, agreed it was not consistent with the information in the FISA applications concerning Report 95, and said “it doesn’t seem like the same story.” Evans told us that OI would have sought to determine how the new information impacted the FISA applications, including obtaining the FBI’s own assessment of how to reconcile the apparent inconsistencies. Evans said that at a minimum, OI would have advised the court of the inconsistencies and the FBI’s assessment of those inconsistencies. He further stated that, depending on the information from the FBI, OI may have decided to delay or abandon the filing of the next renewal application altogether.

B. Information about Page’s Prior Relationship with Another U.S. Government Agency and Information Page Provided the Other Agency that Overlapped with Facts Asserted in the FISA Applications

As noted in Chapter Five, on or about August 17, 2016, while early FISA discussions were ongoing, the Crossfire Hurricane team received a memorandum (August 17 Memorandum) from another U.S. government agency relating to Page’s prior relationship with that agency, including that Page had been approved for operational contact from 2008 to 2013. The information also described Page’s prior interactions with Russian intelligence officers about which the agency was aware,

including contacts Page had with a Russian intelligence officer (Intelligence Officer 1), which were among the historical connections to Russian intelligence officers that the FBI later relied upon in the first FISA application (and subsequent renewal applications) to help support probable cause.³⁹¹ We found that, although this information was highly relevant to the FISA application, the Crossfire Hurricane team did not engage with the other agency regarding this information. In addition, in response to a question from the OI Attorney in September 2016 as to whether Carter Page had a current or prior relationship with the other agency, Case Agent 1 provided the OI Attorney with inaccurate information that failed to disclose the extent and nature of Page's relationship with that agency. As a result, the first FISA application, and FISA Renewal Application Nos. 1 and 2, contained no information regarding Page's relationship with the other U.S. government agency, and did not reveal that his relationship with the other agency overlapped in part with facts asserted in the application regarding Page's ties to particular Russian intelligence officers.

Before Renewal Application No. 3 was submitted to the court, and following news reports about the Carter Page FISAs, Page conducted news interviews in April and May 2017 in which he publicly stated that he had assisted the USIC in the past. Thereafter, the FBI re-engaged with the other U.S. government agency about its prior relationship with Page. SSA 2, who had been the affiant for the first two renewals and would be the affiant for FISA Renewal Application No. 3, told the OIG that in June 2017 he wanted a definitive answer as to whether Page had a prior relationship with the USIC before SSA 2 signed the last renewal application. SSA 2 also told us that he was concerned that Page could claim that he had been acting on behalf of the U.S. government in engaging with certain Russians. SSA 2 stated that he contacted the OGC Attorney assisting with the Crossfire Hurricane investigation to help resolve this issue.³⁹² According to the OGC Attorney and SSA 2, the OGC Attorney was responsible for handling questions or concerns involving the other U.S. government agency for the Crossfire Hurricane team.

The OGC Attorney told us he recalled that the Supervisory Intel Analyst on the Crossfire Hurricane team had raised a concern that Page may have had a prior

³⁹¹ As described in Chapter Five, according to the August 17 Memorandum provided to the FBI by the other U.S. government agency, Page told the other agency in October 2010 that he met with Intelligence Officer 1 four times (which the other agency assessed began in 2008), characterized Intelligence Officer 1 as a "compelling, nice guy," and described Intelligence Officer 1's alleged interest in contacting an identified U.S. person. According to the August 17 Memorandum, the employee of the other U.S. government agency who met with Page assessed that Page "candidly described his contact with" Intelligence Officer 1.

As further described in Chapter Five, the other agency's memorandum did not provide the FBI with information indicating it had knowledge of Page's reported contacts with another particular intelligence officer. The FBI also relied on Page's contacts with this intelligence officer in the FISA application.

³⁹² On May 17, 2017, the Crossfire Hurricane investigation was transferred from the FBI to the Office of Special Counsel upon the appointment of Special Counsel Robert S. Mueller III to investigate Russian interference with the 2016 presidential election and related matters.

relationship with the other U.S. government agency in the past.³⁹³ The OGC Attorney said it was “a big, big concern from both OI and from the FBI that we had been targeting [an individual with a prior relationship with the other agency], because that should never happen without us knowing about it.” The OGC Attorney characterized the Crossfire Hurricane team as “spun up” about this concern, and said he knew that if it were true, they would “need to provide that to the court” because such information would “drastically change[] the way that we would handle...[the] FISA application.” SSA 2 told the OIG that this issue was very important to resolve, because if Page

was being tasked by another agency, especially if he was being tasked to engage Russians, then it would absolutely be relevant for the Court to know...[and] could also seriously impact the predication of our entire investigation which focused on [Page’s] close and continuous contact with Russian/Russia-linked individuals.

In mid-June 2017, the OGC Attorney contacted the other U.S. government agency to seek additional information about Page’s prior relationship with that other agency, and then communicated back to the OI Attorney and SSA 2. Because we determined that the OGC Attorney did not accurately convey, and in fact altered, the information he received from the other agency, we provide these communications in detail below.

1. June 15, 2017—FBI OGC Attorney Requests Information about Page from Other U.S. Government Agency

On June 15, 2017, the OGC Attorney emailed the liaison for the other U.S. government agency (Liaison) about Carter Page’s past, stating:

We need some clarification on Carter Page. There is an indication that he may be a “[digraph]” source.³⁹⁴ This is a fact we would need to disclose in our next FISA renewal (we would not name the [U.S. government agency] of course).

To that end, can we get two items from you?

1) Source Check/Is Page a source in any capacity?

...

³⁹³ The Supervisory Intel Analyst said that he did not recall raising a concern about this issue, but that he did recall being aware that Page had been a “type of source” with this other agency in the past. Although the Supervisory Intel Analyst did not recall discussions about including this information in the FISA application, he did recall general discussions about Page’s relationship with the other U.S. government agency.

³⁹⁴ The Liaison told the OIG that the other U.S. government agency uses a specific two-letter designation, or digraph, to describe a U.S. person who has been approved by the other agency for operational contact.

2) If he is, what is a "[digraph]" source (or whatever type of source he is)?

If you would like to discuss more, please let me know.³⁹⁵

The Liaison responded that same day by providing the OGC Attorney with a list of documents previously provided by the other agency to the FBI mentioning Page's name, including the August 17 Memorandum. The Liaison also wrote that the U.S. government agency uses

the [digraph] to show that the encrypted individual...is a [U.S. person]. We encrypt the [U.S. persons] when they provide reporting to us. My recollection is that Page was or is...[digraph] but the [documents] will explain the details. If you need a formal definition for the FISA, please let me know and we'll work up some language and get it cleared for use.

The OGC Attorney responded, "Thanks so much for this information. We're digging into the [documents] now, but I think the definition of the [digraph] answers our questions." That same day, the OGC Attorney forwarded the Liaison's email response to Case Agent 6 and an FBI SSA assigned to the Special Counsel's Office, without adding any explanation or comment. The SSA responded by telling Case Agent 6 that she would "pull these [documents] for you tomorrow and get you what you need." The OGC Attorney also sent an instant message to his supervisor, the OGC Unit Chief, stating that Carter Page was a "U.S. subsorce of a source" and that "[digraph]=encrypted USPER."

We asked the OGC Attorney if he read the documents identified by the Liaison in her June 15, 2017 email. The OGC Attorney told the OIG that he "didn't know the details of...the content of the [documents]" and did not think he was involved in reviewing them. He also said he "didn't have access to the [documents] in the OGC space," but that the investigative team was provided the list of documents and that they would have been reviewing them. The OGC Attorney said he understood the Liaison's response to mean that Page had not been a source—which the OGC Attorney described as a "recruited asset"—but rather someone who had some interaction with a source for the other U.S. government agency, and not a direct relationship with the other agency. He stated his understanding was that the other U.S. government agency

identified that [Page] was ["digraph"], and ["digraph"] refers to a U.S. person...who's incidentally picked up...[in] reporting out from a source of theirs. So their recruited asset is at a meeting, and [Page] happened to be there too. And then, in the reporting, the source mentions [Page] is there, so the agency protects [Page's] true name by using...["digraph" for Page].

³⁹⁵ In an email sent to Case Agent 6 on June 13, 2017, and in an instant message sent to Case Agent 6 on June 15, 2017, the OGC Attorney referred to this request as "that source check" and "that [digraph] check," respectively.

The OGC Attorney told us that— his belief that Page had never been a source for the other U.S. government agency, but instead interacted with a source—was based on telephone conversations with the Liaison. He said he recalled the Liaison “saying that [Page] was not a source of theirs,” but rather “incidentally reporting information via a source of theirs” and that they “ended up not actually opening him.”³⁹⁶

When we asked the Liaison about the OGC Attorney’s interpretation of the Liaison’s email, the Liaison told us that her email stated just the opposite, namely that Page was a U.S. person who had provided direct reporting to the other U.S. government agency in the past. The Liaison also said that the reason she offered, in her email, to assist in providing language for the FISA application was because she was telling the OGC Attorney that, using the FBI’s terminology, Page had been a source for the other agency. The Liaison also stated that she saw no basis for the OGC Attorney to have concluded, based on their communications and the August 17 Memorandum, that Page never had a direct relationship with the other agency.

The Liaison also said that she did not recall having any telephone discussions with the OGC Attorney on this issue. She added that, even if she had, she did not think the OGC Attorney would have been able to draw any conclusions from such a conversation. The Liaison explained that she would not have had the documents in front of her at the time of any such conversation, and therefore would not have given the OGC Attorney a definitive answer. She emphasized the need to read the documents in order to accurately understand the relationship between Page and the other U.S. government agency.

2. June 16, 2017—FBI OGC Attorney Provides the Liaison’s Response to the OI Attorney

On the evening of June 15, 2017, the OGC Attorney contacted the OI Attorney to request a time to talk the next day. FBI telephone records confirm they spoke the next morning for approximately 28 minutes, until 11:46 a.m. Also at 11:46 a.m. on June 16, the OGC Attorney forwarded to the OI Attorney the Liaison’s June 15 email response. However, in forwarding the Liaison’s response to the OI Attorney, the OGC Attorney did not include the initial email that he sent to the Liaison inquiring about Page’s status as a “[digraph] source.” The OGC Attorney told us that he could not recall why he did not include the initial email, in which he asked, “Is Page a source in any capacity?”

The OI Attorney responded to the OGC Attorney’s email, “thanks I think we are good and no need to carry it any further.” The OGC Attorney replied, “Music to my ears.”

The OI Attorney told us that he did not recall this email exchange with the OGC Attorney or the telephone call on June 16 with the OGC Attorney indicated in

³⁹⁶ When questioned further on this point, the OGC Attorney told us that he only recalled engaging with the Liaison on this issue and not any other person from the other U.S. government agency.

FBI telephone records. When we asked the OI Attorney whether he reviewed the August 17 Memorandum, he said he did not recall if he had asked to see it, but also stated that he would have relied on the case agent's assessment of that document.

The OGC Attorney initially told us that he recalled providing a detailed briefing to the OI Attorney about Page's status, and telling him that the OGC Attorney had conferred with the Liaison and that Page had not been a source for the other agency. However, in a subsequent OIG interview months later, the OGC Attorney said he did not recall a specific conversation with the OI Attorney on this subject matter, but thought he would have conveyed to the OI Attorney the details of what the Liaison had told him.

3. June 19, 2017—FBI OGC Attorney Provides SSA 2 with Inaccurate Information

a. June 19, 2017 Instant Message Exchange

On June 19, 2017, the OGC Attorney and SSA 2 exchanged instant messages about Carter Page's past relationship with the other agency.³⁹⁷ As described above, SSA 2 would be the affiant on Renewal Application No. 3 and was seeking a definitive answer as to whether Page had a prior relationship with the other agency. The relevant portions of the instant message exchange were as follows:

15:26:35, SSA 2: "Do we have any update on the [agency] CHS request? Also, [Case Agent 6] said [OI Attorney] is not so optimistic."

15:27:53, OGC Attorney: "[agency] CHS: You are referring to [Carter Page]?"

15:28:01, SSA 2: "Yes."

15:28:05, OGC Attorney: "He is cleared."

15:28:15, SSA 2: "Cleared to fly?"

15:28:16, OGC Attorney: "[digraph]=Masked USPER."

15:28:34, SSA 2: "So he was and the relationship officially ended?"

15:28:37, OGC Attorney: "So, essentially, the real...source was using [Carter Page] as a [Steele]-like subsource."

15:28:47, OGC Attorney: "[Carter Page] was never a source."

15:28:59, SSA 2: "You mean the [agency] officer?"

15:29:19, OGC Attorney: "Right. Whomever generated the reporting from the [documents]."

³⁹⁷ These instant messages were exchanged on an internal FBI Net application for FBI personnel. All instant messages produced to the OIG reflected Greenwich Mean Time. We have corrected the time stamps to reflect the time in the Eastern Time Zone. Some of the instant messages also contained emojis, which we omitted unless they affected the meaning of the message. We also do not include other intervening instant messages about unrelated topics unless they contributed to an understanding of the relevant messages.

15:29:45, OGC Attorney: "It was just liaison with [Carter Page] which resulted in reporting, eventually they closed it out as unhelpful."

15:30:39, OGC Attorney: "So, in discussing with [OI Attorney], he agreed we do not need to address it in the FISA."

15:31:16, OGC Attorney: "[OI Attorney] is always Eeyore in drafting these special FISA applications."

15:31:27, SSA 2: "So [Carter Page] was a [digraph] or [Carter Page] was a subsource of the [digraph]."

15:32:00, OGC Attorney: "It's [sic] sounds like a subsource of the [digraph]."

15:32:31, OGC Attorney: "And yes, [the other agency] confirmed explicitly he was never a source."

15:33:05, SSA 2: "Interesting."

15:33:21, OGC Attorney: "But like, interesting good, right?"

15:33:54, OGC Attorney: "I mean, at least we don't have to have a terrible footnote."

15:33:57, SSA 2: "Sure. Just interesting they say not a source. We thought otherwise based on the writing...I will re-read."

15:34:28, OGC Attorney: "At most, it's [the Supervisory Intel Analyst] being the CHS, and you talking to [the Supervisory Intel Analyst]."

15:34:54, SSA 2: "Got it. Thank you. Do we have that in writing."

15:35:19, OGC Attorney: "On TS. I'll forward/"

We asked the OGC Attorney about this instant message exchange with SSA 2 in which he told SSA 2 that Carter Page was never a source. The OGC Attorney stated, "That was my, the impression that I was given, yes." We also asked why he told SSA 2 in the instant message exchange that the other U.S. government agency "confirmed explicitly that he was never a source." The OGC Attorney explained that his statement was just "shorthand" for the information provided by the other agency about Page and that he had no particular reason to use the word "explicitly." As to his comment about a "terrible footnote" in the instant messages, the OGC Attorney told us that he was referring to how "laborious" it would be to draft such a footnote for the FISA application, not that such a footnote might undermine or conflict with the overall narrative presented in the FISA applications.

SSA 2 told us that the most important part of this interaction with the OGC Attorney was when the OGC Attorney told SSA 2 that the other agency had said "explicitly" that Page had never been a source. SSA 2 characterized that statement as "the confirmation that I need[ed]." SSA 2 also said that he understood the OGC Attorney's comment about not having to draft a "terrible footnote" to mean that the team could avoid having to explain in Renewal Application No. 3 that they had "just now come to determine that [Page] was an asset of the [other agency] and

probably being tasked to engage...[with] Russians which is...why we opened a case on him." SSA 2 said that he understood the OGC Attorney to be saying that "the optic...would be terrible" if the prior FISA applications were "dubious" in light of a relationship between Page and the other agency, and the FBI was only becoming aware of that relationship in the third renewal application and after Page's public statements.

We showed the instant message exchange between the OGC Attorney and SSA 2 to the Liaison and the OI Attorney. Neither had previously been aware of this exchange. The OI Attorney told us that the OGC Attorney's description of Page as a sub-source did not sound familiar to him. He said:

I feel like if the [OGC Attorney] would have said, well he was a sub-source, I mean to me that's like a flag.... [T]hat means he was being handled by somebody. That means that there was...something more; let's dig more into it.

The OI Attorney also focused on the portion of the exchange where SSA 2 expressed a belief that Page was a source and where the OGC Attorney mentioned not having to prepare a "terrible footnote." He told us that OI should have been made aware of any "internal debate" within the FBI about whether Page was a source for another U.S. government agency, because with the FISC there is no "defense counsel on the other side," and it is up to OI "to over tell the story."

The Liaison focused on the portion of the exchange in which the OGC Attorney stated that Page "was never a source." The Liaison told us that this statement was wrong, as was the OGC Attorney's statement that Page "was a U.S. sub-source of a source." The Liaison said that such an assertion is "directly contradictory to the [documents]" the agency provided to the FBI. The Liaison also said it was inaccurate to describe Carter Page as "like a sub-source of [a digraph]" and to state that the other agency had "confirmed explicitly that [Page] was never a source." We asked the Liaison whether the Liaison ever told the OGC Attorney that Page was not a source. The Liaison said that, to the best of the Liaison's recollection, the Liaison did not and would not have characterized the status of a "[digraph]" without either first reaching out to the other agency's experts responsible for the underlying reporting, or relying on the proper supporting documentation for an answer. The Liaison stated, "I have no recollection of there being any basis for [the OGC Attorney] to reach that conclusion, and it is directly contradicted by the documents."

b. The OGC Attorney Sends SSA 2 an Altered Version of the Liaison's June 15 Email

Immediately following the June 19 instant message exchange between the OGC Attorney and SSA 2, SSA 2 received an email from the OGC Attorney that appeared to be forwarding the Liaison's June 15 response email concerning Page's historical contact with the other U.S. government agency. However, the OIG determined that this forwarded version of the Liaison's response email had been altered. Specifically, the words "and not a 'source'" had been inserted in the

Liaison's June 15 response after the word "[digraph]." Thus, the Liaison's email was altered to read: "My recollection is that Page was or is and [sic] '[digraph]' **and not a 'source'** but the [documents] will explain the details." (Emphasis added). The OGC Attorney also did not include in the email sent to SSA 2 the initial email inquiry from the OGC Attorney to the Liaison about Page's status as a "[digraph] source."³⁹⁸

In response to the June 19 email, SSA 2 asked the OGC Attorney if SSA 2 could send the email to the FBI agents working on the matter. The OGC Attorney responded: "Yes. I actually already did on Friday when [the OI Attorney] said we're good to go. Sorry for not cc'ing you."³⁹⁹

We asked the OGC Attorney about the alteration in the email he sent to SSA 2. He initially stated that he was not certain how the alteration occurred, but subsequently acknowledged that he made the change. He also stated it was consistent with his impression of the information that he had been provided by the Liaison.

We discussed the altered email with SSA 2, who told us that the OGC Attorney was the person he relied upon to resolve the issue of whether Carter Page was or had been a source for the other U.S. government agency. SSA 2 told us that the statement inserted into the Liaison's email—that Page was "not a source"—was the most important part of the email for him. SSA 2 said "if they say [he's] not a source, then you know we're good." SSA 2 also said that if the email from the Liaison had not contained the words "not a source" then, for him, the issue would have remained unresolved, and he would have had to seek further clarification. SSA 2 stated: "If you take out 'and not a source,' it's not wrong, but it doesn't really answer the question." He also said that something lesser, such as a verbal statement from the Liaison through the OGC Attorney, would not have resolved the issue for him. SSA 2 also told us it was important to him that the OGC Attorney had first sent the Liaison's response email to the OI Attorney, because if they discussed the issue and they have "decided we don't have to do a footnote that he's not a source...we've resolved this. We're good to move forward." He also said that he "would assume that the [OI Attorney]...received exactly what [SSA 2] received since it was a forward."

We also showed the altered June 19, 2017 email to the Liaison. She told us that the combination of the omission of the OGC Attorney's question to the Liaison about Page's status as a "[digraph] source," along with the addition of the words "not a 'source'" to her response, was misleading. She explained that by omitting

³⁹⁸ However, the email the OGC Attorney sent to SSA 2 did include header information from the June 16 email sent by the OGC Attorney to the OI Attorney, reflecting that the OI Attorney had been provided the Liaison's response email. It therefore appeared to SSA 2 that he and the OI Attorney had received the same information about Page's past status with the U.S. government agency. However, as described above, the email the OGC Attorney sent to the OI attorney did not contain the altered text that was included in the email that the OGC Attorney sent to SSA 2.

³⁹⁹ The OGC Attorney did not alter the email he had previously forwarded to the other FBI agents.

how the OGC Attorney phrased his questions to her, it took away the context necessary to fully understand her response. We also asked the Liaison whether "not a 'source'" is language she would use to describe a "[digraph]." She said she would not have included the "not a 'source'" language in an email to the OGC Attorney because the Liaison's agency does "not call them sources." The Liaison added that the phrase "not a 'source'" is contradictory to the term "[digraph]," because "[digraph]" indicates that the person is providing information to the Liaison's agency.

Consistent with the Inspector General Act of 1978, following the OIG's discovery that the OGC Attorney had altered the email that he sent to SSA 2, who thereafter relied on it to swear out the final FISA application, the OIG promptly informed the Attorney General and the FBI Director, and provided them with the relevant information about the OGC Attorney's actions.⁴⁰⁰

C. Information Concerning Steele's Past Work-Related Performance

As described in Chapter Five, NSD told us that in the absence of information corroborating the facts from Steele's reporting asserted in the Carter Page FISA application, it was particularly important for the application to articulate to the court the FBI's assessment of the reliability of the source. Therefore, all four FISA applications articulated for the court the basis for the FBI's assessment that Steele was reliable. In all four applications, the FBI's source characterization statement began with the identification of Steele as a former [REDACTED]. FBI and NSD officials told us that in assessing Steele's reliability, the FBI placed great weight on Steele's [REDACTED]. Additionally,

⁴⁰⁰ Prior to the Crossfire Hurricane investigation, the OGC Attorney had been assigned to provide legal support to the FBI's "Midyear Exam" investigation, which concerned former Secretary of State Hillary Clinton's use of a private email server. In the OIG's June 2018 report, *Review of Various Actions in Advance of the 2016 Election*, we referred to the OGC Attorney as FBI Attorney 2. In that report, we described improper political instant messages that the OGC Attorney sent to other FBI employees using FBI information technology systems. For example, on the day after the 2016 U.S. elections, the OGC Attorney sent an instant message to another FBI employee regarding the election outcome, stating:

I am so stressed about what I could have done differently...I just can't imagine the systematic disassembly of the progress we made over the last 8 years. ACA is gone. Who knows if the rhetoric about deporting people, walls, and crap is true. I honestly feel like there is going to be a lot more gun issues; too, the crazies won finally. This is the tea party on steroids. And the GOP is going to be lost, they have to deal with an incumbent in 4 years. We have to fight this again. Also Pence is stupid.

Two weeks later, the OGC Attorney sent an instant message to another FBI colleague about the amount of money the subject of an FBI investigation had been paid while working on the Trump campaign. The FBI colleague responded, "Is it making you rethink your commitment to the Trump administration?" The OGC Attorney replied, "Hell no," and then added "Viva le resistance."

We note that the OGC Attorney's alteration of the Liaison's email in connection with the Crossfire Hurricane investigation described in this report occurred in June 2017, one year prior to our June 2018 referral to the FBI of his actions in connection with the Midyear Exam investigation.

as described in Chapter Five, the FISC legal advisor asked NSD to explicitly identify [REDACTED] in the source characterization statement.

As described in Chapter Six, after the first FISA application was filed, but before Renewal Application No. 1, Priestap and Strzok obtained information about Steele from persons with direct knowledge of his performance of his work duties in a prior position in an effort to further assess Steele's reliability. This was the first time anyone associated with the Crossfire Hurricane investigation discussed Steele with these persons, and it was prompted, at least in part, by Steele's disclosures to *Mother Jones* in late October 2016. Priestap and Strzok took handwritten notes of the feedback they received from the former employer about Steele. These notes referenced that Steele had held a "moderately senior" position in Moscow, as the Crossfire Hurricane team had originally thought and advised OI. Nothing in the notes indicated that Steele was "high-ranking" as stated in the applications. The notes described positive feedback about Steele, such as "smart," "person of integrity," "no reason to doubt integrity," and "[i]f he reported it, he believed it." Priestap told us that his impression was that Steele was considered to be a "Russia expert" and very competent in his work. However, Priestap and Strzok were also provided negative feedback concerning Steele's judgment, including "[d]emonstrates lack of self-awareness, [demonstrates] poor judgment;" "[k]een to help but underpinned by poor judgment;" "[j]udgment: pursuing people [with] political risk but no intel value;" "[r]eporting in good faith, but not clear what he would have done to validate;" and "[d]idn't always exercise great judgment—sometimes [he] believes he knows best."

Priestap and Strzok told us that they did not change their overall assessment of Steele's reliability after being provided this information because they were told that Steele was never untruthful. According to Priestap, he interpreted the negative feedback about Steele's judgment to mean that Steele was a person who strongly believed in his convictions and that those convictions did not always align with management's convictions. Priestap said he himself confronted similar disagreements over prioritization with his own staff, and what stood out more to Priestap were the statements indicating that Steele had never been intentionally dishonest in his prior work. Priestap also told us that, according to the feedback he received, Steele's past reporting accurately reflected what he was told, but Priestap said the question was the accuracy of what he was told, which could not be addressed in this instance without knowing the identity of Steele's sources for the election reporting. Strzok interpreted the feedback regarding Steele's judgment to mean that Steele sometimes followed the "shiny object" without a judgment about whether the shiny thing was really worth pursuing given the risks involved, which was seen as a hindrance to his career progression, but that Steele had no history of fabricating, embellishing, or otherwise "spinning" information.

FBI officials told us, and documents reflect, that Strzok briefed the Crossfire Hurricane team regarding the information he received about Steele. Case Agent 1's handwritten notes from a December 2016 team meeting reflect that the team was told that Steele "may have some judgment problems" but that the team could "continue to rely on reports for FISA." Case Agent 1 did not recall this discussion or

who said that they could continue to rely on Steele's reporting in the next FISA application.

Handwritten notes from the OI Unit Chief reflect that the OGC Attorney advised the OI Unit Chief and the OI Attorney at the end of November 2016 that the team had met with persons with direct knowledge of Steele's performance of his work duties in a prior position. According to the notes, the OGC Attorney told OI that Steele's past contacts said he "could be prone to rash judgments." The notes also indicate that the OGC Attorney advised OI that the FBI did an internal review and found no indication that any of Steele's reporting was false or misleading and that McCabe had signed off on requesting a FISA renewal targeting Carter Page.

The OI Attorney told us that he only vaguely recalled this discussion, but the OI Unit Chief said that he recalled being told that Steele was prone to rash judgment in his actions but not in his reporting. The OI Unit Chief told us he also recalled that the FBI believed it had no reason to question Steele's reporting and therefore had not changed its assessment of his reliability. Evans recalled that one or both of them later advised him, probably in December 2016, that the FBI had been told Steele had "questionable judgment" but was otherwise professional and reliable.

As for why Renewal Application No. 1 (and the subsequent renewal applications) did not include this information about Steele, Evans and the OI Unit Chief told us that, because the information did not change the FBI's assessment as to Steele's reliability, the circumstances leading to the FBI's closure of Steele as a CHS was the more critical update for the court. However, during their OIG interviews, Evans and the OI Unit Chief were shown Strzok's notes. After reviewing the notes, both Evans and the OI Unit Chief said that the notes contained more detail than what they recalled being told by the FBI, including the statement that it was "not clear what [Steele] would have done to validate" his reporting. Both said that they would have asked for more detail about that particular comment if they had known at the time. According to Evans, he would have considered whether to include information in the renewal application if he had known.

D. Information Regarding Steele Reporting's Ties to the Democratic Party, the Democratic National Committee, and the Hillary Clinton Campaign

As described in Chapter Five, the first Carter Page FISA application contained a footnote advising the court that Steele's election reporting may have originated from a request for political opposition research:

[Steele], who now owns a foreign/business/financial intelligence firm, was approached by an identified U.S. person, who indicated to [Steele] that a U.S.-based law firm had hired the identified U.S. person to conduct research regarding Candidate#1's ties to Russia (the identified U.S. person and [Steele] have a long-standing business relationship). The identified U.S. person hired [Steele] to conduct this research. The

identified U.S. person never advised [Steele] as to the motivation behind the research into Candidate #1's ties to Russia. *The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign.* (Emphasis added).

According to FBI officials, and as represented to OI at the time of the first application, the Crossfire Hurricane team was told by Steele that he had been hired by Fusion GPS's Glenn Simpson to perform his election-related work, was advised by Steele that Fusion GPS had been retained by an unnamed law firm, and had not been informed by Steele of the motivation of Fusion GPS. Additionally, as we discuss in Chapter Four, the FBI assumed, but did not know at the time of the first application, that Steele was conducting opposition research. As described in Chapter Five, McCabe told us that he thought he had heard by the time of the first application that Simpson had been working first for a Republican and then later for a Democrat. However, McCabe also told the OIG that his memory on the timing of events is not always reliable. Other FBI officials told us that the team did not know who hired Simpson until after the first FISA application. We were told by Evans that the use of the term "speculates" in the footnote was intended to convey that even though the FBI did not know at the time the identity of Simpson's and the U.S. law firm's ultimate client, the FBI believed it was likely that it was someone who was seeking political opposition research against candidate Trump.⁴⁰¹

According to FBI officials, the Crossfire Hurricane team did not investigate who ultimately paid for Steele's reporting. The OGC Unit Chief and the Supervisory Intel Analyst told us that the team focused instead on vetting the accuracy of the information in Steele's reporting because, if the reporting turned out to be true, it would not matter to the team who ultimately paid for the research.

Nevertheless, in the months following the first FISA application, information became known to the Crossfire Hurricane team that provided greater clarity about the political origins and connections of Steele's reporting. As described in Chapter Nine, by no later than November 21, 2016, Ohr had advised FBI officials that Steele's reporting had been given to the Hillary Clinton campaign (among other entities) and that Steele was "desperate" that Trump not be elected. SSA 1 and the Supervisory Intel Analyst told us, and email communications reflect, that by no later than January 11, 2017, SSA 1 and the Supervisory Intel Analyst understood that Fusion GPS had been hired by the DNC and another unidentified entity to research candidate Trump's ties to Russia. Finally, handwritten notes and other documentation reflect that in February and March 2017 it was broadly known among FBI officials working on and supervising the investigation, and shared with senior NSD and ODAG officials, that Simpson (who hired Steele) was himself hired first by a candidate during the Republican primaries and then later by someone

⁴⁰¹ As we describe in Chapter Five, OI officials told us that the FBI did not advise them of the FBI's belief that Steele was conducting political opposition research until October 11, 2016, when Evans asked the FBI three rounds of questions about Steele's political affiliations in connection with Evans's review of the first FISA application probing the FBI for information. Evans said that he expressed his frustration that the FBI had not informed OI of its belief earlier in the FISA process.

related to the Democratic Party. Nevertheless, the footnote in Renewal Application Nos. 1, 2 and 3, was not revised to reflect this additional information.

Case Agent 6 told us that after he took over the Carter Page investigation, he believed he had a conversation with Case Agent 1 about the identity of Steele's client, but he did not recall any details about what he was told. Case Agent 1 and the OGC Attorney told us that they did not recall when they learned who ultimately paid for the research, and Case Agent 1 said that it may have been sometime after he left the case. The OI Attorney told us that he did not recall being advised that the FBI had more clarity on who had paid for Steele's research.

By March 2017, Evans had received information indicating that Simpson was first hired by a Republican primary candidate and then later by someone related to the Democratic Party. Evans told us that he did not recall revisiting the language in the footnote after learning this information. He said that he interpreted the word "speculates" in the footnote to have the same meaning as the FBI "assesses" or "believes." Further, in his opinion, the footnote clearly advised the court of the potential for political bias, such that he could not see how the additional information would have made a real difference for the court. He said that he did not know that members of the Crossfire Hurricane team had learned that Fusion GPS was hired specifically by the DNC and that, if that were true, he would have wanted to update the court about that information, not because it was material, but just in the interest of candor with the court.

The OGC Unit Chief recalled the team briefing Comey that the research was conducted first for a Republican primary candidate and then later for the Democratic Party. We determined this briefing likely occurred in March 2017. Comey told us that he remembered being advised of this information. He also told us that he did not recall taking notice of the word "speculates" at the time he reviewed the FISA applications, but that in reviewing the language again he thought it "fairly conveyed" that the research originated from a biased source.

Yates told us that she remembered hearing that Steele's research was conducted first for a Republican and then later for a Democrat, but she said she did not recall whether she heard that before or after she left the Department in late January 2017. Yates was removed as Acting Attorney General on January 30, 2017, and we did not find evidence that she was informed of this information prior to that time. We identified notes indicating that by February and March 2017 it was broadly known that Simpson was hired first by a Republican primary candidate and then later by someone related to the Democratic Party. Boente told us that he remembered knowing before he approved Renewal Application No. 2 in April 2017 that Simpson had been hired by a Republican primary candidate and then a Democratic candidate, but Boente said he did not recall any discussion about whether to revise the language in the footnote. He said that whether, in hindsight, the FBI should have revised the language was not a question he could answer during his OIG interview without first having the benefit of an analysis. Rosenstein told us that he did not recall the FBI telling him about the political origins of Steele's reporting before he approved Renewal Application No. 3 in June 2017 or whether he just inferred that after reading the footnote. Rosenstein said that he

did not recall the word "speculates" striking him at the time, but that if the FBI had information at the time of this final FISA application that the research had been funded by the Democratic Party, and that it was going to the Hillary Clinton campaign, he would have expected the FBI to revise the language to be more explicit. He said that if the FBI had such knowledge, the application should say that, or say that a witness told them that, because the additional clarity about the ultimate clients for Steele's reporting would be a relevant fact, though not necessarily dispositive. Similarly, although he did not read the renewal applications before they were filed, then FBI General Counsel James Baker told us that if the team had known the identity of Simpson's clients at the time, such that it was not speculation anymore, then Baker would have expected the language to have been updated.

E. FBI's Source Validation Report Concerning Steele

To establish Steele's reliability, all four Carter Page FISA applications included the statement that Steele's reporting "has been corroborated and used in criminal proceedings." As described in Chapter Five, members of the Crossfire Hurricane team, including the Supervisory Intel Analyst and SSA 1, told us that the phrase "corroborated and used in criminal proceedings" was a reference to Steele's past reporting in the FIFA investigation. Although the team did not review the FIFA case file, SSA 1 stated that they "speculated" that Steele's information was corroborated and used in criminal proceedings because they knew Steele had been "a part of, if not predicated, the FIFA investigation" and was known to have had an extensive source network into Russian organized crime. However, as also described in Chapter Five, no one provided the source characterization statement to Steele's handling agent (Handling Agent 1) for approval, as required by the Woods Procedures. Handling Agent 1 told us that he would not have approved the statement because most of Steele's past reporting had not been corroborated and it had never been used in a criminal proceeding.

As we described in Chapter Six, the Crossfire Hurricane team requested that the FBI's Validation Management Unit (VMU) conduct a formal human source validation review of Steele in early 2017. VMU completed its evaluation and issued its report on March 23, 2017, which stated that Steele was "suitable for continued operation" [REDACTED]. However, the validation report stated that Steele's past reporting in support of the FBI's Criminal Program had been "minimally corroborated," which included Steele's contributions to the FIFA case.⁴⁰² Handling Agent 1 told us that "minimally corroborated" was consistent with his understanding of the entire collection of Steele's reporting to the FBI. Although this finding was different from the source characterization statement contained in

⁴⁰² As noted in Chapter Six, the validation report did not include the Validation Management Unit's (VMU) determination that Steele's election reporting was not corroborated. According to the Unit Chief of VMU, it is not common practice for VMU to include negative findings in its reports, only what they "positively find." The Unit Chief of VMU also said that within the validation context, the term "corroboration" means that the FBI has received the same information from a separate source, and added that uncorroborated does not mean the information is untrue or provide a basis for shutting down a source.

the Carter Page FISA applications, the two renewal applications filed after the March 2017 validation report did not revise the source characterization statement or at least advise the court of VMU's finding.

Although SSA 2 and SSA 3, the Headquarters Program Managers who supervised Crossfire Hurricane from FBI Headquarters, had received the validation report and were aware of its findings, we found no evidence that this information was circulated to NYFO, where the Carter Page investigation was being conducted at the time. Case Agent 1 and Case Agent 6, both of whom were working out of NYFO at the time, told us that they did not recall ever receiving the VMU report or being aware of its findings. Case Agent 6 told us that he would have wanted to know about the findings so that he could have asked questions, and he would have expected that the OI Attorney drafting the next FISA renewal application would have wanted to do the same. The OGC Unit Chief and OGC Attorney also told us they did not recall receiving the VMU report or learning its findings, though the OGC Unit Chief told us she had a general understanding that the FBI officials who reviewed the report thought the information was consistent with the FISA applications.

OI officials told us that they did not recall having been advised of VMU's findings at any time before the second and third renewals, and the OI Attorney said that, had he known, he would have sought additional information from the FBI about the validation that was undertaken. Further, Evans told us that the finding sounded like something he would have thought warranted an update to the court in the next FISA application.

F. Joseph Mifsud's Denials to the FBI

As described in Chapter Three, Priestap and other FBI officials told the OIG that the sole predication for opening the Crossfire Hurricane investigation was the statement George Papadopoulos made to FFG officials that the Trump campaign had received a suggestion or offer of assistance from Russia that involved the anonymous release of disparaging information about then presidential candidate Hillary Clinton. All four Carter Page FISA applications relied upon this information in the probable cause section to help support the FBI's assessment that Russia was attempting to influence the 2016 presidential election and that those efforts were being coordinated by Carter Page and possibly others associated with the Trump campaign.

During an interview with the FBI in late January 2017, Papadopoulos told the FBI that a Maltese citizen, Joseph Mifsud, who was living in London and serving as a university professor, told him that the Russians had "dirt" on Clinton in the form of "thousands of emails." In an interview in February 2017, Papadopoulos told the FBI that Mifsud told him that Clinton had "problems with her emails." In the same interview, Papadopoulos said that the "Russians had her emails" because the Russians told him (Mifsud) they have them. The FBI determined that Mifsud provided this information to Papadopoulos on April 26, 2016, shortly before Papadopoulos's meeting with the FFG.

As part of its investigation, the FBI interviewed Mifsud in February 2017, after Renewal Application No. 1 was filed but before Renewal Application No. 2. According to the FD-302 documenting the interview, Mifsud admitted to having met with Papadopoulos but denied having told him about any suggestion or offer from Russia.⁴⁰³ Additionally, according to the FD-302, Mifsud told the FBI that "he had no advance knowledge Russia was in possession of emails from the Democratic National Committee (DNC) and, therefore, did not make any offers or proffer any information to Papadopoulos." Renewal Application Nos. 2 and 3 did not include these statements Mifsud made to the FBI.

A written case update indicates that Mifsud's denial was circulated to the Crossfire Hurricane team no later than late April 2017. Case Agent 6 told us that he was not sure he was aware at the time that Mifsud had been interviewed.⁴⁰⁴ The OI officials handling Carter Page FISA applications told us that they either had not been advised of the denial or did not recall being advised at the time. Evans told us that he could not say definitively whether OI would have included this information in subsequent renewal applications without discussing the issue with the team (the FBI and OI), but Evans also said that Mifsud's denial as described by the OIG sounded like something "potentially factually similarly situated" to the denials made by Papadopoulos that OI determined should have been included.⁴⁰⁵

G. Carter Page's Alleged Role in Changing the Republican Platform on Russia's Annexation of Ukraine

As described previously, all four FISA applications relied upon information attributed in the Steele reporting to Person 1, including that:

[A]ccording to [the sub-Source], Candidate #1's [Trump's] team, which the FBI assesses includes at least Page, agreed to sideline Russian intervention in Ukraine as a campaign issue and to raise U.S./NATO defense commitments in the Baltics and Eastern Europe to deflect attention away from Ukraine.

This assessment was based upon information in Steele Report 95 that purportedly came from Person 1 ("Source E" in Report 95), as well as news articles in July and August 2016 reporting that the Trump campaign adopted a milder tone toward

⁴⁰³ According to the Special Counsel's Report, Mifsud made inaccurate statements during this FBI interview about his interactions with Papadopoulos. See *The Special Counsel's Report*, Vol. I at 193.

⁴⁰⁴ We did not find any information in the documents we reviewed indicating that Case Agent 6 received the written case update containing the description of Mifsud's interview.

⁴⁰⁵ As described in Chapter Seven, Renewal Application Nos. 2 and 3 advised the court in a footnote that, over the course of several interviews with the FBI in early 2017, Papadopoulos confirmed that he met with officials from the FFG but denied that he discussed anything with them relating to the Russian government. However, as described earlier in this chapter, none of the FISA applications advised the court that Papadopoulos denied to FBI CHSs and the FBI that anyone associated with the Trump campaign was involved in the DNC email hack or was collaborating with Russia or with outside groups like WikiLeaks in the release of emails.

Russia's annexation of Crimea and influenced changes to the Republican Party's platform on providing weapons to Ukraine.

We found that, other than this information from Report 95, the FBI's investigation did not reveal any information to demonstrate that Carter Page had any involvement with the Republican Platform Committee. We further found that, even after the FBI identified the individuals who were involved with influencing the Republican Platform change on Ukraine (which did not include Page), the FBI never altered their assessment. The FBI also did not include in any subsequent Carter Page FISA applications information that contradicted the assertion that Carter Page was involved with the Republican Platform Committee's provision on Ukraine, nor did OI provide such information at any time to the FISC.

As discussed in Chapter Ten, in October 2016, Carter Page met with an FBI CHS and, two days later, pertinent statements from that meeting were sent to Case Agent 1, SSA 1, and other agents and analysts on the Crossfire Hurricane team. The excerpts included statements Page made to the CHS about the platform committee during the Republican National Convention. Page told the CHS that he "stayed clear of that—there was a lot of conspiracy theories that I was one of them...[but] totally off the record...members of our team were working on that, and...in retrospect it's way better off that I...remained at arms length."

Case Agent 1 told the OIG that he did not believe Carter Page's statements on the platform issue were "that specific" and said that Page "minimized" and "vacillated on some things." SSA 1 told us he did not recall why Page's denial that he participated in the Republican Platform Committee was not included in the first FISA application. Before FISA Renewal Application No. 1, which was filed in January 2017, the OI Attorney did receive the documents containing Page's October 2016 denials. Yet, the information about the meeting remained unchanged in the renewal applications. The OI Attorney told us that he did not recall the circumstances surrounding this, but he acknowledged that he should have updated the descriptions in the renewal applications to include Page's denials.

Subsequently, an FBI November 30, 2016 Intelligence Memorandum titled "The Trump Campaign and US-Russia-Ukraine Policy—A Quick Overview," stated:

During a RNC platform sub-committee meeting, Diana Denman, a platform committee member, attempted to insert amendment language calling for the United States to "provide lethal defensive weapons to the Ukrainian government," adding that the Ukraine [sic] was presently "fighting a [Russian-backed] separatist insurrection." In response to Denman's amendment, two Trump campaign members—one of whom was Jeff [JD] Gordon—approached the sub-committee co-chairman and asked for the amendment to be set aside. Denman's amendment was subsequently tabled, and the Trump staffers instead convinced the platform subcommittee to change the language from "lethal defensive weapons" to calling for "appropriate assistance."

The Intelligence Memorandum did not identify or reference Carter Page as the second individual involved, or state that he was involved in any capacity in the platform change. Case Agent 1 said he did not recall reading the November 30 Intelligence Memorandum but said that, at that time, the team was still trying to determine if there was any information connecting Carter Page to the platform change. Case Agent 1 told us that although the FBI did not know who from the Trump campaign approved Carter Page's trip to Moscow prior to the Republican Convention, and the platform change was made shortly after Page returned from his trip to Russia, the belief was that Page was involved in the platform change and the team was hoping to find evidence of that in their review of the FISA collections of Page's email accounts.

Additionally, as described in Chapter Six and earlier in this chapter, in January 2017, Steele's Primary Sub-source provided the FBI with information that was inconsistent with the information Steele reported from Person 1 (Source E in Report 95), including the reporting that Page was involved in the Republican Platform Committee changes on Ukraine. Indeed, the Primary Sub-source made no reference to discussing the Republican Platform Committee or Ukraine provision with Person 1.

Further, on March 16, 2017, Case Agent 1 and Case Agent 6 interviewed Carter Page and asked him about his activities at the 2016 Republican National Convention. Carter Page told them he had no part in the decision by the Platform Committee to omit the reference to "lethal assistance" involving Ukraine, but that he supported the omission of the reference. Page said he learned of the policy change upon receiving an email from Gordon dated July 14, 2016, to himself, Papadopoulos, and four members of the campaign foreign policy team. The email, which Page provided to the FBI during the interview, stated, in part:

I hope you had a chance to read some of the press coverage over Platform [sic]. We are proud to say it is the strongest pro-Israel policy statement in the history of the Republican Party. We are also pleased to say we defeated red line amendments like providing lethal assistance to Ukraine.

That same day, Carter Page replied to this email, "Fantastic, J.D. thanks a lot for the useful insights and context. As for the Ukrainian amendment, excellent work."

Case Agent 6 sent this email to members of the Crossfire Hurricane investigative team, including SSA 2. The OI Unit Chief told us that he did not recall specifically seeing this email but said that if the FBI had any information suggesting Carter Page might not have been involved with the Republican platform, then it should have been discussed with OI.

Renewal Application Nos. 2 and 3 included Carter Page's denials about his involvement in the Republican Platform Committee's changes on assistance to Ukraine from the March 16 interview with the FBI. After including these denials in the applications, the renewal applications stated that,

As the FBI believes that Page also holds pro-Russian views and appears to still have been a member of Candidate #1's [Trump's] campaign in August 2016, the FBI assesses that Page may have been downplaying his role in advocating for the change to Political Party #1's [Republican] platform.

We observed among the NSD's Counterintelligence and Export Control Section (CES) records an April 2017 version of an investigation outline CES prepared and periodically updated reflecting that Carter Page received an email from Gordon in July 2016 about the platform change and that the email "suggests Page was not involved in the decision." Also included in the CES outline were Page's denials to the FBI. Former CES Chief David Laufman told us that, at that time, the FBI was at an "investigative dead end" with respect to Page and the platform issue with no new evidence emerging. During his OIG interview, we provided Laufman with the July 2016 email that Carter Page provided to FBI agents during his March 16 interview. After reviewing the email, Laufman told us that he would reword the reference in the CES outline stating that the email "suggests Page was not involved in the decision to" instead read: "there's no indication in the email that Page was involved."

An FBI March 20, 2017 Intelligence Memorandum titled "Overview of Trump Campaign Advisor Jeff D. [J.D.] Gordon" again attributed the change in the Republican Platform Committee's Ukraine provision to Gordon and an unnamed campaign staffer. The updated memorandum did not include any reference to Carter Page working with Gordon or communicating with the Republican Platform Committee. On May 5, 2017, the Counterintelligence Division updated this Intelligence Memorandum to include open source reporting on the intervention of Trump campaign members during the Republican platform discussions at the Convention to include Gordon's public comments on his role. This memorandum still made no reference to involvement by Carter Page with the Republican Platform Committee or with the provision on Ukraine.

On June 7, 2017, the FBI interviewed a Republican Platform Committee member. This interview occurred three weeks before Renewal Application No. 3 was filed. According to the FBI FD-302 documenting the interview, this individual told the FBI that J.D. Gordon was the Trump campaign official that flagged the Ukrainian amendment, and that another person (not Carter Page) was the second campaign staffer present at the July 11 meeting of the National Security and Defense Platform Subcommittee meeting when the issue was tabled.

Although the FBI did not develop any information that Carter Page was involved in the Republican Platform Committee's change regarding assistance to Ukraine, and the FBI developed evidence that Gordon and another campaign official were responsible for the change, the FBI did not alter its assessment of Page's involvement in the FISA applications. Case Agent 6 told us that when Carter Page denied any involvement with the Republican Platform Committee's provision on Ukraine, Case Agent 6 "did not take that statement at face value." He told us that at the time of the renewals, he did not believe Carter Page's denial and it was the team's "belief" that Carter Page had been involved with the platform change. We

asked Case Agent 6 if the FBI had any information to support its continued assessment that Carter Page was involved in the Republican Platform Committee's provision on Ukraine, and he provided no further information.

In the next chapter, we discuss the interactions career Department attorney Bruce Ohr had with the Crossfire Hurricane team, the information he provided to the team regarding his interactions with Steele and Glenn Simpson, and the work Ohr's wife performed for Fusion GPS. We also describe Ohr's actions following the 2016 elections relating to the investigation of Paul Manafort.

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CHAPTER NINE

DEPARTMENT ATTORNEY BRUCE OHR'S ACTIVITIES DURING THE CROSSFIRE HURRICANE INVESTIGATION

In this chapter, we describe Department attorney Bruce Ohr's activities during the Crossfire Hurricane investigation, primarily relating to his interactions with Christopher Steele. Ohr was an Associate Deputy Attorney General (ADAG) in the Office of the Deputy Attorney General (ODAG) and the Director of the Organized Crime and Drug Enforcement Task Force (OCDETF) at the time of the Crossfire Hurricane investigation, and was personally acquainted with Steele and Fusion GPS co-founder Glenn Simpson. In addition, Ohr's wife Nellie Ohr was employed as an independent contractor by Fusion GPS. During 2016 and 2017, Ohr received information from Steele and Simpson describing alleged links between the Russian government and the Donald J. Trump campaign and suggesting that the Russian government had leverage over Trump. Ohr provided the information he received from Steele and Simpson to the FBI, which had already received much, but not all, of the same information through its direct contact with Steele. Ohr did not advise any of his supervisors in ODAG about his contacts with Steele and Simpson, about his wife's work for Fusion GPS, or about his acting as a conduit of this information to the FBI, until ODAG leadership confronted Ohr about his activities in late 2017.

We also describe in this chapter Ohr's and several other Department attorneys' activities before and after the November 2016 elections relating to the Department's then ongoing criminal money laundering investigation of Paul Manafort.

I. Bruce Ohr's Background

A. Department Positions and Responsibilities

Bruce Ohr joined the Department on January 31, 1991, as an Assistant U.S. Attorney (AUSA) in the U.S. Attorney's Office for the Southern District of New York (SDNY). Ohr remained with SDNY until 1999 when he transferred to the Department's Criminal Division (CRM) in Washington, D.C., as Chief of the Organized Crime and Racketeering Section (OCRS). Ohr told the OIG that as Chief of OCRS, he tried to develop the Department's capacity for fighting transnational organized crime and that this was when he began tracking Russian organized crime.

In 2011, Ohr became Counsel for Transnational Organized Crime and International Affairs to the Assistant Attorney General in CRM and worked primarily for CRM Deputy Assistant Attorney General Bruce Swartz. According to Ohr, in that position he focused on policy issues relating to transnational organized crime and had no prosecutorial responsibilities. He stated that he was often the Department's "public face" at conferences and was sometimes approached by individuals who provided information about transnational organized crime.

In November 2014, Ohr became an ADAG in ODAG and the Director of OCDETF, a Senior Executive Service-level (SES) position. Ohr reported to the Principal Associate Deputy Attorney General (PADAG) and the Deputy Attorney General (DAG) in both of these positions. Ohr stated that as OCDETF Director, he oversaw OCDETF in its "mission...to coordinate organized crime and primarily drug investigations across the different parts of the U.S. government." He said OCDETF is responsible for aspects of the national drug and organized crime policies and provides funding for agents and prosecutors working on drug and organized crime cases. OCDETF is not an operational entity and does not direct prosecutorial actions in any cases. Ohr told us that when he became the OCDETF Director, then DAG Jim Cole expressed his desire for Ohr to expand OCDETF's mission to include transnational organized crime matters. He said that, as a result, he continued working on transnational organized crime policy and, in order to maintain awareness, tracked Russian organized crime issues.

As an ADAG, Ohr also served as Director of the Attorney General's Organized Crime Council, as the Department's Liaison to the Office of National Drug Control Policy, and as a member of the Attorney General's Capital Case Committee. He also assisted with implementing portions of the 2017 Executive Order on Transnational Organized Crime and developing a Transnational Organized Crime initiative.

Throughout his tenure in the Department, Ohr has been a career employee and not a political appointee.

B. Ohr's Relationship with Steele and Glenn Simpson

1. Ohr's Relationship with Steele from 2007 to March 2016

Ohr stated that he met Christopher Steele in late 2007 during meetings with an allied country's government officials.⁴⁰⁶ He said that after the meetings, he met Steele for lunch and spoke about the threat of Russian organized crime. Ohr stated that after Steele left government service, Steele set up a private investigations firm and remained in contact with Ohr. Ohr told us that he and Steele spoke "probably less than once a year" and that he would see Steele for social visits, such as breakfast or lunch, if Steele visited Washington, D.C. He described his relationship with Steele as being "primarily professional," but also "friendly" because they shared with each other information about their families. Steele likewise told us that he and Ohr were personal friends and that he would see Ohr whenever he was in Washington, D.C., which was about once or twice a year.

Ohr stated that Steele provided him reports that Steele prepared for his clients, which Steele thought the U.S. government might find interesting. He told

⁴⁰⁶ Steele told us he recalled meeting Ohr in 2008 while he was visiting a U.S. government agency, and his contact at that agency arranged for him to meet Ohr.

us that he initially did nothing with the information he received from Steele because it was general and not directly useful for an investigation.

Ohr said he introduced Steele to Handling Agent 1 so that Steele could provide information directly to the FBI in approximately spring 2010.⁴⁰⁷ He told us that he "pushed" to make Steele an FBI Confidential Human Source (CHS) because Steele's information was valuable. Ohr also said that it was "not efficient" for him to pass Steele's information to the FBI and he preferred having Steele work directly with an FBI agent. According to Steele, Ohr and Handling Agent 1 coordinated over a period of time with Steele to set up his relationship with the FBI.

Ohr's contact with Steele did not end after Steele formalized his relationship with Handling Agent 1 and the FBI.⁴⁰⁸ Ohr met or talked with Steele multiple times from 2014 through fall 2016, and on occasion those in-person meetings or video calls included Handling Agent 1. Ohr told us that he viewed meeting with Steele as part of his job because he needed to maintain awareness of Russian organized crime activities and Steele knew Russian organized crime trends better than anyone else. He said he knew Steele was also speaking to Handling Agent 1 at this time because Steele would say that he provided the same information to Handling Agent 1. Handling Agent 1 told us that he knew Steele and Ohr were in contact and talked about issues "at a higher policy level," but stated that he did not know anything further regarding their interactions.

Ohr and Steele also communicated frequently over the years regarding Russian Oligarch 1, including in 2016 during the time period before and after Steele was closed as an FBI CHS.⁴⁰⁹ Steele told us his communications with Ohr concerning Russian Oligarch 1 were the result of an outreach effort started in 2014 with Ohr and Handling Agent 1, to approach oligarchs about cooperating with the U.S. government. Ohr confirmed that he and Handling Agent 1 asked Steele to contact Russian oligarchs for this purpose. This effort resulted in Ohr meeting with Russian Oligarch 1 and an FBI agent in September 2015.

2. Ohr's Relationship with Simpson

Ohr told the OIG that he could not recall how he first met Fusion GPS co-founder Glenn Simpson.⁴¹⁰ He estimated that he saw Simpson less than ten times over several years. According to Ohr, Simpson usually reached out to him to

⁴⁰⁷ Ohr stated that he met Handling Agent 1 when he was with SDNY and remained in contact with him through 2017. As described in Chapter Four, Steele stated he recalled meeting Handling Agent 1 when he was with Ohr at a European seminar on Russian related issues in June 2009.

⁴⁰⁸ Ohr stated that he talked to other individuals he met through his job duties over the years and discussed Russian organized crime whenever the opportunity arose. He told us that he spoke with Steele more often than other individuals because Steele contacted him more frequently. Ohr also stated that Steele was the only contact that he introduced to the FBI.

⁴⁰⁹ The United States imposed sanctions on Russian Oligarch 1 and his business interests, including his Russian company, for his links to senior Russian government officials, suspected criminal activities, and ties to Russian organized crime.

⁴¹⁰ As noted in Chapter One, Simpson declined our request for an interview.

provide information about Russian organized crime figures. Ohr stated that most of Simpson's past information was not actionable, so he did not do anything with it and did not try to introduce Simpson to the FBI. However, as described below, Ohr told us that when Simpson provided names in 2016 of possible intermediaries between Russia and the Trump campaign, he wanted to introduce Simpson to the FBI, but thought Simpson seemed reluctant and did not do so.

C. Nellie Ohr's Relationship with Steele and Work for Fusion GPS

Nellie Ohr, Bruce Ohr's wife, told the OIG that she met Steele in 2009 through her husband, and that she recalled meeting him two more times—sometime after 2014 and then at the July 30, 2016 breakfast meeting discussed later in this chapter. She stated that she knew of Steele's interest in Russian oligarchs and understood him to be a Russia analyst. She described his relationship with her husband as a "professional associate" and considered them to be friendly, but not friends.

Nellie Ohr, who has a doctorate in Russian history and is fluent in Russian, told us that she contacted Simpson in October 2015 to ask for a job with Fusion GPS. She stated that she was familiar with Simpson from reading published newspaper articles he wrote relating to Russian criminal activity. She said that she was hired by Fusion GPS as an independent contractor shortly thereafter. According to Nellie Ohr, she worked remotely from home for Fusion GPS, conducting online open source research. Bruce Ohr told us that he did not play any role in Nellie Ohr's hiring by Fusion GPS.

Nellie Ohr stated that while working for Fusion GPS, she initially conducted online, open source research about a Russian company suspected of human trafficking. She told us that, after her first project, Fusion GPS tasked her to research then candidate Trump and his Russian business associates, which involved searching Russian and other foreign language websites and databases and providing periodic reports detailing her findings. Nellie Ohr stated that she was not told who was funding this project and did not know that Steele was also working for Fusion GPS until July 2016. She said that she stopped working for Fusion GPS on September 24, 2016, when she began a full-time job elsewhere.

II. Ohr's Communications with Steele, Simpson, and the FBI in 2016 and 2017

This section details Ohr's communications in 2016 and 2017 with Steele and Simpson regarding alleged Russian connections with Trump or persons associated with the Trump campaign, Ohr's meetings with FBI personnel concerning the information he received from Steele and Simpson, and the FBI's internal communications regarding Ohr.

A. Ohr's 2016 Contacts with Steele and Simpson Regarding Russian Issues

1. Ohr's July 30, 2016 Meeting with Steele

On Saturday, July 30, 2016, at Steele's invitation, Ohr and Nellie Ohr had breakfast with Steele and an associate in Washington, D.C. Nellie Ohr told us she initially thought it was going to be a social brunch, but came to understand that Steele wanted to share his current Russia reporting with Ohr. According to Steele, he intended the gathering to be a social brunch, but Ohr asked him what he was working on. Steele told us that he told Ohr about his work related to Russian interference with the election. Ohr told us that, among other things, Steele discussed Carter Page's travel to Russia and interactions with Russian officials. He also said that Steele told Ohr that Russian Oligarch 1's attorney was gathering evidence that Paul Manafort stole money from Russian Oligarch 1. Ohr also stated that Steele told him that Russian officials were claiming to have Trump "over a barrel." According to Ohr, Steele mentioned that he provided two reports concerning these topics to Handling Agent 1 and that Simpson, who owned Fusion GPS, had all of Steele's reports relating to the election. Steele did not provide Ohr with copies of any of these reports at this time. Later that evening, Steele wrote to Ohr asking to "keep in touch on the substantive issues" and advised Ohr that Simpson was available to speak with him.⁴¹¹

Ohr told the OIG that he did not know before the breakfast that Steele was working with Nellie Ohr's then employer, Fusion GPS, and did not know whether Steele was aware of Nellie Ohr's employment with Fusion GPS. However, Nellie Ohr told us that Steele made a comment during the breakfast indicating to her that he knew about her connection to Fusion GPS and that Simpson was "okay" with Steele talking to her and Ohr. Steele told us he knew Nellie Ohr was working for Fusion GPS, but he did not know she was doing work related to his project—Russian interference with the 2016 U.S. elections.

Ohr stated that because Nellie Ohr was unaware of Steele's information and had never been involved in similar situations, he became uncomfortable during the breakfast and spoke to Steele privately. Ohr said that he did not discuss "the details of the cases that [he was] working on" with Nellie Ohr. He said he explained to Steele that he did not want Nellie Ohr involved and that he made sure that she was not present for any future conversations he had with Steele. Steele told us that Ohr advised him not to discuss his reporting in front of Nellie Ohr.

Ohr said that he knew the information Steele provided to him was opposition research, but did not know who was paying for it. He told us that it was "clear" to him, due to the nature of the research, that Steele and Simpson were hired by a private party "somehow related to the Clinton campaign." He said he also surmised that Steele thought that by giving the information to Ohr, the U.S. government would do "something." Nellie Ohr similarly stated that she understood from the

⁴¹¹ Ohr memorialized each of his meetings with Steele and Simpson with detailed notes about what they told him.

meeting that Steele hoped Ohr would speak with the FBI regarding the information concerning then candidate Trump.

Steele later told the FBI that, prior to the 2016 elections, he provided information to Ohr and was "pushing Ohr to do something about the [election] reports."

Following the July 30 breakfast, Ohr reached out to officials in the FBI and the Department about the information Steele had provided, but did not discuss this information with the DAG or anyone in ODAG. On August 3, 2016, Ohr emailed Handling Agent 1 asking to speak to him. Handling Agent 1 told us he talked with Ohr, who asked him if he had seen Steele's election reports and whether the FBI was doing anything with them. Handling Agent 1 stated that he told Ohr that an executive assistant director at FBI Headquarters and executive management in the New York Field Office (NYFO) knew about Steele's reporting and were addressing it.⁴¹²

Ohr told us that because the information provided by Steele on July 30 was "scary" and he was unsure what to do with it, he also reached out to CRM Deputy Assistant Attorney General Bruce Swartz. According to Ohr's calendar, he met with Swartz on August 4, and both Ohr and Swartz told us that Ohr provided Swartz with specific details of what Steele had told Ohr on July 30.

Swartz told us that he did not tell his immediate supervisor, CRM Assistant Attorney General Leslie Caldwell (who was a political appointee), or any other senior Department political appointees that Ohr was meeting with Steele or the FBI because he did not want to politicize Steele's information by providing it to political appointees.

We asked Ohr whether he contemporaneously sought any ethics guidance regarding any of the events connected with Steele, Simpson, and Nellie Ohr. Ohr stated that he did not recall considering at the time whether the connections between Nellie Ohr's employment and his receipt of information from Steele and Simpson presented any ethics issues, nor did he recall contacting an ethics official for advice. Ohr stated it was possible he did not seek ethics advice because he did not want to "spread" the information around the Department before it was evaluated.⁴¹³

⁴¹² Chapter Four details Handling Agent 1's actions once he received the election reports from Steele, including how the reports made their way to FBI Headquarters and, eventually, to the Crossfire Hurricane team. Handling Agent 1 also told us that, in October 2016, he advised the members of the Crossfire Hurricane team who came to Europe to interview Steele about his August 2016 conversation with Ohr. Handling Agent 1 stated that they did not appear to be surprised by the information, so he assumed the team knew about Ohr's involvement with Steele. However, when we interviewed the Crossfire Hurricane team members, none of them recalled Handling Agent 1 telling them about Ohr.

⁴¹³ Ohr told us that although he did not seek any ethics advice concerning his wife's presence at the July 30, 2016 breakfast, he ensured that Nellie Ohr was not present for any future conversations with Steele.

2. Ohr's August 22, 2016 Meeting with Simpson

On August 22, 2016, Simpson emailed Ohr requesting that Ohr call him. Later that same day, at Simpson's request, Ohr met with Simpson, and Simpson provided Ohr with the names of three individuals who Simpson thought were potential intermediaries between Russia and the Trump campaign.⁴¹⁴ The three names are included in notes that Ohr told us he wrote on the same day as his meeting with Simpson. According to these notes, one of the three names provided by Simpson was one of the sub-sources in Steele's election reports, who we reference as Person 1 in previous chapters. Another of the names was Carter Page's "[b]usiness partner" who was an "[a]lleged" Russian intelligence officer and "the 'brains' behind [Carter] Page's company—Global Energy Capital." Ohr stated that he was uncomfortable receiving this information from Simpson and did not recall Simpson asking him to do anything with it.

Ohr told the OIG that he was troubled by Simpson's information. He stated that he could not remember when or how he provided Simpson's information to the FBI, but would have likely contacted Handling Agent 1 or the FBI's Transnational Organized Crime-East (TOC-East) Section Chief. Emails indicate that Ohr and Handling Agent 1 spoke on August 24, 2016, but neither of them could recall what they discussed.⁴¹⁵

On September 12, 2016, Ohr and Handling Agent 1 exchanged emails referencing Steele. In one email, Handling Agent 1 informed Ohr that an FBI team was looking into Steele's information. In response, Ohr asked Handling Agent 1 to let him know who to contact with additional information. Handling Agent 1 told us that he did not reply to Ohr's question, and we did not find a response.

3. Ohr's September 23, 2016 Meeting with Steele

On September 23, 2016, at Steele's request, Steele met with Ohr in Washington, D.C. Ohr told us they spoke about various topics related to Russia, including information regarding Russian Oligarch 1's willingness to talk with the U.S. government about Manafort. Ohr said that Steele identified the person who was funding Fusion GPS's opposition research; however, according to Ohr, he did not recognize the name and could not remember it long enough to write it down after the meeting. Ohr also said that he and Steele also discussed allegations that an Alfa Bank server in the United States was a link between Russia and the Trump campaign; that Person 1's Russian/American organization in the United States had

⁴¹⁴ On November 14, 2017, Simpson testified before the House Permanent Select Committee on Intelligence. During his testimony, Simpson told the Committee that he did not meet with Ohr prior to the November 2016 presidential election. He stated further that he met with Ohr one time after Thanksgiving 2016. See *Interview of Glenn Simpson Before the Executive Session of the H. Perm. Select Comm. on Intelligence*, 115th Cong. 78 (November 14, 2017) (hereinafter *HPSCI Interview of Glenn Simpson*).

⁴¹⁵ Department emails indicate that Ohr first spoke with the TOC-East Section Chief regarding Steele and Simpson's information in October 2016, which we discuss below.

used the Alfa Bank server earlier in September; and that an individual working with Carter Page was a Russian intelligence officer.

According to Steele, he and Ohr also discussed Steele's concerns that if Trump won the election, Steele's source network may be in jeopardy. Steele said that a new FBI Director and new agency heads appointed by Trump would have a higher degree of loyalty to the new President, and could decide to take action against Steele and his source network. Steele told us that Ohr explained that the FBI Director had a 10-year term and could not be removed from the position by the President, so information about Steele's source network should be protected.⁴¹⁶ According to Steele, he also asked Ohr about why it appeared from the news that the U.S. government was not addressing his election reporting. Steele said that Ohr told him that the Hatch Act made it a criminal offense for a federal official to make a public statement to the detriment or benefit of a candidate within 90 days of an election.⁴¹⁷ When we asked Ohr about this, he told us he did not recall talking to Steele about either of these concerns.

Ohr did not recall whether he provided anyone with the information he received from Steele at this meeting, but stated that he might have spoken to Swartz and Handling Agent 1 about it. Swartz told us that Ohr provided him with specific information at the time regarding Steele's reporting, but he could not recall the specific information when interviewed by the OIG. Handling Agent 1 told us he did not recall discussing these topics with Ohr.

4. Ohr's Early October 2016 Activities Regarding Steele's Information

Sometime prior to October 13, 2016, Ohr talked to the FBI's TOC-East Section Chief about Steele's information, but Ohr could not recall what he told him. The TOC-East Section Chief recalled Ohr mentioning Steele to him starting in mid-2016, but stated that he could not specifically recall the information Ohr relayed concerning Steele's election reporting.⁴¹⁸

In an October 13, 2016 email, the TOC-East Section Chief told Ohr that counterintelligence agents had traveled to a European city and spoken with Handling Agent 1. Ohr responded that he had additional information to share,

⁴¹⁶ This statement concerning the FBI Director's term is incorrect. The President has the authority to remove the FBI Director prior to the expiration of the 10-year term. See Pub. L. No. 94-503, § 203, 90 Stat. 2407 (1976); 5 U.S.C. § 532 notes.

⁴¹⁷ The Hatch Act does not address this issue. Rather, among other things, it prohibits federal employees from participating in certain political activities on and off duty. Section 7323(a)(1) provides that "an employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election." 5 U.S.C. § 7323(a)(1); 5 C.F.R. §§ 734, 734.401(a)(2), 734.407, 734.411.

⁴¹⁸ The TOC-East Section Chief noted that while it was odd to have a high-level Department official in contact with Russian oligarchs, it did not surprise him that Ohr would be approached by individuals, such as Steele, who wanted to talk to the U.S. government. The TOC-East Section Chief said that it would be "outside [of Ohr's] lane" to continue the relationship with these potential sources after their introduction to the FBI.

specifically names of possible intermediaries, and asked if the counterintelligence agents had an interest in receiving this information. We did not find a response to Ohr's email and the TOC-East Section Chief did not recall providing a name to Ohr, but the TOC-East Section Chief said he likely passed the email to a relevant point of contact who could follow up with Ohr.

5. Ohr's October 18-19, 2016 Communications with Steele and Meeting with McCabe and Lisa Page

Early in the morning of October 18, 2016, Steele emailed Ohr, stating "I have something quite urgent I would like to discuss with you, preferably by [video call] (even before work if you can)." Records reflect that Steele and Ohr spoke around 7:00 a.m. Later that morning, Steele wrote Ohr an email referring to U.S. sanctions on the Russian company controlled by Russian Oligarch 1. In the email, Steele referenced their earlier video call and stated that Russian Oligarch 1's attorney wanted Ohr to receive the information. Ohr told us he could not recall what he talked with Steele about that morning, or what the urgent issue was, but based on this email, he said he believed they likely discussed Russian Oligarch 1. Likewise, Steele said he could not recall the topic of the call, but after reviewing the follow-up email, he said he assumed that the conversation included information about Russian Oligarch 1.

Records reflect that shortly after the video call between Ohr and Steele, Ohr called then Deputy Director Andrew McCabe and made a calendar entry indicating a meeting with McCabe for later that day. Ohr told us he set up the meeting to share Steele's and Simpson's information with McCabe. He told us that he contacted McCabe because Ohr had previously worked with McCabe on issues associated with Russian Oligarch 1 and Russian organized crime. Ohr explained that when Ohr was an AUSA in the SDNY, McCabe was leading the Russian organized crime squad at the NYFO. Ohr also stated that he wanted to ensure McCabe knew about Steele's information and assumed McCabe would provide the information to the right people in the FBI.

We asked Ohr if Steele had asked Ohr to meet with the FBI in order to provide the information that Steele had shared with Ohr. Ohr said that he did not think so. We asked Ohr what prompted him to seek a meeting at that time with McCabe, if it was not at Steele's request. He responded that he recalled being concerned sometime between his August conversations with Handling Agent 1 and his later conversation with the TOC-East Section Chief that NYFO was not talking to FBI Headquarters about Steele's reports. Ohr stated that he wanted to meet with McCabe to ensure that McCabe knew about Steele's information and then McCabe could direct it to the right place within the FBI. We asked Ohr why the TOC-East Section Chief's October 13 email advising Ohr that counterintelligence agents were examining Steele's allegations did not alleviate his concern. He responded that he could not recall.

Ohr met with McCabe during the afternoon of October 18, 2016.⁴¹⁹ Ohr told us that he recalled only meeting with McCabe once concerning Steele's information. McCabe's Special Counsel Lisa Page was also present. Ohr told us that he informed McCabe and Lisa Page about his background with Steele and the reporting Steele provided to him. He stated that he told them that Steele and Simpson were hired by a private party to provide opposition research, but said he could not recall whether he specifically mentioned the Clinton campaign. Ohr thought he also shared with them that Steele and Simpson were communicating with others and that their information was generated for a political client and not for the U.S. government. Although Ohr told us that he believed Steele and Simpson were communicating with the media, he said he could not recall whether he specifically mentioned that to McCabe and Lisa Page.

Ohr said that he also told McCabe and Lisa Page that Nellie Ohr had worked for Fusion GPS (by the date of this meeting, Nellie Ohr was no longer working for Fusion GPS). He said he did so because the information he was providing to McCabe and Lisa Page came from Fusion GPS and Steele and that they needed to consider any possible bias. Ohr told us that this was "another reason [for the FBI] to be cautious" when assessing the information's credibility. According to Ohr, he understood from his meeting with McCabe and Lisa Page that he should contact the FBI if Steele contacted him again. Ohr stated that neither McCabe nor Lisa Page discussed the Crossfire Hurricane investigation with him during the meeting.

McCabe told us that he recalled meeting with Ohr in fall 2016. He did not remember Ohr calling him to set up the meeting or how it came to be scheduled.⁴²⁰ He said that the Crossfire Hurricane team previously told him that Ohr knew Steele and that it was not until the meeting that he better understood Ohr's connection to Steele. McCabe stated that he could not recall specific details from the meeting with Ohr, but believed that the October 18, 2016 notes by Lisa Page and Deputy Assistant Director (DAD) Peter Strzok (as detailed below) accurately captured the meeting's details.

Lisa Page told us she attended the meeting, but did not recall Ohr conveying much substantive information. She stated that in general, Ohr told McCabe that Steele had information he wanted to provide to the FBI. Lisa Page's notes from the meeting show that Ohr discussed Steele, provided Steele's previous employment background, talked about issues concerning Russian Oligarch 1, and indicated that Simpson provided Ohr with names of intermediaries between the Kremlin and the

⁴¹⁹ Ohr testified on August 28, 2018, before the House Committees on the Judiciary and on Government Reform and Oversight. He told the committee members that he met with McCabe shortly after his July 30, 2016 meeting with Steele. Based on the documentary evidence, including Ohr's calendar entry and Lisa Page's handwritten notes, along with Ohr's testimony that he met with McCabe a single time, we believe that Ohr met with McCabe on October 18, 2016. We asked Ohr about the date of his meeting with McCabe in light of the documentary evidence. He told us that he did not recall exactly when he contacted McCabe.

⁴²⁰ McCabe said that he and Ohr first met in 2003, when McCabe was assigned to NYFO's Eurasian Organized Crime Task Force and Ohr was Chief of OCRS. According to McCabe, the two spoke periodically between 2003 and 2016 regarding Russian Oligarch 1.

Trump campaign. Lisa Page also wrote that Ohr met with Russian Oligarch 1 the previous year and "Need report?"

We also reviewed Strzok's notes dated October 18 that detail information concerning Ohr. Strzok told us he believed either Lisa Page or McCabe provided the information to him. In addition to the information contained in Lisa Page's notes, Strzok's notes also stated: "Bruce's wife fluent Russian speaker," "Simpson hired Ohr's wife to find connections," and "She saw no connections [at] first." Additionally, we reviewed Assistant Director E.W. "Bill" Priestap's notes, which reflect an entry dated October 19 that states: "DOJ Bruce [Ohr]—Steele is providing reporting to a variety of people." Priestap told us that he did not recall who told him or how he learned this information.

Steele and Ohr spoke on October 19 at Ohr's request. Ohr and Steele both told us that they could not recall what they spoke about, but Ohr claimed that he did not advise Steele or Simpson that he met with McCabe and Lisa Page.

6. Ohr's November 2016 Communications with the FBI and State Department Regarding Steele

As described in Chapter Six, Handling Agent 1 determined that Steele should be closed as a CHS on November 1, 2016, following the October 31 publication of the *Mother Jones* article.⁴²¹ Handling Agent 1 told us that he spoke with Ohr that same day and recommended to Ohr that he read the article. According to Handling Agent 1, as a courtesy, he told Ohr that he was not engaging with Steele anymore, warned Ohr to be careful when dealing with Steele, and said that Steele could not be trusted.

Ohr said that he did not recall whether Handling Agent 1 informed him that Steele was closed as a CHS during the November 1 telephone call, but remembered Handling Agent 1 telling him that he would no longer be working with Steele because Steele spoke to the press. Ohr told the OIG that he was not surprised that Steele talked to the press because he knew that Steele and Simpson were collecting the information for political purposes and that they had previously talked to others about it. According to Ohr, his understanding was that Steele was not collecting the information for the U.S. government, so he was not functioning as an FBI source.

Handling Agent 1 met with Ohr 1 week later in Washington, D.C. According to Handling Agent 1, Ohr apologized for introducing him to Steele and said that he had not realized the impact of the *Mother Jones* article.⁴²² Ohr told us that he

⁴²¹ Handling Agent 1 told us that he informed Steele on November 1, 2016, that it was unlikely the FBI would continue a relationship with him and that Steele must cease collecting information for the FBI. Handling Agent 1 completed a Source Closing Communication document on November 17, 2016, stating that Steele had been closed for cause on November 1, 2016.

⁴²² Handling Agent 1 told us that Ohr also commented to him at this meeting that Nellie Ohr worked at Fusion GPS. Handling Agent 1 stated he never met Nellie Ohr and did not learn her name until the media publicized the Ohrs' involvement.

recalled meeting Handling Agent 1 and discussing the FBI's closure of Steele as a CHS. He also said that Handling Agent 1 told him that the FBI wanted to interview Ohr about his contacts with Steele.⁴²³

On the morning of November 21, 2016, at the State Department's request, Ohr met with Deputy Assistant Secretary Kathleen Kavalec and several other senior State Department officials regarding State Department efforts to investigate Russian influence in foreign elections and how the Department of Justice might assist those efforts. During a break in this meeting, Ohr and Kavalec discussed together Kavalec's interactions with Steele. Ohr told us that he could not recall how he discovered that Kavalec knew Steele or how he and Kavalec began discussing Steele. Ohr also stated that he recalled meeting with Kavalec on more than one occasion because Ohr was interested in obtaining relevant information about Steele from Kavalec so that he could share it with the FBI's Crossfire Hurricane team.⁴²⁴ We asked Ohr if he provided Kavalec with any of the information Steele or Simpson shared with him during these conversations. He said that he could not recall.

Kavalec told us that she could not recall the specifics of her conversations with Ohr regarding Steele. She stated that, just before or after the November 21, 2016 meeting, she asked Ohr if he knew Steele. Kavalec said that she generally shared with Ohr the information that Steele had provided, and she said Ohr appeared to be aware of it already. She told us that Ohr responded that Steele's information was "kind of crazy...kind of wild...quite a tale." She told us that she provided this information to Ohr believing that he would pass it along to whoever needed it. Kavalec said that she did not specifically ask Ohr to do anything with the information and did not expect to receive any feedback from Ohr.

Later on November 21, 2016, in a meeting previously arranged by Lisa Page at Strzok's request, Ohr met with Lisa Page, Strzok, SSA 1, the Office of the General Counsel (OGC) Unit Chief, and the Chief of the Counterintelligence Division's (CD) Counterintelligence Analysis Section I (Intel Section Chief). Strzok, the OGC Unit Chief, SSA 1, and the Intel Section Chief told us the purpose of the meeting was to better understand Steele's background and reliability as a source and to identify his source network.

Notes taken by meeting participants indicate that Ohr shared the following information:

- Ohr thought Steele had "great expertise" concerning Russia;

⁴²³ Ohr is mentioned in Strzok's notes in connection with a November 9, 2016 Crossfire Hurricane team meeting, but Strzok could not tell us what his handwritten notes said, nor could he recall the conversation.

⁴²⁴ Ohr stated that obtaining information from Kavalec was not part of his Department responsibilities, and even though he had previously provided her name to individuals who were part of the Crossfire Hurricane team, he actively sought information from her because he thought it could be important to whatever investigation the FBI was conducting about Russian interference in the 2016 U.S. elections.

- Steele wrote well-sourced reports using a variety of sub-sources that he wrote for other purposes and shared with the FBI;
- Steele had participated in past efforts to connect Ohr to Russian oligarchs through intermediaries;
- Simpson hired Steele to research Trump and hired Nellie Ohr to perform open source research on Trump;
- Ohr met with Simpson in August 2016 and Simpson provided Ohr with the names of three "potential conduits" of information between Russia and the Trump campaign;⁴²⁵
- Steele's reporting was shared by Simpson with "a lot of people" including the Clinton campaign and the Department of State;⁴²⁶
- Steele was "desperate" that Trump not be elected, but was providing reports for ideological reasons, specifically that "Russia [was] bad;"⁴²⁷ and
- Reporting of Kremlin activities "may be exaggerated or conspiracy theory talk," so Steele cannot know whether all the reporting is true.

According to Ohr, he asked the FBI personnel whether there was a prosecutor assigned to their investigation and was told "no." He also said that no one at the meeting told him about the Crossfire Hurricane investigation, but that he was advised that the FBI was "pushing ahead" on a Manafort case.

SSA 1 memorialized the meeting with Ohr in an FD-302, which largely mirrored the attendees' notes, but also provided additional details.⁴²⁸ SSA 1 documented in the FD-302 that Ohr told the FBI that:

- Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President;"
- "Ohr never believed Steele was making up information or shading it;"
- "Simpson and Steele could have met with [Yahoo] or [Yahoo News reporter] jointly, but Ohr [did] not know if they did;" and

⁴²⁵ See Section II.A.2 of this chapter regarding the individuals mentioned by Simpson. At the November 21 meeting, Ohr provided SSA 1 with a copy of his notes containing these three names and a short summary of their alleged roles.

⁴²⁶ Strzok and SSA 1's notes specifically mention then State Department Assistant Secretary Victoria Nuland and then Special Assistant to the Special Envoy to Libya, Jonathan Winer.

⁴²⁷ When we interviewed Steele, he told us that he did not state that he was "desperate" that Trump not be elected and thought Ohr might have been paraphrasing his sentiments. Steele told us that based on what he learned during his research he was concerned that Trump was a national security risk and he had no particular animus against Trump otherwise.

⁴²⁸ SSA 1 told us that the FD-302 documenting the meeting with Ohr was incorrectly dated as having occurred on November 22, 2016, instead of November 21, 2016.

- Ohr "knew" that Simpson was "hired by a lawyer who does opposition research" and that Steele's reporting was being distributed to "the Clinton Campaign, Jon Winer at the U.S. State Department and the FBI."⁴²⁹

The FD-302 also documented that Ohr provided the FBI with copies of the notes he took about the meetings with Steele on July 30, 2016, and in late September 2016. The FBI did not insert this FD-302 into Steele's closed CHS file.⁴³⁰

SSA 1 told us that no one in the meeting directed Ohr to contact Steele or take any action on behalf of the FBI, but added that Ohr likely left the meeting with the impression that he should contact the FBI if Steele contacted him. When asked if the FBI provided him any guidance on what to do if Steele contacted him, Ohr stated that "the general instruction was to let them know...when I got information from Steele," though he could not recall who told him this or whether he was told this at the October 18 or November 21 meeting. Ohr told us that SSA 1 became his initial FBI point of contact when Ohr sought to provide more of Steele's information to the FBI.

7. Ohr's December 2016 Meetings with the FBI and Simpson

On December 5, 2016, Ohr had a follow-up interview with SSA 1 concerning his contacts with Steele and Simpson. During the interview, Ohr told SSA 1 that Simpson directed Steele to speak to the press, which was part of what Simpson was paying Steele to do, but that Ohr did not know whether speaking with *Mother Jones* was Simpson's idea or not. Additionally, according to the FD-302, Ohr gave SSA 1 a document that Nellie Ohr had created, titled "Manafort Chronology" and told SSA 1 that he would provide the FBI with additional research compiled by Nellie Ohr while working for Fusion GPS.

Ohr told us that he did not recall when or why Nellie Ohr provided him with the Manafort Chronology, but pointed to the July 2016 breakfast with Steele as a possible reason she provided it to him. Nellie Ohr told us that she offered Ohr her Fusion GPS research at the end of September 2016, which included the Manafort Chronology, in an effort to supplement what she believed Ohr would tell the FBI after the July 30 meeting with Steele.⁴³¹

On December 7, 2016, Ohr convened an interagency meeting (including representatives from the FBI) regarding strategy in dealing with Russian Oligarch 1. One of Ohr's junior Department colleagues who attended the meeting told us that, after the meeting, she talked with Ohr about why the U.S. government would support trying to work with Russian Oligarch 1. Ohr's colleague said that Ohr told her that Steele provided information that the Trump campaign had been corrupted

⁴²⁹ The FD-302 also stated that Ohr knew "Simpson and others" were talking to Victoria Nuland at the State Department, but did not provide any details.

⁴³⁰ The FBI drafted a total of 13 FD-302s documenting its meetings with Ohr. None of the FD-302s were added to Steele's closed CHS file.

⁴³¹ As discussed above, Nellie Ohr stopped working for Fusion GPS in September 2016.

by the Russians. The colleague told us that she asked Ohr if the allegations went "all the way to the President" and that Ohr responded "yes." She told us that Ohr said to her that this information was "the basis for the [Russian Oligarch 1] discussion." Ohr told us he recalled telling his colleague generally about the information he received from Steele, but said he could not recall when he told her or what prompted him to do so.

According to Ohr's telephone log, Ohr called Simpson on December 8 and arranged a time to meet, but Ohr told us he could not recall why he contacted Simpson. Ohr said that he met with Simpson on December 10, 2016, and that Simpson gave him a thumb drive. Ohr stated that Simpson did not tell him what was on the thumb drive and that Ohr did not ask him, but that Ohr believed it contained Steele's election reports.⁴³² In testimony to the House Permanent Select Committee on Intelligence, Simpson stated that Ohr requested that he provide information regarding Steele's election reporting.⁴³³

Ohr stated, and his contemporaneous notes reflect, that Simpson told him during the meeting that Trump's attorney, Michael Cohen, was an intermediary between the Russian government and the Trump campaign and had replaced Manafort and Carter Page as intermediaries. According to Ohr's notes, during the meeting Simpson referenced several other alleged links between the Trump campaign and the Russian government. Ohr's notes show that Simpson told Ohr that Simpson "still thinks [Person 1] is a key figure connecting Trump to Russia." Additionally, Ohr's notes reflect that Simpson told Ohr that it was Simpson who asked Steele to speak with the *Mother Jones* reporter as a "Hail Mary attempt."

On December 11, 2016, Simpson forwarded an article to a personal email account shared by Ohr and his wife (which Nellie Ohr forwarded to Ohr's Department email account) about a Russian senator's possible support of Trump. The next day, December 12, Simpson wrote another email, this time requesting to speak with Ohr on the telephone. According to Ohr's telephone log, he spoke with Simpson that same day, but Ohr could not recall what he and Simpson discussed.

Also on December 12, Ohr met with SSA 1 and told SSA 1 that Simpson had explained to Ohr that it was Simpson who asked Steele to speak with the *Mother Jones* reporter as a "Hail Mary attempt" to stop Trump from being elected. Ohr also gave SSA 1 the thumb drive that he had received from Simpson during their December 10 meeting.

On December 20, 2016, Ohr provided SSA 1 with another thumb drive, this one containing open source research that Nellie Ohr had produced for Fusion GPS.

⁴³² As mentioned in Chapter Six, the thumb drive included 15 election reports and 1 additional document. The FBI had previously received 9 of the 15 election reports from Steele and 4 additional election reports from the *Mother Jones* reporter through then FBI General Counsel James Baker. Two election reports were new to the FBI, but the FBI also received those two reports at about the same time from then Senator McCain through then Director James Comey. The FBI only received one additional document from the thumb drive Ohr provided to the FBI.

⁴³³ HPSCI Interview of Glenn Simpson, at 78.

Nellie Ohr stated that after the July 30, 2016 brunch, she understood that Ohr was going to talk to the FBI "on request of Steele" and so she provided her work product to her husband at the end of September 2016 as she finished working for Fusion GPS. Ohr told us he could not recall when Nellie Ohr provided him with her research. According to Nellie Ohr, she removed the Fusion GPS headers from her research because she had not asked Simpson for permission to provide the reports to the FBI and wanted the reports to stand on their own merit.

B. Ohr's Continued Contacts with Steele and Simpson from January to November 2017

In 2017, Ohr's written communications with Steele transitioned from emails using Ohr's Department email account to communications using an encrypted electronic messaging forum. Ohr provided the OIG with a transcript of his encrypted electronic communications with Steele, dating from January 25 to November 27, 2017, and his notes from their conversations. These documents indicate that Ohr and Steele communicated multiple times in 2017 and that Ohr typically informed the FBI of those communications shortly thereafter. The FBI's interviews with Ohr between January and mid-May 2017 were summarized in nine FD-302s, which we discuss below.⁴³⁴

During this timeframe, Ohr's FBI point of contact changed. As described in Chapter Three, SSA 1 rotated off the Crossfire Hurricane team in January 2017, and SSA 3 became Ohr's FBI point of contact until April 2017. From approximately May to June 2017, SSA 4 became Ohr's third point of contact. An agent from the Special Counsel's Office became Ohr's final point of contact through November 2017.

In January 2017, Steele expressed concerns to Ohr that the media would identify, and therefore endanger, his employee and the employee's sub-sources. Ohr conveyed Steele's concerns to SSA 3 and SSA 4 several times in the early months of 2017.⁴³⁵ Steele told us that it was clear to him that Ohr was a conduit to the FBI. He said that Ohr told him that he had talked to the FBI about his concern for his sources' safety, and the FBI had offered to help.

At the end of January 2017 and aware that President Trump had removed Acting Attorney General Sally Yates, Steele asked Ohr for an FBI contact if Ohr were to leave the Department. Ohr provided Steele's concerns to the FBI and, on February 6, 2017, SSA 3 and Case Agent 8 requested Ohr to ask Steele if he would be willing to talk to the FBI again.

On February 14, 2017, Ohr shared with SSA 3 and Case Agent 8 information on topics Steele was working on for different clients, unrelated to Russia or

⁴³⁴ In addition to the information summarized in this section, Ohr also provided information to the FBI from Steele and other individuals on unrelated matters.

⁴³⁵ Ohr stated that by the end of January 2017, Steele knew that Ohr was talking with the FBI because he informed Steele that the FBI could protect Steele's employee.

Crossfire Hurricane.⁴³⁶ Ohr also informed the agents that he did not speak to Steele about re-engaging directly with the FBI. Ohr told us that the FBI's offers to talk with Steele in early 2017 were for the purpose of assisting with an emergency with Steele's sub-sources, but when the danger to the sub-sources passed, the need to re-engage disappeared.

On May 8, 2017, Ohr told SSA 4 and Case Agent 5 that Steele was willing to work with the FBI again. Ohr said that Steele had independently raised with Ohr the subject of re-engaging with the FBI. On May 12, 2017, SSA 4 requested that Ohr ask Steele if he was willing to meet with FBI agents in Europe. According to Ohr, he contacted Steele, who agreed to talk with the FBI agents on May 15, 2017. This meeting did not take place, and, as discussed in Chapter Six, the FBI did not have contact with Steele until September 2017 when he was interviewed by agents assigned to the Special Counsel's Office. Ohr told us he continued to communicate with Steele through the end of November 2017 and provided the details of those communications to the FBI, which primarily focused on Steele's interest in being interviewed by the Special Counsel. However, the FBI did not memorialize any meetings its agents had with Ohr after the Crossfire Hurricane investigation was transferred to the Special Counsel's Office in May 2017. Ohr told us that Steele stopped contacting him after Ohr's name appeared in news articles at the end of 2017.

C. Ohr's Lack of Notification to ODAG, NSD, and Others Regarding His Contacts with Steele, Simpson, and the FBI

Ohr stated that it was both his "duty as a citizen" and a Department employee to provide Steele's and Simpson's allegations concerning Russian connections to the Trump campaign to the FBI. Ohr did not inform his supervisors or political leadership in ODAG that he was meeting with Steele, Simpson, or the FBI, and did not seek any ethics advice regarding these activities in light of his wife's employment with Fusion GPS from October 2015 to September 2016.

Ohr told us that while he had the opportunities to do so, he did not advise ODAG's political leadership of his interactions with Steele and Simpson, or of the information they provided and that he shared with the FBI, because he viewed the information as "raw" and "unfinished" Russian source information that the FBI needed to evaluate. Asked whether he instead considered informing a career employee within ODAG of the information, Ohr responded, "I think if I told another ODAG person, then they might have said, well we just got to tell the DAG." Asked whether a factor in his reluctance to tell then DAG Yates was because she may have told him to stop speaking with Steele, Ohr responded, "It may have been, yeah...."

⁴³⁶ Ohr said that he understood Steele was "angling" for Ohr to assist him with his clients' issues. For example, Ohr stated that Steele was hoping that Ohr would intercede on his behalf with the Department attorney handling a matter involving a European company. Ohr denied providing any assistance to Steele in this regard, and we found no evidence that he did. The Department attorney handling the matter involving the European company told us that Ohr never spoke with her about the matter. Steele told us that he asked Ohr about the Department attorney involved in the case because he was considering contacting the attorney about an issue involving his client.

He further stated that he did not want to stop talking to Steele because he was alarmed by the information he was receiving and believed he needed to get it to the FBI.

Ohr told Swartz about his meetings with Steele and Simpson and the information they had provided. Ohr told us that it was possible that he also told then Counsel to the Criminal Division Assistant Attorney General, Zainab Ahmad,⁴³⁷ and Chief of the Fraud Section, Andrew Weissmann, about his meetings with Steele, Simpson, and McCabe. When asked why he thought he may have told these Department employees as opposed to individuals in ODAG, Ohr stated he wanted "to get the information to career people...to evaluate it and figure out what to do."

Weissmann told us that Ohr told him "nothing" about the allegations Ohr received from Steele. Ahmad told us that Ohr did not provide her with detailed information about what Ohr was hearing from Steele and that Ohr only alluded to the fact that Steele had derogatory information about President-elect Trump.

Former members of ODAG leadership told us they were unaware of Ohr's communications with Steele, Simpson, and the FBI at the time those communications were occurring. Former DAG Yates told the OIG that she was "stunned" to learn through media reports in late 2017 that Ohr had engaged in these activities without telling her, and that she would have expected Ohr to inform her about his communications with Steele because they were outside of his area of responsibility and involved the Russia investigation. Yates added that she "would have hoped that [Ohr and the FBI] would have both told me" of Ohr's meetings with Steele and the FBI. She further stated that Ohr's activities needed to be coordinated with the overall Crossfire Hurricane investigation, which included ensuring that the chain of command at both the Department and FBI were jointly deciding what actions, if any, Ohr might take relating to the Russian interference investigation.

Yates told us that had she learned of Ohr's activities as they were occurring, she would have ensured that all Department and FBI personnel involved in the investigation were informed and consulted. Specifically with respect to Ohr's October 18, 2016 meeting with McCabe, Yates told us she expected Ohr to inform her of any meeting with someone at McCabe's level, regardless of the subject matter, but especially about something "outside of [Ohr's] area" of responsibility.

Then Principal Associate Deputy Attorney General Matthew Axelrod similarly told us that he would have expected to know about Ohr's activities, communicating with Steele and providing information to the FBI, because these were not responsibilities assigned to Ohr and his activities related to a "sensitive" matter. Axelrod said that if had he learned of Ohr's activities as they were occurring, he would have asked questions and sought to determine whether the FBI could stop receiving Steele's information through Ohr. Axelrod told us that he thought ODAG would have been uncomfortable with Ohr continuing to provide Steele's information

⁴³⁷ Ahmad was an Acting Deputy Assistant Attorney General in the Criminal Division from January to April 2017.

to the FBI. Then Associate Deputy Attorney General Scott Schools, who was the highest-ranking career official in the Department, and ODAG's ethics advisor, stated that the FBI had a responsibility to fully report Ohr's involvement to the Department's National Security Division (NSD) and that Ohr had a duty to report his involvement to ODAG's managers.

Dana Boente, who became Acting DAG when Yates was removed from the position on January 30, 2017, told us that he was "really surprised" when he learned that Ohr had multiple conversations with Steele, particularly because Ohr had been a prosecutor and knew that an attorney should never talk to a potential witness without an agent being present. Boente stated that if he had learned about Ohr's contacts with Steele while he was Acting DAG, he may have allowed Ohr to meet with Steele for the limited purpose of putting Steele in direct contact with an FBI agent.

Ohr also told the OIG that he did not approach anyone in NSD because he talked to Swartz, who once oversaw counterintelligence cases for the Department, and thought Swartz was in contact with NSD concerning "Russia stuff."⁴³⁸ Ohr also said that he did not know whether Swartz passed any of the information to NSD. Ohr said that, in hindsight, he thought he should have told people in ODAG and NSD about his communications with Steele and Simpson so that they could deal with the issues presented and so that Ohr could have guidance about how to proceed when communicating with Steele or Simpson. Swartz told us that he had no recollection of Ohr asking him to do anything with Steele's information. Swartz further stated that he did not think he informed anyone in NSD about Steele's information.

III. The FBI's Understanding of Its Relationship and Communications with Ohr

In this section, we describe the Crossfire Hurricane team's and FBI leadership's knowledge and understanding of Ohr's activities with Steele, and the information Ohr provided to the FBI.

A. The Crossfire Hurricane Team's Understanding of Ohr's Activities Related to the Investigation

As described earlier in this chapter, Ohr met with FBI agents 13 times between November 21, 2016 and May 15, 2017, to discuss his contacts with Steele and Simpson. At two of these meetings, in December 2016 after Nellie Ohr had left Fusion GPS, Ohr provided the FBI with open source research Nellie Ohr compiled while employed by Fusion GPS. All 13 meetings between Ohr and the FBI were memorialized in FBI FD-302s and, except for the first meeting, each meeting was held at Ohr's request. Ohr told us that, other than the FBI's request to inquire about Steele's interest in talking with the FBI again, Ohr did not recall the FBI

⁴³⁸ Swartz's responsibility for overseeing counterintelligence cases for the Department ended when NSD was created in 2006, but he continues to advise NSD's leadership on international matters.

asking him to take any action regarding Steele or Simpson. However, Ohr also stated that "the general instruction was to let [the FBI] know...when I got information from Steele."

The FBI personnel we interviewed generally told us that Ohr did not make any requests of the FBI, nor did he inquire about any ongoing cases or make any recommendations about potential investigative steps. None of the FBI witnesses we interviewed recalled anyone tasking Ohr to gather information from Steele or to act as an intermediary between the FBI and Steele.

However, SSA 1, the first FBI supervisory agent to meet with Ohr in November 2016, told us that after their meetings, Ohr likely knew that the FBI was seeking information regarding Russian interference in the 2016 elections and would subsequently inform SSA 1 about anything relevant he learned from Nellie Ohr, Steele, Simpson, or elsewhere. SSA 1 stated that he was in "receive mode" with respect to Ohr's information and was trying to glean from it as much as he could about Steele's source network. He also said that Ohr was well-versed in Russian organized crime and that, in SSA 1's view, Ohr's motives for coming to the FBI were "pure."

Case Agent 1, the lead agent on the Carter Page investigation, told us he recalled learning about Ohr from SSA 1, likely before the first Carter Page FISA application was filed on October 21, 2016. Case Agent 1 recalled that contacting Ohr was one of many things on the Crossfire Hurricane team's "to do" list in fall 2016, but it was not as urgent as some of the others. He further stated that the team viewed Ohr as another "stream of reporting" with potentially new information on Steele's election reports. Case Agent 1 told us that ultimately he did not think that Ohr's information presented anything new and said it did not impact the FBI's work on the Carter Page investigation. He also said that once Steele was closed as a CHS, Case Agent 1 did not believe there were any issues with Ohr being a "conduit" to Steele, but the team never discussed specifically tasking Ohr. Case Agent 1 told us that he thought it was "a patriotic thing" for Ohr to provide information to the FBI. Case Agent 1 also stated that Nellie Ohr's former employment with Fusion GPS did not cause him any concern in November and December 2016 because the team was still trying to understand Fusion GPS's role, and the team trusted that Ohr was a professional, career Department official.

SSA 3, one of the supervisory agents who replaced SSA 1, stated that in January 2017, SSA 1 briefed him on the case during their changeover and identified Ohr only as a "DOJ official" and Nellie Ohr as working for Fusion GPS. He recalled SSA 1 informing him that Ohr provided a version of Steele's election reports to the FBI. SSA 3 also told us that Ohr forwarded other information to the team regarding Russian oligarchs and other issues unrelated to the Crossfire Hurricane investigation. SSA 3 stated that he received the information but took no action and did not provide feedback to Ohr because he did not want Ohr to perceive anything as a tasking or discern the focus of the investigation. SSA 3 also stated that he did not task Ohr because of the appearance of using Ohr to obtain information from a closed source. According to SSA 3, he had two main concerns: 1) Ohr's and Nellie Ohr's connections to Steele and Fusion GPS, the latter of which appeared to have

political connections, and 2) the FBI's continual contact with Steele through Ohr about such a sensitive matter, particularly because such contact with a closed source was "out of the norm." He told us that the members of his team shared these concerns, and he expressed them to his supervisor, DAD Jennifer Boone. SSA 3 stated that each time Ohr asked to meet with him, he consulted Boone and was directed to attend the meeting. He told us he fully informed Boone about the information Ohr provided after each interview and provided her with the FD-302s.⁴³⁹ SSA 3 stated that it was his understanding that Boone would then determine what information to share at the executive level meetings.

SSA 4, who became the third SSA to meet with Ohr after SSA 3 rotated off the investigation in May 2017, said that SSA 3 told him that Ohr would come in and talk about "stuff" related to Steele and the agents would listen to Ohr's information, but that they did not consider the information important. According to SSA 4, SSA 3 stated that Ohr was "just some [person] you [had] to talk to when [he] call[ed]." SSA 4 was working from the FBI's Washington Field Office (WFO) and said that he provided updates regarding his communications with Ohr through WFO's chain of command to FBI Headquarters. SSA 4 also said he updated SSA 2 at FBI Headquarters.⁴⁴⁰ SSA 2 told us he talked with SSA 4 about it being a "bad idea" to continue engaging with Ohr regarding his contacts with Steele. SSA 2 also said that by May 2017 he was "completely tired" of dealing with Ohr as an intermediary and thought the team should cease doing so.

The Supervisory Intelligence Analyst (Supervisory Intel Analyst) who was assigned to the Crossfire Hurricane investigation from its opening in July 2016 and participated in an interview with Ohr in January 2017, told the OIG that the Crossfire Hurricane team was initially receptive to Ohr's information and cited the Simpson thumb drive containing some of Steele's reports the FBI did not already possess as an example of useful information from Ohr. However, the Supervisory Intel Analyst also said that when Ohr began relaying Steele's concerns about the sub-sources and talking about topics unrelated to Crossfire Hurricane, he believed that Ohr was "acting or trying to act more as a conduit."

B. FBI Management's Knowledge of Ohr's Activities

Strzok told the OIG that he did not know whether Ohr continued to meet with Steele after Steele was closed. Strzok said that, if Ohr had continued to meet with Steele, he hoped Ohr would not have talked about anything work related. Strzok also said that he did not recall having any indication or concern that Ohr was meeting with Steele and did not recall anyone having such concerns. However, Strzok's handwritten notes indicate that he received updates from SSA 1 and others on December 12, 2016, December 20, 2016, December 22, 2016, and January 23,

⁴³⁹ SSA 3's notes also reflect he briefed Boone and several others regarding Ohr or the information Ohr provided.

⁴⁴⁰ As mentioned in Chapter Seven, SSA 2 was the Headquarters Program Manager assigned to the Crossfire Hurricane investigation and the affiant for the three Carter Page FISA renewal applications.

2017, regarding Ohr's ongoing communications with Steele and Simpson about Steele's election reporting and Steele's concerns about his sub-sources.

In January 2017, Boone and the new team of agents assigned to Crossfire Hurricane assumed responsibility for communicating with Ohr. Boone stated that she knew SSA 3 had spoken with Ohr regarding his contacts with Steele and was documenting the communications in FD-302s, but she did not recall receiving or reviewing them, but said it was possible that she did. She told us that she recalled advising Priestap about the team's contacts with Ohr and the information they received from him, including how to respond to Steele's interest in re-establishing contact with the FBI. Priestap told us that Boone may have briefed him on the team's interviews of Ohr, but he did not remember her doing so.⁴⁴¹

Priestap told us he knew that the Crossfire Hurricane team met with Ohr, but was unaware of how often the meetings occurred and did not know the full extent of Ohr's involvement with Steele until mid-to-late 2017. Priestap stated that the FBI's engagement with Ohr to learn what Steele had shared with Ohr was potentially useful in understanding Steele and verifying his reporting. Priestap said that he believed Ohr was not a "major factor" in the investigation, but instead saw Ohr as a liaison due to his relationship with Steele.

Priestap said he told the team to document what they learned from Ohr to compare it to the other information gathered. Priestap said he was surprised to later learn that the FBI treated Ohr more like a witness or a source. Priestap also stated that he was not told about Ohr's meetings with Simpson, Nellie Ohr's employment with Fusion GPS, or that Ohr provided Simpson's and Nellie Ohr's thumb drives to the FBI—information that was provided by Ohr to the FBI between November 21 and December 20, 2016. He told us that he did not inform Comey or McCabe about Ohr's involvement in the Crossfire Hurricane investigation, because he was unaware of the full extent of it.

Priestap stated that knowing the full extent of Ohr's activities would have raised "red flags" for him because the situation would have been different than Ohr merely having a pre-existing relationship with Steele. He told us that had he been fully aware of the extent of Ohr's activities, he would have inquired about Ohr's motivations and involvement with Steele, Simpson, and the Crossfire Hurricane investigation.

General Counsel Baker stated that he understood from Crossfire Hurricane leadership briefings he attended in fall 2016 that Ohr had a pre-existing relationship with Steele and that Steele may have had conversations with Ohr about Steele's election reporting. He told us that he did not understand Ohr to be acting as a conduit between Steele and the FBI at this time. According to Baker, he was concerned that if the FBI took an action with which Steele disagreed, Steele would

⁴⁴¹ We reviewed notes taken by a Counterintelligence Division DAD. Her notes from January 23, 2017, contain a reference to Ohr's interview that day and specific information provided by Ohr concerning Steele's sub-sources. Although the notes do not list the attendees of this meeting, they appear to be from a Crossfire Hurricane update meeting.

complain to Ohr, whom Baker viewed as being a prominent Department official. He explained that if Steele complained, Ohr would feel compelled to intervene on Steele's behalf.

Baker told us that he obtained more information regarding Ohr's interactions with Steele during a Crossfire Hurricane leadership meeting with Comey and McCabe in spring 2017. He stated that he did not recall Ohr being critical of how the FBI was handling Steele, but that Ohr had become involved to a greater degree than he had in the past. Baker told us that he learned that Ohr was providing to the FBI information that Ohr had received from Steele, and it was Baker's view that "this [was] not good." He said that he could not recall who was discussing this, but he believed it was McCabe and maybe Priestap and then Executive Assistant Director Michael Steinbach.⁴⁴² He also stated that he thought it was "imprudent" to have Ohr involved and "a bit of a mess," but that he believed that McCabe, Steinbach, and Priestap were "on top of it." Baker told us he "may have mentioned" the issue to OGC Principal Deputy General Counsel Trisha Anderson, and asked her to look into it. Anderson told us that she had limited contemporaneous knowledge about Ohr's interactions with Steele and the FBI. In particular, she told us that she did not know at the time that Ohr had repeatedly provided information from Steele to the investigative team or that Ohr's interviews with the FBI were documented in FD-302s. McCabe told us he did not recall the discussion Baker described.

We asked Baker if he had concerns about Ohr receiving information from Steele. He told us that Ohr was "arguably a source," and the situation needed to be handled carefully to protect Ohr and the Department. Baker further stated that accepting information from a closed source through Ohr was "not the right way to run a railroad" and either the FBI needed to reopen Steele or tell Ohr to stop taking information from him. According to Baker, the decision about whether to utilize Ohr, a senior Department official, as an ongoing, frequent conduit with Steele was not a decision for the investigative team to make, but for the Director. He also said the FBI's use of Ohr in this fashion should have been shared with the Department, but he did not recall anyone doing so.

McCabe told us that he knew Ohr was meeting with the investigative team concerning his contacts with Steele, but did not know how often the team met with Ohr until it was reported in the news media. He said he did not recall knowing that Ohr provided the investigative team with a thumb drive from Simpson or from Nellie Ohr. McCabe told us that Ohr was doing the "responsible thing" by informing the investigative team about his conversations with Steele and that he did not tell the Department about Ohr's involvement because he viewed doing so as Ohr's responsibility. Lisa Page stated that she met with Ohr twice in fall 2016 and had no knowledge of Ohr providing information from Steele and Simpson to the FBI.

Comey told us he had no knowledge of Ohr's communications with members of the Crossfire Hurricane investigative team and only discovered Ohr's association

⁴⁴² Steinbach told us he did not recall ever knowing about Ohr's involvement with Steele. Steinbach retired from the FBI on February 24, 2017.

with Steele and the Crossfire Hurricane investigation when the media reported on it. However, notes taken by Strzok during a November 23, 2016 Crossfire Hurricane update meeting attended by Comey, McCabe, Baker, Lisa Page, Anderson, the OGC Unit Chief, the FBI Chief of Staff, and Priestap, reference a discussion at the meeting concerning "strategy for engagement [with Handling Agent 1] and Ohr" regarding Steele's reporting. Strzok stated that, based on his notes, he believed he informed FBI leadership that Ohr approached the FBI concerning his relationship with Steele and that Ohr relayed Steele's information regarding Russia to the team. Although the OGC Unit Chief could not recall when it occurred, she recalled discussing with executive leadership that the FBI should not use Ohr to direct Steele's actions. Because Strzok's notes of the meeting were classified at the time we interviewed Comey, and Comey chose not to have his security clearances reinstated for his OIG interview, we were unable to show him the notes and ask about the reference in them to Steele and Ohr.

IV. Ohr's Activities Relating to the Criminal Division's Manafort Investigation

In addition to Ohr's interactions with the FBI and Steele in connection with the Crossfire Hurricane investigation, Ohr also participated in discussions about a separate money laundering investigation of Paul Manafort that was then being led by prosecutors from the Money Laundering and Asset Recovery Section (MLARS), which is located in the Criminal Division at the Department's headquarters. That criminal investigation was opened by the FBI's Criminal Investigation Division in January 2016, approximately 2 months before Manafort joined the Trump campaign as an advisor, and concerned allegations that Manafort had engaged in money laundering and tax evasion while acting as a political consultant to members of the Ukrainian government and Ukrainian politicians.

Shortly after the 2016 elections, Ohr participated in several meetings with three senior attorneys from the Department's Criminal Division during which they discussed ways to move the Manafort investigation forward more quickly. Ohr and the three senior Criminal Division attorneys were not assigned to the MLARS Manafort investigation and did not advise MLARS or anyone in their respective chain of command of their discussions. In this section, we describe these meetings regarding the MLARS money laundering case.

A. November 2016 to December 2016

Between November 16, 2016 and December 15, 2016, Ohr attended four meetings to discuss the MLARS investigation. These meetings were attended, at various times, by some or all of the following individuals: Bruce Swartz, Criminal Division Deputy Assistant Attorney General (Deputy AAG); Zainab Ahmad, then Counsel to the Criminal Division's Assistant Attorney General; Andrew Weissmann,

then Section Chief of the Criminal Division's Fraud Section; Strzok; and Lisa Page. MLARS was not represented at any of these meetings or told about them.⁴⁴³

The meetings involving Ohr, Swartz, Ahmad, and Weissmann focused on their shared concern that MLARS was not moving quickly enough on the Manafort investigation and whether there were steps they could take to move the investigation forward. The meetings with Strzok and Page focused primarily on whether the FBI was aware of the Manafort investigation so that it could assess the case's relevance, if any, to the FBI's Russian interference investigation.

Then Section Chief of MLARS, Kendall Day, told us that Ohr, Ahmad, and Weissmann did not have any role in the MLARS Manafort investigation. Day told us that Swartz provided assistance to the investigation because it involved gathering foreign evidence and working with foreign governments, but that his assistance was limited to consulting on those specific issues. According to Swartz, he had a long standing interest in the investigation and prosecution of Manafort, dating to at least 2014, and it was therefore appropriate for him to "strategize" with others about how best to move the MLARS Manafort investigation forward. However, Day and Swartz told us that Swartz could not direct the manner in which such investigations progressed. Swartz also told us that as the Deputy AAG responsible for, among other things, the Office of International Affairs, he could not make prosecutorial decisions relating to cases, but "might weigh in on" case-related decisions such as the timing or sensitivities of charges.⁴⁴⁴

Ohr told the OIG that during a meeting with Swartz and Ahmad on November 16, 2016, he advised them of information "about [Paul] Manafort and Trump and possible Russian influence that [Ohr] was getting from Steele and Glenn Simpson," and that he recalled their response was that they should look into the MLARS Manafort investigation.⁴⁴⁵ Ohr and Swartz both told us that they felt an urgency to move the Manafort investigation forward because of Trump's election and a concern that the new administration would shut the investigation down. Ahmad said that her concerns regarding the Manafort investigation, which were based upon her conversations with Swartz and Ohr, were focused on the line prosecutors not adequately working the investigation. Weissmann stated that Ahmad expressed to him that there was a concern, with which he later agreed, that MLARS was not

⁴⁴³ Swartz, Ohr, and Weissmann were members of the Senior Executive Service (SES). Ahmad was on detail to the Criminal Division from the U.S. Attorney's Office for the Eastern District of New York and was not a member of the SES.

⁴⁴⁴ As a Deputy Assistant Attorney General, Swartz supervised three sections in the Department's Criminal Division: the Office of International Affairs (OIA), the Overseas Prosecutorial Development Office (OPDAT), and the Department's police training organization. He also acted as an advisor to the Attorney General, the DAG, and the Assistant Attorney General for the Criminal Division on international affairs issues.

⁴⁴⁵ Swartz told us that he became aware of allegations that Manafort may have engaged in criminal conduct through the media when former Ukrainian President Victor Yanukovich was ousted from office in February 2014. Swartz said that because he was aware of Manafort's connection to the Russian-backed Yanukovich and other alleged misconduct through MLARS's Manafort investigation, he was concerned when the Trump Campaign named Manafort as its manager in May 2016.

moving quickly enough on its Manafort investigation and that he accepted an invitation from Ahmad to attend a meeting with Ohr and Swartz.

The Fraud Section that Weissmann supervised at the time was part of the Department team that had indicted a foreign national whom Ohr, Swartz, Ahmad, and Weissmann came to believe had information relating to Manafort's alleged criminal conduct. Swartz said that because MLARS had not moved the Manafort investigation forward, he thought it appropriate to meet with Weissmann and discuss the possibility of seeking to obtain information from this foreign national regarding Manafort. In December 2016, the four of them discussed a plan for the Department to approach this foreign national and seek his cooperation against Manafort. Because the extradition of this foreign national was being handled by OIA, Swartz had supervisory responsibility for the extradition aspect of that matter.

Ohr told us that after his November 21, 2016 meeting with FBI officials concerning Steele's information, discussed above, Ohr was advised that the FBI was "pushing ahead" on its Manafort case. Ohr said that he probably shared this information with Swartz. According to Ohr, because "we [had] information that Manafort [was]...somehow...a possible connection between the Russian government and the Trump campaign" it was important to get "national security people" involved in that investigation. Ohr said that because Swartz, Strzok, and Lisa Page were all working on matters involving Manafort, he wanted them to meet and get on the "same page." Consequently, at Ohr's suggestion, Ohr, Swartz, and Ahmad met with Strzok and Lisa Page on December 15, 2016.

Strzok told us that the December 15 meeting consisted mainly of Ohr, Swartz, and Ahmad describing information they had regarding Manafort, and inquiring if they could assist the FBI's investigation. He stated that Swartz discussed the MLARS Manafort investigation and stated that the investigation had stalled. Strzok told us that Swartz wanted him to "kick that [investigation] in the ass and get it moving." We asked Strzok if he understood that Swartz was speaking on behalf of the Department about the Manafort investigation. He responded that his "assumption and belief was that [Swartz] and Bruce Ohr were speaking about topics for which they had relevant supervision and authority over."

Swartz stated that the reason he wanted to talk to Strzok about Manafort was to see if Strzok had any counterintelligence information that would be relevant to what Manafort may have been doing and to push the MLARS Manafort investigation forward. Strzok later sent an email to Boone and others, including the OGC Unit Chief, stating that Boone and he needed to speak with the FBI's Criminal Investigation Division regarding its Manafort investigation to get a better understanding its investigative efforts. The OGC Unit Chief responded: "we have got to get our arms around what CID investigated and what it means for [Manafort]...figure what resources, if any, we can bring to bear to get a better understanding of [Manafort's] foreign power connections and the money that passed hands (if any)."

Ohr, Swartz, Ahmad, and Weissmann all told us that they did not inform anyone in their chain of command, such as the leadership of the Criminal Division

or ODAG, about these meetings.⁴⁴⁶ Ohr stated that he should have advised ODAG leadership that he was participating in meetings about the MLARS Manafort investigation because it was a sensitive matter. Swartz told us that the political appointees leading the Criminal Division knew the Manafort investigation existed, and therefore they should only be briefed if "steps were going to be taken" to move the case forward. Swartz added that he did not advise them of his meetings with Ohr, Ahmad, and Weissmann, as well as those with Strzok and Lisa Page, because he was keeping the Manafort investigation from being "politicized" and protecting the Department from allegations that its investigation of Manafort was politically motivated.

Weissmann told us that at around the time of these meetings, he and Ahmad had a conversation in which Ahmad told him that she and Swartz were not going to tell the Department's political leadership about their efforts to move the Manafort investigation forward. Weissmann said that he remembered thinking, at the time, that this was because Swartz and Ahmad wanted to insulate the political leadership from an allegation of politically targeting Manafort. He stated further that he thought it was "an incorrect judgment call," but could not recall if he told that to Ahmad and said he satisfied himself that it was appropriate because the Criminal Division's front office was aware of the fact MLARS had an open investigation of Manafort. Ahmad told us that she did not recall telling Weissmann that political appointees would not be advised of the meetings and that being the "junior person" in the meetings, she would not have made such a decision, but that Swartz may have done so.

The then Section Chief of MLARS, Kendall Day, a career Department official, told us that he was unaware of the meetings discussed above.⁴⁴⁷ He stated that, given that he was supervising MLARS's Manafort investigation, he should have been invited to these meetings because none of those involved knew the strength of the evidence amassed by MLARS against Manafort or the investigation's status. Day also stated that, because the Manafort investigation was a "sensitive matter," it was imperative to keep the Criminal Division's leadership aware of relevant events to ensure that there were no surprises. He stated further that he was providing briefings regarding MLARS's investigation to his political supervisors, including then Criminal Division Assistant Attorney General Leslie Caldwell.

Caldwell told us that she was unaware of any meetings involving Ohr, Swartz, Ahmad, and Weissmann in which they discussed the MLARS investigation of Manafort. She stated further that she thought that not advising political supervisors about the meetings "suggest[ed] a lack of trust or a lack of confidence in the political appointee...and that seem[ed] a little bit paranoid to [her]." She stated further that a rationale that not advising political appointees of the meetings

⁴⁴⁶ Ahmad told us that she did not advise her chain of command of work she did with Swartz. She said that Swartz was a higher-level supervisor within the Criminal Division and, to her knowledge, was reporting on those activities.

⁴⁴⁷ Day, who had been Chief of MLARS, became an Acting Deputy Assistant Attorney General in the Criminal Division in January 2017.

protected them from an allegation of engaging in a political prosecution was "inappropriate," showed "poor judgment" and was "in itself political."

Yates told us that she too was unaware of the meetings involving Ohr, Swartz, Ahmad, and Weissmann. She said that not telling political appointees about these activities "trouble[d]" her because the Department of Justice does not "operate that way." Yates then stated that there is not "a career Department of Justice and a political appointees' Department of Justice. It's all one DOJ."

B. January 31 and February 1, 2017 Meetings

There were no meetings about the Manafort case involving Ohr, Swartz, Ahmad, and Weissmann from December 16, 2016 to January 30, 2017. On the morning of January 31, 2017, the day after Yates was removed as Acting Attorney General, Ahmad, then an Acting Deputy AAG, sent an email to Ohr, copying Swartz, stating that Weissmann "had something he wanted to discuss with us" and asking Ohr if he was free to meet with Weissmann that morning. Due to scheduling conflicts, Ohr could not attend the meeting, which went forward with Weissmann, Swartz, and Ahmad. Neither Swartz, Weissmann, nor Ahmad could remember what occurred at this meeting. However, each of them speculated that they may have discussed the case involving the indicted foreign national pending extradition, referenced above, who they believed might have evidence detrimental to Manafort.

After the meeting, Ahmad sent an email to Lisa Page, copying Weissmann, Swartz, and Ohr, requesting a meeting the next day, February 1. Ahmad wrote:

Do you by chance have time to meet around 11 tomorrow to follow up on our last discussion? There have been a few Criminal Division related developments that we wanted to discuss. Bruce Swartz is leaving for Mexico tomorrow afternoon, so we were hoping we could squeeze this in before he leaves....

On February 1, 2017, Swartz, Ohr, Ahmad, and Weissmann met with Strzok, Lisa Page, and Acting Section Chief 1 of the FBI.⁴⁴⁸ Strzok told us that the meeting was "largely a discussion about [the Criminal] Division's work on Manafort" and that he did not find the meeting "notable." According to contemporaneous notes taken by Strzok and Lisa Page, they discussed efforts that the Department could undertake to investigate attempts by Russia to influence the 2016 elections. Specifically, the FBI was advised that, with regard to Manafort, the Department was "looking just at [Money Laundering]/Kleptocracy" violations and wanted to bring financial analysis experts into the investigation. The notes also show that Swartz inquired whether there were other types of offenses relating to Manafort that could be investigated, such as Foreign Corrupt Practices Act violations. MLARS was not represented at the meeting and was not notified of it. None of the attendees recalled any discussion of new "Criminal Division related developments," and

⁴⁴⁸ Acting Section Chief 1 attended the meeting because his section was handling the Manafort counterintelligence investigation. As discussed in Chapter Four, Acting Section Chief 1 attended the FBI's meeting with Steele in early October 2016.

neither Ahmad nor Weissmann could recall what the reference in Ahmad's email concerned.

We asked Weissmann, Ahmad, Ohr, and Swartz whether there was a connection between the removal of Yates and these meeting requests. Weissmann and Ahmad denied that this was the case. Ohr, on the other hand, told us that it made sense that Yates's firing influenced the decision to have a meeting with Strzok and Lisa Page. Ohr stated further that he could not specifically recall the discussion, but Yates's name may have been mentioned in connection with this meeting. Swartz stated that Yates's departure obviously could have come up, and he was sure they discussed how to proceed with the Manafort investigation in light of her removal.

Ohr stated that Swartz and Ahmad were worried that the Trump Administration would shut down the Manafort investigation after Yates's departure from the Department. Swartz told us that he may have speculated that the Trump Administration would shut down the MLARS Manafort investigation. Weissmann told us that he was not concerned by Yates's removal and did not recall anyone discussing the impact her removal might have on the Manafort investigation. Ahmad similarly told us that she did not recall anyone expressing concerns to her about political appointees interfering with the Manafort investigation.

No one in MLARS, or the Criminal Division's or ODAG's leadership were made aware of this meeting. Then Principal Associate Deputy Attorney General James Crowell told us that career employees do not get to brief the FBI on a very important case without going through Department leadership. He told us that the Manafort case was important with "potentially...national implications" and that not briefing the AG or the AG's staff was not "okay." Crowell further stated that it was "unbelievable" that Ohr was involved in these meetings because as OCDEF Director it was not his job to involve himself in the Manafort investigation.

When we told then Acting DAG Boente that political appointees may not have been advised of these meetings for the purpose of insulating them from allegations of engaging in a political prosecution of Manafort, Boente responded that that was a "less than satisfying answer." He stated that "political appointees make tough calls on political cases every day," and "[that is] not a reason not to tell [political appointees] about [the case]." He stated further that career officials, such as Swartz, Ohr, Ahmad, and Weissmann, have to depend on the Department's political appointees to do the "right thing."

Boente also told us that the Manafort investigation was an MLARS case and that MLARS ought to be prosecuting it. He added that if Swartz, Weissmann, or Ahmad were unhappy with MLARS's prosecution of the matter, they could have spoken with the then Acting Assistant Attorney General, who was a career Department employee, to see if one of them could take over the investigation.

On February 23, 2017, Swartz sent an email to Ohr, Ahmad, and Weissmann proposing a "check-in meeting" and suggested that they invite Lisa Page to attend. Weissmann responded that Lisa Page should not be invited to the meeting, but that

the new Acting Chief of MLARS should be.⁴⁴⁹ Weissmann told us that he wanted the Acting Chief included in the meeting because she had "equity" in the Manafort investigation. He stated further that he had spoken with the Acting Chief about the Manafort case, but had no recollection if he had told her about his prior meetings with Swartz, Ohr, and Ahmad.

The then Acting Chief of MLARS told us that she only learned about the November 2016 to early February 2017 meetings involving Ohr, Swartz, Weissmann, and Ahmad as a result of her OIG interview. Day, the Acting Deputy AAG overseeing MLARS, told us that he discovered in late March or early April 2017 that Weissmann was planning a meeting with reporters to obtain evidence associated with MLARS's Manafort investigation and that Swartz, Ohr, Weissmann and Ahmad were "collectively interested" in the investigation.⁴⁵⁰ He stated further that he met with Swartz and Ahmad in his office and inquired about Weissmann's meeting and their interest in the Manafort investigation. Day recalled telling Swartz and Ahmad that, given their high-ranking positions in the Department, their "unusual level of interest" in the Manafort investigation could create a perception that the Department was investigating Manafort for inappropriate reasons. According to Day, Swartz expressed concern that "because of the change in the administration" the Manafort investigation "might not be allowed to progress." Day said he told Swartz and Ahmad that the investigation would be handled "just like any other" and that Swartz even asking the question suggested that it was going to be treated differently, which was not going to happen. He also told us that he was "comfortable that no decisions were made for any improper reasons" because he "owned" the Manafort investigation and supervised the attorneys working on it. Swartz told us that he did not recall this conversation with Day.⁴⁵¹

The Manafort money laundering investigation remained with MLARS until it was transferred to the Special Counsel's Office in May 2017. Manafort was subsequently indicted on a series of criminal charges. On August 21, 2018, a jury in the United States District Court for the Eastern District of Virginia found Manafort guilty of five counts of filing false tax returns, failing to report foreign bank accounts, and two counts of bank fraud. He was sentenced to 47 months in federal prison. On September 14, 2018, Manafort pled guilty in the United States District Court for the District of Columbia to one count of conspiracy to launder money, tax fraud, failing to file foreign bank account reports, violating the Foreign Agents Registration Act, and making false statements to the Department of Justice. He was sentenced to 43 months in federal prison.

⁴⁴⁹ In early 2017, after Day had been appointed an Acting Criminal Division Deputy AAG, a new Acting Chief was appointed to lead MLARS.

⁴⁵⁰ Weissmann told us that on or about March 31, 2017, an Associated Press (AP) reporter contacted him and stated that he had information regarding Manafort having a storage locker in Virginia. Weissmann said that he believed the information was worth obtaining and set up a meeting with the AP reporter.

⁴⁵¹ After reviewing a draft copy of this report, Ahmad told us that she did not recall having this conversation with Day.

V. Ohr's Removal from ODAG and OCDETF

Prior to fall 2017, ODAG management had no knowledge of Ohr's ongoing relationship with Steele, Ohr's meetings with the FBI, or Fusion GPS's employment of Nellie Ohr. In November 2017, shortly after the Department received a Congressional request to interview Ohr, ODAG received from the FBI the FD-302s detailing Ohr's relationship with Steele and Ohr's subsequent meetings with the FBI. Shortly after receiving the FD-302s, then DAG Rod Rosenstein directed Ohr's removal from his ADAG position. In January 2018, Ohr was removed as Director of OCDETF. This section discusses ODAG's communication expectations, lack of knowledge regarding Ohr's activities with Steele and Simpson, the limited information Ohr provided to Rosenstein in October 2017 about his connection to Steele and Fusion GPS, the eventual full accounting of Ohr's activities provided to ODAG, and ODAG leadership's decisions to remove Ohr from ODAG and OCDETF.

A. ODAG's Communication Expectations and Lack of Knowledge of Ohr's Activities

Several leaders and managers in ODAG during the time period of our review told us that communication within ODAG is imperative.⁴⁵² As explained below, the DAG relies upon assistance from the career Associate Deputy Attorneys General (ADAGs), such as Ohr, to ensure the Department's effective operation. Among other things, the ADAGs contribute to that effort by keeping ODAG leadership aware of pertinent information and issues affecting the Department.

Then PADAG Axelrod explained that, as the PADAG, he was the day-to-day manager of ODAG, and Ohr reported to Yates through him. Axelrod told us that when he started in ODAG, he told everyone in that office to be "canaries in the coal mine" and advise ODAG management of any issues affecting the Department. Axelrod explained that to properly manage ODAG, he needed to be aware of the issues that ODAG personnel were addressing to ensure that work was not being duplicated, nothing "[fell] through the cracks," and Department components knew who to speak with if questions arose. Yates also stressed that raising significant issues to her enabled her decision making process and prevented her from being surprised.

New ODAG leadership reiterated this theme on January 23, 2017, when Crowell sent an email to the Department's top leadership, including Ohr, directing "timely and complete communication" including the details of "any sensitive or

⁴⁵² From summer 2016 through December 2017, ODAG leadership and management changed several times, with three separate DAGs and several iterations of their staff. Yates was DAG until President Trump removed her on January 30, 2017, at which time Boente was appointed Acting DAG. On April 26, 2017, Rosenstein was sworn in as the DAG. Matt Axelrod was Yates's PADAG until he left the Department on January 30, 2017. Crowell joined ODAG in January 2017 and served as Acting PADAG until June 28, 2017, when Robert Hur arrived, at which point Crowell served as Rosenstein's Chief of Staff until December 9, 2017. Tashina Gauhar was the Associate Deputy Attorney General (ADAG) responsible for ODAG's national security portfolio at this time. Scott Schools, who had served in ODAG during a prior tenure in the Department, rejoined ODAG on October 31, 2016, and served as an ADAG until his departure from the Department on July 6, 2018.

high-profile matters" or issues "[l]ikely to generate significant press attention." Additionally, Crowell requested that "unexpected and/or urgent matters" be raised with ODAG to allow for proper collaboration and response.

When asked why he did not alert anyone in ODAG about his contacts with Steele and Simpson after Crowell's January 24, 2017 email, Ohr stated that his contacts with Simpson and Steele were not part of any of his OCDETF cases, so he provided the information to the FBI and career people instead. Ohr told us he felt that he should talk to career people with experience in dealing with Russian information instead of talking to a supervisor within ODAG. According to Ohr, he did not view the fact that he, as a member of ODAG, was receiving information from Steele as significant or problematic, but rather he viewed the information itself as significant and thought it needed to be provided to the FBI.

Crowell stated that he was "flabbergasted" when he learned about Ohr's involvement with Steele and the FBI. He stated that Ohr should have informed ODAG officials of his relationships with Steele and Simpson and his provision of information from them to the FBI, especially when Rosenstein appointed the Special Counsel and began supervising the investigation, because "a potential fact witness" was on Rosenstein's staff.

Crowell told us that if he had known about Nellie Ohr's connection to Fusion GPS or Ohr's involvement with the Russia investigation, he would have moved Ohr away from the DAG to eliminate any appearance that Ohr was involved in the DAG's oversight of the investigation. Crowell also opined that knowing this information about Nellie Ohr or about Ohr's relationship with Steele earlier would have given Department leadership the time and opportunity to determine how to handle the situation as "the American public need[ed] to have confidence that [the investigation was] done the right way...."

Rosenstein stated that, like his predecessor, his Chief of Staff or PADAG ran weekly staff meetings with the ADAGs. He told us that if Ohr or other members of ODAG had any issues or problems, he expected them to talk to his Chief of Staff, the PADAG, or Scott Schools, who was the ODAG ethics advisor and a career Department employee. According to Rosenstein, "everybody understood that if you had...an ethical issue or just a difficult process issue, that's what [Schools was] there for" and that he expected anyone with a sensitive issue to bring it to Schools.

In his position as ADAG, Ohr was not briefed on the existence of the Crossfire Hurricane investigation and the naming of U.S. persons as subjects. This information was known by ODAG leadership and those ADAGs with national security portfolios, which did not include Ohr. However, as detailed in earlier chapters, by fall 2016, rumors about the investigation were in the press; by January 2017, Steele's election reports were published online; and by March 2017, Comey publicly acknowledged the investigation to Congress in a public hearing. Yates told us that the Russian interference investigation in general was well known within ODAG by the time Ohr met with McCabe in October 2016, and that Ohr knew to speak with Tashina Gauhar, the ADAG responsible for ODAG's national security portfolio, about his involvement with Steele and the FBI. Ohr told us he knew from his November

21, 2016 meeting with members of the Crossfire Hurricane investigative team, Strzok, and Lisa Page that the FBI was doing something regarding the allegations, but he did not know prior to that that the FBI had opened a "specific" investigation. During this period, Ohr never disclosed to anyone in ODAG his contacts with Steele regarding Steele's election reporting. Ohr told us that he could have gone to Gauhar as the national security ADAG, but he decided to speak with Swartz instead. Boente told us that at least after the release of the Intelligence Community Assessment (ICA) on Russian interference with the 2016 presidential elections in January 2017, Boente thought Ohr would have appreciated the potential for an investigation into Russia's activities even if nobody in ODAG mentioned it specifically to Ohr.

As discussed above, Ohr also told us that he did not tell any career attorneys within ODAG about his contacts with Steele and Simpson because he thought that if he told another "ODAG person...they might have said, well we just got to tell the DAG." He said another factor may have been concern that the DAG may tell him to stop speaking with Steele.

The OIG identified notes taken during three FBI Russia briefings to Department personnel that mention Ohr.⁴⁵³ In connection with a Department meeting with FBI representatives (including Strzok) on February 16, 2017, notes by Boente, Gauhar, and Schools indicate that someone likely from the FBI mentioned that Nellie Ohr was employed by Simpson and that Ohr and Steele were in contact.⁴⁵⁴ Additionally, notes from an FBI briefing for Boente on March 6, 2017, indicate that someone in the meeting stated that Ohr and Swartz had a "discussion of kleptocracy + Russian org. crime" in relation to the Manafort criminal case in an effort to "re-energize [the] CRM case." Finally, a section of Boente's notes from a March 22, 2017 meeting include the names Weismann, Swartz, and Ohr next to a section of notes regarding Manafort.

After reviewing these notes, none of the ODAG personnel at these meetings could remember Ohr being mentioned, or recall any additional information provided during these briefings beyond what was stated in these notes. Boente, Gauhar, and Schools did not remember the references to Ohr until they reviewed their notes. Gauhar and Schools stated that without more of the salient information now known concerning Ohr's involvement, the remarks about Ohr did not make an impression on them or indicate to them that Ohr was substantially involved in the investigation. Gauhar told us that had the FBI provided any additional information regarding Ohr's involvement at the February 16, 2017 meeting, she would have included that in her notes.⁴⁵⁵ Gauhar further stated that, given the information now available regarding the extent of Ohr's contributions to the FBI's investigation, the

⁴⁵³ See Chapter Three for further information regarding these briefings.

⁴⁵⁴ Schools stated that he also recalled that sometime after the February 16, 2017 meeting, the FBI OGC Unit Chief made a passing reference to Ohr knowing Simpson and Steele.

⁴⁵⁵ Gauhar took extensive notes during Crossfire Hurricane meetings. For example, her notes for the February 16, 2017 meeting are eight pages long.

FBI should have alerted somebody at the Department about Ohr's activities, or Ohr should have alerted ODAG leadership about what he was doing.⁴⁵⁶

B. Ohr Provides Rosenstein with Limited Information about His Connection with Steele and Fusion GPS

Ohr told the OIG that in October 2017, Nellie Ohr received a call from someone at Fusion GPS who told her that the company was providing documents to Congress that identified her as a Fusion GPS contractor and that he realized that then DAG Rosenstein may need to know about this, so he asked to speak with him. He stated that he informed Rosenstein that his wife, Nellie Ohr, worked for Fusion GPS, and that it may become public that Ohr knew Steele and introduced him to the FBI. Ohr told the OIG that he was "prepared to go into more detail [with Rosenstein], but there really wasn't time."

Rosenstein recalled having this conversation in Ohr's office and told us he remembered Ohr stating he knew Steele and that Nellie Ohr worked for Fusion GPS. Rosenstein told us that during this conversation, Ohr may have also said that he introduced Steele to the FBI and that all this information may become public. Rosenstein described the meeting with Ohr as casual and noted that he was in Ohr's office for another reason, which indicated to him that Ohr did not make a special effort to notify him. Rosenstein stated that he left the conversation under the impression that it was only a "strange coincidence" that Ohr knew Steele.

Schools recalled that Ohr, at some point, "stuck his head in the door and said, hey I just wanted to make sure there's nothing I need to do. My wife works at Fusion GPS. I don't know if there's anything, like, a recusal, or anything I need to deal with." Schools stated that he responded to Ohr by saying that "you don't have anything to do with that case. We don't typically in the Department recuse individuals who aren't responsible for the matter giving rise to a potential conflict." Schools believed this conversation occurred a couple months before Ohr's conduct became public and may have coincided with Ohr's October 2017 conversation with Rosenstein.

Ohr told us that a few weeks after his first conversation with Rosenstein on this issue, he spoke with Rosenstein again and told him that he still talked to Steele from time to time and provided information to the FBI when Steele called him. Rosenstein told us that he recalled a second conversation with Ohr concerning Steele, which he believed occurred in early December 2017. According to Rosenstein, Ohr told him that he delivered a thumb drive containing Steele's election reports to the FBI. Rosenstein said this information changed his perspective of the situation. Rosenstein told us the fact that Ohr

⁴⁵⁶ As explained in previous chapters, no one in NSD had knowledge of Ohr's substantive contacts with Steele. Nor were they aware of his delivery to the FBI of Simpson's and Nellie Ohr's thumb drives. NSD attorneys only learned of Ohr's participation in Crossfire Hurricane in late 2017 or early 2018. NSD witnesses told the OIG that they would have expected the FBI or Ohr to have informed them of Ohr's involvement in the investigation as it occurred.

knew Steele was kind of just an unusual coincidence, but the idea that he had actually had some role in this Russia investigation was shocking to me.... [W]e had been fending off these Congressional inquiries. And they were asking for all sorts of stuff, [FD-]302s and things, and...I had no idea that somebody on my staff had actually been involved in...an operational way in the investigation.

According to Rosenstein, he learned that day or the next day that there were several FD-302s from Ohr's interviews with the FBI. He said that Ohr appeared to be serving as an "intermediary" with Steele.

C. ODAG Learns of Ohr's Activities in Connection to the Russian Investigation and Transfers Ohr

On November 28, 2017, the Department received a letter from the Senate Select Committee on Intelligence (SSCI) requesting a closed interview of Ohr as part of its inquiry into Russian interference with the 2016 presidential election. SSCI's request was forwarded to Ohr and Crowell the next day, and the FBI subsequently provided ODAG with the Ohr FD-302s, which Crowell and Schools reviewed. Schools told us he was shocked by the number of FD-302s concerning Ohr because no one from the FBI had mentioned meeting with Ohr as part of the FBI's efforts to corroborate Steele's reporting.

Following ODAG receiving this information, there were a series of meetings within ODAG involving Rosenstein, Crowell, then PADAG Robert Hur, and Schools. These meetings concerned Ohr's involvement in the investigation and what Ohr had previously described as his limited connection to Steele in his conversations with Rosenstein and Schools. Rosenstein stated he was uncomfortable with Ohr's failure to fully inform anyone in ODAG about his communications with Steele and Simpson. Crowell told us that, after reading the FD-302s, he thought Ohr essentially functioned as a source for the FBI on a sensitive investigation without informing his leadership and was surprised that Ohr provided a version of Steele's election reporting to the FBI. Likewise, Schools told us:

[I]t's just inconceivable to me that somebody in the DAG's office would be having those communications [with Steele], and not report them to the DAG and the PADAG. Just because [the DAG and PADAG] have a right to know.

On December 5, 2017, Crowell and Schools met with Ohr to discuss Ohr's contacts with Steele. Crowell stated that they informed Ohr that they reviewed the FD-302s of his meetings with the FBI and asked Ohr why he did not inform anyone in ODAG about his activities. Schools stated that Ohr told them that he thought Steele's information needed to go to the FBI and not to ODAG political leadership because it was a political matter. According to Crowell and Schools, Ohr also stated that he should have let someone know and apologized.

Rosenstein told us Crowell and Schools reported back to him with their findings, and at that point, he realized Congress likely knew more about Ohr's activities with Steele and the FBI than anyone in ODAG did. Rosenstein told us:

[It] was really disappointing to me that he had made the decision originally not to brief anybody [on] our staff and then even after it was clear it was going to be...of national interest...he chose not to disclose, at least to [Schools], that he had actually had an active role....I felt like, if you're in the DAG's office, and the DAG is getting criticized by Congress for the handling of the Russia investigation, you ought to tell him that you had some role in it.

Rosenstein told us he focused on Ohr's role as essentially the equivalent of an FBI agent when dealing with Steele, over the substance of the information Ohr provided to the FBI. According to Rosenstein, the fact that Ohr had extensive conversations with Steele regarding the allegations of Russian interference and transmitted this information from Steele to the FBI—essentially acting as an intermediary, which was not a normal attorney role—formed the basis for Rosenstein's decision to remove Ohr from ODAG. According to Rosenstein, he viewed what Ohr did as collateral to his primary Department responsibilities, and that Ohr should have informed his supervisors about his involvement or sought ethics advice before taking these actions. Rosenstein said he expected an ADAG in these situations to err on the side of disclosure.

Crowell stated his recommendation, as Chief of Staff, was to remove Ohr as an ADAG and alert the appropriate investigative entities for further determination of the extent of Ohr's activities. According to Rosenstein, Crowell, and Schools, Rosenstein decided to use his discretion to move Senior Executive Service-level (SES) employees. He removed Ohr as an ADAG and reassigned him to the Criminal Division.

Crowell and Schools talked to Ohr again on December 6, 2017. They informed him that he was no longer an ADAG, but would remain Director of OCDETF. Crowell stated that he led Ohr through his options to dispute the decision or accept his removal as an ADAG, and that Ohr agreed to the reassignment.

According to Schools, on December 20, 2017, he met with Ohr to inform him that he also was being removed from his position as Director of OCDETF. Ohr stated that Schools told him that then Attorney General Jefferson Sessions and DAG Rosenstein decided to remove him as Director of OCDETF because the position required coordination with the White House, which was something they no longer wanted Ohr to do. During his OIG interview, Schools told us he could not recall what he told Ohr about the reason for his removal; however, after reviewing a draft of this report, Schools stated that Ohr was correct in his recollection of the reason Schools had provided to him for his removal as OCDETF Director.

Rosenstein told the OIG that he and Sessions were both involved in the decision to move Ohr from OCDETF to the Criminal Division. Rosenstein said that Sessions did not want Ohr running the transnational organized crime program and wanted to replace Ohr as a member of the associated threat management working group at the White House. He said that, independently from Sessions, he wanted to take OCDETF in a different direction with a more proactive OCDETF Director. Rosenstein stated that neither of Ohr's moves were disciplinary actions.

In the next chapter, we discuss the FBI's use of CHSs other than Steele and its use of Undercover Employees as part of the Crossfire Hurricane investigation. We also describe several individuals we identified who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs, and explain why such individuals were not tasked as part of the Crossfire Hurricane investigation. Finally, we describe the participation of the SSA supervising Crossfire Hurricane at ODNI strategic intelligence briefings given to the presidential candidates and certain campaign advisors.

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CHAPTER TEN

THE USE OF OTHER CONFIDENTIAL HUMAN SOURCES AND UNDERCOVER EMPLOYEES IN CROSSFIRE HURRICANE

In this chapter, we examine the FBI's use of Confidential Human Sources (CHSs) other than Steele and its use of Undercover Employees (UCEs) in the Crossfire Hurricane investigation to determine whether the FBI had placed any CHSs within the Donald J. Trump for President Campaign or tasked any CHSs to report on the Trump campaign. We found no evidence that the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. However, we found that the Crossfire Hurricane team did task several CHSs and UCEs during the 2016 presidential campaign, which resulted in interactions with Carter Page, George Papadopoulos, and a high-level Trump campaign official who was not a subject of the investigation. All of the CHS interactions were consensually monitored by the FBI. We found that the Crossfire Hurricane team tasked CHSs to interact with Page and Papadopoulos both during the time Page and Papadopoulos were advisors to the Trump campaign, and after Page and Papadopoulos were no longer affiliated with the Trump campaign. We describe the types of information the CHSs sought to elicit from Page, Papadopoulos, and the high-level campaign official, as well as the information the CHSs obtained and the use, if any, that the Crossfire Hurricane team made of that information.

We also determined that additional CHSs were tasked by the FBI to attempt to contact Papadopoulos, but that those attempted contacts did not lead to any operational activity. In addition, we identified several individuals who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs, but who were not tasked as part of the Crossfire Hurricane investigation. One such CHS did provide the Crossfire Hurricane team with general information about Crossfire Hurricane subjects Carter Page and Paul Manafort, but we found that this CHS had no further involvement in the investigation. We identified another CHS that the Crossfire Hurricane team first learned about in 2017, when the CHS voluntarily provided his/her Handling Agent with [REDACTED]

[REDACTED]. These [REDACTED] were placed into the FBI's files and provided to the Crossfire Hurricane team for review, which determined there was not "anything significant" in the [REDACTED]. Below, we provide additional information about the individuals who had either a connection to candidate Trump or a role in the Trump campaign, and who were also FBI CHSs, and explain why they were not tasked in the Crossfire Hurricane investigation.

Finally, we learned during the course of our review that, in August 2016, the supervisor of the Crossfire Hurricane investigation, SSA 1, participated on behalf of the FBI in a strategic intelligence briefing given by the Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including Michael Flynn, and in a separate strategic intelligence briefing given to candidate Clinton and her national security advisors. Although the briefing of candidate Trump and his advisors was not an undercover operation, because SSA 1

was introduced to the briefing participants as an FBI agent, we discuss this briefing in this chapter, including the reason why SSA 1 was in attendance, and the observations that SSA 1 made as a result of his participation.

I. Methodology

To review the FBI's use of CHSs and UCEs in the Crossfire Hurricane investigation, the OIG was given broad access to highly classified information. In July 2018, the FBI's then Assistant Director (AD) for the Counterintelligence Division (CD), E.W. "Bill" Priestap, briefed the OIG regarding the FBI CHSs and UCEs who provided information for the Crossfire Hurricane investigation. This briefing was based on CD's knowledge of the Crossfire Hurricane investigation as well as searches of the FBI's Sentinel and Delta databases.⁴⁵⁷ In this briefing, Priestap described the FBI's operational use of CHSs other than Steele and his sub-sources, and use of UCEs in the Crossfire Hurricane investigation.

Separately, the OIG reviewed emails, text messages, and instant messages of the FBI agents, analysts, and supervisors working on the Crossfire Hurricane investigation, as well as contemporaneous handwritten notes, to identify references to CHSs and UCEs. Through our Delta searches and review of documents, we learned of additional CHSs who were discussed for potential use in Crossfire Hurricane, but ultimately were not tasked by the FBI. We describe these CHSs in greater detail below.

We also obtained and analyzed the FBI's index for the Crossfire Hurricane case file, as well as the indices of the Crossfire Hurricane sub-files for Papadopoulos, Carter Page, Manafort, and Flynn, who were named subjects of the Crossfire Hurricane investigation. These indices reference activities undertaken by the Crossfire Hurricane team involving CHSs by listing the CHS [REDACTED] in each line item that pertains to CHS activity. We then analyzed the underlying documents from the Crossfire Hurricane case file and sub-files that further described any activities involving CHSs.

The OIG was also given access to the FBI's classified Delta database, which is the FBI's automated case management system for all CHS records. We were able to review [REDACTED] the files of CHSs who were used, as well as those who were considered for use, in the Crossfire Hurricane investigation. The Delta files for these CHSs contained historical information, including when the FBI opened each CHS; the issues on which the CHS had reported; contact reports for all interactions with the FBI; quarterly (QSSR) reports and annual (FOASR) reviews of each CHS; and, where one had been performed, a human source

⁴⁵⁷ As described in Chapter Two, the FBI maintains an automated case management system for all CHS records, which the FBI refers to as "Delta." The Delta file for each CHS contains all of the personal and administrative information about the CHS, as well as sub-files for unclassified reporting, classified reporting, validation documentation, and payment records.

validation report. For any CHS that had been closed by the FBI, the Delta file also described the events that led to the closure, and the basis for the FBI's decision.

We also conducted word searches within the FBI's Delta database for a number of terms, including "Trump" and "campaign," as well as the names of individuals who held leadership positions within the Trump campaign. We analyzed each of the Delta documents containing the search terms related to the Trump campaign and its members. In addition, for any CHS identified through these word searches, we reviewed that CHS's Delta file index for at least the 2016-2017 time period, as well as CHS reports within that file, as appropriate, to determine whether the CHS contributed to Crossfire Hurricane, and, if so, how. We also interviewed numerous former and current Department and FBI officials concerning the FBI's use of CHSs and UCEs during the Crossfire Hurricane investigation.

II. Background

CHSs play an important role in the FBI's efforts to combat crime and protect national security, by allowing law enforcement direct access to information that is often not available through other investigative means. At any one time, the FBI has thousands of active CHSs from diverse backgrounds who report on a wide variety of threats. We were told by the FBI that the relationship between a CHS and the FBI may continue for many years, during which time a source may become inactive, and then become active again. We also were advised that it is commonplace for CHSs to bring information to the FBI that is outside of his or her typical focus, because that individual believes the information may be of interest or value to the FBI.

According to the FBI, its use of CHSs in counterintelligence investigations is common. Priestap told the OIG that CHSs are an "ordinary investigative tool" that are "part and parcel of what [FBI] agents do in an investigative sense every day." Priestap added that the upper levels of FBI management, including the Assistant Director and the Deputy Director, are not usually advised when an investigative team wants to use a CHS for a particular investigation. Indeed, the FBI Confidential Human Source Policy Guide (CHSPG) specifies that "daily oversight responsibility for...CHSs resides with the [Supervisory Special Agent (SSA)], who must review all communications regarding the CHSs on his or her squad and supervise the special agents (SAs) operating those CHSs."

With respect to the involvement of CHSs in political campaign activities, as described in Chapter Two, FBI policies allow for the use of "sensitive" sources (a category which includes individuals who are "prominent within domestic political organizations"), the use of CHSs in sensitive monitoring circumstances, and the undisclosed participation of CHSs in organizations exercising First Amendment rights. The use of CHSs in these circumstances requires heightened levels of supervisory approval to safeguard Constitutional rights and protect civil liberties. In our analysis in Chapter Eleven, we explain why those requirements did not apply to any of the CHS or UCE activities undertaken in the Crossfire Hurricane investigation, from its inception through the November 8, 2016 elections.

III. Strategy and Planning for Use of CHSs and UCEs in the Crossfire Hurricane Investigation

A. Strategy for Use of CHSs and UCEs in Crossfire Hurricane

The agents, analysts, and supervisors who worked on Crossfire Hurricane told the OIG that CHSs played an important role in the investigation. The Section Chief of CD's Counterintelligence Analysis Section I (Intel Section Chief) told the OIG that the use of CHSs was

viewed as...one of the best avenues to potentially get some meat on the bones of the allegation that came through that started the case, to get somebody talking about what that reality was, even if the reality was, this guy Papadopoulos knows nothing or...this is what happened that actually explains that predication.... [I]t was one of those few avenues...available to us in that moment, where you could start to get some clarity around...that initial predicated allegation.... [The idea] was to get...[a] source...to develop enough of a relationship to be able to ask some relatively pointed questions around the Russia issue to try to get clarity on that predicated information.

Case Agent 2 agreed that the best way to find the truth was to get a human source to gather information "to tell [us] where the problem is, period. Period."

The witnesses we interviewed gave the OIG three practical reasons for focusing on operations using CHSs in the investigation. First, the case agents said they were conscious that they were working on a compressed time frame, and told us that CHSs can be an effective tool for quickly obtaining information, such as the telephone numbers and email addresses of the named subjects.

Second, early in the investigation, the Crossfire Hurricane team discovered that it had an existing FBI CHS who had previously interacted with named subjects of the investigation. Then Deputy General Counsel Trisha Anderson told the OIG that using such a source operationally in a counterintelligence investigation is "an obvious selection because of those preexisting relationships." SSA 1 told the OIG that "if we have a source...who has direct contact with...predicated subjects, we can run potential consensual monitoring operations and us[e]...undercovers, and...that was a better use of our limited time and resources." Case Agent 2 added that in thinking about which CHSs to use, the Crossfire Hurricane team "didn't have resources to start going out to every Field Office and sensitizing sources," so using an existing CHS to conduct operations against the Crossfire Hurricane subjects made sense.

Third, multiple witnesses told the OIG that they were very concerned about preventing leaks regarding the nature and existence of the Crossfire Hurricane investigation. SSA 1 told the OIG that one of the overriding concerns was keeping information about the investigation out of the public realm, because the team did not want to impact the presidential election in any way. Priestap said that, in an effort to prevent leaks, the investigative team was kept to a "small group...to try to control the information from getting out."

B. Planning for Operations Involving CHSs and UCEs

SSA 1 told the OIG that he and the case agents were responsible for planning how to use CHSs in the Crossfire Hurricane investigation.⁴⁵⁸ Case Agent 1, Case Agent 2, and Case Agent 3 likewise told us that plans for the operational activities using CHSs and UCEs were driven by the agents and SSA 1. Case Agent 1 said that the investigative team was not "told to do anything specifically. It usually emanated from us coming up with our plans and operations." The Intel Section Chief told the OIG the same thing—that the decisions about the use of CHSs and UCEs for Crossfire Hurricane were made by the case agents and SSA 1, and then approved through the chain of command.

SSA 1 told the OIG he did not remember any instances of then Section Chief Peter Strzok expressing opinions about how CHSs should be used or not used, or instructing the team on how to task the CHSs.⁴⁵⁹ Case Agent 1 told the OIG that he did not recall Strzok "telling us to do anything or directing us to do anything" and did not remember "anything [Strzok] did on his own."⁴⁶⁰ Similarly, Case Agent 2 told the OIG that he had no memory of Strzok ever "com[ing] in and say[ing], nope, I don't want this; I want this." Case Agent 3 told us he remembered talking to Strzok on "a couple of occasions" but Case Agent 3 said he could not "remember engaging him in a whole lot." Priestap told the OIG that there were no operational decisions involving CHSs for which Strzok was the sole decision maker.

Strzok's description of his role matched the information provided by the case agents, SSA 1, and Priestap. Strzok told the OIG that there were no investigative steps or operational decisions that he made on his own, independent of the team. With respect to CHS operations, Strzok told the OIG that his role was not exercising decision making authority, but rather "awareness and oversight." Strzok told the OIG he received briefings on the use of CHSs, but that "by and large, the kind of day-to-day operational use of sources was at a lower level than me." Strzok said that decisions on operations involving CHSs were made at the team level, and FBI managers were told by the team "[w]e've got these operations coming up. This is how we're going to use" each CHS.

⁴⁵⁸ The FBI's CHSPG allowed an SSA to approve the operation of CHSs for all of the circumstances involved in the Crossfire Hurricane investigation, except for a heightened approval requirement for extraterritorial operation of a CHS, which applied to one of the Crossfire Hurricane CHS operations addressed in this chapter. We determined that the heightened approval requirement was met in the applicable circumstance. See CHSPG §§ 19.2 & n.12.

⁴⁵⁹ Strzok was promoted to CD Section Chief in February 2016, and later to Deputy Assistant Director (DAD) of CD's Operations Branch I on September 4, 2016.

⁴⁶⁰ The one issue Case Agent 1 remembered Strzok weighing in on was how aggressively to task one of the CHSs. Case Agent 1 told the OIG he remembered Strzok voicing concern that the investigative team was using the CHS "too often" and that repeated use of a CHS could possibly raise suspicions. Case Agent 1 told the OIG he disagreed and thought the team should be more aggressive "given the compressed time frame in which we had to operate" but characterized the discussion as "just a normal kind of give and take" that occurs in planning CHS operations.

The FBI's Office of the General Counsel (OGC) Unit Chief told the OIG that, following a briefing in August 2016, then Deputy Director Andrew McCabe was "on board with using the sources and using them quickly given the timing issue." However, the OGC Unit Chief added that McCabe did not give direction about what sources to use and how.⁴⁶¹ The OGC Unit Chief also did not remember any position that Lisa Page ever took about whether to use any of the CHSs, and said that Lisa Page had no final say over decisions on operations involving CHSs.⁴⁶² Priestap told the OIG that, in the updates that the Director, Deputy Director, and EAD received, they were not provided with the "detail[s] of how...[each] confidential human source was going to be used going forward." During his OIG interview, McCabe said that he did not expect the Crossfire Hurricane team to brief him on every CHS, and that he did not direct the Crossfire Hurricane team to use any specific CHSs. Rather, he said that it was the responsibility of the investigative team "to make [the] assessments" of which CHSs to use and how to use them. He added that FBI policies contain no requirement for a case agent to "get[] the Deputy Director's opinion on whether [a] source operation is a good idea or not or what the limitations should be."

The OGC Unit Chief also told us that members of the investigative team identified the CHSs and UCEs they wanted to use, and proposed the operational activities, as "the best way to try to get [the] answer quickly and covertly." She said that, under FBI policy, SSA 1 had the authority to approve the types of CHS operations used in the Crossfire Hurricane investigation. The Department was not part of the discussions regarding how to use FBI CHSs and UCEs to further the investigation. Department approval was not required to conduct operations using CHSs and UCEs, and the OGC Unit Chief told the OIG that the FBI does not "generally loop in DOJ...to discuss source operations" in counterintelligence investigations because the FBI is very protective of its source base and the identity of its CHSs.

In determining how to use CHSs in the Crossfire Hurricane investigation, SSA 1 and the case agents told the OIG that they focused their CHS operations on the predicated information and the four named subjects. Case Agent 1 told the OIG

⁴⁶¹ The only express direction we found that McCabe gave regarding the use of a CHS concerned a former FBI CHS, who contacted an FBI agent in an FBI field office in late July 2016 to report information from "a colleague who runs an investigative firm...hired by two entities (the Democratic National Committee [DNC] as well as another individual...[who was] not name[d]) to explore Donald Trump's longstanding ties to Russian entities." The former CHS also gave the FBI agent a list of "individuals and entities who have surfaced in [the investigative firm's] examination," which the former CHS described as "mostly public source material." In mid-September 2016, McCabe told SSA 1 to instruct the FBI agent from the field office not to have any further contact with the former CHS, and not to accept any information regarding the Crossfire Hurricane investigation. McCabe told the OIG he did not remember giving those instructions, and could not tell us why he might have done so. We found no evidence that the FBI reopened the former CHS for the Crossfire Hurricane investigation, or tasked the former CHS in connection with the Crossfire Hurricane investigation.

⁴⁶² Case Agent 1, Case Agent 2, and Case Agent 3 each told us that they were not aware of any decision making by Lisa Page in the investigation and that they had little to no interaction with her.

that the team "had a very narrow mandate" and that was "a mandate to look at these four individuals...and see if there's any potential cooperation between themselves and the Russian government...that was our goal in that investigation." He added that they were focused on the information from the Friendly Foreign Government (FFG) "and wanted to prove or disprove it, [as] best we could" but also "wanted to make sure that it didn't get broadcast out and we didn't harm the electoral process." Case Agent 2 told the OIG that the Crossfire Hurricane team was "focused on four predicated subjects." He stated that the core of the investigation was "literally looking at the predication and saying, okay, who reasonably could have had been in a position to receive suggestions from the Russians?" Case Agent 2 also said that in his "experience over twenty years [in the FBI]...a human source every time is going to answer that question" and so the team had "to start thinking about what human sources we can use."

SSA 1 also told the OIG that he did not have any information that the use of the CHSs was motivated in any way by political objectives rather than investigative objectives. He said that there was "no inkling of that. I never detected that, or had any indication of that." Priestap likewise told the OIG he was not aware of anyone's political preferences playing any role in the tasking of the CHSs. Priestap said that if he had seen any indication that Strzok was taking investigative actions for political reasons, Priestap would have removed Strzok from the Crossfire Hurricane team. Priestap said that he "absolutely would not have tolerated" politicization of the investigation, and that he never saw anything to indicate that type of activity was occurring.

C. Absence of FBI CHSs Inside the Trump Campaign

All of the witnesses we interviewed told the OIG that the FBI did not try to recruit members of the Trump campaign as CHSs, did not send CHSs to collect information in Trump campaign headquarters or Trump campaign spaces, and did not ask CHSs to join the Trump campaign or otherwise attend campaign related events as part of the investigation. Using the methodology described above, we found no information indicating otherwise.

Priestap told the OIG he knew of no effort by the FBI to infiltrate the Trump campaign. He said the investigation

was about a foreign adversary trying to mess with our free and fair election system. We wanted to know if any U.S. persons assisted in any way. In no way was it an investigation into...the political process.... [I]t's not the FBI's role in any way to try to monitor or...investigate campaigns.

Priestap added that the FBI wasn't

after policy and plans. We were after some specific information about possible collusion with the Russians.... We never tried to develop somebody and insert them into the campaign. I'm actually pretty darn confident we could have been able to do that...if that was the objective. The FBI is pretty good at developing sources and inserting

them into situations to advance our investigations. I know of no conversation in which that was a plan on the part of the FBI's.

McCabe told the OIG that he was never involved in any discussions about placing an FBI CHS into the Trump campaign to further the Crossfire Hurricane investigation, or for any other purpose. Former Director James Comey told the OIG that, if there had been an effort to place a CHS within the Trump campaign, he would have expected to have been notified of that. He also said he had no knowledge of any FBI CHSs that had been asked by the FBI to join the Trump campaign in any capacity, and no information that would support an allegation that the FBI had been spying on the Trump campaign.

IV. Use of CHSs and UCEs in the Crossfire Hurricane Investigation

A. No CHSs and UCEs Used Prior to the Opening of the Crossfire Hurricane Investigation

In our review, we did not find any evidence that the FBI used CHSs or UCEs to interact with members of the Trump campaign prior to the opening of the Crossfire Hurricane investigation. All of the members of the Crossfire Hurricane team told the OIG that no investigative steps of any type were taken prior to receipt of the predicated information for the Crossfire Hurricane investigation on July 28, 2016, and we found no evidence to the contrary.

We investigated allegations that the FBI used specific individuals to undertake CHS activities prior to the predication of Crossfire Hurricane. For example, we investigated an allegation that the FBI sent a CHS (known as "Henry Greenberg" by other aliases) to meet with Trump advisors Roger Stone and Michael Caputo in March 2016, to offer to sell derogatory information about Hillary Clinton for \$2 million. We found no evidence in the FBI's Delta files or from witness testimony that this individual was acting as an FBI CHS for any purpose in 2016.

We also investigated an allegation, raised by Papadopoulos, that the FBI used Joseph Mifsud, a Maltese citizen who was living in London and serving as a university professor, to pass information to Papadopoulos in April 2016 as a set up, so that the FBI could predicate the Crossfire Hurricane investigation. Papadopoulos raised this possibility during his October 25, 2018 testimony before the House Judiciary Committee and House Committee on Government Reform and Oversight, by stating that Mifsud might have been "working with the FBI and this was some sort of operation" to entrap Papadopoulos. The FBI's Delta files contain no evidence that Mifsud has ever acted as an FBI CHS,⁴⁶³ and none of the witnesses

⁴⁶³ As previously noted, we searched the FBI's Delta database for evidence of FBI CHSs interacting with Papadopoulos and other targets of the Crossfire Hurricane investigation, and found no evidence of such interactions, other than the CHSs specifically described in this chapter.

we interviewed or documents we reviewed had any information to support such an allegation.⁴⁶⁴

In addition, we investigated whether the FBI tasked any CHSs to meet with Carter Page prior to the opening of Crossfire Hurricane. We found no evidence that the FBI had. Case Agent 1, SSA 1, and the Supervisory Intelligence Analyst (Supervisory Intel Analyst) each told the OIG that the FBI did not have anything to do with any operational activities against Carter Page prior to the start of the Crossfire Hurricane investigation on July 31, 2016.⁴⁶⁵

B. CHS and UCE Involvement in Crossfire Hurricane

We found no evidence that the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. However, through our review, we determined that, during the 2016 presidential campaign, the Crossfire Hurricane team tasked four CHSs and a few UCEs, which resulted in interactions with Carter Page, George Papadopoulos, and a high-level Trump campaign official who was not a subject of the investigation. We found that the Crossfire Hurricane team tasked CHSs to interact with Page and Papadopoulos both during the time Page and Papadopoulos were advisors for the Trump campaign, and after Page and Papadopoulos were no longer affiliated with the Trump campaign. All of the CHS interactions were consensually monitored by the FBI. Two of the CHSs tasked by the FBI are referred to below as Source 2 and Source 3. Below we discuss the types of information these CHSs sought to elicit from Page, Papadopoulos, and the high-level campaign official, the information that the CHSs obtained, and the use, if any, that the Crossfire Hurricane team made of that information.

We also determined that two additional CHSs were tasked by the FBI to attempt to contact Papadopoulos, but that those attempted contacts did not lead to any operational activity, and those CHSs are not discussed further in this report.

1. Source 2

Source 2 was closed by the FBI in 2011 for "aggressiveness toward handling agents as a result of what [Source 2] perceived as not enough compensation" and "questionable allegiance to the [intelligence] targets" with which Source 2 maintained contact. However, Source 2 was re-opened 2 months later by Case Agent 1, and was handled by Case Agent 1 from 2011 through 2016 as part of Case Agent 1's regular investigative activities at an FBI field office. The FBI conducted human source validation reviews on Source 2 in 2011, 2013, and 2017.

⁴⁶⁴ The FBI also requested information on [REDACTED]

⁴⁶⁵ As noted in Chapter Three, a New York Field Office (NYFO) Counterintelligence (CI) Agent also told us that the FBI did not use any CHSs to target Carter Page during the NYFO counterintelligence investigation of Page, which was opened on April 6, 2016, and transferred to the Crossfire Hurricane team on August 10, 2016.

Case Agent 1 told the OIG that Source 2 can be "mercurial" and explained that Source 2 was closed for cause in 2011 because the former FBI handler, although very skilled, was "not the right match" for Source 2, which resulted in interpersonal conflict. Case Agent 1 said that when he reopened Source 2, he told Source 2 that this was the "last opportunity" and that the FBI would not tolerate the issues that had arisen in the past. According to Case Agent 1, since that time Case Agent 1 has not experienced any aggressiveness, and has not seen any indication that Source 2 has questionable allegiances to intelligence targets. Instead, Case Agent 1 described Source 2 as willing to assist the FBI "without any hesitation." He added that Source 2 has never given Case Agent 1 any reason to doubt the veracity of Source 2's reporting. Case Agent 1 and SSA 1 both told the OIG that nothing happened in the Crossfire Hurricane investigation to suggest that the concerns leading to Source 2's closure for cause in 2011 had any impact on Crossfire Hurricane.

a. Crossfire Hurricane Team's Initial Meeting with Source 2 on August 11, 2016

Source 2's involvement in the Crossfire Hurricane investigation arose out of Case Agent 1's pre-existing relationship with Source 2. Case Agent 1 told the OIG that when he arrived in Washington, D.C. in early August 2016 to join the Crossfire Hurricane team, he had never previously dealt with the "realm" of political campaigns. He said he lacked a basic understanding of simple issues, for example what the role of a "foreign policy advisor" entails, and how that person interacts with the rest of the campaign. Case Agent 1 said he proposed meeting with Source 2 to ask these questions because Case Agent 1 knew that Source 2 had been affiliated with national political campaigns since the early 1970s. Case Agent 1 also believed Source 2 might have information about, and potentially may have met, one or more of the Crossfire Hurricane subjects. Case Agent 1 told the OIG that he did not know at the time he proposed the meeting that Source 2 had been invited to join the Trump campaign. SSA 1 told the OIG that he did not know about Source 2, or know that Case Agent 1 was Source 2's handler, prior to Case Agent 1 proposing the meeting, which SSA 1 approved.

On August 11, 2016, Case Agent 1, Case Agent 2, and a Staff Operations Specialist (SOS) met with Source 2. Case Agent 1 told the OIG that the plan going into the meeting was to talk generally with Source 2 about Russian "interference in the election, what [Source 2] may know, and...to bring up Papadopoulos." Case Agent 1 added that the team used media reports concerning the release of emails and allegations of Russian hacking to frame the discussion. The Electronic Communication (EC) documenting the meeting states that the investigative team told Source 2 they were "assigned to a project" concerning Russian interference in the Presidential campaign. Case Agent 1 said they did not tell Source 2 that there was an open investigation or who the subjects were. Case Agent 1 also said they did not tell Source 2 about any specifics, including the information the FBI had received from the Friendly Foreign Government (FFG) that led to the opening of the investigation.

Case Agent 1 told the OIG that the team asked Source 2 about Papadopoulos, but Source 2 said he had never heard of him. The EC documenting the meeting reflects that Source 2 agreed to work with the Crossfire Hurricane team by reaching out to Papadopoulos which would allow the Crossfire Hurricane team to collect assessment information on Papadopoulos and potentially conduct an operation.

Case Agent 1 told the OIG that Source 2 then asked whether the team had any interest in an individual named Carter Page. Case Agent 1 said that the members of the investigative team "didn't react because at that point we didn't know where we were going to go with it" but asked some questions about how Source 2 knew Carter Page. Source 2 explained that, in mid-July 2016, Carter Page attended a three-day conference, during which Page had approached Source 2 and asked Source 2 to be a foreign policy advisor for the Trump campaign. According to the EC summarizing the August 11, 2016 meeting, Source 2 said he/she had been "non-committal" about joining the campaign when discussing it with Carter Page in mid-July, but during the August 11, 2016 meeting with the Crossfire Hurricane team, Source 2 "stated that [he/she] had no intention of joining the campaign, but [Source 2] had not conveyed that to anyone related to the Trump campaign." Source 2 further stated he/she "was willing to assist with the ongoing investigation and to not notify the Trump campaign about [Source 2's] decision not to join." Source 2 also told the Crossfire Hurricane team that Source 2 was expecting to be contacted in the near future by one of the senior leaders of the Trump campaign about joining the campaign.

In addition, Source 2 told the Crossfire Hurricane team that Source 2 had known Trump's then campaign manager, Manafort, for a number of years and that he had been previously acquainted with Michael Flynn. Case Agent 1 told the OIG that "quite honestly...we kind of stumbled upon [Source 2] knowing these folks." He said that it was "serendipitous" and that the Crossfire Hurricane team "couldn't believe [their] luck" that Source 2 had contacts with three of their four subjects, including Carter Page.

b. Internal FBI Discussions Concerning Source 2 and the Trump Campaign

Case Agent 1 told the OIG that, after meeting with Source 2 on August 11, 2016, he drove back to FBI Headquarters with Case Agent 2 and the SOS, and met with other members of the Crossfire Hurricane team to discuss how to proceed. During that meeting, the OGC Unit Chief, SSA 1, Strzok, and Priestap learned that Source 2 had been invited to join the Trump campaign by Carter Page and that Source 2 was going to turn down the invitation. All of the FBI witnesses we interviewed said that they would not have used Source 2 for the Crossfire Hurricane investigation if Source 2 had actually wanted to join the Trump campaign. SSA 1 said he did not remember anyone on the Crossfire Hurricane team advocating for Source 2 to actually join the Trump campaign and told the OIG he was relieved that Source 2 did not want to join the campaign "at all." Strzok told the OIG his reaction was "no, no, no, no, no, no.... [O]h god no. Absolutely not" when he learned that Source 2 had been invited to join the Trump campaign. Case Agent 1

told the OIG that if Source 2 had joined the campaign, the Crossfire Hurricane team would not have used Source 2 "because that's not what we were after." He added that having Source 2 in the campaign would have been difficult because "then [Source 2] actually has a job to do and [Source 2 is] going to actually have to do that job." Case Agent 2 told us that the reaction of the OGC attorneys advising the Crossfire Hurricane team was "no freaking way" and that the team was not "pushing for that...[because they were] not trying to get into the campaign." Case Agent 2 said that by using Source 2 outside of the campaign, the Crossfire Hurricane team could find "smart ways, and quiet ways to get information that we can corroborate, that helps us understand what the heck Mr. Papadopoulos meant by...the Trump team received a suggestion from the Russians." Priestap said that his first question was "what was Source 2's answer?" and that the response was Source 2 did not want to join the campaign.

The OGC Unit Chief said that she remembered the team seeking her advice, and said she told them they should not direct Source 2 to join the campaign, but they also should not tell Source 2 not to join the campaign. She told the OIG her advice was that Source 2 "should do what [Source 2] would normally do" and that the Crossfire Hurricane team should "follow [Source 2's] lead." She added that she was "grateful" when she learned that Source 2 did not want to join the Trump campaign, because she said that if the Crossfire Hurricane team had wanted to operate a CHS within the campaign (which she said none of the team members ever proposed to her), that would have raised a host of complicated issues under the FBI's Domestic Investigations and Operations Guide (DIOG), including undisclosed participation in political activities, appearance issues if it became publicly known an FBI source was in the Trump campaign, and the potential that the source could influence campaign policy or strategy.

c. Follow-up Crossfire Hurricane Team Meeting with Source 2 on August 12, 2016

The next day, August 12, 2016, Case Agent 1, Case Agent 2, and the SOS met with Source 2 again. During the August 12, 2016 meeting, Source 2 provided additional information about the role of a foreign policy advisor in a presidential campaign. Case Agent 1 described this portion of their conversation as "more of a generic question, like what is the foreign policy advisor doing" and who does that person report to? Case Agent 1 said that the Crossfire Hurricane team was not interested in the Trump campaign's "policies or any of their positions," but more generally just needed to understand the role of a foreign policy advisor.

During the August 12, 2016 meeting, Case Agent 1, Case Agent 2, and the SOS also told Source 2 that the FBI was interested in Carter Page, and asked whether Source 2 would be willing to contact Carter Page for a private meeting, as a follow-up to their meeting in July 2016. The investigative team told Source 2 that, because the Trump campaign appeared interested in recruiting Source 2, Source 2 was in a perfect position to directly ask Carter Page about media reports regarding links between the campaign and Russia. The team also discussed with Source 2 plans regarding Papadopoulos. As discussed below, Source 2 ultimately met with three members of the Trump campaign on behalf of the FBI—Carter Page,

George Papadopoulos, and a high-level campaign official who was not a subject of the investigation—and the FBI consensually monitored Source 2's conversations with each of these individuals.

d. Source 2's Meetings with Carter Page

(1) August 20, 2016

The first consensually monitored meeting between Source 2 and Carter Page took place on August 20, 2016. As described in Chapter Seven, some of the information obtained from this meeting was referenced in the Carter Page FISA Renewal Application No. 3. Case Agent 1 said that he instructed Source 2 to use the information in the media regarding Russia and Hillary Clinton's emails, and to ask questions Source 2 would normally ask if Source 2 was talking to a foreign policy advisor to a campaign. Members of the Crossfire Hurricane team told the OIG that they expected Source 2 to ask whether the campaign was planning an "October Surprise," as had been reported in the media, in addition to asking Carter Page if he maintained contacts with Russians or knew whether the Russians had been releasing emails to benefit the campaign.

We reviewed the transcript of Source 2's August 20, 2016 meeting with Carter Page. Through their conversations, Source 2 learned where Page was staying while in Washington for campaign meetings. Page also claimed to "personally...have no ambition" to seek a position in the administration if Trump won the election. Page also stated that he had "literally never met" Manafort, had "never said one word to him," and that Manafort had not responded to any of Carter Page's emails. Source 2 (who had known Manafort for decades) told Carter Page not to "feel bad" because everybody who has ever sent emails to Manafort "never got a response."⁴⁶⁶

During their conversation, Page told Source 2 that his July 2016 trip to Moscow "was the most incredible experience of my life." However, Page repeatedly complained about the negative, and highly personal, media attention he was receiving. For example, Page described an article from *The Washington Post* and how "95% of it was complete garbage." Page also complained that, next to Manafort (who he called "public enemy number one") Page was being treated as "public enemy number two." Page said that as a result of a "hit job" in Bloomberg News he had been branded as "Trump's Russia Advisor" with "close ties with the Russian government," and that idea had become "the consistent narrative ever since." Page told Source 2 that he was "just a shareholder" in the Russian energy company Gazprom, but that the media's approach was to highlight "anything that they can kind of spin in a...negative way." As a result of the negative media coverage, Page said that others working for the campaign were joking with him

⁴⁶⁶ As described in Chapters Five and Seven, the FBI did not advise NSD's Office of Intelligence or the Foreign Intelligence Surveillance Court (FISC) of Carter Page's statements concerning Manafort, which contradicted information from Steele's election reporting that was relied upon in the Carter Page FISA applications.

about "attract[ing] all the attention" and keeping the rest of them "off the radar screen."

When Source 2 raised the issue of an "October Surprise," Carter Page said "there's a different October Surprise...[a]lthough maybe some similarities" to the October Surprise in the 1980 Presidential Campaign. Page did not elaborate. Source 2 raised the issue again later in the meeting, and asked if the Trump campaign could access information that might have been obtained by the Russians from the DNC files. Source 2 added that in past campaigns "we would have used [it] in a heartbeat." Page's response was that, because he had been attacked by the media for his connections to Russia, he was "perhaps...[being] overly cautious." When the October Surprise issue came up again, Page alluded to "the conspiracy theory about...the next email dump with...33 thousand" additional emails, but did not further explain what he meant. Source 2 asked "[w]ell the Russians have all that don't they?" to which Page responded "I don't, I-I don't know."

Page also said that "we were not on the front lines of this DNC thing" during the Philadelphia convention and wondered aloud "who's better to do this?" Page asked Source 2 whether the Trump campaign should just leave it to the "other forces that be" and just let it "run its course," with the Trump campaign "egg[ing] it a long a little bit" but without being "seen as the one advancing this in concert with the Russians." Source 2 responded "it needs to be done very delicately and with no fingerprints" to which Page said "[o]kay." Page asked Source 2 if "picking out a couple trusted journalists" and giving them "some ideas of...potential big stories" would be the right way to handle it. Page also suggested that "there may be people that kind of work this angle" but that Page was being "very cautious, you know, right now."

Source 2 also asked Page for information about Papadopoulos. Page said that Papadopoulos was the youngest guy on the campaign, that he used to live in London, and that he had not been to the last campaign meeting. Page also said he had "no comment" on whether Papadopoulos was easily triggered emotionally.

At one point, Source 2 steered the conversation toward Source 2's contacts in the Russian [REDACTED], and described how Source 2 arranged fully paid trips for the [REDACTED] and other Russians to speak [REDACTED]. Source 2 asked if Page knew anyone of that type that might be interested in coming to speak [REDACTED], and Page responded that he "know[s] a couple of people in London" but that he wanted to be "doubly cautious...to limit conspiracy theories" and that his preference would be to "pass along names discreetly." Page added that he would need to "think about the easiest[,] most efficient[,] frankly safest way to...navigate this."

Throughout the meeting, Page asked Source 2 to assist the Trump campaign by writing op-eds. Source 2 stated a willingness "to be helpful to the campaign" but also said that Source 2 would like to know "what the plan is" before committing. Page responded that it was "unfortunate" that Source 2 had not yet gotten to meet a high-level campaign official who was not a subject of the investigation, and Source 2 responded that Source 2 was available whenever that

high-level campaign official "wants to chat." Later in the meeting, Source 2 told Page that Source 2 would like to meet with the high-level campaign official to discuss "what I'm getting in to" because Source 2 said there are "some things that have to be done at this part of...the campaign.... And if you don't do them you're going to lose."

Case Agent 1 told the OIG that Page's comment about the "October Surprise" was meaningful to the Crossfire Hurricane team. He said that when Page was asked the question, Page

kind of trailed off and it...piqued our interest because it seemed like that he knew of something, but he wasn't 100 percent sure and was just kind of alluding to something, but he didn't really give much more information to it. So that kind of pique[d] our interest.

Case Agent 1 said that within the investigative team "there was a discussion whether or not [Carter Page] knew more than he was [letting] on." SSA 1 told the OIG that the Crossfire Hurricane team viewed Page's responses to questions as "less than forthright" and Case Agent 3 described Page as not "as forthcoming as he could have been." As described previously in Chapters Five and Seven, however, the FBI did not include any of the information from the August 20, 2016 meeting between Source 2 and Carter Page in the first FISA application, or Renewal Application Nos. 1 and 2, but did include some of Page's comments to Source 2 about the "October Surprise" in Renewal Application No. 3.

SSA 1 and Case Agent 1 told the OIG that this meeting between Source 2 and Carter Page was important for the investigation in other ways. SSA 1 told the OIG that it was important for the team to determine "where [Carter Page] was living, [and] what he was up to." Case Agent 1 said that, as a result of this operation, "we now had a successful contact between the established FBI source and one of our targets" which gave the Crossfire Hurricane team confidence that they could "find out investigatively what we've been charged to do." Case Agent 1 also said that, because "there were several emails sent back and forth thanking [Source 2]," the FBI obtained Carter Page's email address and telephone number, which could be used in the first FISA application.

Consensual monitoring of the August 20 meeting between Source 2 and Carter Page was presented to McCabe, Priestap, then FBI General Counsel James Baker, Strzok, Anderson and other FBI personnel during briefings on August 25, 2016. Baker told the OIG that what he remembered about the briefing

was feeling comfortable that the focus was on the Russians, the focus was on trying to get foreign-intelligence information, [and] that this other stuff [regarding the campaign] was part of the cover story and not what we were interested in, and something that we...just weren't going to make any use of.

He added that "even though the FBI was collecting some type of political information" through Source 2's conversation with Carter Page, the political information "was not the focus of what we were after...[and] it was being minimized

in the sense that it was just extra crap that we got that we didn't really want." He also said that at the time he felt the people presented the monitoring were appropriately focused on the fact that Source 2 "couldn't get Carter Page to say anything about the Russians." Anderson told the OIG that her impression of the consensual monitoring was that Carter Page was "pretty guarded" in talking to Source 2. McCabe told the OIG he remembered that "there weren't any...smoking guns from the conversation" but that "Page seemed kind of evasive." McCabe did not remember being told about any portions of the conversation other than what was contained on the consensual monitoring that the Crossfire Hurricane team provided to him for review. McCabe also said he remembered having an "expectation that [the Crossfire Hurricane team] would continue to use [Source 2, who] obviously had access to" Carter Page, but McCabe could not remember any follow-up discussions or what the investigative team planned to do next. As described previously in Chapters Five and Seven, the FBI did not inform the National Security Division (NSD) attorney in the Office of Intelligence (OI) who was working on the Carter Page FISA applications about Page's August 2016 interaction with Source 2 until 10 months later, in June 2017. As a result, none of the information from this interaction was considered by OI for inclusion in the first FISA application, or Renewal Application Nos. 1 and 2. Page's comments about the "October Surprise" were included in Renewal Application No. 3, which was filed in June 2017, after Case Agent 6 sent the OI Attorney a 163-page document for the purpose of showing him Page's statements about the "October Surprise." The OI Attorney told the OIG that he used the 163-page document to accurately quote Page's statements concerning the "October Surprise" in Renewal Application No. 3, but that he did not read the other aspects of the 163-page document and that Case Agent 6 did not flag for him Page's statements about Manafort. The OI Attorney told us that these statements, which were available to the FBI before the first application, should have been flagged by the FBI for inclusion in the FISA applications at the time the statements were made because they were relevant to the court's assessment of the allegations concerning Manafort using Page as an intermediary with Russia. Case Agent 6 told the OIG that he did not know that Page made the statement about Manafort because the August 2016 meeting between Source 2 and Page took place before Case Agent 6 was assigned to the investigation. He said that the reason he knew about the "October Surprise" statements in the document was that he had heard about them from Case Agent 1 and did a word search to find the specific discussion on that topic.

(2) October 17, 2016

The second consensually monitored meeting between Source 2 and Carter Page took place on October 17, 2016, 4 days before the FBI obtained the first FISA targeting Page, and after Page had left the Trump campaign. As described in Chapter Five, Page made statements to Source 2 that led the FBI to believe that Page was continuing to be closely tied to Russian officials, including Page's suggestion (described below) that "the Russians" may be giving him an "open checkbook" to fund a foreign policy think tank.

Case Agent 1 told the OIG that the Crossfire Hurricane team had learned through travel records that Page was planning a trip. Case Agent 1 said that the Crossfire Hurricane team

wanted to find out what he was going to do...because at that point he was no longer affiliated with the campaign. He was out. As far as we could tell he was no longer a part of the campaign. We still didn't have the FISA up, but we wanted to see who he was going to be in contact with..., and why he was going...because it just seemed very odd.

Case Agent 1 told the OIG that the investigative team believed that Page may be going to meet an individual with ties to Russian Intelligence. The investigative team was also aware of a Russian responsible for "recruiting U.S. government employees and handling U.S. government employees." Case Agent 1 said that the plan was for Source 2 to help determine where Page was planning to stay and what he was planning to do during his trip.

Case Agent 1 told the OIG that the Crossfire Hurricane team did not get a complete transcript of the meeting, which was consensually monitored, but instead "wrote up only the pertinent parts of whatever meetings occurred just because...doing a full transcript would have taken too long and it was just not pertinent." We reviewed the Crossfire Hurricane team's partial transcript of Source 2's October 17, 2016 meeting with Carter Page.

During the meeting, Page told Source 2 that Page "never had any ambitions to go into government regardless of who won" the upcoming presidential election, and instead called himself the "equivalent" of influential diplomat and academic George Kennan. Page said that, like Kennan who "found[ed] his Institute of Advanced Study," Page would like to develop a research institute to be "a rare voice that talks against this consensus" of Russian containment, which Page believes is too "hawkish and aggressive in a lot of ways against the Russians." In talking about how he would fund this institute, Page told Source 2 "I don't want to say there'd be an open checkbook, but the Russians would definitely..." then, according to the partial transcript, the sentence trailed off as Page laughed. Source 2 asked "they would fund it—yeah you could do alright there" and Page responded "Yeah, but that has its pros and cons, right?"

At other points in the conversation, Page stated that he had "a longstanding constructive relationship with the Russians going back throughout" his life, and that he "could talk for the next 5 hours about all these sneaky little approaches that the [U.S. government] has been taking against Russia—going back...a couple decades." Page also stated his belief that "if these ridiculous approaches and these failed policies continue next January, you know...we're on the brink of war."

When asked about the link between the Russians and WikiLeaks, Page said that, as he has

made clear in a lot of...subsequent discussions/interviews...I know nothing about that—on a personal level, you know no one's ever said

one word to me. But it's interesting, you know, off the record between us—if the only source of transparency and the truth is an external source, you know, c'est la vie right?

Page also mentioned to Source 2 "very deep off the record" that the Clinton campaign had "hired investigators to come after me, including some in London," and that Page had "very good sources...[and knew] the names of the investigators as well."

As for the platform committee during the Republican National Convention, Page told Source 2 that he "stayed clear of that—there was a lot of conspiracy theories that I was one of them.... [But] totally off the record...members of our team were working on that, and...in retrospect it's way better off that I...remained at arms' length. But again, our team was working on that."

Page also told Source 2 that the "core lie" against Page in the media "is that [Page] met with these sanctioned Russian officials, several of which I've never even met in my entire life." Page said that the lies concern "Sechin [who] is the main guy, the head of Rosneft...[and] there's another guy I had never even heard of, you know he's like in the inner circle." When Source 2 asked Page about that person's name, Page said "I can't even remember, it's just so outrageous."⁴⁶⁷ Page stated that he did meet a number of people when he was the commencement speaker at the July 2016 New Economic School graduation in Moscow, and told Source 2 that "the irony of it [was]...there's no law against meeting with sanctioned officials" and that his lawyer said everything would be fine "as long as you don't take gifts or have any sort of business dealings...the lawyer quote was 'don't even take a pen.'"

When Source 2 asked whether Page could introduce Source 2 to Russians who might be interested in speaking [REDACTED], Page laughed and said "[m]y lawyers would probably advise me to..." then laughed again and mentioned Harry Reid's letter to FBI Director Comey asking the FBI to "please look into Carter Page's connections to these people." When asked again, Carter Page reiterated that "lawyers are always cautious...and... this would be setting off such big alarm bells." Page also told Source 2 that Page did not have their "contact details."

Members of the Crossfire Hurricane team and FBI OGC told the OIG they considered Page's discussion of having a potentially "open checkbook" as the most useful and concerning piece of information from the October 17, 2016 meeting between Source 2 and Page. Case Agent 1 told the OIG that, as a result of that comment, the Crossfire Hurricane team was "trying to figure out at the time if that was part of a quid pro quo." SSA 1 told the OIG that Page's comment on funding a research institute using "an open checkbook" from Russia brought SSA 1 closer to believing that Carter Page may actually be acting as an agent of a foreign power. The OGC Attorney told us that he viewed the remark as an indication that Page had "connections that he expected to be able to use to his advantage as a result of the

⁴⁶⁷ As described in Chapters Five and Seven, the FBI did not include Carter Page's denials of these meetings with Russian officials in its description of this CHS operation in the FISA applications.

potential election of Donald Trump." The OGC Unit Chief told the OIG she viewed this as a suggestion "that the Russians would pay for [Page] to operate a think tank in the United States...basically as a propaganda machine."

As discussed in Chapters Five and Seven, these statements about "an open checkbook" from Page's interaction with Source 2 were included in the FISA applications, but Page's statements denying knowing about a WikiLeaks connection to Russia, having involvement in the platform committee, or having met with the sanctioned Russian officials, or even knowing who one of them was, were not included in any of the FISA applications.

(3) December 15, 2016

The third consensually monitored meeting between Source 2 and Carter Page took place on December 15, 2016, which was several days after Page returned from giving a lecture at the New Economic School in Moscow. The New Economic School was the university in Moscow where Page had spoken in July 2016. During their lunch meeting, Page described his recent trip to Moscow as involving "18 hour days for a...week." Page also told Source 2 that Page would be traveling back to Moscow "after the New Year" and that Page had been invited to Christmas parties at Gazprom and Rosneft, but declined those invitations because of recent media reports suggesting that Page was being investigated by the FBI. Page also complained that media outlets had been "bad mouthing" him earlier that day, and told Source 2 that one of the issues Page wanted to discuss was "damage control."

During the meeting, Page and Source 2 discussed some of the individuals who were under consideration for prominent positions in the Trump Administration. With respect to President-elect Trump's announcement that he would nominate Rex Tillerson to be Secretary of State, Page stated that one of the things Tillerson will "get[] hit the worst on" by critics is his relationship with Igor Sechin. However, Page added "[t]hey tried it on me...[and] [t]hey've already played that card so they['ve] got to come up with something new." When Source 2 asked Page how the Russians viewed Tillerson, Page stated that the Russians are "almost in awe" of him, and that they view him as "[s]omeone who has real knowledge as opposed to just standard rhetoric that's been in place for 70-some years."

When asked by Source 2 about where the Russians might take the relationship with the United States, Page said that the Russians are "[e]xcited but cautious" because the Russians had "been...burned a lot in the past." Page also told Source 2 that he thought the question with respect to the relationship between the United States and Russia was whether the United States was going to be "scolding or nasty or [have an] actual friendship."

Source 2 also asked Page about Congressional inquiries into whether the Russians had been leaking Hillary Clinton's emails to try to alter the results of the presidential election. Page responded by saying that, even if they were to "assume [the allegations] are correct," Page believed the real impact was "giving some transparency to the actual corruption of...the people that [the Russians] were exposing," and that was important to the functioning of the democratic process

because "democracy is based on information." Page told Source 2 that the difference between Hillary Clinton's "public versus private positions...never would have come to the forefront" otherwise, and that without such transparency, the American people would have been left with "lies and false information." Page stated that democracy had been "actually made more pure by this exposure, public versus private" of Hillary Clinton's positions, such that the disclosure of her emails "actually served a positive role." When Source 2 suggested that information in U.S. government elections should not be provided by "actors outside the process," Page asked Source 2 "how many times have parties within this town...the U.S. government, interfered in the direction of governments around the world?" Page then stated that he had "an even more controversial statement" which was that the Russian media organizations RT and Sputnik "may...warrant a Nobel Peace Prize" for "providing this transparency and helping to facilitate a pure democracy."

Source 2 also asked Page about the think tank they had discussed in their October 17, 2016 meeting. Page told Source 2 that he had been talking with the New Economic School "a little bit," that "they were actually quite...positive" about the idea, they were thinking about "doing something jointly or...actually based there," and that the New Economic School was "possibly" going to help with the financing. Page added that the New Economic School had a "lot of support internally...[f]rom the government.... High level." When Source 2 asked about Page's statement, during their October 17, 2016 meeting, about Russians giving Page a "blank check" for the think tank, Page stated that he didn't "know that [he] went that far" but that "there was some support...[and] this trip proved it." According to Page, the New Economic School told him to "come back to us with a proposal" and that "very high-level people were quite supportive." Page added that he was weighing the "pros and cons" and that "some people have warned [him to] be careful with having too much Russia connection for obvious reasons."

During their meeting, Page used his personal laptop to show Source 2 the PowerPoint presentation from his most recent lecture, and then gave Source 2 a thumb drive containing a copy of the PowerPoint presentation. Page told Source 2 that one of Page's comments during the Moscow lecture was a play on Trump's phrase "[d]rain the swamp." According to Page, in his lecture he said the "reference for U.S.-Russia relations is, '[d]rain the septic tank,'" by which Page meant that prior dealings with Moscow could be characterized as "deep misunderstandings and...huge missed opportunities." Page pointed out one of the slides from the presentation, which was a "score card" Page had put together concerning previous administrations' positions on Russia. In discussing the "score card," Page told Source 2 that when Hillary Clinton was Secretary of State in 2011, she was interfering with other governments in the same way "that people...are accusing Russia of doing" in the 2016 elections.

As described in Chapter Seven, the Crossfire Hurricane team incorporated some of the information from this December 15, 2016 meeting between Carter Page and Source 2 into Renewal Application No. 1.

(4) January 25, 2017

The final consensually monitored meeting between Source 2 and Carter Page took place on January 25, 2017. None of the information from this meeting was included in any of the Carter Page FISA applications.

During the January 25, 2017 meeting between Page and Source 2, Page asked whether Source 2 had ever "come across that [Steele] guy." Source 2 told Page that he did not know Steele. Page then stated that the reports were "just so false." Page said that he wished the reports "had come out...three [or] four months earlier because...all the stuff...against [Page was] based...directly upon that." Page stated that the reporting, which included "some sort of sex escapade...discredits itself so much" and contains "a lot of factual errors," although Page did not specify which part of the reporting he viewed as erroneous. Page characterized the reporting as "a bigger fraud" than the allegations of voter fraud made by President Trump reported by the media that morning, because Hillary Clinton "was playing against [Page] and...everyone around [Trump] and this [reporting] is the basis of it," which Page described as "complete lies and spin." Page added that, in his view, the lies in the reporting were comparable to the obstruction of justice at issue in Watergate, because "[o]ne of the key elements of obstruction of justice is false evidence" and this "false evidence is directly traceable back to [Hillary Clinton]...sending this over to...the authorities at the J. Edgar Hoover building." In addition, Page told Source 2 that, according to "the front page of the Wall Street Journal," Page was "under surveillance." Page said he thought there was an analogy to Dr. Martin Luther King Jr., "[w]here J. Edgar Hoover was all over this guy," and that Page felt he was being targeted by those in "positions of power, [using] government resources to come after someone [for exercising] freedom of speech" because Page had spoken out on his views regarding Russia. Page told Source 2 he thought it was "completely outrageous" but that he would have to talk to Source 2 "about this offline...[because Page was] not going to put this in email or [discuss it] on a phone call."

Page also told Source 2 that Page was scheduled to meet with Steve Bannon later that afternoon. At the time, Bannon was President Trump's Chief Strategist. Page said he would be "curious to hear" any ideas Source 2 had about ways Page could be "helpful" to the Trump Administration. Page asked for Source 2's advice on whether Page should "take this [fraud] on aggressively and...go on the offensive and fight back" because the allegations against him are "not going away." Page also suggested that if he were offered a position in the Trump Administration and went through a Senate confirmation hearing, he could use the opportunity as "a way of getting it all out there...what a complete lie and what a complete sham...this is" and that it was all done "using government resources based on completely false evidence." Page said that he wanted to show how "this all started based on complete utter lies." Page told Source 2 that he thought Bannon might be receptive to this "forward leaning approach" through which the "lies are exposed and everyone[] kind of understands how this all came about and the impact." In response, Source 2 suggested that the Trump Administration was unlikely to put Page "through a Senate confirmation, [because] everybody who objects to [Page's] viewpoint on [Russia] will be rounded up and trotted through in front of the

cameras" and it would be politically impossible to get the votes needed for confirmation.

Source 2 asked Page whether he had made any more progress on the think tank, which Source 2 said could be helpful by undertaking projects "exploring how...international business leads to international political cooperation," for example. Source 2 stated that he thought Page "might be able to create something useful in London," and added that if Page "could bring some Russian money to the table...[Source 2] might be able to help...get some US money." Page told Source 2 that he was concerned about "anything that's sort of balanced, getting that weight correct." Page said he was trying to take his time and weigh the pros and cons, but also was "kind of anxious...[based on] conversations last month in Moscow...[that the] momentum is building" toward another potential Cold War. Page said that, based on his conversations with Deputy Prime Minister Arkady Dvorkovich, who Page described as the "de facto chairman" of the New Economic School, the Russians are "fully on board" and want to "get started." But Page said that he was concerned that doing this "on that side that can be a black mark for people like McCain" who might view it as "[t]oo un-American." When Source 2 asked Page if Page could "tie him down to...a dollar amount...that then [Source 2] can try to match" Page responded "a million and a million?" but Source 2 expressed doubt about whether Source 2 could raise a million dollars to contribute to the think tank.

The only other subject of the Crossfire Hurricane investigation that was mentioned during the January 25, 2017 conversation was Michael Flynn. Source 2 asked Page if he knew Flynn "pretty well," and Page responded that he "kind of" knew Flynn's "number two."

As with other denials made by Page to an FBI CHS, these statements about the Steele reports were not included in FISA Renewal Application No. 2 or FISA Renewal Application No. 3.

e. Source 2's Meeting on September 1, 2016 with a High-Level Trump Campaign Official Who Was Not a Subject of the Crossfire Hurricane Investigation

At the request of the Crossfire Hurricane team, Source 2 also reached out to a high-level official of the Trump campaign, who was not a subject of the investigation. Source 2 succeeded in arranging a meeting with the high-level Trump campaign official on September 1, 2016, and their meeting was consensually monitored by the Crossfire Hurricane team. Case Agent 1 told the OIG that this meeting occurred after Case Agent 1 got approval from the OGC Unit Chief to consensually monitor the conversation, as required by the DIOG. Priestap told the OIG that from an operational standpoint, he personally reviewed and approved the operation even though review at his level was not required by the DIOG. McCabe's handwritten notes reflect that he was told ahead of time that Source 2 was going to be meeting with the high-level Trump campaign official, but McCabe told the OIG he did not remember anything specific about that discussion. He added that his approval was not required for such an operation, and if he was told ahead of time, it was "likely that [he] asked...who [that] was because that [name] would not

have...stood out to [him] independently." FBI and Department policy did not require that the FBI obtain Department approval to consensually monitor this conversation. Then Chief of NSD's Counterintelligence and Export Control Section (CES) David Laufman told the OIG that he had no recollection of being informed that the FBI was planning to consensually monitor a conversation between a CHS and a high-level official of the Trump campaign, and we are not aware of any Department official having been informed in advance by the FBI.

Case Agent 1 told the OIG that the plan for this meeting was for Source 2 to ask the high-level campaign official about Papadopoulos and Carter Page "because they were...unknowns" and the Crossfire Hurricane team was trying to find out how "these two individuals who are not known in political circles...[got] introduced to the campaign," including whether the person responsible for those introductions had ties to Russian Intelligence Services (RIS). SSA 1 told the OIG that he did not remember having a plan in place in case the FBI monitored information that was politically sensitive. He told the OIG that "if we received that information and recognized it for what it was, our first call would be to our general counsel to talk to them about how we need to ingest that." SSA 1 also told the OIG that he did not think the Crossfire Hurricane team gathered any of that type of information through Source 2's meeting with the high-level campaign official.

The OGC Unit Chief remembered discussing with the team, with respect to the use of Source 2, the need to be careful about First Amendment-protected activities. However, she said that her concern about a CHS collecting that type of information arises if the operation seeks information falling outside the authorized purpose of the investigation or if the FBI is "broadly disseminating that information and/or using it in a way that would undermine or promote" one candidate or the other. The OGC Unit Chief said the Crossfire Hurricane investigation did not really raise that concern, because the FBI did not seek information outside the authorized purpose of the investigation and was not disseminating the information it gathered from the CHSs or using it "in a way that would expose it to people that didn't need to know it." The OGC Unit Chief also said that her main concern about CHSs interacting with members of the Trump campaign was ensuring that CHSs were not "influencing steps the campaign was going to take."

Priestap told the OIG he remembered multiple meetings where the team discussed the objectives of having Source 2 engage with members of the Trump campaign and former members of the Trump campaign, and the "need to steer clear" of collecting campaign information "deal[ing] with policies, plans, staffing decisions, [or] anything related." Priestap also said that "it's not always possible...[o]nce people start talking" to a source to stay on point, because the target of the operation may tell a source about the topic that interests the FBI, as well as a lot of additional information. He added that "the FBI tries really hard to take the information we're authorized to collect and to disregard the information it [isn't], no matter how embarrassing, scintillating, or whatever else that information might be to others."

Case Agent 1 told the OIG that none of the information collected from monitoring Source 2's conversation with the high-level Trump campaign official was

ever used in the Crossfire Hurricane investigation. He said that the team determined that "the conversation wasn't germane to any of the investigative activity we were taking, so we didn't do anything with that." We found that the Crossfire Hurricane team did not transcribe the meeting. Instead, Case Agent 1 said that the consensual monitoring was "check[ed]...into evidence and that was about it. We didn't do anything with that conversation."

We reviewed the consensual monitoring of the September 1, 2016 meeting between Source 2 and the high-level Trump campaign official who was not a subject of the investigation.⁴⁶⁸ In the consensual monitoring, Source 2 raised a number of issues that were pertinent to the investigation, but received little information in response. For example, Source 2 asked whether the Trump campaign was planning an "October Surprise." The high-level Trump campaign official responded that the real issue was that the Trump campaign needed to "give people a reason to vote for him, not just vote against Hillary." When asked about the allegations of Russian interference in the 2016 elections, the high-level Trump campaign official told Source 2:

Honestly, I think for the average voter it's a non-starter. I think in this city [Washington, D.C.] it's a big deal. I think in New York it's a big deal, but I think from the perspective of the average voter, I just don't think they make the connection.

The high-level Trump campaign official added that in his view, the key for the Trump campaign "is to say what we have said all along—we need to raise the level of abstraction, we need to talk about the security of the election system, which includes things like voter IDs."

Source 2 also asked about George Papadopoulos, who the high-level Trump campaign official described as "very eager" and "a climber." The high-level campaign official added that he was "always suspicious of people like that." The high-level campaign official described Carter Page as a "treasure," but agreed with Source 2 that Carter Page is "ambiguous" in his thinking, and that it can be hard to get a clear answer out of him. When Source 2 asked whether the Trump campaign needed to do something to put the ideas raised by Carter Page's Moscow speech in perspective, the high-level campaign official told Source 2 that "it's not that it's not important," but that the campaign official was "not sure it was something that in the grand scheme of things rises to the level of the campaign making an open effort" to do "other than to say we should never have any interference in our electoral process." As for the relationship between candidate Trump and Manafort, Source 2 was told that the high-level campaign official thought Trump and Manafort did not "ever hit it off" and that Manafort "was trying to do a traditional campaign, and Mr. Trump wasn't buying it." The high-level campaign official made a few additional comments about the internal structure, organization, and functioning of

⁴⁶⁸ At the beginning of this consensual monitoring, Source 2 has a brief conversation with the FBI agent. The FBI agent clearly instructs Source 2 that, in meeting with the high-level campaign official, "consistent with our theme...listen to him, talk to him with your points, we are not directing you to join the campaign."

the Trump campaign. During the conversation, Source 2 and the high-level campaign official also discussed issues unrelated to the Crossfire Hurricane investigation, such as an internal campaign debate about Trump's immigration strategy, efforts to reach out to minority groups and the impact of those efforts, and the campaign's strategies for responding to questions about Trump's decision not to release his tax returns. We found no evidence that any information contained on the consensual monitoring was put to any use by the Crossfire Hurricane team.

f. Source 2's Meetings with George Papadopoulos

At the direction of the Crossfire Hurricane team, Source 2 invited Papadopoulos to meet with Source 2 in September 2016, to discuss a project. Case Agent 1 said that the Crossfire Hurricane team thought it would play to "Papadopoulos's ego to help take part in a project." The project was based on Papadopoulos's past writings about the Leviathan oil fields off the coast of Israel and Turkey, and was not related to Papadopoulos's role in the Trump campaign. The FBI, through Source 2, covered the costs of Papadopoulos's travel, and paid Papadopoulos \$3,000 for the project.

The Crossfire Hurricane case agents told the OIG that they were trying to recreate the conditions that resulted in Papadopoulos's comments to the FFG officials about the suggestion from Russia that it could assist the Trump campaign by anonymously releasing derogatory information about presidential candidate Hillary Clinton, which we described in Chapter Three. Case Agent 1 said that by taking Papadopoulos to another country, Papadopoulos might "feel a little freer to talk outside the confines of the United States and...repeat that conversation" he had with the FFG officials. Case Agent 3 said that it made sense to take him there, "have a political discussion over a couple drinks and reproduce" Papadopoulos's statements to the representative of the FFG if possible.

The members of the Crossfire Hurricane team who traveled for the operation were Case Agent 1, Case Agent 2, and the SOS. The written plan for the operation stated that Papadopoulos would meet with Source 2 to discuss the project. The written plan stated that during that time "there will be ample opportunity and various angles to have [Papadopoulos] expound on the initial comments made in May 2016" to the FFG regarding the anonymous release of emails by the Russians that would damage the Clinton presidential campaign.

SSA 1 told the OIG that it was his understanding that FBI executive managers were "briefed consistently" during the planning for this operation, and orally approved the operation before it took place.⁴⁶⁹ Case Agent 1 said that he did not remember any FBI managers voicing concerns about this operation. Priestap

⁴⁶⁹ There is no requirement in the CHSPG for the FBI to inform the Department of extraterritorial CHS operations in support of national security investigations. In fact, the CHSPG states: "Pursuant to the AG memo dated May 5, 2006, the AG delegated to the FBI Director the authority to approve national security [extraterritorial] operations," which the Director then delegated to the Assistant Director.

told the OIG that he recalled being aware of the operation and approving it. McCabe told the OIG that he did not remember knowing ahead of time that the FBI was going to be consensually monitoring Source 2's meetings, but that approval for such an operation by the Deputy Director was not required.

The OGC Unit Chief told the OIG that because the operation targeted Papadopoulos individually and wasn't directed at anything related to the campaign, she thought that it was appropriate. She said that her main concern about using Source 2 to interact with members of the Trump campaign was ensuring that Source 2 was not "influencing steps the campaign was going to take" and that "asking questions of Papadopoulos to collect information did not raise those kinds of concerns." Priestap signed the formal authorization for the operation on September 15, 2016, the day the operation concluded. SSA 1 told the OIG that it was "just standard practice...[to] get verbal authority" before such an operation and to have the paperwork "signed after the fact."

**(1) September 15, 2016 Brunch Meeting with
Source 2 and Papadopoulos**

On September 15, 2016, Papadopoulos met for brunch with Source 2 and to discuss the project. The meeting was consensually monitored by the FBI, and later transcribed. Much of the conversation between Source 2 and Papadopoulos concerned Papadopoulos's academic pursuits, his work with the Hudson Institute, and his research on the Arab Spring, Greek energy production, and the strategic importance of Cyprus. During the meeting, Source 2 told Papadopoulos that the paper Papadopoulos was writing should focus on geopolitical dimensions in the eastern Mediterranean, including the energy sector and Russia's engagement with the Israelis. Source 2 offered Papadopoulos \$3,000 for the paper, and asked for Papadopoulos to complete it within three weeks.

During the meeting, Source 2 told Papadopoulos that Carter Page "always says nice things about you." Papadopoulos told Source 2 that although Carter Page was one of the campaign's "Russian people," Page "has never actually met Trump...[and] hasn't actually advised him on Russia...[but] [h]e might be advising him indirectly through [another campaign official]." Papadopoulos also told Source 2 that General Flynn "does want to cooperate with the Russians and the Russians are willing to...embrace adult issues." As for Papadopoulos's own connections with Russia, Papadopoulos told Source 2 he thought that "we have to be wary of the Russians" and mentioned that "they actually invited me to their...faith talk. I didn't go though." Papadopoulos explained to Source 2 that he made the decision not to go because it is "just too sensitive...[as an] advisor on the campaign trail...especially with what is going [on] with Paul Manafort." Source 2 also asked Papadopoulos about the possibility of the public release of additional information that would be harmful to Hillary Clinton's campaign. Papadopoulos responded that Julian Assange of WikiLeaks had said in public statements to "get ready for October...[but] [w]hatever that means no one knows."

As a result of this brunch meeting, the Crossfire Hurricane team assessed that Papadopoulos was "responding in a deferential mode" to Source 2, and decided

that Source 2 would set a follow-up meeting for drinks with Papadopoulos later that afternoon "to ask direct questions...pertaining to the Crossfire Hurricane predicated material."

(2) September 15, 2016 Evening Meeting with Source 2 and Papadopoulos

On the evening of September 15, 2016, Source 2 and Papadopoulos met for pre-dinner drinks and further discussion. The meeting was consensually monitored by the FBI, and later transcribed. According to the executive summary written by Case Agent 2 after the operation, the goal of this meeting was for Source 2 to ask Papadopoulos direct questions about whether the Trump campaign benefitted from, or anyone in the Trump campaign had knowledge of, Russian assistance or the WikiLeaks release of information that was damaging to the Clinton campaign.

When Source 2 initially asked about WikiLeaks, Papadopoulos commented that with respect to Assange "no one knows what he's going to release" and that he could release information on Trump as a "ploy to basically dismantle... [or] undercut the...next President of the United States regardless of who it's going to be." Papadopoulos also stated that "no one has proven that the Russians actually did the hacking," then continued to discuss hacking by pointing out that he had "actually had a few...Israelis trying to hack" his cell phone, which Papadopoulos said "shocked" him because he had "done some sensitive work for that government," and he said the Israelis had "allowed [him] quite a high level of access." Papadopoulos also stated that "no one else" did the work that he did for the Israelis, and that it had led "some folks [to] joke...[that Papadopoulos] should go into the CIA after this if [Trump] ends up losing."

Later in the conversation, Source 2 asked Papadopoulos directly whether help "from a third party like WikiLeaks for example or some other third party like the Russians, could be incredibly helpful" in securing a campaign victory. Papadopoulos responded:

Well as a campaign, of course, we don't advocate for this type of activity because at the end of the day it's, ah, illegal. First and foremost it compromises the US national security and third it sets a very bad precedence [sic].... So the campaign does not advocate for this, does not support what is happening. The indirect consequences are out of our hands.... [F]or example, our campaign is not...engag[ing] or reaching out to wiki leaks or to the whoever it is to tell them please work with us, collaborate because we don't, no one does that.... Unless there's something going on that I don't know which I don't because I don't think anybody would risk their, their life, ah, potentially going to prison over doing something like that. Um...because at the end of the day, you know, it's an illegal, it's an illegal activity. Espionage is, ah, treason. This is a form of treason.... I mean that's why, you know, it became a very big issue when Mr. Trump said, "Russia if you're listening...." Do you remember?... And you know we had to retract it because, of course, he didn't mean for

them to actively engage in espionage but the media then took and ran with it.

When Source 2 raised the issue again, Papadopoulos added:

to run a shop like that...of course it's illegal. No one's looking to...obviously get into trouble like that and, you know, as far as I understand that's, no one's collaborating, there's been no collusion and it's going to remain that way. But the media, of course, wants to take a statement that Trump made, an off-the-cuff statement, about [how] Russia helped find the 30,000 emails and use that as a tool to advance their [story]...that Trump is...a stooge and if he's elected he'll permit the Russians to have carte blanche throughout Eastern Europe and the Middle East while the Americans sit back and twiddle their thumbs. And that's not correct.⁴⁷⁰

The meeting ended with Papadopoulos offering to introduce Source 2 to more members of the Trump campaign team, and offering to set up a follow-up meeting the next time Source 2 is in Washington, D.C. Source 2 advised Papadopoulos that Source 2 did not "really want to be in government again" but was "wanting to help on China" and willing to provide Papadopoulos with written materials, such as speeches and pre-position papers, which might be helpful on foreign policy issues involving China.

Case Agent 1 told the OIG that Papadopoulos's "response to the direct questions seemed weird" to the Crossfire Hurricane team because it "seemed rehearsed and almost rote." Case Agent 1 added that at these points in the conversation, Papadopoulos "went from a free-flowing conversation with [Source 2] to almost a canned response. You could tell in the demeanor of how [Papadopoulos] changed his tone, and to [the Crossfire Hurricane team] it seemed almost rehearsed." Case Agent 1 emailed SSA 1 and others to report that Papadopoulos "gave...a canned answer, which he was probably prepped to say when asked." According to Case Agent 1, it remained a topic of conversation on the Crossfire Hurricane team for days afterward whether Papadopoulos had "been coached by a legal team to deny" any involvement because of the "noticeable change" in "the tenor of the conversation."

Case Agent 2 told the OIG that his concern after Papadopoulos's meetings with Source 2 was that the team was not "any closer to answering the question of whether...any of these guys have information on penetration" of the Trump campaign. Case Agent 3 added that because Papadopoulos "made statements about doing sensitive work for [a foreign] government" that opened a new area of inquiry with respect to Papadopoulos's foreign contacts.

SSA 1 told the OIG that his main observation was that when Papadopoulos was pushed for answers, he seemed to have a "prepared statement. It sounded

⁴⁷⁰ As described in Chapters Five and Seven, none of the Carter Page FISA applications advised the FISC of Papadopoulos's denials to Source 2 that the Trump campaign had any involvement in the release of DNC emails by WikiLeaks.

like a lawyer wrote it.” OGC Deputy General Counsel Trisha Anderson similarly said that, when she learned of Papadopoulos’s responses in 2018 while working on the Rule 13 Letter to the FISC (described in Chapter Eight), she viewed them as “self-serving” and “sound[ing] like a lawyered statement.” SSA 1 said that, as a result of Source 2’s meetings with Papadopoulos, SSA 1 did not have any concerns that the information gathered intruded upon planning or strategy of the Trump campaign.

2. Source 3

Case Agent 3 and an Intelligence Analyst identified Source 3 as an individual with a connection to Papadopoulos who may be willing to act as a CHS, based on statements Source 3 had made to the FBI several years prior, during an interview in an unrelated investigation. Source 3 had never previously worked for the FBI as a CHS, and the Delta records for Source 3 state that the opening of this CHS “was accelerated due to operational necessity.”

Case Agent 3 said that he considered Source 3 to be a reliable CHS because Source 3 was always available when the FBI needed Source 3, provided good descriptions of the conversations with Papadopoulos, and the summaries that Source 3 provided to the FBI were corroborated by the consensual monitoring. The FBI performed a human source validation review on Source 3 in 2017, and recommended Source 3 for continued operation.

Papadopoulos and Source 3 met multiple times between October 2016 and June 2017, all of which occurred after the FBI understood that Papadopoulos had ceased working on the Trump campaign.⁴⁷¹ All but one of their meetings were consensually monitored by the FBI; however, not all of them were transcribed by the FBI. Instead, Case Agent 3 said that he and the Intelligence Analyst would review the recordings to find portions that were of investigative interest, and those portions were written up or reviewed.

Case Agent 3 told the OIG that, with respect to Source 3, the topics that Case Agent 3 “was interested in didn’t pertain to the [Trump] campaign. They

⁴⁷¹ The precise date that Papadopoulos left the Trump campaign is unclear. Case Agent 3 told the OIG that it was his understanding that Papadopoulos left the Trump campaign on October 4, 2016. We noted that, on October 10, 2016, Papadopoulos sent a text message stating that he was “no longer with the campaign.” However, we also reviewed a text message that Papadopoulos sent to a different contact on October 17, 2016, stating that he was still working for the Trump campaign, but that he was “laying low” after getting in trouble for comments during an “interview on Russia.” The Special Counsel’s Report stated that Papadopoulos was dismissed from the Trump campaign in early October 2016, after the September 30, 2016 publication of an interview he gave to a Russian news agency created negative publicity. See *The Special Counsel’s Report*, Vol. I at 93 & n. 492. In his interview with the House Judiciary Committee and House Committee on Government Reform and Oversight on October 25, 2018, Papadopoulos said that the date he was removed from the campaign was unclear, and that he did not think he “ever really left the campaign.” See *Transcript of Interview of George Papadopoulos before the House Judiciary Committee and House Committee on Government Reform and Oversight*, October 25, 2018, 133. For the purpose of this report, we have used early October as the approximate date of Papadopoulos’s separation from the Trump campaign, as that is the date that the FBI believed such separation occurred.

pertained to Russia and [another foreign country], with regard to whatever Papadopoulos was doing." Case Agent 3 said the guidance he gave to Source 3 was that the FBI was "interested in these foreign activities, and we're not interested in the campaign stuff."

Case Agent 3 told the OIG that Source 3 collected information about Papadopoulos's contacts with Russians through their monitored conversations. However, Case Agent 3 said that the consensual monitoring revealed that Papadopoulos had contacts with, and an interest in selling access to the United States government, which Case Agent 3 said he pursued as a separate "prong" of the Crossfire Hurricane investigation. Case Agent 3 said that, as a result, he "pivoted with the source to try to passively collect the Russia stuff and bring that up subtly during conversation" while collecting information about Papadopoulos's contacts with the other foreign government. Case Agent 3 also said that the monitored conversations between Source 3 and Papadopoulos gave the FBI information about how Papadopoulos "reacts to different topics...[which] was incredibly useful" in the FBI's preparation to interview Papadopoulos.

We reviewed the transcripts of two conversations between Source 3 and Papadopoulos that were monitored prior to the November 8, 2016 elections. In the first consensually monitored conversation, during the third week of October 2016, Papadopoulos described how he had worked for the presidential campaign of Ben Carson before joining the Trump campaign, and that when he was with the Trump campaign, he "set up a meeting with...[t]he President of Egypt and Trump." Papadopoulos also told Source 3 that, since leaving the Trump campaign, Papadopoulos had "transitioned into like my own private brand." Papadopoulos later stated he was "still with...the campaign indirectly" and that he had made "a lot of cool [connections] and I'm going to see what's going to happen after the election." He added that he had learned "[i]t's all about connections now days, man." Papadopoulos did not say much about Russia during the first conversation with Source 3, other than to mention a "friend Sergey...[who] lives in...Brooklyn," and invite Source 3 to travel with Papadopoulos to Russia in the summertime.

In the second consensually monitored conversation, at the end of October 2016, Papadopoulos told Source 3 that Papadopoulos had been "on the front page of Russia's biggest newspaper" for an interview he had given 2 to 3 weeks earlier. Papadopoulos said that he was asked "[w]hat's Mr. Trump going to do about Russia if he wins, what are your thoughts on ISIS, what are your thoughts on this?" and stated that he did not "understand why the U.S. has such a problem with Russia." Papadopoulos also said that he thinks Putin "exudes power, confidence." When Source 3 asked Papadopoulos if he had ever met Putin, Papadopoulos said that he was invited "to go and thank God I didn't go though." Papadopoulos said that it was a "weird story" from when he "was working at...this law firm in London" that involved a guy who was "well connected to the Russian government." Papadopoulos also said that he was introduced to "Putin's niece" and the Russian

Ambassador in London.⁴⁷² Papadopoulos did not elaborate on the story, but he added that he needed to figure out

how I'm going to monetize it, but I have to be an idiot not to monetize it, get it? Even if [Trump] loses. If anything, I feel like if he loses probably could be better for my personal business because if he wins I'm going to be in some bureaucracy I can't do jack..., you know?

Papadopoulos added that there are plenty of people who aren't even smart who are cashing in, and asked Source 3 "Do you know how many Members of Congress I've met that know jack...about anything? Except what their advisors tell them?... They can barely put a sentence together.... I'm talking about Members of Congress dude." In other portions of the conversation with Source 3, Papadopoulos repeated that what he really wanted to figure out was how to "monetize...[his] connections" because Papadopoulos felt like he knew "a lot of Ambassadors...[and] a lot of Presidents." Papadopoulos said that once the election was over, Papadopoulos was going

to sit down and systematically write who I know, what they want, and how I can leverage that because if you know like government guys and ambassadors you should be making money, that's all I know because there's not one person I know who has those connections that isn't making...money.

He observed that what he had to "sell is access," and "[t]hat's what people pay millions of dollars for every year. It's the cleanest job."

However, when Source 3 asked Papadopoulos whether Papadopoulos thought "Russia's playing a big game in this election," Papadopoulos said he believed "That's all bull[.]" Papadopoulos said "[n]o one knows who's hacking [the DNC].... Could be the Chinese, could be the Iranians, it could be some Bernie...supporters." Papadopoulos added that arguments about the Russians are "all...conspiracy theories." He said that he knew "for a fact" that no one from the Trump campaign had anything to do with releasing emails from the DNC, because Papadopoulos said he had "been working with them for the last nine months.... And all of this stuff has been happening, what, the last four months?" Papadopoulos added that he had been asked the same question by Source 2. Papadopoulos said he believed Source 2 was going to go

and tell the CIA or something if I'd have told him something else. I assume that's why he was asking. And I told him, absolutely not....it's illegal, you know, to do that....

The FBI did not inform OI of these conversations at the time they occurred and, as described in Chapters Seven and Eight, the subsequent FISA renewal applications

⁴⁷² As described in The Special Counsel's Report, Papadopoulos later learned that the woman he had met was not actually Putin's niece. See *The Special Counsel's Report*, Vol. I at 84 & n.424.

on Carter Page did not include these statements. In its July 12, 2018 Rule 13 Letter to the FISC, NSD advised the court of this information.

B. Other CHSs Who Were Not Tasked As Part of Crossfire Hurricane

In our review, we also learned that, in 2016, the FBI had several other CHSs with either a connection to candidate Trump or a role in the Trump campaign. Some of these sources were known to and available for use by the Crossfire Hurricane team during the 2016 presidential campaign, while others were not.

As one example, the Crossfire Hurricane team received general information about Page and Manafort in August 2016 from one such CHS. This CHS was not involved in the presidential campaign but, according to the Handling Agent, knew candidate Trump and had been in contact with the candidate. The Handling Agent for this CHS told the OIG that he was given "zero context" about the Crossfire Hurricane investigation, "told absolutely nothing." According to the Handling Agent, the information the CHS provided about Page was "open-source information" that was "[a]ll over the Internet." The Handling Agent also said that, once FBI Headquarters received this general information, the "matter was dropped." We found no evidence that any members of the Crossfire Hurricane team ever suggested inserting this CHS into the Trump campaign to gather investigative information. SSA 1 told the OIG "that was not what we were looking to do." SSA 1 added that the Crossfire Hurricane team was "looking for information about the predicate, and didn't want it to be construed later...as something other than what we were really after."⁴⁷³

⁴⁷³ SSA 1 did contact the Handling Agent for this CHS after the November 8, 2016 election, and asked for "a read-out from your CHS regarding possible positions in administration." SSA 1 told the OIG that he sent this email because he thought that the CHS might receive "a position somewhere in the administration" which would become a "sensitive matter that we would need to handle differently." In late November 2016, the Handling Agent met with the CHS. The Handling Agent later wrote a document stating one purpose of the meeting was "to obtain insight regarding the upcoming Trump Administration following the recent U.S. Presidential elections." We asked the members of the Crossfire Hurricane team about this statement in the document. SSA 1 told the OIG that he had never seen this document before and that this was not what he intended the Handling Agent to discuss with the CHS. Priestap told the OIG that this statement "absolutely" would have raised concerns if he had learned of it in real time. He said he was not aware that this type of information was being collected from a CHS and that he "hope[d] it was misstated [in the document], because we don't, well, it's not what we should be doing." The Handling Agent told the OIG that, to him, the phrase "obtain insight" was a synonym for asking a "[p]ersonal opinion," and that he was just making "small talk" with the CHS, the way you would expect to converse with those "tied to political circles" immediately following an election. The Handling Agent added that this information was "not investigative in nature" and was not placed into any case file. The Handling Agent's SSA said that "because the Trump Administration...was not under any kind of investigation" by her squad, she was not concerned about this sentence when she saw it, and she understood it to be written in the general context of preparation for the CHS's meeting with a foreign intelligence officer unrelated to the Crossfire Hurricane investigation. The Handling Agent added that he was not aware of this document being shared with or accessible to the Crossfire Hurricane team, and we found no evidence that members of the Crossfire Hurricane team ever received this document.

We also learned about a different CHS who at one point held a position in the Trump campaign. However, by the time that the CHS told his/her Handling Agent about this involvement, the CHS was no longer part of the Trump campaign. After Crossfire Hurricane team members learned about this CHS, they reviewed the CHS's file, but did not task the CHS as part of the investigation. The OGC Attorney told the OIG that he distinctly remembered the OGC Unit Chief "strongly advising [the Crossfire Hurricane agents] to be cautious with this particular CHS." Case Agent 1 recalled that, because this CHS was "at one point...part of the campaign...we just said, hey, hands off." Documents in the CHS's Delta file reflect that the Handling Agent minimized contact with the CHS because of the CHS's campaign activities, even though the CHS was no longer involved in the Trump campaign.⁴⁷⁴

As part of our review, we also discovered an October 2016 email written to SSA 1 by an Intelligence Analyst on the Crossfire Hurricane team. The email copied information out of a CHS's Delta file stating that the CHS is "scheduled to attend a 'private' national security forum with Donald Trump" in October 2016, after which the CHS will provide "an update on the Trump meeting." However, none of the Crossfire Hurricane case agents remembered knowing that any FBI CHS had been scheduled to attend a private forum with candidate Trump. SSA 1 told the OIG he did not remember this CHS "at all" and had no information about whether the CHS actually attended such a meeting. The Handling Agent for this CHS told the OIG that what was described in the document was a gathering at a hotel that was "more of a...campaign speech or campaign discussion" and "more like a campaign stop than a meeting." The Handling Agent told the OIG he could not remember if the CHS ended up attending or not, and added that he "would certainly not be tasking a source to go attend some private meeting with a candidate, any candidate, for president or for other office, to collect the information on what that candidate is saying." We found no evidence that this CHS ever reported any information collected from a meeting with Trump or a Trump campaign event.

Although the Crossfire Hurricane team was aware of these CHSs during the 2016 presidential campaign, we were told that operational use of these CHSs would

⁴⁷⁴ The email stating that the CHS would not be used in Crossfire Hurricane said:

After careful consideration, the CROSSFIRE HURRICANE team has decided, at this time, it is best to utilize your CHS as a passive listening post regarding any observations [he/she] has of the campaign so far. Base[d] on current, on-going operations/developments in the CROSSFIRE HURRICANE investigation, we are not going to directly task or sensitize the CHS at this point in time. We appreciate [your] assistance in this matter and remain interested in any campaign related reporting that you guys may receive from the CHS during normal debriefs.

Case Agent 2, who wrote the email, told the OIG that the email was "incorrect" and what he was asking for was any information about attempts by Russia "to screw around with the campaign or the elections." He also acknowledged that it was "a mistake" not to make that clear in the email. The Handling Agent for this CHS told the OIG he "dismissed the e-mail...outright" because the CHS was "not even in the campaign" by that time. He added that within the field office, they had "made the decision...that we weren't touching this...right prior to a Presidential election." We found no evidence that the Crossfire Hurricane team received any information from this CHS in response to Case Agent 2's email.

not have furthered the investigation, and so these CHSs were not tasked with any investigative activities. Moreover, SSA 1 told the OIG that the members of the Crossfire Hurricane team "never [had] any intent, never any desire...to collect...campaign or privileged information with regard to the presidential election."

We also learned of two other FBI CHSs, one of whom held a position [REDACTED] and the other of whom [REDACTED]

[REDACTED] We found no evidence that the Crossfire Hurricane team ever knew about the CHS who held a position [REDACTED] and, accordingly, no evidence that the CHS was tasked to do anything as part of the Crossfire Hurricane investigation.

With respect to the CHS with connections to [REDACTED], the Handling Agent told the OIG that this CHS regularly provides "a ton of information on all sorts of things" to the FBI without being tasked and brings "reams of information" to their meetings. In March 2017, after the campaign had ended, the CHS voluntarily provided his/her Handling Agent with five sets of documents on multiple topics [REDACTED]

[REDACTED]. According to the Handling Agent, this was not information that he had asked the CHS to obtain or provide to the FBI. The Handling Agent told the OIG that the CHS gave the [REDACTED] to the FBI because the CHS "thought it was of interest to the U.S. government." The Handling Agent placed the materials into the FBI's files.⁴⁷⁵ Also in March 2017, the Handling Agent forwarded the [REDACTED] to his supervisor, who sent it to FBI Headquarters, after which it was provided to the Crossfire Hurricane team for review.⁴⁷⁶ Later, the Handling Agent learned from the CHS [REDACTED]

[REDACTED]. An Intelligence Analyst assigned to the Crossfire Hurricane team asked the Handling Agent [REDACTED] from the CHS, which the Handling Agent placed in the FBI's files and sent to the Crossfire Hurricane team. The Crossfire Hurricane Intelligence Analyst who reviewed [REDACTED] advised Crossfire Hurricane supervisors and case agents that there was not "anything significant" in [REDACTED]. Moreover, the Crossfire Hurricane team [REDACTED]

The OGC Unit Chief told the OIG she had no concerns about the Crossfire Hurricane team receiving [REDACTED] was over and that, because the focus of the Crossfire Hurricane

⁴⁷⁵ We notified the FBI upon learning during our review that [REDACTED] materials that the CHS had provided to the FBI were still maintained in FBI files.

⁴⁷⁶ The Handling Agent for this CHS and the Handling Agent's SSA were aware that FBI Headquarters was conducting a "special" investigation because the Handling Agent assisted the Crossfire Hurricane team by serving a court order in October 2016 related to the investigation. However, neither the Handling Agent nor his SSA was provided any information about the nature or scope of the Crossfire Hurricane investigation.

investigation was "trying to identify whether or not the Russians had infiltrated or were working with U.S. persons associated with the Trump campaign,...[it] would have been fine to collect it either during the campaign or afterwards" because it went to "the heart of the question of whether or not there was any sort of conspiracy."

The Handling Agent for this CHS told the OIG that he did not recall asking this CHS any questions [REDACTED]

The Handling Agent said he was aware that the CHS "may have had some political meanderings toward...[REDACTED], and was trying to be associated with that," but the Handling Agent did not understand, or inquire about, the full extent of the CHS's involvement. The SSA in the field office who supervised the Handling Agent told the OIG that he had no memory of knowing [REDACTED]. He characterized the CHS's involvement as the source's "hobby" or "outside interests." He said:

the FBI did not have a source in the campaign, [REDACTED]
[REDACTED], that we didn't even know
about at the time or didn't care about at the time.

He said that, in his view, any [REDACTED] "was totally separate from [the CHS's] work with the FBI." He added that, because the CHS was a Trump supporter, he was "not worried about [the source] trying to provide information or getting dirty information on Trump." He said any suggestion this CHS "was directed to damage or investigate the Trump Administration is just absurd."⁴⁷⁷

⁴⁷⁷ We reviewed the text and instant messages sent and received by the Handling Agent, the co-case Handling Agent, and the SSA for this CHS, which reflect their support for Trump in the 2016 elections. On November 9, the day after the election, the SSA contacted another FBI employee via an instant messaging program to discuss some recent CHS reporting regarding the Clinton Foundation and offered that "if you hear talk of a special prosecutor...I will volunteer to work [on] the Clinton Foundation." The SSA's November 9, 2016 instant messages also stated that he "was so elated with the election" and compared the election coverage to "watching a Superbowl comeback." The SSA explained this comment to the OIG by saying that he "fully expected Hillary Clinton to walk away with the election. But as the returns [came] in...it was just energizing to me to see....[because] I didn't want a criminal to be in the White House."

On November 9, 2016, the Handling Agent and co-case Handling Agent for this CHS also discussed the results of the election in an instant message exchange that reads:

Handling Agent: "Trump!"

Co-Case Handling Agent: "Hahaha. Shit just got real."

Handling Agent: "Yes it did."

Co-Case Handling Agent: "I saw a lot of scared MFers on...[my way to work] this morning. Start looking for new jobs fellas. Haha."

Handling Agent: "LOL"

No one involved with the Crossfire Hurricane investigation, including Strzok, Priestap and Comey, knew about this CHS during the campaign, or when the CHS was [REDACTED], or when the CHS met with [REDACTED]. Priestap told the OIG he "did not know it was happening," and that, as the AD of the Counterintelligence Division, he "absolutely" should have been told that there was an active FBI CHS with access to [REDACTED]. He said that, no matter what level of approval was required to continue operating such a CHS, that as a matter of "common sense" this was a situation where "[t]he bosses need to know." We make a recommendation in Chapter Eleven to address this issue. We found no evidence that this CHS was tasked by the FBI to interact with any members of the Trump campaign, transition team, or Administration.

V. ODNI Strategic Intelligence Briefing Provided to Candidate Trump, Flynn, and Another Trump Campaign Advisor

As we described in Chapter Three, the FBI decided not to conduct defensive briefings for any members of the Trump campaign about the information the FFG provided to the U.S. government that served as the predicate for opening Crossfire Hurricane. However, we learned during the course of our review that, during the presidential election campaign, the FBI was invited by ODNI to provide a baseline counterintelligence and security briefing (security briefing) as part of ODNI's strategic intelligence briefing given to members of both the Trump campaign and the Clinton campaign, consistent with ODNI's and the FBI's practice in prior presidential election cycles. We also learned that, because Flynn was expected to attend the first such briefing for members of the Trump campaign on August 17, 2016, the FBI viewed that briefing as a possible opportunity to collect information potentially relevant to the Crossfire Hurricane and Flynn investigations. We found no evidence that the FBI consulted with Department leadership or ODNI officials about this plan.

In the first week of August 2016, the FBI's Presidential Transition Team requested that CD begin preparations for providing unclassified "counterintelligence awareness" briefings to the transition teams for the Trump and Clinton campaigns. The FBI participated in strategic intelligence briefings conducted by ODNI on August 17, 2016, for Trump and his selected advisors, including Flynn; and on August 27, 2016, for Clinton and her selected advisors. The FBI also participated in ODNI strategic intelligence briefings for members of each campaign: on August 31, 2016, to Trump campaign staff; on August 31, 2016, to Clinton campaign staff; on September 8, 2016, to Vice Presidential candidate Tim Kaine; and on September 9, 2016, to Vice Presidential candidate Michael Pence.

Co-Case Handling Agent: "Come January I'm going to just get a big bowl of popcorn and sit back and watch."

Handling Agent: "That's hilarious!"

The FBI selected SSA 1, the supervisor for the Crossfire Hurricane investigation, to provide the FBI security briefings for Trump and Clinton.⁴⁷⁸ SSA 1 told us that one of the reasons for his selection was that ODNI had informed the FBI that one of the two Trump campaign advisors attending the August 17 briefing would be Flynn. He further stated that the briefing provided him "the opportunity to gain assessment and possibly have some level of familiarity with [Flynn]. So, should we get to the point where we need to do a subject interview...I would have that to fall back on." Asked to explain what he meant by "assessment," the SSA 1 continued,

[Flynn's] overall mannerisms. That overall mannerisms and then also if there was anything specific to Russia, or anything specific to our investigation that was mentioned by him, or quite frankly we had an...investigation, right. And any of the other two individuals in the room, if they, any kind of admission, or overhear, whatever it was, I was there to record that.

SSA 1 told us that he did not recall specific internal FBI discussions about having him provide the FBI security briefings for Trump and Clinton, but believes that the group who likely would have been part of any such discussions—Strzok, the Intel Section Chief, and possibly Lisa Page—shared a general understanding of the reasons for doing so. SSA 1 also told us that using an opportunity to interact with the subject of an investigation is not unusual for the FBI, and that in this instance, it actually proved useful because SSA 1 was able to compare Flynn's "norms" from the briefing with Flynn's conduct at the interview that SSA 1 conducted on January 24, 2017, in connection with the FBI's investigation of Flynn.

We asked SSA 1 whether he was aware of any discussions within the FBI about the appropriateness of the FBI using an ODNI strategic intelligence briefing for a presidential candidate, organized by ODNI as part of the presidential transition process, as an opportunity to gather potentially relevant investigative information about or from a staff member who is the subject of an FBI investigation. SSA 1 responded that he did not recall if there were any such discussions, but that if there were, they would have occurred at levels above him. He also told us that he did not personally have any concerns with the plan.

According to Baker, discussions about using SSA 1 as the FBI briefer did occur at higher levels. Baker told us that he recalled these discussions included himself, McCabe, Priestap, Strzok, possibly Lisa Page, and the FBI's then Executive Assistant Director of the National Security Branch. Baker said the decision to use SSA 1 for the briefing was reached by consensus within this group. Baker told us that he did not raise any concerns about using SSA 1 as the briefer because "[h]e was not there to induce anybody to say anything.... He was not there to do an undercover operation or...elicit some type of statement or testimony.... He was there on the off chance that somebody said something that might be useful." From Baker's perspective, the benefit of having SSA 1 at the briefing was to pick up on

⁴⁷⁸ SSA 1 also provided the FBI security briefings on behalf of the FBI to Kaine and Pence, but not to the campaigns' staffs.

any statements by the attendees that might have relevance to the Crossfire Hurricane investigation:

[I]f somebody said something, you want someone in the room who knew enough about the investigation that they would be able to understand the significance of something, or some type of statement, whereas...a regular briefer who didn't know anything about that might just let it go, and it might not even register with them. And so...that was the reason to have [SSA 1] there.

We asked Baker whether he recalled any discussion about the potential chilling effect on, and the FBI's participation in, future presidential transition briefings if the FBI's use of SSA 1 in this manner became known. Baker told us that he did not recall that issue being discussed, and added that the use of SSA 1 was focused on the FBI's counterintelligence investigation and Russian activities, including any directed at the Trump campaign; it was not the intention to collect any "political intelligence about campaign strategy, about campaign personalities, or anything that could be used in any political way."

We asked McCabe about his knowledge of the ODNI strategic intelligence briefings of the presidential campaigns and the decision to use SSA 1 as the FBI briefer because of SSA 1's role in the Crossfire Hurricane investigation. McCabe told us that ODNI was primarily responsible for providing national security threat briefings, and that the FBI was given a limited period of time in this instance to cover what it needed to address. He told us that he could not recall if he was aware in advance of the briefing that SSA 1 would attend for the FBI, or why SSA 1 was selected. McCabe acknowledged that it was possible he was part of a conversation about whether SSA 1 should handle the briefing because of his involvement with Crossfire Hurricane, but said he could not recall any such conversation. Asked whether he was aware there was an investigative purpose for SSA 1 handling the briefing, McCabe told us that he did not recall such a conversation and was not aware there was an investigative purpose for SSA 1 attending.

SSA 1 told us that he recalled Strzok being primarily responsible for providing SSA 1 with instruction on how to handle the FBI's portion of the ODNI strategic intelligence briefings, but that others also assisted, including the Intel Section Chief and possibly Lisa Page. SSA 1 did not recall Priestap having any role. SSA 1 told us that he believed he and Strzok created the briefing outline together, and that he prepared himself through mock briefings attended by Strzok, Lisa Page, the Intel Section Chief, and possibly the OGC Unit Chief. According to SSA 1, the briefing outline was not tailored to serve the investigative interests of Crossfire Hurricane and there was nothing he did differently for the Trump briefing as compared to the Clinton briefing: "that was one of the things that was very key. [The briefings] needed to be consistent."

The OIG reviewed the briefing outline prepared by SSA 1 and Strzok. According to the outline, the purpose of the briefing was to "give [the recipients] a baseline on the presence and threat posed by Foreign Intelligence Services to the

National Security of the U.S.” The outline described the type of information that Foreign Intelligence Services (FIS) seek to obtain, the presence of FIS intelligence officers in the United States, and the primary methodologies FIS intelligence officers use to collect information. The outline also identified the Russian FIS and the Chinese as posing the greatest threat to the United States and described generally the difference in how the two countries conduct intelligence operations.

SSA 1 told us that he was the only FBI representative at the ODNI briefing on August 17, 2016, which was attended by Trump, Flynn, and another Trump campaign advisor. According to SSA 1, he understood the ODNI briefing would take about 2 hours to complete and that SSA 1 would have about 10 minutes to conduct the FBI’s security briefing. After completing his briefing, SSA 1 said he remained for the duration of the ODNI briefing. About a week after the briefing, SSA 1 communicated separately with the OGC Attorney and Strzok about whether to formally document the briefing. There was agreement that he should. SSA 1 told us that given the “[b]ig stakes” involved, it was important to document the interaction with the subject of an FBI investigation so that there was a clear record of what was said. There was also agreement that an Electronic Communication (EC) instead of an FD-302 was the better document form to use because the briefing was not an interview and there was nothing testimonial to memorialize.

The August 30, 2016 EC was drafted by SSA 1 and approved by Strzok and the OGC Attorney. The 3-page document describes the purpose, location, and attendees of the briefing. It states that the FBI security briefing lasted approximately 13 minutes, and describes how one of the ODNI briefers initiated the briefing, explained the ground rules, and introduced SSA 1. The EC then recounts in summary fashion the briefing SSA 1 provided. In this regard, the EC is consistent with the outline of the briefing described above. Woven into the briefing summary are questions posed to SSA 1 by Trump and Flynn, and SSA 1’s responses, as well as comments made by Trump and Flynn.

Other than identifying the ODNI briefers and the length of the ODNI strategic intelligence briefing, the EC does not contain any details about the information that was provided by ODNI. With regard to comments made by Trump or Flynn during the ODNI briefing, the EC describes two questions asked by Trump. SSA 1 told us that Flynn made comments during exchanges with the ODNI briefers on many subjects unrelated to Russia that SSA 1 did not document because the information was not pertinent to any FBI interests. SSA 1 told us that he documented those instances where he was engaged by the attendees, as well as anything related to the FBI or pertinent to the FBI Crossfire Hurricane investigation, such as comments about the Russian Federation. SSA 1 said that he also documented information that may not have been relevant at the time he recorded it, but might prove relevant in the future. After completing the EC, SSA 1 added it to the Crossfire Hurricane case file.⁴⁷⁹

⁴⁷⁹ FBI records indicate the EC was uploaded to the FBI’s Sentinel case management system on August 30, 2016.

With respect to the FBI security briefings SSA 1 provided to Clinton, Kaine, and Pence, SSA 1 told us that he did not memorialize those briefings in writing because the attendees did not include a subject of an FBI investigation.⁴⁸⁰ He also told us that there was nothing from the other briefings that was of investigative value to the Crossfire Hurricane team; had there been, he said he would have documented it. We also asked SSA 1 whether he participated in any post-presidential election transition briefings.⁴⁸¹ He told us that he did not and that he would be surprised if the FBI provided any such briefings that included Flynn without SSA 1's knowledge.

We identified no Department or FBI policies or procedures regarding the handling of presidential transition briefings, and no requirement that Department leadership be consulted before using a presidential transition briefing, or a defensive briefing, for possible investigative purposes. Because we believe doing so presents important policy issues, we make a recommendation in Chapter Eleven that addresses this issue.

⁴⁸⁰ We identified text messages between Strzok and Lisa Page from November 2016 suggesting the FBI may have considered using a connection between a then member of Pence's staff and an FBI employee in some manner to further the Crossfire Hurricane investigation. We asked SSA 1 about this. He said that he had been told of the connection but did not personally know the FBI employee, and that he did not change his approach to Pence's FBI security briefing because of the connection. He also said he could not recall any discussions about using the connection to further the Crossfire Hurricane investigation, and we did not find any evidence that it was used.

⁴⁸¹ On September 2, 2016, ODNI provided a second strategic intelligence briefing to Trump, Flynn, and another Trump campaign advisor. We found no evidence that SSA 1 or anyone from the FBI attended this briefing, although instant messages indicate that the FBI had contacted ODNI about including SSA 1 at the briefing.

CHAPTER ELEVEN ANALYSIS

In this chapter, we provide the OIG's analysis of the events described in Chapter Three through Chapter Ten. We divide our analysis into five sections. In Section I, we discuss whether the opening of the Crossfire Hurricane investigation and four related investigations, and whether certain early investigative techniques used by the FBI, complied with the requirements of the Attorney General's Guidelines for Domestic FBI Operations (AG Guidelines) and the FBI's Domestic Investigations and Operations Guide (DIOG).

In Section II, we analyze the role of Christopher Steele's election reporting in the four Carter Page Foreign Intelligence Surveillance Act (FISA) applications and the numerous instances in which factual representations in those applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the applications were filed. In Section III, we analyze the FBI's handling of Christopher Steele and his election reporting, and whether the FBI's receipt and use of his reporting during the Crossfire Hurricane investigation complied with FBI Confidential Human Source (CHS) policies and procedures.

Section IV examines issues relating to Department attorney Bruce Ohr's interactions with Steele, Glenn Simpson, the FBI, and the State Department during the Crossfire Hurricane investigation, as well as whether the work Ohr's spouse performed for Simpson's firm implicated any ethical rules applicable to Ohr. We also analyze Ohr's interactions with Department attorneys and FBI officials concerning the Department's criminal investigation of Paul Manafort.

Lastly, in Section V, we focus on the FBI's use of CHSs, other than Steele, and Undercover Employees (UCEs) in the Crossfire Hurricane investigation and analyze whether the Crossfire Hurricane team's use of such individuals complied with Department and FBI policies. We also analyze the attendance of an FBI Supervisory Special Agent (SSA) assigned to the Crossfire Hurricane investigation at counterintelligence briefings given to the 2016 presidential candidates and certain campaign advisors.

As we explained in Chapter One, we did not analyze all of the decisions in the Crossfire Hurricane investigation. Rather, we reviewed the topics described above. Moreover, our role in this review was not to second-guess discretionary judgments by Department personnel about whether to open an investigation, or specific judgment calls made during the course of an investigation, where those decisions complied with or were authorized by Department rules, policies, or procedures. We do not criticize particular decisions merely because we might have recommended a different investigative strategy or tactic based on the facts learned during our investigation. The question we considered was not whether a particular investigative decision was ideal or could have been handled more effectively, but rather whether the Department and the FBI complied with applicable legal requirements, policies, and procedures in taking the actions we reviewed, or,

alternatively, whether the circumstances surrounding a decision indicated that it was based on inaccurate or incomplete information, or considerations other than the merits of the investigation. If the explanations we were given for a particular decision were consistent with legal requirements, policies, and procedures, and were not unreasonable, we did not conclude that the decision was based on improper considerations in the absence of documentary or testimonial evidence to the contrary.

I. The Opening of Crossfire Hurricane and Four Related Counterintelligence Investigations

In this section, we examine the opening of Crossfire Hurricane and four related counterintelligence investigations of individuals associated with the Donald J. Trump for President Campaign. Specifically, we analyze whether, in opening these investigations, the FBI complied with the requirements set forth in the AG Guidelines and the DIOG.

The applicable provisions of the AG Guidelines and the DIOG require that FBI investigations be undertaken for an “authorized purpose”—that is, “to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.” The AG Guidelines also require that FBI investigations have adequate factual predication—that is, allegations, reports, facts, or circumstances indicative of possible criminal activity or a national security threat. In addition, for investigations designated as Sensitive Investigative Matters (SIMs), such as Crossfire Hurricane, the DIOG imposes special approval and notification requirements when opening such a matter. The DIOG also emphasizes that investigators take particular care to consider whether a planned investigative activity is the least intrusive method and is reasonably based upon the needs of the investigation.

As described in Chapter Three, on July 31, 2016, the FBI’s Counterintelligence Division (CD) opened a Full Investigation titled “Crossfire Hurricane” to determine whether individual(s) associated with the Trump campaign were “witting of and/or coordinating activities with the Government of Russia.” The opening of the investigation occurred days after WikiLeaks publicly released hacked emails from the Democratic National Committee (DNC). According to the FBI Electronic Communication (EC) documenting the decision, the investigation was opened in response to information CD officials received on July 28, 2016, from a Friendly Foreign Government (FFG) indicating that in a May 2016 meeting with the FFG, George Papadopoulos, an advisor to the Trump campaign, “suggested the Trump team had received some kind of a suggestion” from Russia that it could assist in the election process with the anonymous release of information during the campaign that would be damaging to candidate Clinton and President Obama. We did not find information in FBI or Department emails, or other documents, or through witness testimony, indicating that any information other than the FFG information was relied upon to predicate the opening of the Crossfire Hurricane investigation. However, as noted below, the FBI received the FFG information at a time when it had reason to believe that Russia may have been connected to the

WikiLeaks disclosures that occurred earlier in July 2016, and when the U.S. Intelligence Community (USIC), including the FBI, was aware of Russia's efforts to interfere with 2016 U.S. elections.

In the following weeks, the FBI also opened related counterintelligence investigations into four individuals associated with the Trump campaign—Papadopoulos, Carter Page, Michael Flynn, and Paul Manafort—because the FBI identified these individuals as having alleged ties to Russia or a history of travel to Russia.

We concluded that the FBI's decision to open Crossfire Hurricane and the four related individual investigations was, under Department and FBI policy, a discretionary judgment call and that the FBI's exercise of discretion was in compliance with those policies. For the reasons described below, we found that each investigation was opened for an authorized purpose and, in light of the low threshold established by Department and FBI predication policy, with adequate factual predication. We also found that the FBI satisfied the DIOG's notification and approval requirements for designating Crossfire Hurricane and the four related individual investigations as SIMs. Nevertheless, we were concerned about the limited notice requirements under Department and FBI policy before opening investigations such as these, relating to constitutionally protected activity occurring during a national presidential campaign. We were also concerned about the limited notice requirements before using more intrusive investigative techniques that could impact constitutionally protected activity. Accordingly, we make several recommendations below to address these concerns.

A. Authorized Purpose

The AG Guidelines and the DIOG both require that FBI investigations be undertaken for an "authorized purpose"—that is, "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence." Under both the AG Guidelines and the DIOG, the FBI may not undertake an investigation for the sole purpose of monitoring activities protected by the First Amendment or to interfere with the lawful exercise of other rights secured by the Constitution or laws of the United States. However, both the AG Guidelines and the DIOG permit the FBI to conduct an investigation, even if it might impact First Amendment or other constitutionally protected activity, so long as there is a legitimate law enforcement purpose associated with the investigation.

We concluded that, under the AG Guidelines and the DIOG, the FBI had an authorized purpose when it opened Crossfire Hurricane to obtain information about, or to protect against, a national security threat or federal crime, even though the investigation also had the potential to impact constitutionally protected activity. The FBI's opening EC referenced the Foreign Agents Registration Act (FARA) and stated, "[b]ased on the information provided by [the FBI Legal Attaché], this investigation is being opened to determine whether individual(s) associated with the Trump campaign are witting of and/or coordinating activities with the Government of Russia." We found that the FBI opened the Crossfire Hurricane

investigation shortly after officials in CD received the FFG information on July 28. The opening EC documented the pertinent FFG information verbatim and described relevant background information. All of the senior FBI officials who participated in the discussions about whether to open a case told us the information from the FFG warranted investigation. For example, the FBI's then Deputy General Counsel told us that the FBI "would have been derelict in our responsibilities had we not opened the case," because a foreign power allegedly colluding with a presidential candidate or his campaign was a threat to our nation that the FBI was obligated to investigate under its counterintelligence mission.

Then CD Assistant Director E.W. "Bill" Priestap, who approved opening the case, told us that the combination of the FFG information and the FBI's ongoing cyber intrusion investigation into the July 2016 hacks of the DNC's emails created a counterintelligence concern that the FBI was "obligated" to investigate. Priestap also told us that, prior to making the final decision to approve the opening of Crossfire Hurricane, he considered whether the FBI should conduct defensive briefings for the Trump campaign about the information from the FFG. However, Priestap ultimately decided that providing such briefings created the risk that "if someone on the campaign was engaged with the Russians, he/she would very likely change his/her tactics and/or otherwise seek to cover-up his/her activities, thereby preventing us from finding the truth." We did not identify any Department or FBI policy that applied to this decision and therefore determined that the decision whether to conduct defensive briefings in lieu of opening an investigation, or at any time during an investigation, was a judgment call that is left to the discretion of FBI officials.⁴⁸²

As part of our review, we sought to determine whether there was evidence that political bias or other improper considerations affected decision making in Crossfire Hurricane, including the decision to open the investigation. Such evidence would raise questions as to whether Crossfire Hurricane was opened for an authorized purpose, and serious concerns about whether the decision compromised the constitutional rights of any U.S. persons. We discussed the issue of political bias in a prior OIG report, *Review of Various Actions in Advance of the 2016 Election*, where we described text messages between then Special Counsel to the Deputy Director Lisa Page and then Section Chief Peter Strzok, among others. These text messages included statements of hostility toward then candidate Trump and statements of support for then candidate Hillary Clinton. These messages, most of which pertained to the Russia investigation, potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. Our prior review stated that the text messages were "not only

⁴⁸² Later in this chapter, we recommend that the Department and FBI evaluate which types of sensitive investigative matters should require advance notification to a senior Department official, such as the Deputy Attorney General, in addition to the notifications currently required for such matters, especially for opening investigations that implicate core First Amendment activity and raise policy considerations or heighten enterprise risk. Such a requirement would not only give senior Department leadership the opportunity to consider the constitutional and prudential issues associated with opening certain investigations but also the opportunity to consult with the FBI about whether to conduct a defensive briefing in a circumstance such as this one.

indicative of a biased state of mind but, even more seriously, impl[y] a willingness to take official action to impact [Trump's] electoral prospects." For example, on July 31, 2016, in connection with the formal opening of Crossfire Hurricane, Strzok texted Page: "And damn this feels momentous. Because this matters. The [Clinton email investigation] did, too, but that was to ensure we didn't F something up. This matters because this MATTERS. So super glad to be on this voyage with you." Additionally, on August 8, 2016, Page sent a text message to Strzok that stated, "[Trump's] not ever going to become president, right? Right?!" Strzok responded, "No. No he's not. We'll stop it." Although we did not find in our prior report any documentary or testimonial evidence directly connecting the political views stated in the text messages to the specific investigative actions in Midyear that we reviewed, we concluded that Strzok's text messages with Page indicated or created the appearance of bias against Trump. We further concluded that the messages raised serious questions about the propriety of any investigative decisions in which Strzok and Lisa Page played a role. Because several of these inappropriate and troubling messages occurred at or near the time of the opening of Crossfire Hurricane, we closely reviewed the roles of Strzok and Lisa Page in the investigation's opening and whether there was any documentary or testimonial evidence that their views impacted the decision to open the investigation.

We found that while she attended some of the discussions, Lisa Page did not play a role in the decision to open Crossfire Hurricane or the four individual cases. Strzok was directly involved in the decisions to open Crossfire Hurricane and the four individual cases, but we found that he was not the sole, or even the highest level decision maker as to any of those matters. Priestap, Strzok's supervisor, told us that ultimately he was the official who made the decision to open the Crossfire Hurricane investigation, and Strzok then prepared and approved the formal documentation, as required by the DIOG. Evidence reflected that this decision by Priestap was reached by consensus after multiple days of discussions and meetings that included Strzok and other leadership in CD, the FBI Deputy Director, the FBI General Counsel, and the FBI Deputy General Counsel. We similarly found that the decisions to open the four individual cases were reached by consensus of Crossfire Hurricane agents and analysts who identified individuals associated with the Trump campaign who had recently travelled to Russia or had other alleged ties to Russia, and that Priestap was involved in those decisions. The formal documentation opening each of these four investigations was approved by Strzok, as required by the DIOG.

We did not find documentary or testimonial evidence that political bias or improper motivation influenced Priestap's decision to open Crossfire Hurricane. The evidence also showed that FBI officials responsible for and involved in the case opening decisions were unanimous in their belief that, together with the July 2016 release by WikiLeaks of hacked DNC emails, the Papadopoulos statement described in the FFG information reflected the Russian government's potential next step to interfere with the 2016 U.S. elections. These FBI officials were similarly unanimous in their belief that the FFG information represented a threat to national security that warranted further investigation by the FBI. Witnesses told us that they did not

recall observing during these discussions any instances or indications of improper motivations or political bias on the part of the participants, including Strzok.

We also reviewed the text messages and emails of each of the FBI officials, in addition to Strzok, who participated in the decision to open Crossfire Hurricane and the four individual cases, and did not identify any statements in those communications that indicated or suggested the decision could have been affected by political bias or other improper considerations. We also reviewed other contemporaneous documents, such as meeting notes, and asked witnesses who were not involved in the decision to open Crossfire Hurricane but who were familiar with the predication for the case for any evidence of political bias or improper motivation in the FBI's decision making. Again, we found no such evidence, including from Department officials briefed about Crossfire Hurricane subsequent to it being opened. These officials also did not express any concerns about the FBI's decision to open the investigation. By way of example, David Laufman, then Chief of the National Security Division's (NSD) Counterintelligence and Export Control Section (CES), told us that it would have been "a dereliction of duty and responsibility of the highest order not to commit the appropriate resources as urgently as possible to run these facts to the ground, and find out what was going on."

We therefore concluded the FBI met the requirement in the AG Guidelines and the DIOG that Crossfire Hurricane be opened for an "authorized purpose," namely "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence." We also determined that, although the investigation had the potential to impact constitutionally protected activity, the FBI's decision to open the investigation was permissible under both Department and FBI policies because there was a legitimate law enforcement purpose associated with the investigation. Nevertheless, we believe that investigations affecting core First Amendment activity and national political campaigns raise significant constitutional and prudential issues and therefore we recommend below that Department policy require advance notification to a senior Department official, such as the Deputy Attorney General (DAG), before a Department component opens such an investigation so that Department leadership can consider these issues from the outset.

B. Factual Predication

In addition to requiring an authorized purpose, Department and FBI policy also mandate that each case have adequate factual predication before being initiated. The predication requirement is not a legal requirement but rather a prudential one imposed by Department and FBI policy. For example, the Supreme Court has held that the Department and FBI can lawfully open a federal criminal grand jury investigation even in the absence of predication. See *United States v. Morton Salt*, 338 U.S. 632, 642-43 (1950) (a grand jury "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not"); see also *United States v. R. Enterprises*, 498 U.S. 292, 297 (1991).

The AG Guidelines generally describe predication as allegations, reports, facts, or circumstances indicative of possible criminal activity or a national security threat, or the potential for acquiring information responsive to foreign intelligence collection requirements. For full counterintelligence investigations such as Crossfire Hurricane and the four related individual investigations, Section II.B.4 of the AG Guidelines and Section 7 of the DIOG state that the required level of predication is an "articulable factual basis" that "reasonably indicates" that any one of three defined circumstances exists, including:

An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.⁴⁸³

The AG Guidelines and the DIOG do not provide heightened predication standards for sensitive matters, or for allegations potentially impacting constitutionally protected activity, such as First Amendment rights. Rather, as we discuss below, the approval and notification requirements contained in the AG Guidelines and DIOG are, in part, intended to provide the means by which such concerns can be considered by senior officials.

In Crossfire Hurricane, the "articulable factual basis" set forth in the opening EC was the FFG information received from an FBI Legal Attaché stating that Papadopoulos had suggested during a meeting in May 2016 with officials from a "trusted foreign partner" that the Trump team had received some kind of suggestion from Russia that it could assist by releasing information damaging to candidate Clinton and President Obama.⁴⁸⁴ Additionally, by July 31, 2016, although not specifically mentioned in the EC, the FBI had reason to believe that Russia may have been connected to the WikiLeaks disclosures that occurred earlier in July 2016. Further, as we note in Chapter Three, the FBI received the FFG information at a time when theUSIC, including the FBI, was aware of Russia's efforts to interfere with the 2016 U.S. elections. Given the low threshold for predication in

⁴⁸³ As detailed in Chapter Two, the DIOG separately provides that a Preliminary Investigation may be opened based upon "any allegation or information" indicative of possible criminal activity or threats to the national security. In cases opened as Preliminary Investigations, the DIOG provides that all lawful investigative methods (including CHS and UCE operations) may be used except for mail opening, physical searches requiring a search warrant, electronic surveillance requiring a judicial order or warrant (Title III wiretap or a FISA order), or requests under Title VII of FISA. A Preliminary Investigation may be converted to a Full Investigation if the available information provides predication for a Full Investigation.

⁴⁸⁴ Papadopoulos has stated that the source of the information he shared with the FFG was a professor from London, Joseph Mifsud, and has raised the possibility that Mifsud may have been working with the FBI. As described in Chapter Ten of this report, the OIG searched the FBI's database of Confidential Human Sources (CHSs) and did not find any records indicating that Mifsud was an FBI CHS, or that Mifsud's discussions with Papadopoulos were part of any FBI operation. The FBI also requested information on [REDACTED]

the AG Guidelines and the DIOG, we concluded that the FFG information, provided by a government the USIC deems trustworthy, and describing a first-hand account from an FFG employee of the content of a conversation with Papadopoulos, was sufficient to predicate the full counterintelligence investigation because it provided the FBI an articulable factual basis that, if true, reasonably indicated activity constituting either a federal crime or a threat to national security may have occurred or may be occurring.⁴⁸⁵

We similarly concluded that the FBI had sufficient predication to open full counterintelligence investigations of Papadopoulos, Page, Flynn, and Manafort in August 2016. The investigation of Papadopoulos was predicated upon his alleged statements in May 2016 to an employee of the FFG. According to the opening EC, Papadopoulos was "identical to the individual who made statements indicating that he is knowledgeable that the Russians made a suggestion to the Trump team that they could assist the Trump campaign with an anonymous release of information during the campaign that would be damaging to the Clinton campaign." The three other cases were predicated on information developed by the Crossfire Hurricane team through law enforcement database and open source searches, conducted to determine which individuals associated with the Trump campaign may have been in a position to have received the alleged offer of assistance from Russia. As described in Chapter Three, through these efforts, the Crossfire Hurricane team identified three individuals—Page, Manafort, and Flynn—associated with the Trump campaign with either ties to Russia or a history of travel to Russia, two of whom (Page and Manafort) were already the subjects of open FBI investigations pertaining to, in part, their Russia-related activities. The FBI determined that this information, taken together with the information from the FFG indicating Russia had made a suggestion to the Trump team that it could assist by releasing information damaging to candidate Clinton, stated an articulable factual basis reasonably indicating activity may be occurring that may constitute a federal crime or a threat to national security. As with the opening of Crossfire Hurricane, we concluded that the quantum of information articulated by the FBI to open these individual investigations was sufficient to satisfy the low threshold established by Department and FBI predication policy, particularly in the context of the FBI's separate and ongoing investigative efforts to address Russian interference in 2016 U.S. elections.

C. Sensitive Investigative Matters (SIMs)

We concluded that the FBI appropriately designated Crossfire Hurricane and each of the four individual counterintelligence investigations as SIMs, or Sensitive

⁴⁸⁵ We determined that the election reporting from Christopher Steele played no role in the opening of Crossfire Hurricane. As described in Chapter Four, while some individuals in the FBI, including Steele's handling agent, had received Steele's election reporting as early as July 2016, the CD officials at FBI Headquarters and the members of the Crossfire Hurricane team did not receive the first Steele reports until September 19—weeks after the Crossfire Hurricane investigation was opened—and were not aware of any of the information in the reports prior to that date. We also found no evidence that the FBI undertook any investigative activities directed at the Trump campaign or members of the Trump campaign before opening Crossfire Hurricane on July 31, 2016. As described in Chapters Three and Nine, the FBI had ongoing investigations of Paul Manafort and Carter Page at that time, which were unrelated to the information that predicated Crossfire Hurricane.

Investigative Matters. As described in Chapter Two, a SIM is an investigative matter that must be approved for opening by FBI management and brought to the attention of Department officials because of the possibility of public notoriety and sensitivity. The categories of matters designated as SIMs include investigations involving the activities of a domestic political organization or an individual prominent in such an organization. Under the DIOG's definition, the term "domestic political organization" includes a committee or group formed to elect an individual to public office. Moreover, if an assessment or predicated investigation concerns a person prominent in a "domestic political organization" but not the political organization itself, it nonetheless must be treated as a SIM.

For Crossfire Hurricane, the FBI believed that any potential subjects of the investigation would be "prominent" members of a political campaign. With the four individual cases, the FBI determined that the individuals identified as subjects—foreign policy advisors Page, Papadopoulos, and Flynn; and campaign manager Manafort—were "prominent" in the Trump political campaign. We found the decision to designate the cases as SIMs to be appropriate. However, as discussed later in this chapter, our interviews with certain FBI agents revealed significant confusion over the meaning of the phrase "prominent within a domestic political organization" in the context of the policies applicable to CHSs, with some agents interpreting that phrase as limited to a person "running for office," and other agents questioning whether a presidential campaign was a "domestic political organization." We recommend later in this chapter that the FBI establish guidance to better define this phrase with respect to CHS use. Because the phrase is also used in FBI policies applicable to SIMs, we recommend that any additional guidance also take into account and be applied to the SIM requirements.

We also determined that the FBI satisfied the DIOG's approval and notification requirements for SIMs. At the FBI, these requirements included review of the opening by the FBI Office of the General Counsel (OGC), which in this case was conducted by the OGC Unit Chief; and approval by the FBI Headquarters operational Section Chief, which was provided here by then Section Chief Strzok. The DIOG also requires that NSD be notified of the opening of a SIM. The FBI satisfied this requirement by briefing NSD officials in the Counterintelligence and Export Control Section—orally, due to the sensitivity of the cases—about the openings within days of the investigations being initiated.⁴⁸⁶

Although the FBI satisfied the approval and notification requirements for SIMs, we believe such sensitive cases should also include advance notice to Department senior management officials, especially for case openings such as this one that implicated core First Amendment activity and a national political campaign. The FBI did not formally brief anyone in Department leadership at the time that Crossfire Hurricane was opened. While the then FBI Deputy Director was aware of

⁴⁸⁶ Technically, the DIOG's notice requirement for cases designated as a SIM provides that notice be emailed to a NSD email account within 30 days of the case opening. As described in Chapter Three, the Crossfire Hurricane team orally briefed NSD and Department officials on two occasions within days of the case opening rather than email notice to a general email account due to the sensitivity of the cases.

and gave his approval for the investigation prior to its opening, the investigation—concerning the actions of individuals associated with a presidential campaign—could have been opened, consistent with FBI and Department policy, without any notice to FBI or Department leadership and based solely on the decision of an FBI Headquarters Section Chief, with review by FBI OGC and notice to an “appropriate NSD official.” As noted in Chapter Two, current Department and FBI policies require high-level notice and approval in other circumstances where investigative activity could substantially impact certain civil liberties. The purpose of such notice and approval is to allow senior Department officials to consider the potential constitutional and prudential implications of opening certain investigations, even where there is sufficient predication to do so. Accordingly, we recommend that the Department and FBI evaluate which types of SIMs should require advance notification to a senior Department official, such as the DAG, in addition to the notifications currently required for SIMs, especially for cases that implicate core First Amendment activity and a national political campaign, and establish, as necessary, implementing policies and guidance.

D. Staffing of Investigation

Due to the sensitivity of the investigation, FBI leadership initially ran the investigation out of FBI Headquarters, rather than out of one or more field offices as is typically done in FBI investigations. We found that the decision to run the investigation out of FBI Headquarters created challenges for the team, which we were told were known risks consciously taken by CD officials, including Priestap, in order to minimize the potential of an unauthorized public disclosure of the investigation and allow for better coordination with Headquarters and interagency partners. These challenges included difficulties in obtaining needed investigative resources, such as surveillance teams, electronic evidence storage, technically trained agents, and other investigative assets standard in field offices to support investigations. Additionally, the FBI had to detail agents to FBI Headquarters from field offices for 90-day temporary duty assignments (TDYs). Then, when these 90-day TDY assignments expired, new agents were detailed to FBI Headquarters, resulting in three iterations of Crossfire Hurricane teams and supervisors from July 31, 2016, to the transfer of the case to the Special Counsel’s Office in May 2017.

We found that this ad hoc staffing presented challenges compared to the established chain of command structure that exists in FBI field offices. The turnover of agents and supervisors resulted in a loss of institutional knowledge and a lack of communication among agents, analysts, and supervisors. While we did not find that conducting the investigation from FBI Headquarters was the cause of the problematic issues we identify in this report, witnesses we interviewed told us that investigating Crossfire Hurricane from FBI Headquarters created significant challenges. We therefore recommend that the FBI develop specific protocols and guidelines for staffing and running any future sensitive investigations from FBI Headquarters.

E. Least Intrusive Investigative Techniques

The AG Guidelines and the DIOG require that the “least intrusive” means or method be “considered” when selecting investigative techniques and, “if reasonable based upon the circumstances of the investigation,” be used to obtain information instead of a more intrusive method. The least intrusive method principle reflects an attempt to balance the FBI’s ability to effectively conduct investigations with the potential negative impact an investigation can have on the privacy and civil liberties of individuals encompassed within an investigation. The DIOG emphasizes that in the context of cases designated as SIMs, particular care should be taken when considering whether the planned course of action is the least intrusive method if reasonable based upon the circumstances of the investigation. However, DIOG § 4.1.1 states that investigators “must not hesitate to use any lawful method consistent with the [AG Guidelines] when the degree of intrusiveness is warranted in light of the seriousness of the matter concerned.” According to DIOG § 4.4.5, “[i]n the final analysis, choosing the method that [most] appropriately balances the impact on privacy and civil liberties with operational needs, is a matter of judgment, based on training and experience.”

As described in Chapter Three, immediately after opening the investigation, the Crossfire Hurricane team submitted name trace requests to other U.S. government agencies and a foreign intelligence agency, and conducted law enforcement database and open source searches, to identify individuals associated with the Trump campaign in a position to have received the alleged offer of assistance from Russia. Members of the Crossfire Hurricane team told us that they avoided the use of compulsory legal process to obtain information at this time in order to prevent any public disclosure of the investigation’s existence and to avoid any potential impact on the election. The FBI also sent Strzok and an SSA to a European city to interview the source of the information the FBI received from the FFG, and also searched the FBI’s CHS database to identify sources who potentially could provide information about connections between individuals associated with the Trump campaign and Russia. Each of these early steps is authorized under the DIOG and was a less intrusive investigative technique.

After the FBI opened the four individual cases based on information obtained through the above-described efforts, the Crossfire Hurricane team used CHSs to interact and consensually record conversations with two of the investigative subjects—Page and Papadopoulos—on multiple occasions in an effort to obtain specific information relevant to the allegations. The FBI also used a CHS to consensually record a conversation with a high-level Trump campaign official who was not a subject of the Crossfire Hurricane investigation. Use of a CHS to conduct consensual monitoring is a more intrusive investigative technique than the ones used immediately after Crossfire Hurricane was opened, but is also one that FBI witnesses told us is commonly used in FBI counterintelligence investigations. For example, Priestap told the OIG that CHSs are an “ordinary investigative tool” that

are "part and parcel of what [FBI] agents do in an investigative sense every day."⁴⁸⁷

As noted above, FBI policy provides that these decisions are matters of judgment to be made based on an investigator's training and experience. We found that, in making these judgments about using CHSs to interact with investigative subjects, the Crossfire Hurricane team complied with applicable Department and FBI policies for these operations, and obtained all requisite approvals. Although the CHS operations implicated constitutionally protected activity, we found no evidence that they were undertaken solely for the purpose of monitoring constitutionally protected activity, which is prohibited by the DIOG. We also found no testimonial or documentary evidence that these operations resulted from political bias or other improper considerations. We therefore concluded that these early investigative activities undertaken by the Crossfire Hurricane team were matters of judgment that were permitted by the AG Guidelines and the DIOG. However, as discussed later in this chapter, we are concerned that current Department and FBI policies do not require, at a minimum, consultation with the Department before using a CHS to monitor conversations with members of a major party candidate's presidential campaign, including a high-level campaign official who was not a subject of the investigation. Further, we are concerned that the FBI did not have a plan or process in place to address what the team should have done in the event a CHS operation resulted in the FBI's incidental receipt of sensitive campaign information. Accordingly, we make a recommendation below to ensure additional oversight, accountability, and consideration of the constitutional interests at stake in such operations.

In addition to these CHS operations, the FBI also discussed in August 2016, within days of opening the Carter Page investigation, the possible use of a separate, highly intrusive technique to obtain information: FISA-authorized electronic surveillance [REDACTED] targeting Carter Page. According to Case Agent 1, the Crossfire Hurricane team had hoped that emails and other communications obtained through surveillance would help provide valuable information about what Page did while in Moscow in the previous month and the Russian officials with whom he may have spoken. As detailed in Chapter Five, the FBI ultimately did not seek a FISA order in August 2016 because OGC, NSD's Office of Intelligence (OI), or both determined that more evidence was needed to support a probable cause determination that Page was an agent of a foreign power.

As discussed below, after the Crossfire Hurricane team received the election reporting from Christopher Steele on September 19, they reinitiated discussions with OI and efforts to obtain authority for FISA surveillance [REDACTED] targeting Page, which they received from the Foreign Intelligence Surveillance Court (FISC) on October 21. Because of the reviews and approvals required before submitting a FISA application to the FISC, the decision to seek to use this highly

⁴⁸⁷ As we summarize in Chapter Ten, the consensual recordings done by the CHSs did not generate information tending to support the allegation that Page and Papadopoulos were, wittingly or unwittingly, providing assistance to Russia. Members of the Crossfire Hurricane team told us that the recordings nevertheless provided important background information about the subjects.

intrusive investigative technique was reviewed and approved at multiple levels of the Department, including by then DAG Sally Yates for the initial FISA application and first renewal and by then Acting Attorney General Dana Boente and then DAG Rod Rosenstein for the second and third renewals. However, as we explain in the next section, the Crossfire Hurricane team failed to inform the Department of significant information that was available to the team at the time that the FISA applications, including the first application, were drafted and filed. Much of that information was inconsistent with, or undercut, the allegations contained in the FISA applications to support probable cause and, in some instances, resulted in inaccurate information being included in the applications. Accordingly, we questioned the judgment and performance of members of the Crossfire Hurricane team involved in the FISA applications, and determined that, as a result of their actions, senior Department officials authorized the FBI to seek to use this highly intrusive investigative technique targeting Carter Page based on significant omissions and inaccurate information in the initial and renewal FISA applications. While we do not speculate whether senior Department officials would have authorized the FBI to seek to use FISA authority had they been made aware of all relevant information, it was clearly the responsibility of Crossfire Hurricane team members to advise Department officials of such critical information so that they could have made a fully informed decision.

II. The FISA Applications

In this section, we analyze the role of Christopher Steele's election reporting in the four Carter Page FISA applications filed with the FISC. Additionally, we detail and analyze the numerous instances in which factual representations in the applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the applications were filed.

As described in Chapter Five, within days of opening the Carter Page and George Papadopoulos cases on August 10, 2016, the FBI first considered the possibility of seeking to obtain a FISA order authorizing electronic surveillance [REDACTED] targeting Carter Page and George Papadopoulos. We found that the Crossfire Hurricane team initially focused its efforts on obtaining FISA authority targeting Page, more than on efforts to surveil Papadopoulos or other members of the Trump campaign, because of Page's prior contacts with known Russian intelligence officers, which the Crossfire Hurricane team believed would have made Page most susceptible, and most likely, to have received, the suggestion or offer of assistance reported in the FFG information.⁴⁸⁸

⁴⁸⁸ As described in Chapter Five, although the Crossfire Hurricane team was also interested in seeking FISA surveillance targeting Papadopoulos, the FBI OGC attorneys were not supportive because the FBI had no information that Papadopoulos was being directed by the Russians. FBI and NSD officials told us that the Crossfire Hurricane team ultimately did not seek FISA surveillance of Papadopoulos. We were also told that the team also did not seek FISA surveillance of Manafort or Flynn, and we are aware of no information indicating that the Crossfire Hurricane team requested or seriously considered FISA surveillance of Manafort or Flynn.

We determined that, on August 15, 2016, Case Agent 1 sent a written summary by email to the OGC Unit Chief describing Page's Russian business and financial ties, his prior contacts with known Russian intelligence officers, and his recent travel to Russia. In this email, Case Agent 1 stated his belief that the information provided "a pretty solid basis" for requesting authority under FISA to conduct surveillance targeting Page. The next day, August 16, the OGC Unit Chief emailed Stuart Evans, then NSD's Deputy Assistant Attorney General with oversight responsibility over OI, to advise him of the possible FBI request for a FISA order to surveil Page. The email from the OGC Unit Chief stated that "I don't think we are quite there yet, but given the sensitivity and urgency of this matter, I would like to get OI involved as early as possible."

On or about August 17, 2016, in response to the Crossfire Hurricane team's prior Carter Page name trace request, the Crossfire Hurricane team received a memorandum from another U.S. government agency detailing its prior interactions with Page, including that Page had been approved as an "operational contact" for the other agency from 2008 to 2013.⁴⁸⁹ The memorandum also detailed the information that Page had provided to the other agency concerning his prior contacts with certain Russian intelligence officers. As detailed in Chapters Five and Eight, the Crossfire Hurricane team did not accurately describe to OI the nature and extent of the information that the FBI received from the other agency, which we found was highly relevant to an evaluation of the FISA request.

Additionally, in August 2016, Page made statements to an FBI CHS that, if true, were in tension with the reporting the FBI received subsequently from Steele, alleging that Page was being used as an intermediary by Manafort to conspire with Russia. The FBI did not inform OI of Page's statements before any of the four FISA applications were filed, and did not inform OI of the CHS operation until June 2017, shortly before filing the last FISA application.

On or about August 22, 2016, a decision was made by the FBI OGC, OI, or both that more evidence was needed to support probable cause that Carter Page was an agent of a foreign power. The OGC ceased its discussions with OI about seeking a FISA order targeting Page. However, on September 19, 2016, the same day that the Crossfire Hurricane team first received Steele's election reporting, the team reinitiated discussions with OGC about seeking a FISA order authorizing surveillance targeting Page and specifically focused on Steele's reporting in drafting the FISA request. Two days later, on September 21, the OGC Unit Chief contacted the NSD OI Unit Chief to advise him that the FBI believed it was ready to submit a formal FISA request to OI relating to Page.

⁴⁸⁹ As described in Chapter Five, according to the U.S. government agency, "operational contact," as that term is used in the memorandum about Page, provides "Contact Approval," which allows the agency to contact and discuss sensitive information with a U.S. Person and to collect information from that person via "passive debriefing," or debriefing a person of information that is within the knowledge of an individual and has been acquired through the normal course of that individual's activities. According to the U.S. government agency, a "Contact Approval" does not allow for operational use of a U.S. Person or tasking of that person.

Over the next several weeks, the FBI and OI prepared the FISA application targeting Carter Page, which was filed with the FISC on October 21, 2016. The FISC granted the first FISA warrant the same day, authorizing electronic surveillance [REDACTED] targeting Page for 90 days. As the Crossfire Hurricane investigation proceeded, the Department submitted three renewal applications with the FISC on January 12, April 7, and June 29, 2017, seeking authority to continue electronic surveillance [REDACTED] targeting Carter Page. A different FISC judge considered each application before issuing the requested orders, which collectively resulted in approximately 11 months of FISA coverage from October 21, 2016, until September 22, 2017.

As noted above, in the OIG's June 2018 report, *Review of Various Actions in Advance of the 2016 Election*, we described text messages between Peter Strzok and Lisa Page discussing statements of hostility toward then candidate Trump and statements of support for candidate Clinton. Several of these text messages appeared to mix political opinions with discussions about the investigation into candidate Clinton's email use and refer to the Crossfire Hurricane investigation. As part of our review of the Carter Page FISA applications, we sought to determine whether there was evidence that Strzok or Page affected the preparation of or decision to file any of the applications. As described in Chapter Five, Strzok approved the request to expedite the FISA application proposed by the Crossfire Hurricane team, and he and Lisa Page communicated with Department officials, as did other FBI officials, in an effort to move the first application forward. This included conversations with NSD officials during which Strzok expressed frustration that the FISA process was not moving forward at the pace desired by the FBI. However, testimonial and documentary evidence we reviewed established that Strzok and Lisa Page played no role in the substantive preparation or approval of any of the four FISA applications, including the Woods process. We did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to seek FISA authority on Carter Page.

A. The Role of the Steele Election Reporting in the Applications

We concluded that the Crossfire Hurricane team's receipt of Steele's election reporting on September 19, 2016, played a central and essential role in the decision by FBI OGC to support the request for FISA surveillance targeting Carter Page, as well as the Department's ultimate decision to seek the FISA order. In particular, the OGC Unit Chief told us that she thought probable cause was a "close call" when the team first proposed seeking a FISA in mid-August and separately when she discussed the idea with OI around the same time. She said that it was the Steele reporting received in September, concerning Page's alleged activities with Russian officials in the summer of 2016, that "pushed it over" the line in terms of establishing probable cause that Page was acting in concert with Russian officials. The OGC Unit Chief's testimony was consistent with the testimony of the OI Unit Chief who told us that the Steele reporting was "what kind of pushed it over the line" in terms of the FBI being ready to pursue FISA authority targeting Page. Contemporaneous handwritten notes from Case Agent 1 and the then Chief of NSD's Counterintelligence and Export Control Section similarly indicated that in late

August 2016 an assessment had been made, by FBI OGC, OI, or both, that the information known at that time did not establish probable cause.

In addition, we found no evidence of further discussions between the FBI and OI between late August and September 19 concerning the possibility of obtaining a FISA order targeting Page. We determined those discussions were effectively reinitiated on September 21, two days after the Crossfire Hurricane team's receipt of the Steele election reporting. At that time, FBI OGC attorneys advised OI of the reporting from Steele and said for the first time that the FBI was ready to move forward with a FISA application targeting Page. Further, we found that the first FISA application drew heavily, although not entirely, upon the Steele reporting to support the government's position that Page was an agent of a foreign power.

We found that the FBI's decision to rely upon Steele's election reporting to help establish probable cause that Page was an agent of Russia was a judgment reached initially by the case agents on the Crossfire Hurricane team. We further found that FBI officials at every level concurred with this judgment, from the OGC attorneys assigned to the investigation to senior CD officials, then FBI General Counsel James Baker, then Deputy Director Andrew McCabe, and then Director James Comey. FBI leadership supported relying on Steele's reporting to seek a FISA order authorizing surveillance targeting Page after being advised of, and giving consideration to, the concerns expressed by Evans that Steele may have been hired by someone associated with presidential candidate Clinton or the DNC, and that the foreign intelligence to be collected through the FISA order would probably not be worth the "risk" of being criticized later for collecting communications of someone (Carter Page) who was "politically sensitive." According to McCabe, the FBI "felt strongly" that the FISA application should move forward because the team believed they had to get to the bottom of what they considered to be a potentially serious threat to national security, even if the FBI would later be criticized for taking such action. As described in Chapter Five, McCabe and others discussed the FBI's position with NSD and ODAG officials, and these officials accepted the FBI's decision to move forward with the application, based substantially on the Steele information.

The FISA statute and FISC Rules of Procedure (FISC Rules) do not establish requirements specific to the use of CHS information, such as Steele's, to support probable cause in a FISA application. The FBI OGC's FISA guidance (described in Chapter Two) specifies that agents should take into account the reliability of any "informant," the circumstances of the informant's knowledge, and the age of the information relied upon when judging the evidence to support probable cause in any given case. As described in earlier chapters, we found that the FBI did not have information corroborating the specific allegations against Carter Page in Steele's reports when it relied upon them in the FISA applications. FBI OGC and NSD officials told us that the verification process set forth in the FBI's Woods Procedures does not require that the FBI have corroboration for the CHS information presented in an application. According to these officials, when information in a FISA application is attributed to a CHS, the Woods Procedures require only that the agent verify, with supporting documentation, that the application accurately reflects what the CHS told the FBI. The procedures do not

require that the agent verify, through a second, independent source, that what the CHS told the FBI is true. We did not identify anything in the Woods Procedures that is inconsistent with these officials' description of the procedures. According to Evans, the FISC is aware of how the FBI "verifies" information in a FISA application under the Woods Procedures, including information attributed to a CHS.

However, without corroboration, it was particularly important for the FISA applications to articulate to the court the FBI's knowledge of Steele's background and its assessment of his reliability. On these points, the applications advised the court that Steele was believed to be a reliable source for three reasons: his professional background, his history of work as an FBI CHS since 2013, and his prior reporting, which the FBI described as "corroborated and used in criminal proceedings." As described below, the representations about Steele's prior reporting were overstated and not approved by Steele's handling agent, as required by the Woods Procedures. Our analysis of the FBI's assessment of the Steele reporting is described later in this chapter.

Following the FBI's decision to proceed with seeking a FISA order after consideration of the risks identified by Evans, OI developed a footnote, based on information provided by the Crossfire Hurricane team, to address Evans's concern about the potential political bias of Steele's research. The footnote stated that Steele was hired by an identified U.S. person (Glenn Simpson) to conduct research regarding "Candidate #1's" (Donald Trump) ties to Russia and that the FBI "speculates" that this U.S. person was likely looking for information that could be used to discredit the Trump campaign. Evans told us that this additional information made him comfortable with the way Steele was described in the application, based upon the information the FBI provided to OI at that time. However, Evans also expressed frustration to the FBI at the time, and later to the OIG, that the FBI had not advised OI of the political origins of Steele's election reporting until late in the drafting process on the first FISA application, and only after OI asked the team three times for information about Steele's possible political connections.

B. Inaccurate, Incomplete, or Undocumented Information in the FISA Applications

The FBI's FISA and Standard Minimization Procedures Policy Guide (FISA SMP PG) states that the U.S. government's "ability to obtain FISA authority depends on the accuracy of applications submitted to the FISC. Because FISA proceedings are *ex parte*, the FISC relies on the [U.S. government's] full and accurate presentation of the facts to make its probable cause determinations." It further states that it is the case agent's responsibility to ensure that statements contained in applications submitted to the FISC are "scrupulously accurate." As we discuss below, we found that the FBI failed to fulfill this obligation to the court. This failure falls most immediately on the shoulders of the case agents and supervisors who were responsible for assisting OI in the preparation of the FISA applications and performing the factual accuracy review during the Woods process. However, as we discuss below, we identified (1) numerous serious factual errors and omissions in the applications, (2) a failure across three investigative teams to advise NSD

attorneys of significant information that undercut certain allegations in the FISA applications, (3) a lack of satisfactory explanations for these failures, and (4) a continuous failure to reassess the factual assertions supporting probable cause in the FISA applications as the investigation proceeded and information was obtained raising significant questions about the Steele reporting. We concluded that these facts demonstrated a failure on the part of the managers and supervisors in the Crossfire Hurricane chain of command, including FBI senior officials.

As described in Chapter Five, NSD officials told us that the nature of FISA practice requires that OI rely on the FBI agents who are familiar with the investigation to provide accurate and complete information. Unlike federal prosecutors, OI attorneys are usually not involved in an investigation, or even aware of a case's existence, unless and until OI receives a request to initiate a FISA application. Once OI receives a FISA request, OI attorneys generally interact with field offices remotely and do not have broad access to FBI case files or sensitive source files. NSD officials cautioned that even if OI received broader access to FBI case and source files, they still believe that the case agents and source handling agents are better positioned to identify all relevant information in the files. In addition, NSD officials told us that OI attorneys often do not have enough time to go through the files themselves, as it is not unusual for OI to receive requests for emergency authorizations with only a few hours to evaluate the request.

Despite the necessity that OI receive complete and accurate information from the FBI, our review identified numerous instances in which the FBI did not provide information relevant to the probable cause determination to OI and, therefore, that information was not shared with either the decision makers in the Department who ultimately approved the applications, or with the court, which ultimately found probable cause to believe that Carter Page was an agent of a foreign power and authorized FISA surveillance of him on four separate occasions. We found this failure by the FBI particularly concerning given the critical gatekeeper role that OI attorneys have in ensuring that FISA applications (a) contain sufficient evidence, in NSD's view, to support a probable cause finding, and (b) include information that is inconsistent with or contrary to the information presented in support of establishing probable cause. We concluded that OI attorneys were unable to fulfill this responsibility because members of the Crossfire Hurricane team repeatedly failed to provide OI with all relevant information. As a consequence, the factual representations in the initial and renewal FISA applications filed with the FISC contained information that was inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the applications were filed.

In addition, we identified significant errors with the Crossfire Hurricane team's compliance with the FBI's Woods Procedures, which were adopted by the FBI in 2001 after errors were identified in numerous FISA applications in FBI counterterrorism investigations. The Woods Procedures are intended to ensure the accuracy of every piece of information asserted in a FISA application by requiring that both an agent and a supervisory agent verify, with supporting documentation that must be maintained in the Woods File, that each factual assertion is accurately

stated. We determined that these requirements were not met with regard to any of the four Carter Page FISA applications.

Below we highlight the significant instances of inaccurate, incomplete, or undocumented information identified during our review, beginning with the first application. After the first application, we highlight significant additional errors and omissions in the renewal applications, including the agents' failures to update factual assertions repeated in the renewal applications, disclose new relevant information, and reassess the evidence supporting probable cause as the investigation progressed. Finally, we describe the failures in the performance of the Woods Procedures that could have prevented some, but not all, of the errors and omissions we identified.⁴⁹⁰

1. The First FISA Application

As with all applications, the FISC Rules and FBI procedures required that the Carter Page FISA applications contain all material facts. Although the FISC Rules do not define or otherwise explain what constitutes a "material" fact, the FISA SMP PG states that a fact is "material" if it is relevant to the court's probable cause determination.

In all four applications, the factual basis supporting probable cause relied upon Page's historical (pre-2016) contacts with known Russian intelligence officers, as well as information from four Steele reports (Reports 80, 94, 95, and 102). The most prominent of the Steele reports were Report 94 concerning alleged secret meetings between Carter Page and two Russian nationals (Igor Sechin and Igor Divyekin) in July 2016, and Report 95 concerning the alleged role of Page as an intermediary between the Trump campaign and Russia. According to Report 95, Paul Manafort was using Page as an intermediary between the Trump campaign and Russia in a "well-developed conspiracy" that involved Russia's agreement to disclose hacked DNC emails to WikiLeaks in exchange for the Trump campaign's agreement, to include at least Page, to sideline Russian intervention in Ukraine as a campaign issue. Steele told us that the allegations in Report 95 came from one person (Person 1) and were provided to Steele by Steele's Primary Sub-source. The allegation in Report 102 that Russia released the DNC emails to WikiLeaks in an attempt to swing voters to Trump, an objective allegedly conceived and promoted by Page and others, also came from Person 1 and was provided to Steele by Steele's Primary Sub-source.⁴⁹¹

However, as more fully described in Chapter Five, based upon the information known to the FBI in October 2016, the first application:

⁴⁹⁰ Chapters Five and Eight more fully describe the most significant instances of inaccurate, incomplete, and undocumented information we identified during our review, and Appendix One provides a complete list of the failures we identified in the Woods Procedures.

⁴⁹¹ Person 1 was also one of two sources for the allegation in Report 80 that derogatory information about Hillary Clinton had been compiled for many years, was controlled by the Kremlin, and had been fed by the Kremlin to the Trump campaign for an extended period of time.

1. Omitted information from another U.S. government agency detailing its prior relationship with Page, including that Page had been approved as an operational contact for the other agency from 2008 to 2013, and that Page had provided information to the other agency concerning his prior contacts with certain Russian intelligence officers, one of which overlapped with facts asserted in the FISA application;
2. Included a source characterization statement asserting that Steele's prior reporting had been "corroborated and used in criminal proceedings," which overstated the significance of Steele's past reporting and was not approved by Steele's FBI handling agent, as required by the Woods Procedures;
3. Omitted information relevant to the reliability of Person 1, a key Steele sub-source (who, as previously noted, was attributed with providing the information in Report 95 and some of the information in Reports 80 and 102 relied upon in the application), namely that (1) Steele himself told members of the Crossfire Hurricane team that Person 1 was a "boaster" and an "egoist" and "may engage in some embellishment" and (2) the FBI had opened a counterintelligence investigation on Person 1 a few days before the FISA application was filed;
4. Asserted that the FBI had assessed that Steele did not directly provide to the press information in the September 23 *Yahoo News* article, based on the premise that Steele had told the FBI that he only shared his election-related research with the FBI and Simpson; this premise was factually incorrect (Steele had provided direct information to *Yahoo News*) and also contradicted by documentation in the Woods File—Steele had told the FBI that he also gave his information to the State Department;
5. Omitted Papadopoulos's statements to an FBI CHS in September 2016 denying that anyone associated with the Trump campaign was collaborating with Russia or with outside groups like WikiLeaks in the release of emails;
6. Omitted Page's statements to an FBI CHS in August 2016 that Page had "literally never met" or "said one word to" Paul Manafort and that Manafort had not responded to any of Page's emails; if true, those statements were in tension with claims in Steele's Report 95 that Page was participating in a "conspiracy" with Russia by acting as an intermediary for Manafort on behalf of the Trump campaign; and
7. Selectively included Page's statements to an FBI CHS in October 2016 that the FBI believed supported its theory that Page was an agent of Russia but omitted other statements Page made, including denying having met with Sechin and Divyekin, or even knowing who Divyekin was; if true, those statements contradicted the claims in Steele's Report 94 that Page had met secretly with Sechin and Divyekin about

future cooperation with Russia and shared derogatory information about candidate Clinton.

We found no indication that NSD officials were aware of these issues at the time they prepared or reviewed the first FISA application. Regarding the third listed item above, the OI Attorney who drafted the application had received an email from Case Agent 1 before the first application was filed containing the information about Steele's "boaster" and "embellishment" characterization of Person 1, whom the FBI believed to be Source E in Report 95 and the source of other allegations in the application derived from Reports 80 and 102. This information was part of a lengthy email that included descriptions of various individuals in Steele's source network and other information Steele provided to the Crossfire Hurricane team in early October 2016. The OI Attorney told us that he did not recall the Crossfire Hurricane team flagging this issue for him or that he independently made the connection between this sub-source and Steele's characterization of Person 1 as an embellisher. We believe Case Agent 1 should have specifically discussed with the OI Attorney the FBI's assessment that this sub-source was Person 1, that Steele had provided derogatory information regarding Person 1, and that [REDACTED], so that OI could have assessed how these facts might impact the FISA application. As described in Chapter Five, Evans and the OI Attorney told us that they would have wanted to discuss this information internally within NSD and with the FBI and likely would have, at a minimum, disclosed the information to the court.

We were particularly concerned by Case Agent 1's failure to provide accurate and complete information to the OI Attorney concerning Page's relationship status with the other U.S. government agency and Page's communications with the other agency about his contacts with Russian intelligence officers. As described in Chapter Five, in response to a question from the OI Attorney in late September 2016 as to whether Carter Page had a current or prior relationship with the other agency, Case Agent 1 stated that Page's relationship was "dated" (when Page lived in Moscow in 2004-2007) and "outside scope." This representation was contrary to the information that the other agency provided in its August 17, 2016 Memorandum to the FBI, which stated that Page was approved as an operational contact of the other agency from 2008 to 2013 (after Page had left Moscow); it also was contrary to information in the FBI's own case files regarding Page's claims of interactions with the other agency. Moreover, rather than being outside the scope of the FISA application, Page's status with the other agency overlapped in time with some of the interactions between Page and known Russian intelligence officers alleged in the FISA applications. Further, Page provided information to the other agency about his past contacts with a Russian intelligence officer (Intelligence Officer 1), which were among the historical connections to Russian intelligence officers that the FBI relied upon in the first FISA application (and subsequent renewal applications) to

help support probable cause.⁴⁹² According to the August 17 Memorandum, an employee of the other agency assessed that Page "candidly described his contact with" Intelligence Officer 1 to the other agency. Thus, the FBI relied upon Page's contacts with Intelligence Officer 1, among others, in support of its probable cause statement, while failing to disclose to OI or the FISC that (1) Page had been approved as an operational contact by the other agency during a five-year period that overlapped with allegations in the FISA application, (2) Page had disclosed to the other agency contacts that he had with Intelligence Officer 1 and certain other individuals, and (3) the other agency's employee had given a positive assessment of Page's candor. The FBI also did not engage with the other U.S. government agency to understand what it meant for Page to have been approved as an operational contact, whether Page interacted with Russian intelligence officers at the behest of the other agency or with the intent to assist the U.S. government, and the breadth of the other agency's information concerning Page's interactions with Intelligence Officer 1; all information that would have been highly relevant to the FISC's probable cause determination.⁴⁹³

Case Agent 1 was unable to reconcile for us the information he provided to the OI Attorney with the information in the August 17 Memorandum or FBI case files, explaining to the OIG that he did not recall his state of knowledge in 2016 regarding Page's history with the other U.S. government agency. We concluded that Case Agent 1 failed to provide accurate and complete information to the OI Attorney concerning Page's relationship and cooperation with the other agency. Further, we believe Case Agent 1 or his supervisor, SSA 1, should have ensured that someone on the team contacted the other agency after receiving the August 17 Memorandum to determine what it meant for Page to have been approved as an operational contact, whether Page interacted with Russian intelligence officers at the behest of the other agency or with the intent to assist the U.S. government, and to seek additional information concerning Page's interactions with Intelligence Officer 1.

We also found troubling the Crossfire Hurricane team's failure to advise OI of statements Page made, as noted in the sixth item above, to an FBI CHS in August 2016 during a consensually monitored meeting through which the Crossfire Hurricane team had sought to obtain information from Page about possible links between the Trump campaign and Russia. This CHS operation was one of the first investigative steps in the Carter Page investigation and took place before the media had publicly reported the allegations in the Steele reports. During the operation, Page made statements that, if true, undercut the allegation in Steele's Report 95 (received by the team in September) that Manafort was using Page as an intermediary with Russia. According to the transcript of the operation, Page told the CHS that he had "literally never met" or "said one word to" Manafort, and that

⁴⁹² The other agency did not provide the FBI with information indicating it had knowledge of Page's reported contacts with another particular intelligence officer. The FBI also relied on Page's contacts with this intelligence officer in the FISA application.

⁴⁹³ As noted earlier in this chapter, according to the U.S. government agency that approved Page as an operational contact, the approval did not allow for the operational use or tasking of Page.

Manafort had not responded to any of Page's emails. Page's statements concerning Manafort, which Page made before he had reason to know about Steele's reporting connecting him to Manafort in a conspiracy with Russia, were not provided to OI prior to the filing of the first FISA application. We agree with the OI Attorney who told us that the FBI should have flagged these statements for inclusion in the FISA application because they were relevant to the court's assessment of the allegations in Report 95 concerning Manafort using Page as an intermediary with Russia. We also believe that as the case proceeded and the FBI gathered substantial evidence of Page's past electronic communications, the lack of evidence showing substantive communications between Page and Manafort bolstered the need to, at a minimum, include Page's statements regarding Manafort in the renewal applications.

Further, we were concerned by the Crossfire Hurricane team's assertion, without approval from Steele's handling agent (Handling Agent 1), that Steele's prior reporting had been "corroborated and used in criminal proceedings" (second item noted above), which we were told was primarily a reference to Steele's role in the International Federation of Association Football (FIFA) corruption investigation. According to Handling Agent 1, he would not have approved the representation in the application because only "some" of Steele's prior reporting had been corroborated—most of it had not—and because Steele's information was never used in a criminal proceeding. The Supervisory Intelligence Analyst (Supervisory Intel Analyst), who told us he originally provided this language for an intelligence product prepared by his analytical team, told us that he did not review the FIFA case file or "dig into" exactly how Steele's information was used in the FIFA case. SSA 1 told us that the team had "speculated" that Steele's prior reporting had been corroborated and used in criminal proceedings because they knew Steele had been "a part of, if not predicated, the FIFA investigation" and was known to have an extensive source network into Russian organized crime.

The source characterization statement in all four FISA applications stated that Steele's prior reporting had been corroborated and used in criminal proceedings, and the renewal applications further relied upon this assertion as the basis for the FBI's assessment that Steele was still reliable despite his disclosure of the FBI's investigation to media outlet *Mother Jones* in late October 2016. Given the importance of a source's bona fides to a court's determination of reliability—particularly in cases where, as here, the source information supporting probable cause is uncorroborated—we concluded that the repeated failure in all four applications by the agents and the SSAs involved to comply with FBI policy requiring that the handling agent review and approve the language was significant. This created the impression that at least some of Steele's past reporting had been deemed sufficiently reliable by prosecutors to use in court, and that more of his information had been corroborated than was actually the case.

None of the inaccuracies and omissions we identified in the first application were brought to the attention of OI before the last FISA application was filed in June 2017. Consequently, these failures were repeated in all three renewal applications. As a result, the Department officials who reviewed one or more of the applications, including DAG Yates, Acting Attorney General Boente, and DAG Rosenstein, did not have accurate and complete information at the time they

approved the applications. We do not speculate as to whether or how this additional information might have influenced the decisions of senior leaders who supported the applications, if they had known all of the relevant information. Nevertheless, we believe it was the obligation of the agents who were aware of the information to ensure that OI and the decision makers had the opportunity to consider it, both to decide whether to proceed with the applications and, if so, how to present this information to the court. We also do not speculate as to whether this additional information would have influenced the court's decision on probable cause if the court had accurate and complete information at the time of the first application. However, it was the Department's and FBI's obligation to ensure that the applications were "scrupulously accurate" and that the court was provided with a complete and accurate recitation of the relevant facts, which we found did not occur.

2. The Three Renewal Applications

In addition to repeating the errors contained in the first FISA application, we identified other, similarly significant errors in the three renewal applications, based upon information known to the FBI after the first application was filed and before one or more of the renewals was filed. As more fully described in Chapter Eight, the renewal applications:

8. Omitted the fact that Steele's Primary Sub-source, who the FBI found credible, had made statements in January 2017 raising significant questions about the reliability of allegations included in the FISA applications, including, for example, that he/she did not recall any discussion with Person 1 concerning WikiLeaks and there was "nothing bad" about the communications between the Kremlin and the Trump team, and that he/she did not report to Steele in July 2016 that Page had met with Sechin;
9. Omitted Page's prior relationship with another U.S. government agency, despite being reminded by the other agency in June 2017, prior to the filing of the final renewal application, about Page's past status with that other agency; instead of including this information in the final renewal application, the FBI OGC Attorney altered an email from the other agency so that the email stated that Page was "not a source" for the other agency, which the FBI affiant relied upon in signing the final renewal application;
10. Omitted information provided by persons with direct knowledge of Steele's work-related performance in a prior position about Steele's professional judgment, including statements that Steele had held a "moderately senior" position (not "high-ranking" as noted in the applications), had no history of reporting in bad faith but demonstrated "poor judgment," "pursued people with political risk but no intelligence value," "didn't always exercise great judgment," and it was "not clear what he would have done to validate" his reporting;

11. Omitted information from Department attorney Bruce Ohr about Steele and his election reporting, including that (1) Steele's reporting was going to Clinton's presidential campaign and others, (2) Simpson was paying Steele to discuss his reporting with the media, and (3) Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President";
12. Failed to update the description of Steele after information became known to the Crossfire Hurricane team, not only from Ohr but from others, that provided greater clarity on the political origins and connections of Steele's reporting, including that Simpson was hired by someone associated with the Democratic Party and/or the DNC;
13. Failed to correct the assertion in the first FISA application that the FBI did not believe that Steele directly provided information to the reporter who wrote the September 23 *Yahoo News* article, even though there was no information in the Woods File to support this claim and even after certain FBI officials involved in Crossfire Hurricane learned in 2017, before the third renewal application, of an admission that Steele made in a court filing about his interactions with the news media in the late summer and early fall of 2016;
14. Omitted the finding from a formal FBI source validation report that Steele was suitable for continued operation but that his past contributions to the FBI's criminal program had been "minimally corroborated," and instead continued to assert in the source characterization statement that Steele's prior reporting had been "corroborated and used in criminal proceedings";
15. Omitted Papadopoulos's statements to an FBI CHS in late October 2016 (after the first application was filed) denying that the Trump campaign was involved in the circumstances of the DNC email hack;
16. Omitted Joseph Mifsud's denials to the FBI that he supplied Papadopoulos with the information Papadopoulos shared with the FFG (suggesting that the campaign received an offer or suggestion of assistance from Russia);⁴⁹⁴ and
17. Omitted evidence indicating that Page played no role in the Republican platform change on Russia's annexation of Ukraine as alleged in Steele Report 95, which was inconsistent with a factual assertion relied upon to support probable cause in all four FISA applications.

We found the FBI's failure, noted in the eighth listed item above, to advise OI or the court of the inconsistencies between Steele and his Primary Sub-source to be among the most serious omissions of information. As described in Chapter Four,

⁴⁹⁴ According to The Special Counsel's Report, Mifsud made inaccurate statements during this FBI interview about his interactions with Papadopoulos. See *The Special Counsel's Report*, Vol. I at 193. Nevertheless, Evans told us that Mifsud's denials during his FBI interview sounded like something "potentially factually similarly situated" to the denials made by Papadopoulos that OI determined should have been included in the applications.

Steele himself was not the originating source of any of the factual information in his reporting; Steele instead relied on his Primary Sub-source for information, who used his/her network of sub-sources to gather information that was then passed to Steele. As described in Chapters Six and Eight, during his/her January 2017 interview with the FBI, the Primary Sub-source made statements that were inconsistent with multiple sections of the Steele reports, including the allegations relied upon in the FISA applications. These inconsistencies should have resulted in serious discussions about the reliability of Steele's reporting—particularly to support a probable cause showing in a court filing—but did not. For example, regarding the allegations in Report 95 that came from Person 1 (Source E), the Primary Sub-source said, among other things, that he/she had only one, 10- to 15-minute telephone call with someone he/she believed was Person 1 and did not recall any discussion or mention of WikiLeaks. Further, the Primary Sub-source told the FBI that there was "nothing bad" about communications between the Kremlin and the Trump team. The Primary Sub-source's account of these communications, if true, was not consistent with the allegations of a "well-developed conspiracy" in Reports 95 and 102 attributed to Source E (Person 1). Further, his/her statement that he/she did not recall any discussion or mention of WikiLeaks during the telephone call was inconsistent with those allegations. However, the FBI did not share this information with OI. The FBI also failed to share other inconsistencies with OI, including the Primary Sub-source's account of the alleged meeting between Page and Sechin in Steele's Report 94 and his/her descriptions of the source network.⁴⁹⁵

The fact that the Primary Sub-source's account was inconsistent with key assertions attributed to his/her own sub-sources in Reports 94, 95, and 102 should have generated significant discussions between the Crossfire Hurricane team and OI prior to submitting the next FISA renewal application. According to Evans, had OI been made aware of the information, such discussions might have included the possibility of foregoing the renewal request altogether, at least until the FBI reconciled the differences between Steele's account and the Primary Sub-source's account to the satisfaction of OI. However, we found no evidence that the Crossfire Hurricane team ever considered whether any of the inconsistencies warranted reconsideration of the FBI's previous assessment of the reliability of the Steele reports or notice to OI before the subsequent renewal applications were filed.

As a result, the second and third renewal applications provided no substantive information concerning the Primary Sub-source's interview, and instead offered a brief conclusory statement that the FBI met with the Primary Sub-source "[i]n an effort to further corroborate Steele's reporting" and found the Primary Sub-

⁴⁹⁵ As more fully described in Chapter Eight, according to the Primary Sub-source, he/she was not told until October 2016 that the Page-Sechin meeting had taken place the previous July. According to the Primary Sub-source, he/she had only told Steele in July 2016 that he/she had heard that the meeting would be taking place. However, Steele authored Report 94 in July 2016 alleging that the Page-Sechin meeting had taken place that month and describing the topics that were discussed at the meeting. As noted previously, Page denied to an FBI CHS that he had met with Sechin in July 2016, and, as of the date of the last FISA application, the FBI had not determined whether a meeting between Sechin and Page took place. In addition, the Primary Sub-source's description of each of his/her sources indicated that their positions and access to the information they were reporting were more attenuated than represented by Steele and described in the FISA applications.

source to be "truthful and cooperative." We believe that including this statement, without also informing the court that the Primary Sub-source gave an account of the events that was inconsistent with key assertions in Steele's reporting, left a misimpression that the Primary Sub-source had corroborated the Steele reporting. Indeed, as we describe in Chapter Eight, in its July 2018 Rule 13 letter to the court, the Department—which was continuing to rely on the FBI's representations regarding the Primary Sub-source's interview—defended the reliability of Steele's reporting and the FISA applications by citing, in part, to the Primary Sub-source's interview as "additional information corroborating [Steele's] reporting" and noting the FBI's determination that he/she was "truthful and cooperative."

When we asked the case agents and supervisory agents who participated in the preparation or Woods review of the second and third renewal applications, they either told us that they were not aware of the inconsistencies or, if they were aware, they did not make the connection that the inconsistencies affected aspects of the FISA applications. For example, Case Agent 1 told us that he believed that someone else should have highlighted the issue for the agents working on the second renewal application because he did not know some of the details concerning Person 1 that would have helped him make the necessary connections. He told us that he did not know whether Steele had his own relationship with Person 1 such that Steele could have had another basis for attributing all the information in Report 95 to Person 1. However, given Case Agent 1's central role in the Page investigation, the Primary Sub-source interview, and the preparation of the first two FISA applications and factual accuracy review on the third, we believe he should have been one of the first to notice, and advise others about, the problems the Primary Sub-source's accounts created for the FISA applications. Similarly, we believe the Supervisory Intel Analyst also should have noticed and advised others about the conflicting information, given he participated in the January 2017 Primary Sub-source interview, helped supervise the team's evaluation of the Steele reporting, and played a supportive role in the preparation of the prior FISA applications. Instead, as discussed in Chapter Eight, the Supervisory Intel Analyst circulated a 2-page intelligence memorandum to senior FBI officials highlighting aspects of the Primary Sub-source's account but failed to advise them of the inconsistencies between Steele and his Primary Sub-source on, among other things, the key allegations against Page in Reports 94 and 95.

In addition to the Primary Sub-source's interview, we found other information in the FBI's possession that raised questions about the accuracy of the Steele reporting regarding Carter Page, but that was not included in the renewal applications. As described in Chapter Five, to support the allegations in Report 95 that Page worked to sideline Ukraine as a campaign issue, the first FISA application described two news articles from July and August 2016 reporting that the Trump campaign had worked behind the scenes to change the Republican Party's platform on providing weapons to Ukraine. As more fully described in Chapter Eight, after the first application, the Crossfire Hurricane team did not learn of any information that Page was involved in the platform change and instead developed evidence tending to show that two other Trump campaign officials were responsible for the change. Despite this, as noted in the seventeenth item above, the FBI did not

include this information in any of the renewal applications or alter its assessment that Page was involved in the platform change. Instead, the renewal applications stated that Page had denied any role in the platform change to the FBI in March 2017 but that the FBI assessed Page may have been downplaying his role.

The renewal applications also continued to fail to include information regarding Carter Page's relationship with another U.S. government agency and information Page had shared with the other agency about his contacts with Russian intelligence officers, even after the Crossfire Hurricane team re-engaged with the other U.S. government agency in June 2017 (item nine above). As described in Chapter Eight, following interviews that Page gave to news outlets in April and May 2017 stating that he had assisted the U.S. intelligence community in the past, one of the SSAs supervising Crossfire Hurricane sought additional information about the issue. SSA 2, who was to be the affiant for Renewal Application No. 3 and had been the affiant for the first two renewals, told us that he wanted a definitive answer to whether Page had ever been a source for another U.S. government agency before he signed the final renewal application, because he was concerned that Page could claim that he had been acting on behalf of the U.S. government when engaging with certain Russians. This led to interactions between the OGC Attorney assigned to Crossfire Hurricane and a liaison from the other U.S. government agency. In an email from the liaison to the OGC Attorney, the liaison provided written guidance, including that it was the liaison's recollection that Page had a relationship with the other agency, and directed the OGC Attorney to review the information that the other agency had provided to the FBI in August 2016. As noted above, that August 2016 information stated that Page did, in fact, have a prior relationship with that other agency. However, the OGC Attorney altered the liaison's email by inserting the words "not a source" into it, thus making it appear that the liaison had said that Page was "not a source"; the OGC Attorney then sent the altered email to SSA 2. Relying upon this altered email, SSA 2 signed the third renewal application (that again failed to disclose Page's past relationship with the other agency). Consistent with the Inspector General Act of 1978, following the OIG's discovery that the OGC Attorney had altered and sent the email to SSA 2, who thereafter relied on it to swear out the final FISA application, the OIG promptly informed the Attorney General and the FBI Director and provided them with the relevant information about the OGC Attorney's actions.

None of these inaccuracies and omissions that we identified in the renewal applications were brought to the attention of OI before the applications were filed. As a result, similar to the first application, the Department officials who reviewed one or more of the renewal applications, including Yates, Boente, and Rosenstein, did not have accurate and complete information at the time they approved them. An exception with respect to Boente concerned information regarding the ties between Steele's reporting and the Democratic Party, which documents indicate were broadly known among relevant Department officials by February and March 2017. Boente recalled knowing the information at the time he approved the second renewal. Rosenstein told us he believes he learned that information from news media accounts, but did not recall whether he knew at the time he approved the third renewal. As with the first FISA application, we do not speculate whether or

how having accurate and complete information might have influenced the decisions of senior Department leaders who supported the renewal applications, or the court, if they had known all of the relevant information. Nevertheless, it was the obligation of the FBI agents and supervisors who were aware of the information to ensure that the FISA applications were “scrupulously accurate” and that OI, the Department’s decision makers, and ultimately, the court had the opportunity to consider the additional information and the information omitted from the first application. The individuals involved did not meet this obligation.

Multiple factors made it difficult for us to assess the extent of FBI leadership’s knowledge as to each fact stated incorrectly or omitted from the FISA applications. As described in prior chapters, Comey certified the first three applications as the FBI Director, and McCabe certified the final renewal application as the Acting FBI Director. As the FBI’s senior leaders, Comey and McCabe would have had greater access to case information than Department leadership and also more interaction with senior CD officials and the investigation team. Further, as described in Chapter Three, CD officials orally briefed the Crossfire Hurricane cases to FBI senior leadership throughout the investigation. McCabe received more briefings than Comey, but both received oral briefings of the team’s investigative activities. During one such briefing, McCabe listened to parts of the recording of the conversation between Carter Page and an FBI CHS in August 2016. In addition, in her capacity as the Deputy Director’s counsel, Lisa Page attended meetings with Strzok and the Crossfire Hurricane team and reported information back to McCabe. However, limited recollections and the absence of detailed documentation of meetings made it impracticable for us to determine, beyond the more general investigative updates that we know were provided, what specific information was described during these leadership briefings and the precise nature of FBI leadership awareness of critical facts.⁴⁹⁶ Moreover, we identified instances in which senior FBI officials were not provided with complete information. For example, although we found that Comey and McCabe had been informed that the FBI had interviewed Steele’s Primary Sub-source, the 2-page intelligence memorandum that they were sent highlighting aspects of the Primary Sub-source’s account failed to advise them of inconsistencies between Steele’s reporting and the Primary Sub-source on key allegations. Thus, while we believe the opportunities for learning investigative details were greater for FBI leadership than for Department leadership, we were unable to conclusively determine whether FBI leadership was provided with sufficient information, or sufficiently probed the investigative team, to enable them to effectively assess the evidence as the case progressed.

3. Failures in the Woods Process

As more fully described in Chapter Two, the FBI’s Woods Procedures seek to ensure the accuracy of every factual assertion in a FISA application by requiring that an agent and his or her supervisor verify, with supporting documentation, that the assertion is correct and maintain the supporting document in the Woods File.

⁴⁹⁶ In addition, Comey’s decision not to reinstate his security clearance for his OIG interview made the OIG unable to question him or refresh his recollection with relevant, classified documentation.

In the case of renewal applications, this process involves re-verifying the accuracy of "old facts" from prior applications that are repeated and verifying and obtaining supporting documentation for any "new facts" that are added.

We examined the FBI's compliance with the Woods Procedures by comparing the facts asserted in the probable cause sections of the FISA applications to the documents maintained in each application's Woods File. Our comparison identified numerous instances in which a fact asserted in the application was not supported by appropriate documentation in the Woods File. The Woods errors we identified generally fell into three categories: (1) a fact asserted in the FISA application that had no supporting documentation in the Woods File, (2) a factual assertion had a corresponding document in the Woods File, but the document did not state the fact asserted in the FISA application, or (3) the corresponding document in the Woods File indicated that the fact asserted in the FISA application was inaccurate.

Among the most significant Woods errors we identified in this review were: (1) the failure to obtain the handling agent's approval of the source characterization statements for Steele and another FBI CHS whose information was relied upon in the applications; (2) documentation in the Woods File used to support the FBI's statement that Steele only shared his election related research with Simpson actually stated that Steele also shared the information with the State Department; and (3) documentation in the Woods File to support the FBI's assertion that Page did not refute his alleged contacts with Sechin and Divyekin to an FBI CHS actually stated that Page specifically denied meeting with Sechin and Divyekin to the CHS. Appendix One describes additional Woods errors that our review identified.

Some of the Woods errors, including the ones highlighted above, were repeated in all four applications, demonstrating that the agents and supervisors performing the Woods Procedures did not attempt to re-verify the accuracy of factual assertions repeated from prior applications—or if they did, they did not read the documents completely but only confirmed that a corresponding document appeared in the Woods File.

As described in Chapter Two, the Woods Procedures were adopted in 2001 following errors in numerous FISA applications in counterterrorism investigations. When properly followed, the Woods Procedures help reduce errors in the information supporting a FISA application by requiring an agent to identify and maintain a source document for every fact asserted in the application and complete a list of database searches on the FISA target and any CHSs relied upon in the application. We observed that the Woods process focuses on the facts actually asserted in an application and will not necessarily identify relevant facts that are missing from an application. For this reason, performance of the Woods Procedures, alone, would have caught some but not all of the many problems we identified. We believe these problems nevertheless would have been caught, or never would have existed in the first place, had the Crossfire Hurricane team adequately performed its duty of sharing all relevant information with OI.

C. Conclusions Regarding the FISA Applications

1. The Failure to Share Relevant Factual Information with OI, the Department's Decision Makers, and the Court, and Other FISA Related Errors

As described in Chapters Five and Seven, all four FISA applications received the necessary Department approvals and certifications—in each instance the approval required for submission of the proposed application (read copy) was appropriately executed by the OI Unit Chief, and the final application was certified by the FBI Director or Acting Director and approved by the DAG or, in the case of the second renewal application, the Acting Attorney General. Further, we found that all four applications received more attention and scrutiny than a typical FISA application in terms of the additional layers of review and number of high-level officials who read the application. This was particularly true of the first application, which underwent a lengthy review and editing process within NSD, the FBI OGC, and ODAG.

However, as discussed above, relevant information was not shared with, and consequently not considered by, the decision makers who ultimately decided to support the applications. The failure to update OI with accurate and complete information resulted in FISA applications that made it appear that the evidence supporting probable cause was stronger than was actually the case. Based upon the information in the application, Yates told us that when she approved and signed the first application, she did not believe it presented a close call from a legal sufficiency standpoint, and she was comfortable that the request for FISA authority sought by the FBI was an appropriate investigative step to take. Similarly, Rosenstein told us that by the time he signed Renewal Application No. 3 probable cause was not “a great stretch” and seemed obvious to him, given that the prior applications relied upon the same information that had been approved and granted three times by federal judges. As detailed in this report, these assessments by these decision makers were not based on a complete understanding of all relevant information that was available to the FBI at the time the applications were submitted. Indeed, by the time Rosenstein signed the final application, among other things, the following information had not been provided to the decision makers: (1) Steele’s Primary Sub-source had not confirmed the allegations regarding Carter Page to the FBI and instead gave an account that was inconsistent with and contradicted them; and (2) testimonial and documentary evidence obtained by the FBI tended to show that other Trump campaign officials, not Page, were responsible for influencing the Republican platform change.

Some factual misstatements and omissions were arguably more significant than others, but we concluded that the case agents’ failures to share all relevant information with OI made OI unable to perform its gatekeeper function and deprived the decision makers the opportunity to make fully informed decisions. While we found isolated instances where a case agent forwarded documentation to the OI Attorney that included, among other things, information omitted from the FISA applications, we noted that, in those instances, the Crossfire Hurricane team did not alert the OI Attorney to the information. For example, when Case Agent 6

provided the OI Attorney in June 2017 with the 163-page document detailing Page's meeting with the FBI CHS in August 2016, he directed the OI Attorney's attention to statements that Page made that the FBI believed furthered the FISA application but did not identify for the OI Attorney relevant information that tended to undercut the probable cause analysis.⁴⁹⁷ Although we agreed with the OI Attorney that he should have examined material that the FBI provided to him more carefully, we concluded that the responsibility to raise relevant issues for OI fell squarely on the case agents who were most familiar with the case information. Further, we found instances when the OI Attorney asked the Crossfire Hurricane team the right questions, such as in September 2016 when he asked the case agent about Page's relationship with the other U.S. government agency, yet was provided with inaccurate or incomplete information. As noted previously, we do not speculate whether the correction of any particular misstatement or omission, or some combination thereof, would have resulted in a different outcome. Nevertheless, the decision makers should have been given complete and accurate information so that they could have meaningfully performed their duty to evaluate probable cause.

The failure to update OI on all significant case developments relevant to the FISA applications led us to conclude that the agents did not give equal attention or treatment to the relevant facts that did not support probable cause, or reassess the evidence supporting probable cause as the investigation progressed. The FISA Request Form does not specifically ask the case agent to share with OI information that, if accurate, would tend to undermine or would be inconsistent with the information being relied upon to support the government's theory, in whole or in part, that the target is a foreign power or an agent of a foreign power. We believe sworn law enforcement officers should already understand this basic obligation based on their training and experience. Nevertheless, we recommend that the FBI and the Department take additional steps to re-emphasize this obligation in the FISA context and help ensure that agents focus their attention equally on their obligation to share information with OI that might detract from a probable cause finding, regardless of whether they believe it to be true. FBI procedures should also ensure that OI receives all information that bears on the reliability of every CHS whose information the FBI intends to rely upon in the FISA application. This should include all information from the derogatory information sub-file, recommended later in our analysis of the FBI's relationship with Steele and its assessment of Steele's election reporting. A more robust questionnaire in the FISA Request Form could also help ensure that all relevant information is shared with OI so that its attorneys can do their job, and that case agents are not leaving to themselves the determination that is also properly OI's of what information might be significant or relevant to probable cause, or should be disclosed to the court.

We also found the quantity of omissions and inaccuracies in the applications and the obvious errors in the Woods Procedures deeply concerning. Although we

⁴⁹⁷ As described in Chapter Five, Case Agent 6 told us that he did not know that Page made the statement about Manafort because the August 2016 meeting took place before he was assigned to the investigation. He said that the reason he knew about the "October Surprise" statements in the 163-page document was that he had heard about them from Case Agent 1 and did a word search to find the specific discussion of that topic.

did not find documentary or testimonial evidence of intentional misconduct on the part of the case agents who assisted OI in preparing the applications, or the agents and supervisors who performed the Woods Procedures, we also did not receive satisfactory explanations for the errors or missing information. In most instances, witnesses told us that they either did not know or recall why the information was not shared with OI, that the failure to do so may have been an oversight, that they did not recognize at the time the relevance of the information to the FISA application, or that they did not believe the missing information to be significant. On this last point, we believe that case agents may have improperly substituted their own judgments in place of the judgment of OI to consider the potential materiality of the information, or in place of the court to weigh the probative value of the information. As described above, given that certain factual misstatements were repeated in all four applications, across three different investigative teams, we also concluded that agents and supervisors failed to appropriately perform the Woods Procedures on the renewal applications by not giving much, if any, attention to re-verifying "old facts." We recommend that the Woods Form be revised to emphasize to agents and their supervisors this obligation and to have them certify that they re-verified factual assertions repeated from prior applications.

As noted throughout this report, Case Agent 1 was primarily responsible for some of the most significant errors and omissions in the FISA applications, including (1) the mischaracterization of Steele's prior reporting resulting from his failure to seek review and approval of the statement from the handling agent, as the Woods Procedures required, (2) the failure to advise OI of Papadopoulos's statements to FBI CHSs that were inconsistent with the Steele reporting relied upon in the FISA applications that there was a "well-developed conspiracy of co-operation" between individuals associated with the Trump campaign and Russia, (3) the failure to advise OI of Page's statements to an FBI CHS regarding him having no communications with Manafort and denying the alleged meetings with Sechin and Divyekin, (4) providing inaccurate and incomplete information to OI about information provided by another U.S. government agency regarding its past relationship with Page that was highly relevant to the applications, (5) the failure to advise OI of the information from Bruce Ohr about Steele and his election reporting, and (6) the failure to advise OI of the inconsistencies between Steele and his Primary Sub-source. The explanations that Case Agent 1 provided for these errors and omissions are summarized in Chapter Five and Chapter Eight of this report. While we found no documentary or testimonial evidence that this pattern of errors by Case Agent 1 was intentional, we also did not find his explanations for so many significant and repeated failures to be satisfactory. We therefore concluded that these explanations did not excuse his failure to meet his responsibility to ensure that the initial FISA application, the first renewal application, and the third renewal application were "scrupulously accurate."

We similarly found errors by supervisory FBI employees with responsibility for the accuracy of the FBI applications. For example, SSA 1 performed the supervisory accuracy review for the first application required under the Woods Procedures and did not correct the errors we identified before the application was filed. We found that the team "speculated" that Steele's prior reporting had been

corroborated and used in criminal proceedings, but did not take reasonable steps to ensure the accuracy of this statement and did not confirm that Handling Agent 1 had reviewed and approved its content, as required by the Woods Procedures. Separately, SSA 3 and SSA 5 failed to correct all of the errors we identified in the renewal applications, as did Case Agent 1 and Case Agent 7, when they performed the accuracy review under the Woods Procedures for one or more of the renewals.⁴⁹⁸

These failures by supervisory and non-supervisory agents represent serious performance failures.⁴⁹⁹ However, as we next discuss, the breadth and significance of these and other errors raised broader concerns as well.

2. Failure of Managers and Supervisors, including Senior Officials, in the Chain of Command

As this chapter summarizes, we identified at least 17 significant errors and omissions in the Carter Page FISA applications, and many additional Woods related errors. These errors and omissions resulted from case agents providing wrong or incomplete information to OI and failing to flag important issues for discussion, without any satisfactory explanations. Moreover, case agents and SSAs did not give equal attention or treatment to the relevant facts that did not support probable cause, or reassess the evidence supporting probable cause as the investigation progressed and the information gathered undercut the assertions in the FISA applications. Further, the agents and SSAs did not follow, or appear to even know, the requirements in the Woods Procedures to re-verify the factual assertions from previous applications that are repeated in renewal applications and verify source characterization statements with the CHS handling agent and document the verification in the Woods File. That so many basic and fundamental errors were made on four FISA applications by three separate, hand-picked teams, on one of the most sensitive FBI investigations that was briefed to the highest levels within the FBI and that FBI officials expected would eventually be subjected to close scrutiny, raised significant questions regarding the FBI chain of command's management and supervision of the FISA process.

As described in prior chapters, FBI Headquarters established a chain of command for Crossfire Hurricane that included close supervision by senior CD managers, who then briefed FBI leadership throughout the investigation. Although we do not expect managers and supervisors to know every fact about an

⁴⁹⁸ Case Agent 7 was a relatively new FBI special agent who was recently assigned to assist Case Agent 6 with the Carter Page investigation when he conducted the Woods Procedures on Renewal Application No. 3. During the Woods process, Case Agent 7 and Case Agent 6 identified and added some documents missing from the Woods File to provide support for the factual assertions in Renewal Application No. 3. In addition, SSA 5 said that on numerous occasions, Case Agent 1 and Case Agent 6 told him that the OI Attorney preparing the Carter Page FISA applications had "already seen all of the supporting documentation."

⁴⁹⁹ After reading a draft of our report, SSA 1 and other members of the Crossfire Hurricane team told us that their performance should be assessed in light of the full scope of responsibilities they had in 2016, in connection with the FBI's Russian counterintelligence investigation, and that the Carter Page FISA was a narrow aspect of their overall responsibilities.

investigation, or senior leaders to know all the details of cases they are briefed on, in a sensitive, high-priority matter like this one, it is reasonable to expect that they will take the necessary steps to ensure that they are sufficiently familiar with the facts and circumstances supporting and potentially undermining a FISA application in order to provide effective oversight consistent with their level of supervisory responsibility. We did not find that this was the case with the Carter Page FISA applications. Time and again, when we questioned managers, supervisors, and senior officials during their OIG interviews about the breadth of issues we identified during the review, the answers we received reflected a lack of understanding or awareness of important information that related to many of the problems we identified.

Nevertheless, we found that managers, supervisors, and senior officials in the chain of command were aware of sufficient information that should have resulted in questions being raised regarding the reliability of the Steele reporting and the probable cause supporting the FISA applications. For example, after months of effort, the Crossfire Hurricane team had not corroborated any of the specific substantive allegations against Carter Page contained in the election reporting and relied on in the FISA applications (confirming only limited factual details such as Page's dates of travel), or any other evidence implicating Page. In fact, as discussed in Chapter Seven, before Renewal Application No. 2 was submitted to the court in April 2017, the Deputy Assistant Director and SSAs at FBI Headquarters supervising the Carter Page case had actually discussed, based upon the information gathered by that time, whether Page was a significant subject in the FBI's investigation by that time, let alone be the target of a FISA order.⁵⁰⁰ In addition, senior FBI officials were aware of Steele's political ties, and his disclosures of information to *Mother Jones* and other third parties. The Crossfire Hurricane team had also received information directly from persons with direct knowledge of Steele's work-related performance in a prior position that he had a history of demonstrating poor judgment, and they were aware of the information from Ohr concerning Steele's motivations and potential bias. Additionally, before the final FISA renewal application, the team had received the results of the FBI's source validation review of Steele, including the finding that Steele's past assistance to the FBI's criminal program had been "minimally corroborated," and Strzok and other supervisors had received information that Steele had been a source for the *Yahoo News* article. We recognize that FBI managers, supervisors, and senior officials in the chain of command were not made aware of all of the significant information undermining the Steele reporting, such as the inconsistencies between the reporting relied upon in the FISA applications and the Primary Sub-source's accounts of this information. Nevertheless, we concluded that the information that was known to them should have resulted in greater vigilance in overseeing the use of a highly intrusive technique in such a sensitive case, but did not. In our view,

⁵⁰⁰ Under existing FBI policy the CD Assistant Director has no role in the review or approval of FISA applications. Priestap told us that, in comparison to the FBI Director, Deputy Director, and their staffs, the Assistant Director is in a better position to understand the facts supporting FISA applications, though he cautioned that review and approval of FISA applications by an Assistant Director should be limited to the only the most significant cases, if FBI policy is changed in this way.

this was a failure of not only the operational team, but also the managers and supervisors, including senior officials, in the chain of command.

For these reasons, we recommend that the FBI review the performance of the employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers, supervisors, and senior officials in the chain of command of the Carter Page investigation, and take any action deemed appropriate. In addition, given the extensive compliance failures we identified in this review, we believe that additional OIG oversight work is required to assess the FBI's compliance with Department and FBI FISA-related policies that seek to protect the civil liberties of U.S. persons. Accordingly, we have initiated an OIG audit that will further examine the FBI's compliance with the Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations. This audit will be informed by the findings in this review, as well as by our prior work over the past 15 years on the Department's and FBI's use of national security and surveillance authorities, including authorities under FISA, as detailed in Chapter One.

3. Clarification Regarding OGC Legal Review During the Woods Process

As described in Chapter Two, the Woods Procedures do not currently explain the steps that should be taken during OGC's final legal review of a FISA application or require that documentation of the final legal review be maintained in an appropriate FBI file. And, as described in Chapter Seven, the FBI was unable to provide the OIG with documentation of the OGC legal review of Renewal Application Nos. 1 and 2. We therefore recommend that the FBI revise the Woods Procedures to specify what steps must be taken and documented during the legal review performed by an OGC line attorney and SES-level supervisor before submitting the FISA application package to the FBI Director for certification. Because we were advised that the SES-level review is sometimes delegated to a non-SES-level supervisor, we also recommend that the FBI revise the Woods Procedures to clarify which positions may serve as the supervisory reviewer for OGC.

III. The FBI's Relationship with Christopher Steele and Its Receipt and Use of His Election Reporting

In this section, we analyze the FBI's handling of Christopher Steele and its use of his election reporting in Crossfire Hurricane, and whether the FBI's receipt and use of his reporting during that investigation complied with FBI CHS policies and procedures. As described in Chapter Four, Steele is a former intelligence officer [REDACTED] who in 2009 formed a consulting firm specializing in corporate intelligence and investigative services. In 2010, Steele was introduced by Department attorney Bruce Ohr to an FBI agent, and for several years provided information to the FBI about various matters, such as corruption in the International Federation of Association Football (FIFA). In October 2013, the FBI agent, referred to in our report as Handling Agent 1, completed the paperwork to make Steele an FBI CHS. Handling Agent 1 took

this step because the volume of Steele's reporting had increased and involved persons of interest to the FBI, and he wanted to task Steele to collect additional information and compensate him for this work. Over the next 3 years, Steele provided the FBI with reporting primarily about Russian oligarchs.

In June 2016, Steele and his consulting firm were hired by Fusion GPS, a Washington, D.C. investigative firm, to obtain information about whether Russia was trying to achieve a particular outcome in the 2016 U.S. elections, what personal and business ties then candidate Trump had in Russia, and whether there were any ties between the Russian government and Trump or his campaign. Steele's work for Fusion GPS resulted in at least [REDACTED] reports related to the election and, with Fusion GPS's authorization, Steele provided [REDACTED] of the reports to the FBI between July and October 2016, and [REDACTED] others to the FBI through Ohr and other third parties (as we described in Chapters Six and Nine).⁵⁰¹ As noted earlier, we determined that Steele's election reporting played a central and essential role in the Department's decision in connection with the Crossfire Hurricane investigation to seek a FISA order in October 2016 authorizing electronic surveillance [REDACTED] targeting Carter Page.

We found that FBI policy permitted the receipt and use of Steele's election reporting in the Crossfire Hurricane investigation, and we did not find documentary or testimonial evidence that this decision was the result of political bias or other improper considerations. We further found that the FBI was aware of the potential for political influences on Steele's reporting from the outset of receiving it in July 2016 and, in part to account for those potential influences, the Crossfire Hurricane team undertook substantial efforts to evaluate the accuracy of the reporting and the reliability of the sources of Steele's information. We determined that these investigative efforts raised significant questions about the accuracy and reliability of Steele's election reporting. However, as described in Chapters Seven and Eight and earlier in this chapter, we concluded that the FBI did not share these questions about the reporting with Department attorneys working on the Carter Page FISA applications and failed to reassess its reliance on Steele's reporting in the Crossfire Hurricane investigation.

We also found the FBI and Steele held differing views about the nature of their relationship during this time period. Steele had signed CHS paperwork with the FBI following his opening as a CHS in 2013. Accordingly, the FBI considered

⁵⁰¹ Following his attorney's review of a draft of this report, Steele advised us through his attorney that it was important to note that his election reporting consisted of information transmitted by word of mouth by a number of individual sources. According to Steele, this is a necessary practice to obtain information in a closed society like Russia and the election reports are descriptions of what certain individual sources, deemed to be reliable by Steele's consulting firm (Orbis), stated. Further, in Steele's view, his election reports should not have been treated as facts or allegations but as the starting point for further investigation, which he said was the intended use of the reports furnished to Fusion GPS. Steele advised us through his attorney that "it is with that lens that the accuracy and value of Steele's reporting should be assessed." Steele told us that it was his hope and expectation that the FBI would have used its resources to investigate the report information. We found no evidence that Steele communicated this view of his reporting to Handling Agent 1 or members of the Crossfire Hurricane team.

Steele a CHS bound by certain obligations. Steele, however, considered himself a businessperson whose firm (not Steele) had a contractual CHS agreement with the FBI and whose election related work was not undertaken pursuant to that agreement, but instead was conducted solely on behalf of his firm's client (Fusion GPS), not the FBI. This disagreement led to divergent expectations about Steele's conduct, affected the FBI's control over Steele during the Crossfire Hurricane investigation, and ultimately resulted in the FBI formally closing Steele as a CHS (although, as we discuss later in this chapter, we found the FBI continued its relationship with Steele through Ohr).

A. The FBI's Receipt, Use, and Assessment of Steele's Reporting

As described in Chapter Four, the Crossfire Hurricane team first learned of Steele's reports when they received six of them from Handling Agent 1 in September 2016.⁵⁰² The reporting was not the result of any proactive FBI investigative action, or any FBI tasking or direction to Steele. Rather, Steele's election reporting was developed at the request of his consulting firm's client, Fusion GPS, and was provided to the FBI with his client's consent. We found that the FBI was aware of the potential for political bias in the Steele election reporting from the outset of obtaining it. Handling Agent 1 told us that when Steele provided him with Report 80 in July 2016 and described his engagement with Fusion GPS, it was obvious to Handling Agent 1 that the request for the research was politically motivated.⁵⁰³ The Supervisory Intel Analyst explained that he also was aware of the potential for political influence on the Steele election reporting when it became available to the Crossfire Hurricane team in September 2016.

We determined that the FBI's decisions to use Steele's information in Crossfire Hurricane and to task him in October 2016 were based on multiple factors unrelated to political considerations, including: (1) Steele's prior work as an intelligence professional for a [REDACTED]; (2) his expertise on Russia; (3) his past record as an FBI CHS, which included furnishing information concerning the activities of Russian oligarchs and investigative leads involving corruption in FIFA; (4) the assessment of Handling Agent 1 that Steele was reliable and had provided information to the FBI in the past

⁵⁰² Steele first gave Handling Agent 1 two of these six reports in July 2016, approximately 2 months before the Crossfire Hurricane team received them on September 19. We describe in Chapter Four the various explanations we received for this delay in transmitting the reports to the team, none of which we found to be satisfactory.

⁵⁰³ As described in Chapter Four, Handling Agent 1 told us that Steele informed him at their July 2016 meeting that Fusion GPS had been hired by a law firm to conduct research, though, according to Handling Agent 1, Steele stated that he did not know the law firm's name or its political affiliation. Notes that Steele allowed us to review and that he represented were written contemporaneously with the meeting state that Steele told Handling Agent 1 that "Democratic Party associates" were paying for Fusion GPS's research, the "ultimate client" was the leadership of the Clinton presidential campaign, and "the candidate" was aware of Steele's reporting. We also reviewed notes made by an Assistant Special Agent in Charge (ASAC) in the FBI's New York Field Office (NYFO) of a July 13 call the ASAC had with Handling Agent 1 about Report 80. Among other things, the notes identify Simpson as a client of a law firm and that the "law firm works for the Republican party or Hillary and will use [the information described in Report 80] at some point."

that had been corroborated; and (5) that Steele's reporting was consistent with the FBI's knowledge at the time of alleged Russian efforts to interfere in the 2016 U.S. elections.

The fact that Steele had been retained to conduct political opposition research did not require the FBI, under either Department or FBI policies, to ignore the information. The FBI and federal law enforcement regularly receive information from individuals with potentially significant biases and motivations, including drug traffickers, convicted felons, and even terrorists. The FBI is not required to set aside such information; rather, under CHS policy, the FBI is required to critically assess the information in light of any potentially significant biases and motivations. The "FBI must, to the extent practicable, ensure that the information collected from every CHS is accurate and current, and not given to the FBI in an effort to distract, mislead, or misdirect FBI organizational or governmental efforts."⁵⁰⁴ Past OIG reviews of the Department's law enforcement components have found that the use of information from such individuals presents significant risks.⁵⁰⁵

In the Crossfire Hurricane investigation, as described in detail in Chapters Four and Six of this report, the team undertook substantial efforts to verify Steele's election reporting, including interviewing Steele; identifying and interviewing certain of Steele's sub-sources; undertaking CHS and Under Cover Employee (UCE) meetings with Papadopoulos, Page, and a high-level Trump campaign official; conducting database inquiries; open source research; and seeking information from other U.S. government intelligence agencies.⁵⁰⁶ However, we found that corroboration for the election reporting proved to be elusive for the FBI to identify. FBI officials told us that the singular nature of the reporting (e.g., its recounting of conversations between a small number of persons) made it extremely difficult to verify. We determined that prior to and during the pendency of the FISAs the FBI was unable to corroborate any of the specific substantive allegations against Carter Page contained in the election reporting and relied on in the FISA applications, and was only able to confirm the accuracy of a limited number of circumstantial facts, most of which were in the public domain, such as the dates that Page traveled to Russia, the timing of events, and the occupational positions of individuals referenced in the reports.

⁵⁰⁴ *Confidential Human Source Validation Standards Manual* ("VSM"), 0258PG (March 26, 2010), § 1.0.

⁵⁰⁵ U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Audit of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' Management and Oversight of Confidential Informants*, Audit Report 17-17 (March 2017); DOJ OIG, *Audit of the Drug Enforcement Administration's Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*, Audit Report 15-28 (July 2015); DOJ OIG, *A Review of ATF's Operation Fast and Furious and Related Matters* (September 2012); and DOJ OIG, *The FBI's Compliance with the Attorney General's Investigative Guidelines* (September 2005).

⁵⁰⁶ FBI staff told us that because they knew of the potential for political influences on the election reporting, they did not devote resources to determine precisely which organization or persons were sponsoring Steele's reporting. Consistent with what we were told, we found that the FBI did not focus much attention on seeking to identify the client of Fusion GPS that was funding Steele's research.

In addition to the lack of corroboration, we found that the FBI's interviews of Steele, the Primary Sub-source, and a second sub-source, and other investigative activity, revealed potentially serious problems with Steele's description of information in his election reports. For example, as noted above, the Primary Sub-source's accounting of events during his/her January 2017 interview with the FBI (after the filing of the first FISA application and Renewal Application No. 1, but before the filing of Renewal Application No. 2) was not consistent with and, in fact, contradicted the allegations in Reports 95 and 102 attributed to Person 1, as well as those in Report 94 concerning the meeting between Page and Sechin. In addition, another sub-source told the FBI in August 2017 (after the filing of Renewal Application No. 3) that information in Steele's election reporting attributable to him/her had been "exaggerated." Because the sub-sources themselves could have furnished exaggerated or false information to Steele, as well as to the FBI during their interviews, the cause of these inconsistencies remains unknown. According to the Supervisory Intel Analyst, the FBI ultimately determined that some of the allegations contained in Steele's election reporting were inaccurate, such as the allegation that Manafort used Page as an intermediary (Report 95) and that Michael Cohen had travelled to Prague for meetings with representatives of the Kremlin (Reports 134, 135, 136, and 166). Although the Supervisory Intel Analyst also stated that some of the broader themes in Steele's election reporting were consistent with USIC assessments, such as Russia's desire to sow discord in the Western Alliance, he further told us that, as of September 2017, the FBI had corroborated limited information in the Steele election reporting, and much of that information was publicly available.⁵⁰⁷

As we described earlier in our analysis, the FBI failed to notify OI, which was working on the Carter Page FISA applications, of the potentially serious problems identified with Steele's election reporting that arose as early as January 2017 through the efforts described above. As previously stated, we believe it was the obligation of the agents who were aware of this information to ensure that OI and the decision makers had the opportunity to consider it, both for their own assessment of probable cause and for consideration of whether to include the information in the applications so that the FISC received a complete and accurate recitation of the relevant facts. Moreover, even as the FBI developed this

⁵⁰⁷ As discussed in detail in Chapter Six, FBI leadership, including Comey and McCabe, advocated for the Steele election reporting to be included in the Intelligence Community Assessment (ICA) on Russian election interference that was being prepared in December 2016. For example, in a December 17 telephone call with the Director of National Intelligence (DNI), Comey stated that the FBI was "proceeding cautiously to understand and attempt to verify the reporting as best we can, but we thought it important to bring it forward to the IC effort." However, according to the Intel Section Chief and Supervisory Intel Analyst, as the interagency editing process for the ICA progressed, the CIA expressed concern about using the Steele election reporting in the body of the ICA, and recommended that it be moved to an appendix. In a December 28, 2016 email to the Office of the Director of National Intelligence (ODNI) Principal Deputy Director, McCabe objected to this recommendation, stating, "We oppose CIA's current plan to include [the election reporting] as an appendix." However, the FBI Intel Section Chief told us that the CIA viewed the Steele reporting as "internet rumor." The FBI's view did not prevail, and the final ICA report included a short summary of the Steele election reporting in an appendix.

information, we found no evidence that the Crossfire Hurricane team reconsidered its reliance on the Steele reporting in the FISA renewal applications.

In addition to these investigative efforts by the Crossfire Hurricane team to evaluate Steele as a source, the FBI's Validation Management Unit (VMU) completed a human source validation review of Steele in March 2017. We examined VMU's assessment, and in doing so, identified two procedural problems that affected the usefulness of its work product that, if not addressed by the FBI, could negatively affect VMU's future CHS assessments.⁵⁰⁸ First, we found instances where information we deemed significant about Steele was not included in his Delta file, and therefore was not available to VMU so that it could be taken into account during VMU's validation review. The information omitted from Steele's Delta file included facts that the Crossfire Hurricane team learned in December 2016 about Steele relating to his work-related performance in a prior position, and the FBI Transnational Organized Crime Intelligence Unit's concerns about the number of contacts that Steele purportedly had with Russian oligarchs. We have raised issues in prior OIG reviews about the FBI's handling of derogatory CHS information.⁵⁰⁹ We believe the FBI needs to assess how to better ensure that derogatory information about its CHSs is included in Delta and is readily identifiable once added. The FBI should establish enhanced procedures to ensure the completeness of its Delta files, including for investigations that are operated from FBI Headquarters.

Second, we determined that it was an error for VMU to omit from the Steele validation report its finding that its assessment of Steele's work for the FBI failed to reveal corroboration for the election reporting from the FBI and other U.S. government holdings that VMU examined. The supervising Unit Chief told us that the reason for the omission was VMU's practice of reporting on "what we positively find" and not on what is lacking. As a result, the VMU report acknowledged Steele's contribution to the FBI criminal program but did not elaborate on his contributions, or lack thereof, to the counterintelligence program. In Steele's case, VMU's approach misapprehended the reason for CD's request for the validation review. CD's interest in Steele resulted from his election reporting so any conclusions that VMU reached about it would be of intense interest to CD. According to Priestap, who had previously overseen the work of VMU in his capacity as Deputy Assistant Director in the Directorate of Intelligence, VMU's decision to omit its conclusion that Steele's election reporting was uncorroborated "defeats the whole purpose of us asking [VMU] to do the validation reporting." We believe the FBI should evaluate the reporting practices of VMU.

Finally, we found that the FBI was aware of the potential for disinformation in the Steele election reporting and, in part to address that issue, made some effort to

⁵⁰⁸ We note that, by the date of the VMU human source validation review in March 2017, the Crossfire Hurricane team had identified potentially significant issues with Steele's reporting and the VMU validation review did not make any findings that would have altered that judgment.

⁵⁰⁹ U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Process*, Audit Report 20-009 (November 2019); DOJ OIG, *A Review of the FBI's Handling and Oversight of FBI Asset Katrina Leung* (May 2006).

assess that possibility. However, in view of information we found in FBI files we reviewed, and that was available to the Crossfire Hurricane team during the relevant time period, we believe that more should have been done to examine Steele's contacts with intermediaries of Russian oligarchs in order to assess those contacts as potential sources of disinformation that could have influenced Steele's reporting or, at a minimum, influenced Steele's understanding of events in Russia that furnished context for the analytical judgments he used to evaluate the reporting. We agree with the assessment of Priestap and Evans that this issue warranted more scrutiny than it was afforded.

B. The Lack of Agreement on Steele's Status as an FBI CHS and its Effect on the Crossfire Hurricane Team's Relationship with Steele

We determined that, from the outset of the FBI's formal relationship with Steele in 2013 (when Steele first received FBI CHS admonishments), the FBI and Steele had differing views on the nature of Steele's relationship with the FBI. The FBI considered Steele to be an FBI CHS following his enrollment as a CHS, which was reinforced by Steele's later signing of CHS payment and admonishment paperwork, while Steele considered the CHS documentation to be a business arrangement between him, on behalf of his consulting firm, and the FBI. As detailed in Chapter Four, we found evidence during our review that supported both the FBI's view and Steele's position.

The paperwork enrolling Steele as a CHS in 2013 was the FBI's standard CHS opening documentation; the FBI documented Steele's receipt of CHS admonishments; and the documentation did not reference in any way a relationship between the FBI and Steele's consulting firm. Similarly, on multiple occasions thereafter, Steele signed, using his FBI assigned code name, FBI payment forms that were plainly denominated as CHS documentation and that did not reference his consulting firm. However, we also identified material indicating that Steele made known to Handling Agent 1 from the outset of their discussions in 2010 that he could not be a CHS for the FBI due to his prior work as a foreign intelligence professional. We also identified a memorandum that the FBI sent to Steele's [REDACTED], prior to opening Steele as a CHS in 2013, explaining that "Mr. Steele is providing the FBI with information," while also stating that the information that the FBI was to obtain would be furnished "primarily through Mr. Steele's privately owned company" and that the FBI would "treat any material provided as information obtained through a Confidential Human Source." Similarly, Steele's letter to his [REDACTED], dated at around the same time as the FBI memorandum, informed the [REDACTED] that Steele's consulting firm (rather than Steele) was planning to enter into a commercial relationship with the FBI. Given the similarities between the FBI and Steele memoranda to Steele's [REDACTED], the FBI's description of Steele appears crafted to satisfy Steele's concerns and, in our view, is indicative of the understanding reached between Steele and the FBI concerning his status—that both sides would leave unresolved their differing perspectives on the nature of their relationship in order to keep information flowing to the FBI and to ensure that Steele could be paid for any work he performed on behalf of the FBI.

This uncertainty about the nature of the relationship had an impact on each side's understanding of Steele's obligations to the FBI in the Crossfire Hurricane investigation, particularly after the meeting between the FBI and Steele in early October 2016 about Steele's election reporting. Steele told us that he never viewed himself or his firm as performing election-related work on behalf of the FBI; rather, Steele considered himself to be functioning as a consultant to a paying client of his firm, which was seeking information about Russian interference in the 2016 U.S. elections from Steele's source network. Steele reported the information to his client, Fusion GPS, as he acquired it and followed his client's instructions. In contrast, we found that the FBI agents viewed Steele as a former intelligence officer colleague who was an FBI CHS with obligations to the FBI, and that the agents displayed insufficient awareness of the priority Steele placed on his business commitments.⁵¹⁰

We concluded that, at the outset of Steele's interactions with the FBI in July 2016 regarding his election reporting work, it was clear that Steele was operating as a businessperson working on behalf of a client of his firm, rather than as a CHS for the FBI. Indeed, as detailed in Chapter Four, when Steele met Handling Agent 1 on July 5, 2016, Steele told him about his consulting firm having been retained by Fusion GPS, and provided Handling Agent 1 with Report 80. Handling Agent 1 made clear to Steele that he was not working for the FBI on his election assignment and was not being tasked to collect election related information. We found that Handling Agent 1's caution to Steele was unnecessary from Steele's perspective, as he did not view himself as working on behalf of the FBI to gather election related information, and he and his client were taking steps to disseminate the election reporting to other parties. Handling Agent 1 told us, however, that from his perspective he believed his caution to Steele was necessary because he believed Steele was a CHS and his election related activity would be harmful to Steele's relationship with the FBI.

As detailed in Chapter Nine and discussed later in this chapter, beginning in July 2016, Steele had multiple contacts with Department attorney Bruce Ohr about his reports. That same month, Steele first provided his election reporting to the State Department. In August 2016, the FBI received correspondence from Members of Congress that described information included in the Steele reports, and in September 2016, Steele met with journalists from *The New York Times*, *The Washington Post*, *Yahoo News*, *The New Yorker*, and CNN about his work. Steele in fact was the "Western intelligence source" referenced in the September 23, *Yahoo News* article entitled, "*U.S. Intel Officials Probe Ties Between Trump Advisor and Kremlin*," that described efforts by U.S. intelligence to determine whether Carter Page had opened communication channels with Kremlin officials. The FBI did not ask Steele whether he was a source for the article, nor did it question Steele about the apparent dissemination of his election reporting to other parties.

⁵¹⁰ In comments on this report, Handling Agent 1 told us that he was well aware of Steele's business priorities, but that he was not aware that Steele would be a "front man" in dealings with the press and that Steele would fail to inform him of these and other contacts that violated the FBI's instructions at the early October meeting.

However, the caution provided by Handling Agent 1 to Steele at their July 2016 meeting—that Steele was not being tasked to collect election related information—changed in early October 2016 when Crossfire Hurricane investigators met with Steele and attempted to task him as a CHS. During that meeting, the FBI requested that Steele collect “3 buckets” of information, which was a small subset of information related to the FBI’s investigation into Russian interference in the 2016 U.S. elections.⁵¹¹ The FBI told Steele that the FBI was willing to compensate him “significantly” for this information, and that he would be paid \$15,000 just for attending the October meeting.⁵¹² Additionally, investigators told us that they orally instructed Steele to report information he gathered in response to these taskings exclusively to the FBI. These taskings and instructions were consistent with the FBI considering Steele to be a CHS going forward.⁵¹³

Based on the testimony we obtained from participants in the early October meeting and the documents we reviewed that memorialized it, Steele appears to have made no commitments in response to this FBI request for exclusivity, though we found that he did not expressly reject it either. From the surrounding circumstances, we concluded it was unlikely that Steele agreed to the FBI’s request. Steele was a businessperson with a paying client for whom he had worked on other projects and had committed to assist the client on the election project. Steele told us that any attempt by the FBI to interfere in his assignment from Fusion GPS would have been a “showstopper.” Case Agent 2 could not recall Steele agreeing to anything during the meeting in early October, and acknowledged to OI following the meeting that they needed to be “realistic” about the prospects of Steele limiting the dissemination of his reporting to the FBI.⁵¹⁴

⁵¹¹ The 3 buckets concerned (1) information on the Crossfire Hurricane subjects; (2) physical evidence; and (3) leads for sources.

⁵¹² Although the FBI did not condition this payment on Steele’s future performance, the FBI cancelled the payment after it decided to close Steele as a CHS in November 2016.

⁵¹³ We also examined whether the FBI disclosed classified information to Steele during the early October meeting. We determined that Case Agent 2 did when he discussed information with Steele that the FBI received from the FFG, and that he did not have prior authorization to make the disclosure. However, we found that: (1) Case Agent 2 was given significant latitude from his supervisors to frame his discussions with Steele; (2) Case Agent 2 believed he had authorization to discuss classified information with Steele based on prior discussions with his supervisors; (3) a CD Section Chief was present when Case Agent 2 made the disclosure, and the CD Section Chief did not voice objection to it at the time or afterward; and (4) Case Agent 2 included the disclosure in a written summary he prepared of the early October meeting that was uploaded to the Crossfire Hurricane case file. We also found that the CHS Policy Guide (CHSPG) does not address the disclosure of sensitive or classified information to CHSs and that the FBI has not otherwise developed guidance on the issue. We found no evidence that Case Agent 2 attempted to conceal his disclosure or that it was for any purpose other than advancing the objectives of the Crossfire Hurricane investigation. Case Agent 2 is retired from the FBI. We make a recommendation in this report that the FBI establish guidance for sharing sensitive information with CHSs.

⁵¹⁴ As we described in Chapter Four, Handling Agent 1 believed that Steele failed to abide by FBI instructions when he continued to meet with the media and the State Department about issues over which the FBI had sought to establish an exclusive reporting relationship at the early October meeting. Case Agent 2 told the OIG that he thought it was “terrible” for Steele to complain to the FBI about leaks during the meeting given that he had been meeting with media outlets in September and

Nevertheless, we found that, following this October meeting, the FBI viewed Steele as a CHS with respect to these taskings and considered him bound by the standard "CHS admonishments" that he had received initially in 2013 and renewed most recently in January 2016, which committed him to "abide by the instructions of the FBI" and to "provide truthful information to the FBI."⁵¹⁵ Handling Agent 1 told us that he previously had provided oral instructions to Steele that included not divulging the existence of his relationship with the FBI to others, and not sharing with third parties the information he was providing to the FBI aside from his client paying for the research. However, these oral instructions were not documented in Steele's Delta file, and Steele told us that he did not recall receiving them, but understood that the FBI did not want him to reveal their relationship to others. We also found that the FBI's standard admonishment form does not include an instruction to the CHS not to disclose the existence of the CHS's relationship with the FBI to others absent the FBI's permission.⁵¹⁶

In contrast, Steele told us that, from the outset of his relationship with the FBI, the FBI acquiesced in practice to an arrangement that recognized the existence of the "two pipelines" of information that Steele described to us and which we discussed more fully in Chapter Four. In Steele's view, any FBI admonishments and instructions were relevant only to his FBI assignments (*i.e.* Pipeline 2 work), but not to his work for his firm's clients that Steele chose to share with the FBI (*i.e.* Pipeline 1 work). Steele stated that he was free to discuss Pipeline 1 work with his clients and with third parties, as necessary, without gaining permission from the FBI. Steele told us that the FBI indicated at the meeting in early October that it sought to convert his Pipeline 1 election project for Fusion GPS into a Pipeline 2 project for the FBI, and take control of it. Steele also told us that he made it clear during the meeting that was not going to happen because he was obligated to his client and was "not dumping the client" in favor of the FBI, but that he also wanted to be as helpful to the FBI as he could. According to Steele, the FBI accepted his position, though they requested that he not share his election reporting with other U.S. government entities or with third-party clients other than Fusion GPS. Steele said he could not recall if he agreed to this FBI request but believed that the request was not resolved at the meeting. FBI attendees at the early October meeting told us they had no recollection of Steele rejecting their request that he provide information on the "3 buckets" exclusively to the FBI, and if he had rejected their request it would have been documented.

Consistent with their inability in 2013 to reach a shared understanding on Steele's status with the FBI, we concluded that the FBI and Steele in October 2016

had provided information that was used in the *Yahoo News* article. According to Case Agent 2, in hindsight "[c]learly [Steele] wasn't truthful with us. Clearly." Steele denied to us that he ever lied or purposely misled the FBI.

⁵¹⁵ The FBI form memorializing Steele's receipt of admonishments in 2016 states that Handling Agent 1 "verbally admonished the CHS with CHS admonishments, which the CHS fully acknowledged, signed and dated." The FBI could not locate the signed admonishment form, however.

⁵¹⁶ For safety and security reasons, among others, we believe such an instruction should be a part of the standard admonishments provided by the Department's law enforcement components to its CHSs, and we therefore include a recommendation to that effect in this report.

appeared to reach a similarly imperfect arrangement that reflected the competing needs and interests of each party. The FBI provided instructions to Steele, but Steele did not make any express commitment to abide by specific terms. The FBI also sought exclusivity for information Steele developed in response to the tasking, but we found that Steele did not make an express commitment to the FBI to honor this request.

As described in Chapter Six, the FBI closed Steele as a CHS for cause in November 2016, after determining that Steele breached an obligation when he divulged his FBI relationship to a journalist for *Mother Jones* the month before. This obligation was based upon the oral admonishment the FBI said it previously provided to Steele, an admonishment Steele said he did not recall receiving or agreeing to, but one that he said reflected an expectation he understood. Steele also told us, in explaining his disclosure to *Mother Jones*, that he believed the FBI had misled him when Comey notified Congress in late October 2016 that the FBI was reopening the Clinton email investigation while at the same time an FBI official was quoted in *The New York Times* as saying that there was no investigation of Trump or the Trump campaign.

We believe that the FBI's decision to close Steele, as well as its failure to press him about his role in the September 2016 *Yahoo News* story and his October 2016 visit to the State Department, were consequences of the FBI's and Steele's inability to come to a shared understanding on the terms of their relationship. We also believe that the FBI allowed the arrangement with Steele to exist because its expectations about Steele's behavior were heavily influenced by his background as a former intelligence officer and his past assistance to the FBI in that capacity, with insufficient focus on Steele's current business interests and obligations, even though Steele disclosed them to the FBI. Indeed, as we describe in the next section, we found that even after the FBI closed Steele as a CHS in November 2016 for cause, and as a result, under FBI policy should have ceased its contact with Steele absent exceptional circumstances or reopening him as a CHS, the FBI continued its relationship with Steele by allowing Steele to regularly provide information to the FBI through a senior Department attorney, Bruce Ohr, with whom Steele was friendly.

IV. Issues Relating to Department Attorney Bruce Ohr

In this section, we analyze the interactions Department attorney Bruce Ohr had with Christopher Steele, Simpson, the FBI, and the State Department during the Crossfire Hurricane investigation. We also analyze Ohr's interactions with Department attorneys and FBI officials concerning the Department's criminal investigation of Paul Manafort. At the time of these activities, Ohr was an Associate Deputy Attorney General in ODAG and the Director of the Organized Crime and Drug Enforcement Task Force (OCDETF).

As described more fully in Chapter Nine, at about the same time that Steele was engaging with the FBI on his election reporting, Steele was also sharing his reporting with Ohr, with whom he had a pre-existing professional and "friendly"

relationship since at least 2007. Beginning in July 2016, Steele had contacted Ohr on multiple occasions to discuss information from Steele's election reports. At Steele's suggestion, Ohr also met in August 2016 with Simpson, the owner of Fusion GPS, to discuss Steele's reports. At the time, Ohr's wife, Nellie Ohr, worked at Fusion GPS as an independent contractor. Ohr had a second meeting with Simpson in December 2016, at which time Simpson gave Ohr a thumb drive containing numerous Steele election reports.

On October 18, 2016, three days before the first FISA application was submitted to the FISC, and after speaking with Steele that morning, Ohr requested a meeting with, and that same day met with McCabe to share Steele's and Simpson's information with him. Thereafter, Ohr met with members of the Crossfire Hurricane team 13 times between November 21, 2016, and May 15, 2017, concerning his contacts with Steele and Simpson. All 13 meetings occurred after the FBI had closed Steele as a CHS for disclosing information to *Mother Jones* and, except for the November 21 meeting, each meeting was initiated at Ohr's request. Ohr told us he did not recall the FBI asking him to take any action regarding Steele or Simpson, but Ohr also stated that "the general instruction was to let [the FBI] know...when I got information from Steele." At two of these meetings, both in December 2016, after Nellie Ohr had left Fusion GPS, Ohr provided the FBI with open source research Nellie Ohr conducted on Manafort while working at Fusion GPS. The Crossfire Hurricane team memorialized each meeting with Ohr as an "interview" using an FBI FD-302 form.

In addition to the FBI, Ohr met with senior State Department officials in November 2016 to discuss State Department efforts to investigate Russian influence in foreign elections. On this and several other days Ohr had separate discussions with State Department Deputy Assistant Secretary Kathleen Kavalec about Steele and his election information specifically to obtain relevant information that he could share with the FBI.

Department leadership, including Ohr's supervisors in ODAG and ODAG officials who reviewed and approved the Carter Page FISA applications, were unaware of Ohr's meetings with FBI officials, Steele, Simpson, and the State Department until after Congress requested information from the Department regarding Ohr's activities in late November 2017.

In addition, shortly after the U.S. elections in November 2016, Ohr participated in several meetings with Deputy Assistant Attorney General (Deputy AAG) Bruce Swartz, Chief of the Fraud Section Andrew Weissmann, and Counsel to the Criminal Division Assistant Attorney General Zainab Ahmad regarding the Department's money laundering investigation of Manafort. Two of these meetings included FBI officials Peter Strzok and Lisa Page.⁵¹⁷ The FBI opened the Manafort money laundering investigation in January 2016, before the opening of Crossfire Hurricane and before Manafort joined the Trump campaign, and the case was being led in 2016 by prosecutors from the Criminal Division's (CRM) Money Laundering

⁵¹⁷ One of the two meetings attended by Strzok and Page was also attended by Acting Section Chief 1 of the FBI.

and Asset Recovery Section (MLARS). Ohr and the three CRM officials he met with did not have supervisory authority over the MLARS criminal investigation, and they did not advise their supervisors in ODAG and CRM MLARS prosecutors of the meetings. However, we did not find evidence that these meetings progressed beyond discussion into any specific actions that interfered with the MLARS investigation or Department leadership's oversight of that matter.

In light of these activities, we considered the following issues addressed below: (1) whether Ohr's interactions with Steele, Simpson, the FBI, and State Department violated Department policy or resulted in any specific performance failures, (2) whether the FBI's interactions with Ohr concerning Steele and Simpson after Steele was closed as an FBI CHS violated Department or FBI policy, (3) whether Nellie Ohr's work for Fusion GPS implicated any ethical rules applicable to Ohr, and (4) whether the meetings between Ohr, CRM officials, and the FBI regarding the MLARS investigation violated Department policy or resulted in any specific performance failures.

A. Bruce Ohr's Interactions with Steele, Simpson, the State Department, and the FBI

We did not identify a specific Department policy prohibiting Ohr from meeting with Steele, Simpson, or the State Department and providing the information he learned from those meetings to the FBI. Further, we found no evidence that the FBI expressly requested that Ohr obtain information from Steele, or anyone else, on the FBI's behalf. However, as described in Chapter Nine, Ohr told us that "the general instruction [he received from the FBI] was to let them know...when I got information from Steele." Similarly, SSA 1 told us that Ohr likely left their initial November 21, 2016 meeting with the impression that he should contact the FBI if Steele contacted him, which is what Ohr did.

In this regard, we concluded that Ohr committed consequential errors in judgment by (1) failing to advise his direct supervisors or the DAG that he was communicating with Steele and Simpson and then requesting meetings with the FBI's Deputy Director and Crossfire Hurricane team on matters that were outside his areas of responsibility, and (2) making himself a witness in the investigation by having direct communications with Steele about his reporting and activities and providing Steele's information to the FBI.⁵¹⁸

We found that Ohr's failure to advise his supervisors resulted in Ohr being aware of relevant information that was not made known to Department officials, thereby interfering with those officials' supervisory responsibility for the Crossfire Hurricane investigation and the Carter Page FISA applications. As described in Chapter Eight, Yates, Boente, and Rosenstein told us that they had no knowledge at the time they reviewed and approved the Page FISA applications that Ohr had provided the FBI with information related to the Crossfire Hurricane investigation and that was relevant to the FISA applications. Other ODAG officials who reviewed one or more of the applications told us that they were also unaware of Ohr's

⁵¹⁸ We did not find evidence that Ohr shared non-public information with Steele or Simpson.

activities at the time, including the Associate Deputy Attorney General responsible for ODAG's national security portfolio who interacted with NSD and OI officials on the FISA applications and was aware of their efforts described in Chapter Five to evaluate the Steele information being relied upon to support probable cause. Although we found no information suggesting that Ohr knew about any of the FISA applications before they were filed, by failing to advise his supervisors of his interactions with Steele, Simpson, and the FBI, Ohr deprived those supervisors of the ability to ensure that the ODAG officials working on the applications were made aware of information relevant to evaluating the Steele reporting in the applications. It also deprived ODAG officials of the opportunity to ensure that NSD and OI were made aware of the information that Ohr knew from his Steele interactions so that NSD and OI could consider whether to include the information in the next FISA application, though we believe that the FBI case agent should have been the first to advise NSD and OI of Ohr's activities. As described in Chapter Eight, the late discovery of Ohr's interviews with the FBI prompted NSD to submit a Rule 13 letter to the court, over a year after the final FISA orders were issued, to inform the court, among other things, of information that Ohr had provided to the FBI but that the FBI had failed to inform NSD and OI about, including that Steele was "desperate that Donald Trump not get elected and was passionate about him not being the U.S. President."

Additionally, as described in earlier chapters, beginning in early 2017, Boente and later Rosenstein requested multiple briefings on the Crossfire Hurricane investigation, which included, among many topics, updates on the FBI's continued efforts to assess Steele and his information. Because Ohr did not advise anyone in ODAG about his activities, Boente, Rosenstein, and the other ODAG officials briefed into Crossfire Hurricane had no idea that one of the senior attorneys on their staff, with no responsibility over counterintelligence investigations, had made himself a witness in the investigation by having direct communications with Steele about his reporting and activities and initiating contact with the Crossfire Hurricane team to provide the FBI with information he received from Steele, as well as information he received separately from Simpson, Kavalec, and Nellie Ohr.

Further, we found that Ohr's failure to advise his supervisors of his activities deprived the DAG and senior ODAG officials of the ability to decide for themselves the prudential question of whether to have an ODAG attorney act as a conduit between a closed FBI CHS and the FBI on matters relating to an open investigation. The opportunity to consider that question for themselves was particularly important here, given the connections to a high priority, politically sensitive investigation and the involvement of a closed CHS with ties to a political party and candidate for President, and indirect connections to the ODAG attorney's spouse. Former Principal Associate Deputy Attorney General (PADAG) Matthew Axelrod, Ohr's direct supervisor in 2016, told us that he would have expected to know about Ohr's communications with Steele and the FBI. Axelrod stated that if ODAG officials had known, they would have questioned Ohr's involvement and determined whether the FBI had the ability to "pull him out" of acting as a conduit between Steele and the FBI. He said that he thought it "unlikely that we would have been comfortable with [Ohr] continuing to play that role." Axelrod's immediate successor, former Acting

PADAG James Crowell, who supervised Ohr in 2017, told us that he was "flabbergasted" when he learned of Ohr's interactions with the FBI regarding Steele. According to Crowell, Ohr should have informed ODAG officials of his relationship with Steele and Simpson and his interactions with the FBI, especially after Rosenstein appointed the Special Counsel and began directly supervising the investigation, because "a potential fact witness" was on Rosenstein's staff. Crowell told us that he would have taken steps to eliminate any appearance that Ohr was involved in ODAG's oversight of the investigation.

We found that, while no Department or ODAG policy specifically prohibited Ohr's activities, Ohr was clearly cognizant of his responsibility to inform his supervisors of his interactions with Steele, the FBI, and State Department. Indeed, Ohr acknowledged to the OIG that the possibility that he would have been told by his supervisors to stop having such contact may have factored into his decision not to tell them about it. Precisely because of this possibility, and the reasons more fully described above, we concluded that Ohr committed consequential errors in judgment by failing to advise his direct supervisors or the DAG that he was communicating with Steele, Simpson, and the FBI on matters related to the Crossfire Hurricane investigation, and that this performance failure had a negative impact on the investigation and ODAG's fulfillment of its own management responsibilities. We are referring our finding to the Department's Office of Professional Responsibility for any action it deems appropriate. We are also providing our finding to Ohr's current supervisors in CRM for any action they deem appropriate.

B. FBI Interactions with Ohr Concerning Steele and Simpson

As described in Chapter Two, the FBI's CHS Policy Guide (CHSPG) provides guidance to agents concerning contacts with CHSs after they have been closed for cause, as was the case with Steele as of November 1, 2016. According to the CHSPG, a handling agent must not initiate contact with or respond to contacts from a former CHS who has been closed for cause absent exceptional circumstances that are approved (in advance, whenever possible) by an SSA. Where there is contact with a CHS following closure (whether or not for cause), new information "may be documented" to a closed CHS file. However, the CHSPG requires the reopening of the CHS if the relationship between the FBI and the CHS is expected to continue beyond the initial contact or debriefing. Reopening requires high levels of supervisory approval, including a finding that the benefits of reopening the CHS outweigh the risks.

In this instance, we found that the FBI did not initiate direct contact with Steele after his closure on November 1, 2016. However, the FBI did respond to numerous contacts made by Steele to the FBI through Ohr. Ohr himself was not a direct witness to the facts and circumstances that were the focus of the Crossfire Hurricane investigation; rather, his purpose in communicating with the FBI was to pass along information from Steele. Further, although Ohr initiated his meetings with the Crossfire Hurricane team, as noted above, the team gave Ohr the impression that he should contact them in the event he had additional contact with Steele. While the FBI's CHS policy does not explicitly address indirect contact

between an FBI agent and a closed CHS, we concluded that the FBI's repeated acceptance of information from Steele through a conduit (Ohr) was equivalent to responding to a contact from Steele and therefore should have triggered the CHS policy requiring that such contact occur only after an SSA determines that exceptional circumstances exist. Here, the SSAs on the Crossfire Hurricane team attended the meetings with Ohr and served as Ohr's points of contact, and in this manner approved the contact. However, we found no evidence that the SSAs made a considered judgment that exceptional circumstances existed for the repeated contact; in the absence of such a circumstance, the FBI's re-engagement of Steele did not fully comply with the FBI's CHS policy.

In addition, the Crossfire Hurricane team memorialized the meetings with Ohr and the information Ohr provided in FD-302 forms serialized to the case file. Although the information was not separately documented in Steele's closed CHS file, the guidance regarding documentation is discretionary (new information "may be documented" to a closed CHS file). We believe the FBI should make such documentation mandatory so that the CHS file contains all relevant information about the CHS.

As noted above, the CHSPG contemplates the reopening of the CHS if the relationship between the FBI and the CHS is expected to continue beyond the initial contact or debriefing, which helps to ensure that high level supervisors weigh the risks presented by reengagement with the CHS and that operational assessments of the CHS are undertaken. Although the FBI met with Ohr on 13 occasions and accepted information that Ohr received from Steele, the FBI never assessed whether to re-open Steele as a CHS. As described in Chapter Nine, there were differing views about whether the information Ohr was providing had any investigative value. SSAs on the investigation also told us that they had some concern at the time that continuing to engage with Ohr regarding his interactions with Steele was "out of the norm" and a "bad idea." Although the FBI did not have a direct "relationship" with Steele after November 1, 2016, we believe the use of Ohr as a conduit between the two created a relationship by proxy that should have triggered a supervisory decision early in the process about whether to reopen Steele as a CHS or discontinue accepting information indirectly through Ohr. We concluded that not obtaining supervisory review was inconsistent with the CHS policy's intent to have a higher level official determine whether the "exceptional circumstances" that an SSA believes are present to authorize an initial contact with a closed CHS warrant reopening of the CHS.⁵¹⁹

We found that the Crossfire Hurricane team did not consider Ohr providing the FBI with information from Steele to be a re-engagement of their relationship with Steele. Rather, the team viewed Ohr as just another "stream of reporting." On the other hand, Priestap told us that he was not aware of the full extent of Ohr's communications with Steele and the Crossfire Hurricane team and that the number

⁵¹⁹ Even if the SSAs had determined that exigent circumstances existed for the initial re-engagement with Steele, once it was clear the contact between FBI and Ohr was expected to continue beyond the initial contact, we believe FBI policy required the SSAs to either reopen Steele at that time or discontinue accepting his information indirectly through Ohr.

of times Ohr provided the FBI with information from Steele would have raised "red flags" for him. We believe that additional policy guidance would be helpful to clarify the considerations and requirements that apply in the third-party context. Accordingly, we recommend that the FBI revise its CHS policy to explicitly address the situation that occurred here, namely the steps that should be followed before and after accepting information from a closed CHS indirectly through a third party, and the considerations that should be taken into account before doing so. Further, we recommend that the CHS policy be clarified to require that contact with a closed CHS be documented in the CHS file.

C. Ethics Issues Raised by Nellie Ohr's Former Employment with Fusion GPS

Fusion GPS employed Nellie Ohr as an independent contractor from October 2015 to September 2016. We considered whether Bruce Ohr complied with his financial disclosure reporting obligations under 5 C.F.R. part 2634 related to Nellie Ohr's employment. On his annual financial disclosure forms covering calendar years 2015 and 2016, Ohr listed Nellie Ohr as an "independent contractor" and reported her income from that work on the form. We determined that 5 C.F.R. part 2634, which sets forth the financial disclosure rules for executive branch employees, and the supplemental guidance from the Office of Government Ethics (OGE), did not require Ohr to list on the form the specific organizations, such as Fusion GPS, that retained and paid Nellie Ohr as an independent contractor during the reporting period. We further noted that, consistent with OGE practice, Ohr's financial disclosure form, which listed Nellie Ohr as an "independent contractor" and reported her total income but not the specific source(s) of the income, was reviewed and approved for filing by the ODAG and Department ethics officers before being submitted to OGE. Accordingly, we determined that Ohr complied with his financial disclosure reporting obligations.

We separately considered whether the Standards of Ethical Conduct for Employees of the Executive Branch required Ohr to recuse himself from participating in activity related to the Crossfire Hurricane investigation because of Nellie Ohr's prior work for Fusion GPS as an independent contractor. Specifically, 5 C.F.R. § 2635.502(a) provides that an employee should not participate in a matter, unless agency ethics counsel authorizes participation, "[w]here an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household...and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter...." Section 402(b)(1) defines "direct and predictable effect" as "a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest." We found that Nellie Ohr's relationship with Fusion GPS ceased on September 24, 2016, which was prior to Ohr's meeting with McCabe on October 18, 2016, as well as all 13 of his meetings with the Crossfire Hurricane team, the first of which was on November 21, 2016. Accordingly, by those dates, Ohr's activities could not have had a direct and predictable effect on his or his wife's financial interests, and federal ethics rules did

not require that Ohr obtain Department ethics counsel approval before engaging with the FBI in connection with the Crossfire Hurricane matter.

The federal ethics rules further provide in Section 502(a)(2) that an employee "who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section [namely, to consult with Department ethics officials] to determine whether he should or should not participate in a particular matter." However, while OGE has made clear that employees are "encouraged" to use this process, it also has stated that "[t]he election not to use that process should not be characterized...as an 'ethical lapse.'" OGE 94 x 10(1), Letter to a Department Acting Secretary, March 30, 1994; *see also*, OGE 01 x 8 Letter to a Designated Agency Ethics Official, August 23, 2001. While OGE guidance establishes that Ohr did not commit a formal ethical violation, we nevertheless concluded that Ohr, an experienced Department attorney and a member of the SES, should have been more cognizant of the appearance concerns created by Nellie Ohr's employment with Fusion GPS and availed himself of the process described in Section 502(a). We found that his failure to take this step displayed a lapse in judgment.

D. Meetings Involving Ohr, CRM officials, and the FBI Regarding the MLARS Investigation

As described in more detail in Chapter Nine, on November 16, 2016, Ohr advised CRM officials Bruce Swartz and Zainab Ahmad of information "about [Paul] Manafort and Trump and possible Russian influence that [Ohr] was getting from Steele and Glenn Simpson." This discussion led to subsequent meetings with them and Andrew Weissmann about the pre-existing MLARS investigation of Manafort and whether the Fraud Section could move the investigation forward. At the time of these meetings, Swartz was a CRM Deputy AAG and Weissmann was the Chief of the Fraud Section. During this period, Ahmad was initially Counsel to the Criminal Division AAG and then became an Acting CRM Deputy AAG.⁵²⁰ None of these CRM officials had supervisory responsibility over the MLARS investigation. Ahmad and Weissmann did not have prior direct involvement in the investigation. Swartz had assisted MLARS with gathering evidence from abroad, and therefore, had extensive prior knowledge and involvement with the investigation, but was not responsible for investigative decisions. The MLARS Manafort investigation was outside Ohr's areas of responsibility. At Ohr's suggestion, Ohr, Swartz, and Ahmad also met with FBI officials Peter Strzok and Lisa Page in December 2016 to discuss the MLARS investigation because Ohr knew by that time that the FBI's CD was working on a separate matter involving Manafort. On January 31, 2017, one day after Yates was removed as Deputy Attorney General, Ahmad, after consulting with Swartz and Weissmann, called a second meeting, citing to "a few Criminal Division related developments." None of the attendees of the meeting could explain to us what the "Criminal Division related developments" were, and we did not find any. However,

⁵²⁰ Swartz, Ohr, and Weissmann were members of the Senior Executive Service (SES). Ahmad was on detail to the Criminal Division from the U.S. Attorney's Office for the Eastern District of New York and was not a member of the SES.

we are not aware of any information indicating that these discussions resulted in any actions taken or not taken in the MLARS investigation and ultimately the investigation remained in MLARS until it was transferred to The Special Counsel's Office in May 2017.

MLARS officials were not invited to these meetings or informed of them. The then Chief of MLARS, Kendall Day and the acting Chief who replaced him in January 2017, both told us that they were unaware at the time that these CRM officials and Ohr were discussing the MLARS investigation and engaging with the FBI. Day told us that when he learned in March or April 2017 that Swartz, Ohr, Ahmad, and Weissmann were "collectively interested" in the Manafort investigation, he met with Swartz and Ahmad and told them that their "unusual level of interest" could create a perception that the Department was investigating Manafort for inappropriate reasons.⁵²¹

In addition, Ohr, Swartz, Ahmad, and Weissmann told us that they did not advise their supervisors of their meetings, and senior CRM and ODAG officials told us that they were unaware of them. Further, Swartz told us that he specifically did not advise political appointees leading the Criminal Division of the meetings. According to Swartz, he did not believe at the time that he needed to advise political appointees because the meetings had not resulted in any steps being taken in the MLARS investigation, and by not informing them he was keeping the MLARS investigation from being "politicized" and protecting the Department from allegations that its MLARS investigation of Manafort was politically motivated. Swartz stated that he would have informed his political superiors if any decision to take action had been made as a consequence of the meetings. Weissmann told us that he thought not telling Department leadership was an "incorrect judgment call," but could not recall if he expressed this view to Swartz or Ahmad.

The former senior Department leaders we interviewed expressed serious concern about Swartz's assertion that not informing Department leadership about case related investigative activities somehow protected the Department. For example, after Yates learned during her OIG interview of the meetings involving Ohr, Swartz, Ahmad, and Weissmann, she told us that a decision not to advise political appointees "trouble[d]" her because the Department does not "operate that way." Yates said that there is not "a career Department of Justice and a political appointees' Department of Justice. It's all one DOJ." Former CRM Assistant

⁵²¹ After reviewing a draft of this report, Swartz told us that he had provided information to the OIG demonstrating his long standing interest and official involvement in reviewing Manafort's conduct, dating back to at least 2014, and that he was concerned by what he perceived as the "languishing" pace at which the MLARS investigation was progressing, and that it was his "duty" to attempt to move it forward. He therefore believed it was appropriate for him to meet with Weissmann to discuss potential avenues for doing this, and to meet with FBI officials to ensure that the FBI was aware of MLARS' investigation. Although we acknowledge Swartz's long-standing interest and official involvement in Manafort-related inquiries, we believe that Swartz could have raised his concerns directly with MLARS, Day, or others in MLARS' direct supervisory chain. Indeed, when asked about Swartz's concerns, then Acting DAG Boente told us that the Manafort investigation was an MLARS case, and Swartz could have taken his concerns to the then Acting Assistant Attorney General, who was a career Department employee, to attempt to address his concerns.

Attorney General (AAG) Leslie Caldwell told us that a decision to not advise political appointees of meetings they were having relating to the MLARS investigation to avoid “politicizing” it was “inappropriate” and showed “poor judgment” because it “suggest[ed] a lack of trust or a lack of confidence in the political appointee . . . and that seem[ed] a little bit paranoid to [her].”

We did not identify any Department policies prohibiting internal discussions about a pending investigation among officials not assigned to a matter, or between those officials and senior officials from the FBI. However, we were troubled by the testimony more fully described in Chapter Nine that there was a deliberate decision not to inform the political appointees, or the Acting AAG of CRM after the change in presidential administrations – who was a career Department employee – of these discussions in order to insulate the MLARS investigation from becoming “politicized.” We concluded that the decision to intentionally withhold information from the Department’s leadership in both the prior and current administrations, in the absence of concerns of potential wrongdoing or misconduct fundamentally misconstrued who is ultimately responsible and accountable for the Department’s work.⁵²² We agree with the concerns expressed to us by Yates and Caldwell. Department leaders cannot fulfill their management responsibilities, and be held accountable for the Department’s actions, if subordinates intentionally withhold information from them in such circumstances. The Department’s leadership, which is nominated by the President and confirmed by the Senate, is ultimately answerable within the Executive Branch, to Congress, and in the courts for the investigations, prosecutions, and other activities of the Department, whether politically sensitive or routine. Ultimately, however, we did not find evidence that the meetings between Ohr and CRM officials Swartz, Ahmad, and Weissmann, amongst themselves and with FBI officials Strzok, Lisa Page, and Acting Section Chief 1, progressed beyond discussion to any specific actions that interfered with the MLARS investigation or Department leadership’s oversight of that matter.

V. The Use of Other Confidential Human Sources and Undercover Employees and Compliance with Applicable Policies

In this section, we analyze the FBI’s use of CHSs, other than Steele, and Under Cover Employees (UCEs) in the Crossfire Hurricane investigation, and discuss whether the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. Additionally, we analyze whether the Crossfire Hurricane team’s use of such individuals complied with Department and FBI policies. We also discuss SSA 1’s participation on behalf of the FBI in a strategic intelligence briefing given by the Office of the Director of National Intelligence (ODNI) to candidate Trump and his national security advisors, including Michael Flynn, and a separate strategic intelligence briefing given to candidate

⁵²² Had Ohr and the CRM officials believed that the circumstances involved potential wrongdoing or misconduct, they should have reported their concerns to the OIG or the Department’s Office of Professional Responsibility; they also could have reported their concerns to Congress.

Clinton and her national security advisors, and the observations that SSA 1 made of Flynn and others as a result of his participation in those briefings.

Overall, we determined that the Crossfire Hurricane team tasked several CHSs and UCEs during the 2016 presidential campaign, which resulted in multiple interactions with Carter Page and Papadopoulos, both during and after the time they were affiliated with the Trump campaign, and an interaction with a high-level Trump campaign official who was not a subject of the investigation. The Crossfire Hurricane team also attempted to contact Papadopoulos through additional CHSs, but those efforts were unsuccessful. We further determined that the Crossfire Hurricane team received general information about Page and Manafort from another FBI CHS, but that this CHS had no further role in the Crossfire Hurricane investigation. Additionally, we identified several individuals who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs, who the Crossfire Hurricane team could have tasked, but did not. We found no evidence that the FBI placed any CHSs or UCEs within the Trump campaign or tasked any CHSs or UCEs to report on the Trump campaign. We also did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to use CHSs to interact with Page, Papadopoulos, and the high-level Trump campaign official in the Crossfire Hurricane investigation.

We concluded that the investigative activities undertaken by the Crossfire Hurricane team involving CHSs and UCEs received the necessary FBI approvals and complied with applicable Department and FBI policies. However, we also determined that neither the Department's nor the FBI's policies required the FBI to notify the Department of these investigative activities, and we are unaware of any Department official having had advance knowledge of the FBI's plans to consensually monitor conversations between FBI CHSs and Page, Papadopoulos, and a high-level official of the Trump campaign. We concluded that Department and FBI policies do not, in these circumstances, provide sufficient oversight and accountability for investigative activity that has the potential to gather sensitive information involving protected First Amendment activity. For example, prior to the operation involving the high-level campaign official, SSA 1 told the OIG that he did not remember having a plan in place in case the FBI recorded information that was politically sensitive. We believe that notification to Department officials in such situations would help to ensure that the FBI has planned sufficiently to address the incidental collection of political information, and make an assessment prior to that collection of whether the potential impact on constitutionally protected activity outweighs any potential investigative benefit.

We therefore make several recommendations to strengthen Department and FBI CHS policies to require Department consultation, at a minimum, when tasking a CHS to interact with officials in national political campaigns; to provide additional guidance to FBI handling agents about how to document the affiliations of CHSs who, on their own, participate in political organizations or activities and then voluntarily provide information to the FBI; and to provide FBI supervisors with the information necessary to assess whether to close a CHS, or designate that individual as a "sensitive source," depending on the level of CHS participation in political organizations or activities.

E. Use of CHSs and UCEs

The agents, analysts, and supervisors assigned to the Crossfire Hurricane investigation told us that CHSs are routinely used in FBI counterintelligence investigations, and that they viewed CHS operations as one of the best methods available to quickly obtain information about the predicated allegations in the Crossfire Hurricane investigation, while preventing information about the nature and existence of the investigation from becoming public, and potentially impacting the presidential election. In Chapter Ten we described multiple CHS operations undertaken by the Crossfire Hurricane team, including the tasking of CHSs and UCEs during the 2016 presidential campaign. These investigative activities included numerous CHS interactions with Page and Papadopoulos to collect information about the predicated allegations while both were Trump campaign advisors and after they were no longer affiliated with the Trump campaign. In addition, an FBI CHS was tasked to interact with a high-level Trump campaign official who was not a subject of the Crossfire Hurricane investigation in an effort to gather information potentially relevant to the predicated allegations. We also determined that the FBI attempted to contact Papadopoulos through additional CHSs, but those attempted contacts did not lead to any operational activity.

In our review, we also learned that, in 2016, there were several other individuals who had either a connection to candidate Trump or a role in the Trump campaign, and were also FBI CHSs. Some of these sources were known to and available for use by the Crossfire Hurricane team during the 2016 presidential campaign. The Crossfire Hurricane team received general information about Page and Manafort from one such CHS, but that CHS did not further assist the Crossfire Hurricane team in any way. We found no evidence that any members of the Crossfire Hurricane team ever suggested inserting this CHS into the Trump campaign to gather investigative information. SSA 1 told the OIG, "that was not what we were looking to do." For a different CHS who held a position in the Trump campaign, we learned that the Crossfire Hurricane team decided not to task the CHS, and the FBI Handling Agent minimized contact with the CHS, because of the CHS's campaign involvement. The Crossfire Hurricane team also made no use of an FBI CHS who had a potential opportunity for a private meeting with candidate Trump. That CHS's Handling Agent told the OIG that he "would certainly not be tasking a source to go attend some private meeting with a candidate, any candidate, for president or for other office, to collect the information on what that candidate is saying." Although the Crossfire Hurricane team was aware of these CHSs during the 2016 presidential campaign, we were told that operational use of these CHSs would not have furthered the investigation, and so these CHSs were not tasked with any investigative activities.⁵²³ Moreover, SSA 1 told the OIG that the members of the Crossfire Hurricane team "never [had] any intent, never any

⁵²³ We were troubled by some of the language contained in certain documents we reviewed regarding the use and possible use of some of the CHSs, as we detail in Chapter 10. However, we saw no evidence that the FBI, or specifically the Crossfire Hurricane team, actually used any CHSs as a "passive listening post" for the Trump campaign or to "obtain insight" regarding the incoming Trump Administration.

desire...to collect...campaign or privileged information with regard to the presidential election."

We also learned of two other FBI CHSs, one of whom held a position [REDACTED] and the other of whom [REDACTED]

[REDACTED] We found no evidence that the Crossfire Hurricane team ever knew about the first CHS, who held a position [REDACTED] and, accordingly, no evidence that the first CHS was tasked to do anything as part of the Crossfire Hurricane investigation.

We found that the Crossfire Hurricane team did not learn about the second CHS until months after the election. In 2017, the Crossfire Hurricane team learned about the second CHS after the CHS voluntarily provided to the CHS's Handling Agent, after the campaign was over and prompted by events reported in the media,

[REDACTED] and the Handling Agent forwarded the material, through his supervisor and FBI Headquarters, to the Crossfire Hurricane team. The team determined that [REDACTED]

[REDACTED]. The Handling Agent told us that, when he subsequently informed the Crossfire Hurricane team that the CHS had [REDACTED]

[REDACTED] an Intelligence Analyst assigned to the Crossfire Hurricane team asked the Handling Agent to collect [REDACTED] from the CHS, which the Handling Agent did. We learned that the Crossfire Hurricane team determined that there was not "anything significant" in this [REDACTED], and never tasked the CHS to interact with anyone [REDACTED]

While we found that no action was taken by the Crossfire Hurricane team in response to receiving [REDACTED], we nevertheless were concerned to learn that the Handling Agent for the second CHS [REDACTED] that the CHS had voluntarily provided into the FBI's files, and we promptly notified the FBI upon learning that they were still being maintained in the FBI's files. We further concluded that because the second CHS's Handling Agent did not understand the CHS's political involvement, no assessment was performed by the source's Handling Agent or his supervisors (none of whom were members of the Crossfire Hurricane team) to determine whether the CHS required re-designation as a "sensitive source" or should have been closed during the pendency of the campaign. To address this issue, we recommend the FBI provide additional guidance to handling agents concerning their responsibility to inquire whether their CHS participates in the types of groups or activities that would bring their CHS within the definition of a "sensitive source." Handling agents should document (and update as needed) those affiliations, and any others voluntarily provided to them by the CHS, in the Source Opening Communication, the "Sensitive Categories" portion of each CHS's Quarterly Supervisory Source Report, the "Life Changes" portion of CHS Contact Reports, or as otherwise directed by the FBI, so that the FBI can assess the appropriateness of continuing to use a CHS, particularly where the CHS

is participating in political organizations or activities and then voluntarily providing information to the FBI.

Finally, we found no evidence that the Crossfire Hurricane team tasked any CHSs or UCEs to join the Trump campaign, sent any CHSs or UCEs to campaign offices or to campaign events to collect information for the Crossfire Hurricane investigation, or tasked any CHSs or UCEs to report on the Trump campaign.

F. Compliance with FBI Policies

We determined that the Crossfire Hurricane investigation was opened before any CHSs or UCEs were tasked to interact with any members of the Trump campaign. Once the Crossfire Hurricane investigation was opened, the use of CHSs and UCEs was authorized under the AG Guidelines and the DIOG, which permit use of "all lawful investigative methods in the conduct of a Full Investigation" including specifically "CHS use and recruitment," "consensual monitoring of communications," and "Undercover Operations."⁵²⁴

As noted previously, the Crossfire Hurricane investigation was designated a SIM under DIOG § 10.1.2, because the FBI determined that any potential subjects of the investigation would be "prominent" members of a political campaign. The same designation was assigned to the four individual cases because the FBI determined that the individuals identified as subjects were "prominent" in the Trump campaign. However, the CHS operations undertaken in Crossfire Hurricane did not require heightened review by FBI supervisors or Department approval because, under the DIOG, the operations did not involve the use of "sensitive" sources, "Undisclosed Participation" (UDP) in political organizations, or "sensitive monitoring circumstances." As discussed in Chapter Two, the DIOG requires SAC approval to open a "sensitive" source; SAC approval with notice to the Sensitive Operations Review Committee (a panel that includes Department AAGs or their designees) for UDP in a political organization or other organization exercising First Amendment rights; and Department approval for a CHS to record conversations in a "sensitive monitoring circumstance." We determined that none of these approval requirements applied to the investigative activities undertaken by the Crossfire Hurricane team.

FBI policy defines "sensitive" sources to include CHSs who are political candidates or who are "prominent within a domestic political organization." None of the CHSs tasked in the Crossfire Hurricane investigation fell within these categories, because none of the CHSs were themselves candidates or prominent members of a campaign. The agents, analysts, and supervisors on the Crossfire Hurricane team told the OIG that they did not attempt to recruit or use members of the Trump campaign as CHSs, and we found no evidence suggesting otherwise. However, our interviews with FBI handling agents revealed significant confusion over the meaning

⁵²⁴ AG Guidelines § II.B.4(b)(ii); DIOG §§ 7.3, 7.9(E), 7.9(I), 7.9(U). As noted in Chapter Two, had the investigation been opened as a Preliminary Investigation, rather than a Full Investigation, the use of CHSs and UCEs would similarly have been authorized under the AG Guidelines and the DIOG.

of the phrase "prominent within a domestic political organization," with some agents interpreting that phrase as limited to a person "running for office," and other agents questioning whether a presidential primary campaign was a "domestic political organization." Accordingly, we recommend that the FBI establish guidance to better define this phrase, so that agents understand the meaning of this phrase as it is used in FBI policy.

FBI policies concerning "Undisclosed Participation" (UDP) apply when anyone acting on behalf of the FBI, to include CHSs and UCEs, becomes a member of, or participates in, the activity of an organization without disclosing to the organization their FBI affiliation. These policies likewise did not apply to the Crossfire Hurricane case because we found no evidence that any of the FBI CHSs or UCEs used in Crossfire Hurricane joined or participated in the Trump campaign at all, and certainly not at the direction of, or otherwise on behalf of, the FBI. During our review, this issue briefly arose because we learned that one of the subjects of the Crossfire Hurricane investigation had invited an FBI CHS to join the Trump campaign, prior to the opening of the investigation. However, we found that when the Crossfire Hurricane team learned about this invitation following the investigation's opening, the team did not consider using this opportunity to engage in UDP. Rather, every FBI witness we interviewed said they would not have done so even if the FBI CHS had actually wanted to join the campaign. Strzok's reaction to the possibility—"[O]h god no. Absolutely not"—and the reaction Case Agent 2 attributed to the OGC attorneys—"no freaking way"—were indicative of the reactions we heard from all members of the Crossfire Hurricane team when we questioned them about whether they considered the possibility of inserting an FBI CHS into the Trump campaign to collect investigative information. None of the documents we reviewed indicated that any member of the Crossfire Hurricane team ever advocated for that type of investigative activity.

The use of CHSs and UCEs by the Crossfire Hurricane team also did not present a "sensitive monitoring circumstance," as defined by the AG Guidelines and the DIOG. As described in these policies, a "sensitive monitoring circumstance" arises when the FBI seeks to record communications with officials who have already been elected or appointed, such as Members of Congress, federal judges, or high ranking members of the executive branch. The AG Guidelines and the DIOG do not require prior notice to, or approval by, the Department when the FBI uses a CHS to consensually monitor communications with candidates for political office or prominent officials within their campaigns.

Because the CHS operations conducted during the Crossfire Hurricane investigation did not implicate the FBI's policies regarding sensitive sources, UDP, or sensitive monitoring circumstances, Department or higher level FBI notice or approval was not required for such operations. Under the CHSPG, which vests SSAs with daily oversight responsibility for CHSs in routine investigations, approval at the SSA level was sufficient.⁵²⁵ The only relevant exception for the Crossfire

⁵²⁵ CHSPG § 2.1.1.

Hurricane investigation were counterintelligence CHS extraterritorial operations, which required approval by an FBI Assistant Director, and which we found received approval by Priestap.⁵²⁶ We determined that the day-to-day decisions concerning whether and how to use CHSs and UCEs in the Crossfire Hurricane investigation were made by the investigative team, with the approval of SSA 1 as required by FBI policy. We further found that SSA 1 briefed the FBI supervisors in his chain of command—Strzok, Priestap, and on one occasion McCabe—about the CHS operations planned by the investigative team. Priestap told the OIG that he remembered knowing about, and approving of, all of the CHS operations in Crossfire Hurricane, even though review and approval at his level was not required by the DIOG for operations conducted within the United States.

We further concluded that the use of CHSs and UCEs in the Crossfire Hurricane investigation complied with the DIOG's requirement that "investigative activities be conducted for an authorized purpose."⁵²⁷ As discussed previously, the Crossfire Hurricane investigation was opened for an authorized purpose—which means "to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence."⁵²⁸ The DIOG also provides that the underlying purpose of the investigative activity "may not be solely to monitor the exercise of constitutional rights...."⁵²⁹ While the investigative activity in this case clearly implicated First Amendment protected activity, we did not find evidence that members of Crossfire Hurricane team attempted to use CHSs or UCEs for the sole purpose of monitoring activities protected by the First Amendment. Rather, we determined that these investigative activities were focused on obtaining information that would enable investigators to better assess the predicated information. Indeed, a significant amount of the information gathered during these operations was inconsistent with the Steele election reporting and should have been provided to Department attorneys, but was not.

For example, our review of CHS interactions with Page indicated that they were initiated to obtain information relevant to the allegations under investigation. Page was asked about his ongoing ties to Russia, contacts with Russian intelligence officials, views on media reports linking the Trump campaign and Russia, involvement in the committee responsible for the Republican platform language concerning aiding Ukraine, and views on the possibility of an "October Surprise" if the Trump campaign could access information obtained by the Russians from the

⁵²⁶ As described in Chapter Two, the [REDACTED]

[REDACTED] Because the Crossfire Hurricane investigation at the outset was a national security investigation, the [REDACTED]

⁵²⁷ DIOG § 4.1.2.

⁵²⁸ DIOG § 7.2.

⁵²⁹ DIOG § 4.1.2.

DNC emails. Similarly, CHS operations aimed at Papadopoulos were linked to the allegations under investigation in Crossfire Hurricane. For example, when Papadopoulos was asked about the Trump campaign, the questions were focused on obtaining information about other Crossfire Hurricane subjects (Page and Flynn) or determining whether the Trump campaign benefitted from, or anyone in the Trump campaign had knowledge of, Russian assistance or the WikiLeaks release of information that was damaging to the Clinton campaign. Papadopoulos's response—that the Trump campaign was not "advocat[ing] for this type of activity because at the end of the day it's...illegal"—clearly pertained to the issues under investigation and, as discussed elsewhere in this report, should have been provided to the Department's attorneys for evaluation as part of the FISA applications. Likewise, the high-level Trump campaign official was asked about the role of three Crossfire Hurricane subjects—Page, Papadopoulos, and Manafort—in the Trump campaign, and also asked about allegations in public reports concerning Russian interference in the 2016 U.S. elections, the campaign's response to ideas featured in Page's Moscow speech, and the possibility of an "October Surprise." These areas of inquiry were focused on the allegations under investigation in an effort to elicit pertinent information.

However, the CHS and the high-level campaign official [REDACTED]

[REDACTED]. We found that the Crossfire Hurricane team made no use of any information collected from the high-level Trump campaign official, because the team determined that none of the information gathered was "germane" to the allegations under investigation. However, as noted above, we were concerned that the Crossfire Hurricane team did not recall having in place a plan, prior to the operation involving the high-level campaign official, to address the possible collection of politically sensitive information.

We also looked for, but did not find, documentary evidence that investigative activities involving CHSs and UCEs during Crossfire Hurricane were undertaken for political purposes, rather than investigative objectives. Similarly, none of the witnesses provided any such information to us. In addition, we evaluated the roles of Lisa Page and Strzok in decision making about how to use CHSs and UCEs in the Crossfire Hurricane investigation. We learned that the Crossfire Hurricane case agents had limited and, in some cases, no interaction with Lisa Page, and that she had no authority over, or even involvement in, decision making concerning the use of CHSs or UCEs. Although we found that Strzok oversaw aspects of Crossfire Hurricane, and was briefed regarding the plans for the use of CHSs and UCEs, we found no evidence that Strzok gave specific directions as to which CHSs to task and how to task them, or acted as the sole decision maker for any of the CHS or UCE operations. In addition, none of the Crossfire Hurricane team members stated that they believed Strzok's political views impacted the use of CHSs or UCEs, and we did not find any documentary evidence suggesting such an impact.

Although we found that the Crossfire Hurricane team complied with all applicable Department and FBI policies regarding the use of CHSs, we are

concerned that current FBI and Department policies are not sufficient to ensure appropriate oversight and accountability when such operations potentially implicate sensitive, constitutionally protected activity. During Crossfire Hurricane, the FBI conducted multiple CHS operations that involved interactions with members of a major party candidate's presidential campaign, including a high-level campaign official who was not an investigative subject. Under current Department guidelines and FBI policy, those operations only required the approval of an FBI SSA, a first-level supervisor (although here, as noted above, an FBI Assistant Director approved of all of the CHS operations). The FBI was not required to notify the Department of those investigative activities and we are unaware of any Department official having had advance knowledge of the FBI's plan to consensually monitor conversations between CHSs and Page and Papadopoulos, both during and after the time they were affiliated with the Trump campaign, and a conversation with a high-level Trump campaign official. The then Chief of NSD's Counterintelligence and Export Control Section David Laufman told the OIG that he believed such activity should require Department authorization. We agree.

We recommend that the Department and FBI assess the definition of a "sensitive monitoring circumstance" contained in the AG Guidelines and the DIOG to determine whether to expand its scope to include consensual monitoring of major party domestic political candidates for federal office or individuals prominent within those domestic political organizations, so that at a minimum, Department consultation is required when tasking a CHS to interact with officials in national political campaigns. Such a change would be consistent with other currently-existing FBI and Department policies intended to ensure appropriate approval and oversight where certain constitutionally protected activity is concerned. Examples include the FBI's heightened approval requirements for sensitive UDP that is likely to affect the exercise of First Amendment rights by members of an organization, the FBI's definition of "Sensitive Investigative Matters" (which includes domestic political candidates and prominent members of domestic political organizations), the Department's approval requirements for consensual monitoring when investigating alleged misconduct by a senior member of the executive branch or a Member of Congress, and the Department's requirement for Attorney General approval for toll record subpoenas and search warrants directed at members of the media. We believe the same considerations that resulted in the adoption of these provisions to protect the exercise of constitutional rights similarly apply to the situation present in Crossfire Hurricane, where the Department and FBI were conducting CHS operations of officials affiliated with a major party candidate's national political campaign.

G. Participation in ODNI Strategic Intelligence Briefing

As described in Section V of Chapter Ten, we learned during the course of our review that in August 2016, the supervisor of the Crossfire Hurricane investigation, SSA 1, participated on behalf of the FBI in an ODNI strategic intelligence briefing given to candidate Trump and his national security advisors, including Flynn, and in a separate briefing given to candidate Clinton and her national security advisors. The stated purpose of the FBI's counterintelligence and security portion of the briefings was to provide the recipients "a baseline on the

presence and threat posed by foreign intelligence services to the National Security of the U.S." However, we found the FBI also had an investigative purpose when it specifically selected SSA 1, a supervisor for the Crossfire Hurricane investigation, to provide the FBI briefings. SSA 1 was selected, in part, because Flynn, who would be attending the briefing with candidate Trump, was a subject in one of the ongoing investigations related to Crossfire Hurricane. SSA 1 told us that the briefing provided him "the opportunity to gain assessment and possibly some level of familiarity with [Flynn]. So, should we get to the point where we need to do a subject interview...I would have that to fall back on."

After the meeting, SSA 1 drafted an Electronic Communication (EC) documenting his participation in the ODNI strategic intelligence briefing attended by Trump, Flynn, and another advisor, and added the EC to the Crossfire Hurricane investigative file. The EC described the purpose, location, and attendees of the briefing, and recounted in summary fashion the portion of the briefing SSA 1 provided. Woven into the briefing summary were questions posed to SSA 1 by Trump and Flynn, and SSA 1's responses, as well as comments made by Trump and Flynn. SSA 1 told us that he documented those instances where he was engaged by the attendees, as well as anything related to the FBI or pertinent to the Crossfire Hurricane investigation, such as comments about the Russian Federation. SSA 1 said that he also documented information that may not have been relevant at the time he recorded it, but might prove relevant in the future. SSA 1 told us that he did not memorialize in writing the briefing he participated in of candidate Clinton and her national security advisors because the attendees did not include a subject of an FBI investigation, and because there was nothing from the other briefings that was of investigative value to the Crossfire Hurricane team.

As we described earlier in connection with the FBI's decision not to conduct defensive briefings to the Trump campaign about the information the FBI received from the FFG, we did not identify any Department or FBI policy that applied to that decision and determined that those decisions are judgment calls left to the discretion of FBI officials. Similarly, we did not identify any Department or FBI policy or guidance that specifically addresses using FBI counterintelligence and security briefings to members of political campaigns for investigative purposes, as occurred in Crossfire Hurricane. We believe there should be.

Baker told us that the decision to select SSA 1 to participate in the ODNI briefing because of his involvement with Crossfire Hurricane was reached by consensus among a group that he recalled involved multiple FBI officials, including McCabe.⁵³⁰ If accurate, SSA 1's selection at least was discussed and approved by high-level officials at the FBI, which we believe should occur in advance of such activity. However, there is nothing in FBI policy requiring high-level approval. Further, the Department was not informed that the FBI was using the ODNI briefing of a presidential candidate for investigative purposes, nor was ODNI made aware that the individual providing the FBI's portion of the briefing would be

⁵³⁰ McCabe told us that it was possible he participated in conversations about whether SSA 1 should conduct the briefings, but could not recall any.

memorializing information from the briefing into an FBI case file for investigative purposes.

ODNI strategic intelligence briefings of the type that were provided to candidates Trump and Clinton convey sensitive information to familiarize the recipients with certain national security issues; and the FBI's counterintelligence and security portion of the briefings highlights why the recipients, once given access to such information, should assume they will be targets of foreign intelligence services. The briefings are important because they attempt to prepare both national political party candidates, on an equal footing, for the national security threats facing them if elected. The transfer of information, the exchanges of questions and answers that can occur, and the effectiveness of this process rely on an expectation of trust and good faith among the participants. The FBI's use of such briefings for investigative purposes potentially interferes with this expectation and could frustrate the purpose of future counterintelligence briefings. For this reason, we recommend that any decision to use FBI counterintelligence and security briefings to members of political campaigns for investigative purposes should require the approval of senior leaders at both the FBI and the Department, and approval should be documented and based on factors set forth in FBI policy.

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CHAPTER TWELVE CONCLUSIONS AND RECOMMENDATIONS

I. Conclusions

In July 2016, 3 weeks after then FBI Director James Comey announced the conclusion of the FBI's "Midyear Exam" investigation into presidential candidate Hillary Clinton's handling of government emails during her tenure as Secretary of State, the FBI received reporting from a Friendly Foreign Government (FFG) that, in a May 2016 meeting with the FFG, Trump campaign foreign policy advisor George Papadopoulos "suggested the Trump team had received some kind of a suggestion" from Russia that it could assist in the election process with the anonymous release of information during the campaign that would be damaging to candidate Clinton and President Obama. Days later, on July 31, the FBI initiated the Crossfire Hurricane investigation that is the subject of this report.

As we noted last year in our review of the Midyear investigation, the FBI has developed and earned a reputation as one of the world's premier law enforcement agencies in significant part because of its tradition of professionalism, impartiality, non-political enforcement of the law, and adherence to detailed policies, practices, and norms. It was precisely these qualities that were required as the FBI initiated and conducted Crossfire Hurricane. However, as we describe in this report, our review identified significant concerns with how certain aspects of the investigation were conducted and supervised, particularly the FBI's failure to adhere to its own standards of accuracy and completeness when filing applications for Foreign Intelligence Surveillance Act (FISA) authority to surveil Carter Page, a U.S. person who was connected to the Donald J. Trump for President Campaign. We also identified what we believe is an absence of sufficient policies to ensure appropriate Department oversight of significant investigative decisions that could affect constitutionally protected activity.

The Opening of Crossfire Hurricane and the Use of Confidential Human Sources

The decision to open the Crossfire Hurricane investigation was made by the FBI's then Counterintelligence Division (CD) Assistant Director (AD), E.W. "Bill" Priestap, and reflected a consensus reached after multiple days of discussions and meetings among senior FBI officials. We concluded that AD Priestap's exercise of discretion in opening the investigation was in compliance with Department and FBI policies, and we did not find documentary or testimonial evidence that political bias or improper motivation influenced his decision. While the information in the FBI's possession at the time was limited, in light of the low threshold established by Department and FBI predication policy, we found that Crossfire Hurricane was opened for an authorized investigative purpose and with sufficient factual predication.

However, we also determined that, under Department and FBI policy, the decision whether to open the Crossfire Hurricane counterintelligence investigation,

which involved the activities of individuals associated with a national major party campaign for president, was a discretionary judgment call left to the FBI. There was no requirement that Department officials be consulted, or even notified, prior to the FBI making that decision. We further found that, consistent with this policy, the FBI advised supervisors in the Department's National Security Division (NSD) of the investigation only after it had been initiated. As we detail in Chapter Two, high-level Department notice and approval is required in other circumstances where investigative activity could substantially impact certain civil liberties, and that notice allows senior Department officials to consider the potential constitutional and prudential implications in advance of these activities. We concluded that similar advance notice should be required in circumstances such as those that were present here.

Shortly after the FBI opened the Crossfire Hurricane investigation, the FBI conducted several consensually monitored meetings between FBI confidential human sources (CHS) and individuals affiliated with the Trump campaign, including a high-level campaign official who was not a subject of the investigation. We found that the CHS operations received the necessary approvals under FBI policy; that an Assistant Director knew about and approved of each operation, even in circumstances where a first-level supervisory special agent could have approved the operations; and that the operations were permitted under Department and FBI policy because their use was not for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. We did not find any documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to conduct these operations. Additionally, we found no evidence that the FBI attempted to place any CHSs within the Trump campaign, recruit members of the Trump campaign as CHSs, or task CHSs to report on the Trump campaign.

However, we are concerned that, under applicable Department and FBI policy, it would have been sufficient for a first-level FBI supervisor to authorize the sensitive domestic CHS operations undertaken in Crossfire Hurricane, and that there is no applicable Department or FBI policy requiring the FBI to notify Department officials of a decision to task CHSs to consensually monitor conversations with members of a presidential campaign. Specifically, in Crossfire Hurricane, where one of the CHS operations involved consensually monitoring a high-level official on the Trump campaign who was not a subject of the investigation, and all of the operations had the potential to gather sensitive information of the campaign about protected First Amendment activity, we found no evidence that the FBI consulted with any Department officials before conducting the CHS operations—and no policy requiring the FBI to do so. We therefore believe that current Department and FBI policies are not sufficient to ensure appropriate oversight and accountability when such operations potentially implicate sensitive, constitutionally protected activity, and that requiring Department consultation, at a minimum, would be appropriate.

The FISA Applications to Conduct Surveillance of Carter Page

One investigative tool for which Department and FBI policy expressly require advance approval by a senior Department official is the seeking of a court order under the Foreign Intelligence Surveillance Act (FISA). When the Crossfire Hurricane team first proposed seeking a FISA order targeting Carter Page in mid-August 2016, FBI attorneys assisting the investigation considered it a “close call” whether they had developed the probable cause necessary to obtain the order, and a FISA order was not requested at that time. However, in September 2016, immediately after the Crossfire Hurricane team received reporting from Christopher Steele concerning Page’s alleged recent activities with Russian officials, FBI attorneys advised the Department that the team was ready to move forward with a request to obtain FISA authority to surveil Page. FBI and Department officials told us the Steele reporting “pushed [the FISA proposal] over the line” in terms of establishing probable cause. FBI leadership supported relying on Steele’s reporting to seek a FISA order targeting Page after being advised of, and giving consideration to, concerns expressed by a Department attorney that Steele may have been hired by someone associated with a rival candidate or campaign.

The authority under FISA to conduct electronic surveillance and physical searches targeting individuals significantly assists the government’s efforts to combat terrorism, clandestine intelligence activity, and other threats to the national security. At the same time, the use of this authority unavoidably raises civil liberties concerns. FISA orders can be used to surveil U.S. persons, like Carter Page, and in some cases the surveillance will foreseeably collect information about the individual’s constitutionally protected activities, such as Page’s legitimate activities on behalf of a presidential campaign. Moreover, proceedings before the Foreign Intelligence Surveillance Court (FISC)—which is responsible for ruling on applications for FISA orders—are *ex parte*, meaning that unlike most court proceedings, the government is present but the government’s counterparty is not. In addition, unlike the use of other intrusive investigative techniques (such as wiretaps under Title III and traditional criminal search warrants) that are granted in *ex parte* hearings but can potentially be subject to later court challenge, FISA orders have not been subject to scrutiny through subsequent adversarial proceedings.

In light of these concerns, Congress through the FISA statute, and the Department and FBI through policies and procedures, have established important safeguards to protect the FISA application process from irregularities and abuse. Among the most important are the requirements in FBI policy that every FISA application must contain a “full and accurate” presentation of the facts, and that agents must ensure that all factual statements in FISA applications are “scrupulously accurate.” These are the standards for all FISA applications, regardless of the investigation’s sensitivity, and it is incumbent upon the FBI to meet them in every application. That said, in the context of an investigation involving persons associated with a presidential campaign, where the target of the FISA is a former campaign official and the goal of the FISA is to uncover, among other things, information about the individual’s allegedly illegal campaign-related activities, members of the Crossfire Hurricane investigative team should have

anticipated, and told us they in fact did anticipate, that these FISA applications would be subjected to especially close scrutiny.

Nevertheless, we found that members of the Crossfire Hurricane team failed to meet the basic obligation to ensure that the Carter Page FISA applications were "scrupulously accurate." We identified significant inaccuracies and omissions in each of the four applications—7 in the first FISA application and a total of 17 by the final renewal application. For example, the Crossfire Hurricane team obtained information from Steele's Primary Sub-source in January 2017 that raised significant questions about the reliability of the Steele reporting that was used in the Carter Page FISA applications. But members of the Crossfire Hurricane team failed to share the information with the Department, and it was therefore omitted from the second and third renewal applications. All of the applications also omitted information the FBI had obtained from another U.S. government agency detailing its prior relationship with Page, including that Page had been approved as an operational contact for the other agency from 2008 to 2013, and that Page had provided information to the other agency concerning his prior contacts with certain Russian intelligence officers, one of which overlapped with facts asserted in the FISA application.

As a result of the 17 significant inaccuracies and omissions we identified, relevant information was not shared with, and consequently not considered by, important Department decision makers and the court, and the FISA applications made it appear as though the evidence supporting probable cause was stronger than was actually the case. We also found basic, fundamental, and serious errors during the completion of the FBI's factual accuracy reviews, known as the Woods Procedures, which are designed to ensure that FISA applications contain a full and accurate presentation of the facts.

We do not speculate whether the correction of any particular misstatement or omission, or some combination thereof, would have resulted in a different outcome. Nevertheless, the Department's decision makers and the court should have been given complete and accurate information so that they could meaningfully evaluate probable cause before authorizing the surveillance of a U.S. person associated with a presidential campaign. That did not occur, and as a result, the surveillance of Carter Page continued even as the FBI gathered information that weakened the assessment of probable cause and made the FISA applications less accurate.

We determined that the inaccuracies and omissions we identified in the applications resulted from case agents providing wrong or incomplete information to Department attorneys and failing to identify important issues for discussion. Moreover, we concluded that case agents and SSAs did not give appropriate attention to facts that cut against probable cause, and that as the investigation progressed and more information tended to undermine or weaken the assertions in the FISA applications, the agents and SSAs did not reassess the information supporting probable cause. Further, the agents and SSAs did not follow, or even appear to know, certain basic requirements in the Woods Procedures. Although we did not find documentary or testimonial evidence of intentional misconduct on the part of the case agents who assisted NSD's Office of Intelligence (OI) in preparing

the applications, or the agents and supervisors who performed the Woods Procedures, we also did not receive satisfactory explanations for the errors or missing information. We found that the offered explanations for these serious errors did not excuse them, or the repeated failures to ensure the accuracy of information presented to the FISC.

We are deeply concerned that so many basic and fundamental errors were made by three separate, hand-picked investigative teams; on one of the most sensitive FBI investigations; after the matter had been briefed to the highest levels within the FBI; even though the information sought through use of FISA authority related so closely to an ongoing presidential campaign; and even though those involved with the investigation knew that their actions were likely to be subjected to close scrutiny. We believe this circumstance reflects a failure not just by those who prepared the FISA applications, but also by the managers and supervisors in the Crossfire Hurricane chain of command, including FBI senior officials who were briefed as the investigation progressed. We do not expect managers and supervisors to know every fact about an investigation, or senior leaders to know all the details of cases about which they are briefed. However, especially in the FBI's most sensitive and high-priority matters, and especially when seeking court permission to use an intrusive tool such as a FISA order, it is incumbent upon the entire chain of command, including senior officials, to take the necessary steps to ensure that they are sufficiently familiar with the facts and circumstances supporting and potentially undermining a FISA application in order to provide effective oversight consistent with their level of supervisory responsibility. Such oversight requires greater familiarity with the facts than we saw in this review, where time and again during OIG interviews FBI managers, supervisors, and senior officials displayed a lack of understanding or awareness of important information concerning many of the problems we identified.

In the preparation of the FISA applications to surveil Carter Page, the Crossfire Hurricane team failed to comply with FBI policies, and in so doing fell short of what is rightfully expected from a premier law enforcement agency entrusted with such an intrusive surveillance tool. In light of the significant concerns identified with the Carter Page FISA applications and the other issues described in this report, the OIG today initiated an audit that will further examine the FBI's compliance with the Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations. We also make the following recommendations to assist the Department and the FBI in avoiding similar failures in future investigations.

II. Recommendations

For the reasons fully described in previous chapters, we recommend the following:

1. The Department and the FBI should ensure that adequate procedures are in place for the Office of Intelligence (OI) to obtain all relevant and accurate information, including access to Confidential Human Source

(CHS) information, needed to prepare FISA applications and renewal applications. This effort should include revising:

- a. the FISA Request Form: to ensure information is identified for OI: (i) that tends to disprove, does not support, or is inconsistent with a finding or an allegation that the target is a foreign power or an agent of a foreign power, or (ii) that bears on the reliability of every CHS whose information is relied upon in the FISA application, including all information from the derogatory information sub-file, recommended below;
 - b. the Woods Form: (i) to emphasize to agents and their supervisors the obligation to re-verify factual assertions repeated from prior applications and to obtain written approval from CHS handling agents of all CHS source characterization statements in applications, and (ii) to specify what steps must be taken and documented during the legal review performed by an FBI Office of General Counsel (OGC) line attorney and SES-level supervisor before submitting the FISA application package to the FBI Director for certification;
 - c. the FISA Procedures: to clarify which positions may serve as the supervisory reviewer for OGC; and
 - d. taking any other steps deemed appropriate to ensure the accuracy and completeness of information provided to OI.
2. The Department and FBI should evaluate which types of Sensitive Investigative Matters (SIM) require advance notification to a senior Department official, such as the Deputy Attorney General, in addition to the notifications currently required for SIMs, especially for case openings that implicate core First Amendment activity and raise policy considerations or heighten enterprise risk, and establish implementing policies and guidance, as necessary.
 3. The FBI should develop protocols and guidelines for staffing and administering any future sensitive investigative matters from FBI Headquarters.
 4. The FBI should address the problems with the administration and assessment of CHSs identified in this report and, at a minimum, should:
 - a. revise its standard CHS admonishment form to include a prohibition on the disclosure of the CHS's relationship with the FBI to third parties absent the FBI's permission, and assess the need to include other admonishments in the standard CHS admonishments;

- b. develop enhanced procedures to ensure that CHS information is documented in Delta, including information generated from Headquarters-led investigations, substantive contacts with closed CHSs (directly or through third parties), and derogatory information. We renew our recommendation that the FBI create a derogatory information sub-file in Delta;
 - c. assess VMU's practices regarding reporting source validation findings and non-findings;
 - d. establish guidance for sharing sensitive information with CHSs;
 - e. establish guidance to handling agents for inquiring whether their CHS participates in the types of groups or activities that would bring the CHS within the definition of a "sensitive source," and ensure handling agents document (and update as needed) those affiliations and any others voluntarily provided to them by the CHS in the Source Opening Communication, the "Sensitive Categories" portion of each CHS's Quarterly Supervisory Source Report, the "Life Changes" portion of CHS Contact Reports, or as otherwise directed by the FBI so that the FBI can assess whether active CHSs are engaged in activities (such as political campaigns) at a level that might require re-designation as a "sensitive source" or necessitate closure of the CHS; and
 - f. revise its CHS policy to address the considerations that should be taken into account and the steps that should be followed before and after accepting information from a closed CHS indirectly through a third party.
5. The Department and FBI should clarify the following terms in their policies:
- a. assess the definition of a "Sensitive Monitoring Circumstance" in the AG Guidelines and the FBI's DIOG to determine whether to expand its scope to include consensual monitoring of a domestic political candidate or an individual prominent within a domestic political organization, or a subset of these persons, so that consensual monitoring of such individuals would require consultation with or advance notification to a senior Department official, such as the Deputy Attorney General; and
 - b. establish guidance, and include examples in the DIOG, to better define the meaning of the phrase "prominent in a domestic political organization" so that agents understand which campaign officials fall within that definition as it relates to "Sensitive Investigative Matters," "Sensitive UDP," and the designation of "sensitive sources." Further, if the Department expands the scope of "Sensitive Monitoring Circumstance," as

recommended above, the FBI should apply the guidance on "prominent in a domestic political organization" to "Sensitive Monitoring Circumstance" as well.

6. The FBI should ensure that appropriate training on DIOG § 4 is provided to emphasize the constitutional implications of certain monitoring situations and to ensure that agents account for these concerns, both in the tasking of CHSs and in the way they document interactions with and tasking of CHSs.
7. The FBI should establish a policy regarding the use of defensive and transition briefings for investigative purposes, including the factors to be considered and approval by senior leaders at the FBI with notice to a senior Department official, such as the Deputy Attorney General.
8. The Department's Office of Professional Responsibility should review our findings related to the conduct of Department attorney Bruce Ohr for any action it deems appropriate. Ohr's current supervisors in the Department's Criminal Division should also review our findings related to Ohr's performance for any action they deem appropriate.
9. The FBI should review the performance of all employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers, supervisors, and senior officials in the chain of command of the Carter Page investigation, for any action deemed appropriate.

APPENDIX 1

WOODS PROCEDURES⁵³¹
FIRST FISA APPLICATION

Factual Assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document shows that the factual assertion is inaccurate
The DNI commented that this influence included providing money to particular candidates or providing disinformation.	5		X	
Although Page did not provide any specific details to refute, dispel, or clarify the media reporting, he made vague statements that minimized his activities.	27			X
In or about May 2016, Buryakov was sentenced to 30 months in prison.	FN 6	X		
[Steele] is a former [redacted] and has been an FBI source since in or about October 2013. [Steele's] reporting has been corroborated and used in criminal proceedings and the FBI assesses [Steele] to be reliable. [Steele] has been compensated approx. \$95,000 by the FBI and the FBI is unaware of any derogatory information pertaining to [Steele]. ⁵³²	FN 8	X		
[Steele] reported the information contained herein to the FBI over the course of several meetings with the FBI from in or about June 2016 through August 2016.	FN 8	X		
[Steele] told the FBI that he/she only provided this information to the business associate and the FBI.	FN 18			X
Since that time, Source #2 has routinely provided reliable information that has been corroborated by the FBI.	FN 20	X		
Source #2 has been compensated in excess of [redacted] since 2008.	FN 20	X		

⁵³¹ This Appendix describes errors we identified in the Woods process for the four Carter Page FISA applications. We did not examine the "facilities" section of the applications. This Appendix does not include non-Woods-related errors in the applications described in Chapters Five and Eight. As described in Chapter Two, the Woods Procedures seek to ensure the accuracy of every factual assertion in a FISA application. These procedures require that the case agent who requests an application create and maintain a "Woods File" that contains: (1) supporting documentation for every factual assertion contained in the application, and (2) results and supporting documentation of the required searches and verifications. In this appendix, we identify each factual assertion in the FISA applications for which we found (1) no supporting documentation in the Woods File, (2) purported supporting documentation in the Woods File that did not state the fact asserted in the FISA application, or (3) purported supporting documentation in the Woods File that actually indicates the fact asserted is inaccurate.

⁵³² The Woods Procedures require that when an application contains reporting from a Confidential Human Source (CHS), the Woods File must contain documentation from the CHS handling agent verifying that the handling agent has reviewed the facts on the CHS's background and reliability and that the representations in the FISA about the CHS are accurate.

APPENDIX 1

**WOODS PROCEDURES
RENEWAL APPLICATION NO. 1**

Factual assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document shows that the factual assertion is inaccurate
The DNI commented that this influence included providing money to particular candidates or providing disinformation.	6		X	
Although Page did not provide any specific details to refute, dispel, or clarify the media reporting, he made vague statements that minimized his activities.	29			X
According to Source #2, Page initially attempted to distance the think tank from Russian funding.	35	X		
Papadopoulos is a current subject of an FBI investigation. ⁵³³	FN 3	X		
In or about May 2016, Buryakov was sentenced to 30 months in prison.	FN 7	X		
[Steele] is a former [REDACTED] and has been an FBI source since in or about October 2013. [Steele] has been compensated approx. \$95,000 by the FBI. [T]he FBI assesses [Steele] to be reliable is previous reporting from [Steele] has been corroborated and used in criminal proceedings.	FN 9	X		
[I]n or about October 2016, the FBI suspended its relationship with [Steele] due to [Steele's] unauthorized disclosure of information to the press.	FN 9		X	
[Steele] reported the information contained therein to the FBI over the course of several meetings with the FBI from in or about June 2016 through August 2016.	FN 9	X		
[Steele] told the FBI that he/she only provided this information to the business associate and the FBI.	FN 19			X
Since that time, Source #2 has routinely provided reliable information that has been corroborated by the FBI.	FN 21	X		
Source #2 has been compensated in excess of [REDACTED] since 2008.	FN 21	X		

⁵³³ Although the Crossfire Hurricane team knew the FBI had an ongoing investigation of Papadopoulos, the Woods File did not contain documentation supporting this factual assertion. The Woods Procedures do not exempt information known to the case agent from having supporting documentation.

APPENDIX 1

**WOODS PROCEDURES
RENEWAL APPLICATION NO. 2⁵³⁴**

Factual assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document shows that the factual assertion is inaccurate
The DNI commented that this influence included providing money to particular candidates or providing disinformation.	6		X	
Although Page did not provide any specific details to refute, dispel, or clarify the media reporting, he made vague statements that minimized his activities.	30			X
According to Source #2, Page initially attempted to distance the think tank from Russian funding.	35	X		
Page stated that he believed that he was the subject of electronic surveillance by the U.S. government.	35	X		
The FBI's ongoing investigation has revealed that Page has moved out of his New York City residence and does not currently maintain a permanent address; rather Page lives in and out of hotels inside New York City and other cities.	36	X		
Court-authorized [REDACTED] revealed a document titled [REDACTED]. " The document outlines what appear to be talking points that are meant to counter media reports that cast Page in a negative light.	42	X		
At a later point in the interview, after the FBI explained to Page how Page could be viewed as having a source-handler or co-optee relationship with the Russian intelligence officers, Page claimed that he believed that he was "on the books," but that he only provided the Russian intelligence officers with "immaterial non-public" information.	46-7	X		
Also during the interviews, Page denied ever meeting with Sechin or Divyekin.	47	X		

⁵³⁴ The Woods File for Renewal Application No. 2 contains a piece of paper that states "Strat Plan" and another piece of paper that states "New 302," "Feb. Article," and "March Article." The case agent who compiled the Woods File for this application told us that these pieces of paper were "placeholders" he inserted into the file to indicate to the SSA reviewer that a supporting document existed, but that a copy of it was not placed into the file. We do not believe these placeholders met the Woods requirements because the descriptions of the referenced documents were vague and it was not clear to us why the actual documents could not have been included in the Woods File. We also observed that there was no notation or other record indicating that the agent and supervisor performing the factual accuracy review in fact examined the documents identified by the placeholders.

APPENDIX 1

Factual assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document shows that the factual assertion is inaccurate
As of March 2017, the FBI has conducted several interviews with Papadopoulos. During these interviews, Papadopoulos confirmed that he met with officials from the above-referenced friendly foreign government, but he denied that he discussed anything related to the Russian Government during these meetings.	FN 4			X
In or about May 2016, Buryakov was sentenced to 30 months in prison.	FN 8	X		
[Steele] is a former [redacted] and has been an FBI source since in or about October 2013. [Steele] has been compensated approx. \$95,000 by the FBI. [T]he FBI assesses [Steele] to be reliable as previous reporting from [Steele] has been corroborated and used in criminal proceedings.	FN 10	X		
[I]n or about October 2016, the FBI suspended its relationship with [Steele] due to [Steele's] unauthorized disclosure of information to the press.	FN 10		X	
[Steele] reported the information contained therein to the FBI over the course of several meetings with the FBI from in or about June 2016 through August 2016.	FN 10	X		
[Steele] told the FBI that he/she only provided this information to the business associate and the FBI.	FN 20			X
Since that time, Source #2 has routinely provided reliable information that has been corroborated by the FBI.	FN 22	X		
Source #2 has been compensated in excess of [redacted] since 2008.	FN 22	X		

APPENDIX 1

**WOODS PROCEDURES
RENEWAL APPLICATION NO. 3⁵³⁵**

Factual assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document indicates the factual assertion is inaccurate
The DNI commented that this influence included providing money to particular candidates or providing disinformation.	6		X	
Russian President Vladimir Putin said in or about September 2016 that Russia was not responsible for the hack, but that the release of the DNC documents was a net positive: "The important thing is the content that was given to the public."	7	X		
U.S. Person #1 recalled an instance where Page was picked-up in a chauffeured car and it was rumored at that time that Page had met with Igor Sechin.	21		X	
Although Page did not provide any specific details to refute, dispel, or clarify the media reporting, he made vague statements that minimized his activities.	33			X
Court-authorized [REDACTED] [REDACTED] that appears to confirm that Page did, in fact, meet with such officials.	35	X		
Court-authorized [REDACTED] Page planned to visit members or employees of "Inter RAO."	42	X		
According to Source #2, Page initially attempted to distance the think tank from Russian funding. When Source #2 reminded Page of his previous statement regarding the "open checkbook," Page did not refute his previous comment and provided some reassurance to Source #2 about the likelihood of Russian financial support.	44	X		
Court-authorized [REDACTED] [REDACTED] The document outlines what appear to be talking points that are meant to counter media reports that cast Page in a negative light.	47-8	X		

⁵³⁵ Similar to the Woods File for Renewal Application No. 2, the file for Renewal Application 3 contains a "placeholder" piece of paper that states "Strat Plan," indicating to the SSA reviewer that a supporting document existed for the factual assertion, but that it was not placed into the Woods File. For the reasons noted above, we do not believe this placeholder met the Woods requirements.

APPENDIX 1

Factual assertion in FISA Application	Page # or FN	No supporting documentation	Supporting documentation does not state this fact	Supporting document indicates the factual assertion is inaccurate
Page downplayed his interactions with Dvorkovich during his March 2017 interviews with the FBI. During these interviews, Page characterized his interaction with Dvorkovich in July 2016 as a simple introduction in passing and a brief handshake.	53		X	
[Steele] is a former [REDACTED] and has been an FBI source since in or about October 2013. [Steele] has been compensated approx. \$95,000 by the FBI. [T]he FBI assesses [Steele] to be reliable as previous reporting from [Steele] has been corroborated and used in criminal proceedings.	FN 10	X		
[I]n or about October 2016, the FBI suspended its relationship with [Steele] due to [Steele's] unauthorized disclosure of information to the press.	FN 10		X	
[Steele] reported the information contained therein to the FBI over the course of several meetings with the FBI from in or about June 2016 through August 2016.	FN 10	X		
In or about December 2008, Source #2 was opened as an FBI source. In or about January 2011, Source #2 was closed as an FBI source for, among other things, motivation for reporting, but not for validity of reporting. Source #2 was reopened in or about March 2011. Since that time, Source #2 has routinely provided reliable information that has been corroborated by the FBI.	FN 21	X		
Source #2 has been compensated in excess of [REDACTED] since 2008.	FN 21	X		
[Steele] told the FBI that he/she only provided this information to the business associate and the FBI.	FN 22			X
According to information on its website, Gazprombank was founded by Gazprom to provide banking services for gas industry enterprises.	FN 26	X		

APPENDIX 2

FBI'S RESPONSE



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535-0001

December 6, 2019

The Honorable Michael Horowitz
Inspector General
U.S. Department of Justice
Washington, D.C. 20530

Dear Inspector General Horowitz:

Thank you for the opportunity to respond to the Office of the Inspector General (OIG) Report titled, "*Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*" (Report).

The Federal Bureau of Investigation (FBI) appreciates the OIG's crucial independent oversight role and the thoroughness and professionalism your office brought to this work. The Report's findings and recommendations represent constructive criticism that will make us stronger as an organization. We also appreciate the Report's recognition that the FBI cooperated fully with this review and provided broad and timely access to all information requested by the OIG, including highly classified and sensitive material involving national security.

The Report concludes that the FBI's Crossfire Hurricane investigation and related investigations of certain individuals were opened in 2016 for an authorized purpose and with adequate factual predication. The Report also details instances in which certain FBI personnel, at times during the 2016-2017 period reviewed by the OIG, did not comply with existing policies, neglected to exercise appropriate diligence, or otherwise failed to meet the standard of conduct that the FBI expects of its employees — and that our country expects of the FBI. We are vested with significant authorities, and it is our obligation as public servants to ensure that

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these authorities are exercised with objectivity and integrity. Anything less falls short of the FBI's duty to the American people.

Accordingly, the FBI accepts the Report's findings and embraces the need for thoughtful, meaningful remedial action. I have ordered more than 40 corrective steps to address the Report's recommendations. Because our credibility and brand are central to fulfilling our mission, we are also making improvements beyond those recommended by the OIG. And where certain individuals have been referred by the OIG for review of their conduct, the FBI will not hesitate to take appropriate disciplinary action if warranted at the completion of the required procedures for disciplinary review.

Below is a summary of the actions we are taking, which we describe in more detail in the attachment to this letter.

First, we are modifying our processes under the Foreign Intelligence Surveillance Act (FISA), both for initial applications and renewals, to enhance accuracy and completeness. The FBI relies on FISA every day in national security investigations to prevent terrorists and foreign intelligence services from harming the United States. We are making concrete changes to ensure that our FISA protocols, verifications, layers of review, record-keeping requirements, and audits are more stringent and less susceptible to mistake or inaccuracy. These new processes will also ensure that the FISA Court and the Department of Justice (DOJ) are apprised of all information in the FBI's holdings relevant to a determination of probable cause.

Second, we undertook an extensive review of investigative activity based out of FBI Headquarters. The FBI is a field-based law enforcement organization, and the vast majority of our investigations should continue to be worked by our field offices. Moving forward, in the very rare instance when FBI Headquarters runs a sensitive investigation, we are requiring prior approval by the FBI Deputy Director and consultation with the Assistant Director in Charge or Special Agent in Charge of the affected field offices.

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Third, we are making significant changes to how the FBI manages its Confidential Human Source (CHS) Program. Many FBI investigations rely on human sources, but the investigative value derived from CHS-provided information rests in part on the CHS's credibility, which demands rigorous assessment of the source. The modifications we are making to how the FBI collects, documents, and shares information about CHSs will strengthen our assessment of the information these sources are providing.

Fourth, I am establishing new protocols for the FBI's participation in Office of the Director of National Intelligence (ODNI)-led counterintelligence transition briefings (*i.e.*, strategic intelligence briefings) provided to presidential nominees. The FBI's role in these briefings should be for national security purposes and not for investigative purposes. Continued participation by the FBI in these transition briefings is critical to ensuring continuity in the event of a change in administrations. The new FBI protocols about transition briefings will complement procedures already implemented by the FBI earlier this year to govern the separate category of defensive briefings. The FBI gives defensive briefings, which are based on specific threat information, in a wide variety of contexts and for myriad federal, state, and other public and private individuals and entities. The procedures we recently established for defensive briefings regarding malign foreign influence efforts have brought a new rigor and discipline to whether and how such briefings should proceed.

Fifth, I am mandating a specialized, semiannual training requirement for FBI personnel at all levels who handle FISA and CHS matters. This training will be experience-based, and it will cover specific lessons learned from this Report, along with other new and revised material. Earlier in my tenure as Director, I reinstated an annual ethics training program for all FBI employees, because I learned the training had been discontinued in prior years. While that training was not introduced in response to this Report, all current FBI employees involved in the 2016-2017 events reviewed by the OIG have since completed this additional training in ethics and professional responsibility.

Finally, we will review the performance and conduct of certain FBI employees who were referenced in the Report's recommendations — including managers, supervisors, and senior

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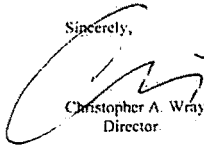
officials at the time. The FBI will take appropriate disciplinary action where warranted. Notably, many of the employees described in the report are no longer employed at the FBI.

* * *

I want to emphasize that the FBI's participation in this process was undertaken with my express direction to be as transparent as possible, while honoring our duty to protect sources and methods that, if disclosed, might make Americans less safe. Where protection of certain sensitive information is well-founded, I remain committed to upholding the laws and longstanding policies governing classification and public release. I am just as committed to the principle that possible embarrassment and chagrin to the FBI or its employees is not, and should never be, the basis of a decision not to divulge FBI information. The FBI has worked closely with the OIG and DOJ on the classification issues implicated by the Report. Our joint process with the OIG and DOJ has ensured all material facts could be presented in this Report, with redactions carefully limited and narrowly tailored to specific national security and operational concerns. I am grateful for the mutual assistance of the OIG and DOJ in responsible presentation of this extremely sensitive information.

Since becoming FBI Director in August 2017, I have emphasized to FBI agents, analysts, and staff the importance of doing things the right way, by the book. I am humbled to serve alongside these dedicated men and women, and I am confident that the actions we are taking will strengthen our historic institution, ensure that we continue to discharge our responsibilities objectively and free from political bias, and better position us to protect the American people against threats while upholding the Constitution.

Sincerely,



Christopher A. Wray
Director

Enclosure

APPENDIX 2

**The Federal Bureau of Investigation's Response to the Report
December 6, 2019**

[Recommendations from the OIG appear verbatim in *italics*.]

1. *The Department and the FBI should ensure that adequate procedures are in place for the Office of Intelligence (OI) to obtain all relevant and accurate information, including access to Confidential Human Source (CHS) information, needed to prepare FISA applications and renewal applications. This effort should include revising:*
 - a. *the FISA Request Form: to ensure information is identified for OI: (i) that tends to disprove, does not support, or is inconsistent with a finding or an allegation that the target is a foreign power or an agent of a foreign power, or (ii) that bears on the reliability of every CHS whose information is relied upon in the FISA application, including all information from the derogatory sub-file, recommended below;*
 - b. *the Woods Form: (i) to emphasize to agents and their supervisors the obligation to re-verify factual assertions repeated from prior applications and to obtain written approval from CHS handling agents of all CHS source characterization statements in applications, and (ii) to specify what steps must be taken and documented during the legal review performed by an FBI Office of General Counsel (OGC) line attorney and SES-level supervisor before submitting the FISA application package to the FBI Director for certification;*
 - c. *the FISA Procedures: to clarify which positions may serve as the supervisory reviewer for OGC; and*
 - d. *taking any other steps deemed appropriate to ensure the accuracy and completeness of information provided to OI.*

The FBI fully accepts these recommendations and is taking the following actions, many of which exceed the OIG's specific recommendations:

1. Supplementing the FISA Request Form with new questions, including a checklist of relevant information, which will direct agents to provide additional information and to collect all details relevant to the consideration of a probable cause finding, emphasizing the need to err on the side of disclosure;
2. Requiring that all information known at the time of the request and bearing on the reliability of a CHS whose information is used to support the FISA application is captured in the FISA Request Form and verified by the CHS handler;
3. Adding reverification directives to the FISA Verification Form, known as the Woods Form, which will require agents and their supervisors to attest to their diligence in re-verifying facts from prior factual applications and to confirm that any changes or clarifying facts, to the extent needed, are in the FISA renewal application;
4. Improving the FISA Verification Form by adding a section devoted to CHSs, including a new certification related to the CHS-originated content in the FISA application by the CHS handler, and CHS-related information that requires confirmation by the CHS handler, which will be maintained in the CHS's file;
5. Adding an affirmation to the FISA Verification Form that, to the best of the agent's and supervisor's knowledge, OI has been apprised of all information that might reasonably

APPENDIX 2**The Federal Bureau of Investigation's Response to the Report, *continued from previous page***
December 6, 2019

- call into question the accuracy of the information in the application or otherwise raise doubts about the requested probable cause finding or the theory of the case;
6. Adding a checklist to the FISA Verification Form that walks through the new and existing steps for the supervisor who is affirming the case agent's accuracy review prior to his or her signature, affirming the completeness of the accuracy review;
 7. Formalizing the role of FBI attorneys in the legal review process for FISA applications, to include identification of the point at which SES-level FBI OGC personnel will be involved, which positions may serve as the supervisory legal reviewer, and establishing the documentation required for the legal review;
 8. Creating and teaching a case study based on the OIG Report findings, analyzing all steps of that particular FISA application and its renewals to show FBI personnel the errors, omissions, failures to follow policy, and communication breakdowns, and to instruct where new or revised policies and procedures will apply, so that mistakes of the past are not repeated;
 9. Requiring serialization of completed FISA Verification Forms in the FBI's case management system to increase accountability and transparency;
 10. Developing and requiring new training focused on FISA process rigor and the steps FBI personnel must take, at all levels, to make sure that OI and the FISC are apprised of all information in the FBI's holdings at the time of an application that would be relevant to a determination of probable cause;
 11. Identifying and pursuing short- and long-term technological improvements, in partnership with DOJ, that will aid in consistency and accountability; and,
 12. Directing the FBI's recently expanded Office of Integrity and Compliance to work with the FBI's Resource Planning Office to identify and propose audit, review, and compliance mechanisms to ensure the above changes to the FISA process are effective. In addition, OIC has been directed to evaluate whether other compliance mechanisms would be beneficial to the implementation of the changes detailed below.
2. *The Department and FBI should evaluate which types of Sensitive Investigative Matters (SIM) require advance notification to a senior Department official, such as the Deputy Attorney General, in addition to the notifications currently required for SIMs, especially for case openings that implicate core First Amendment activity, and establish implementing policies and guidance, as necessary.*

The FBI fully accepts this recommendation and is taking the following actions:

1. Identifying, in consultation with the DOJ, which types of SIMs warrant coordination with a senior Department official, implementing heightened FBI approval requirements for the opening of these SIMs, and establishing related processes; and,
2. Training FBI personnel on the changes to ensure that the FBI workforce is consistently recognizing and applying the new requirements and processes for the identified types of SIMs.

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**The Federal Bureau of Investigation's Response to the Report, continued from previous page
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3. *The FBI should develop protocols and guidelines for staffing and administering any future sensitive investigative matters from FBI Headquarters.*

The FBI fully accepts this recommendation. Prior to receiving this recommendation, the FBI established a working group that reviewed all FBI Headquarters investigations. This review resulted in the closing of those investigations not falling within certain limited exceptions or transferring those cases to the appropriate field offices. In addition, the FBI is taking the following actions, affecting all potential FBI Headquarters investigations:

1. Establishing protocols and guidelines for the rare circumstance when a FBI Headquarters-led investigation might be appropriate;
 2. Requiring consultation with the Assistant Director(s) in Charge or Special Agent(s) in Charge of all affected field offices prior to the opening of any FBI Headquarters investigation;
 3. Requiring FBI Deputy Director approval prior to opening any FBI Headquarters SIM;
 4. Developing and implementing protocols to ensure FBI Headquarters-led investigations follow the structure of field-led investigations, apply the same investigative rigor, and engage in timely and relevant information sharing with the appropriate field offices; and,
 5. Instituting an annual audit of investigative files opened at FBI Headquarters during the previous year. The purpose of the audit will be to determine whether each investigation complies with policy and if it should remain an FBI Headquarters-run investigation.
4. *The FBI should address the problems with the administration and assessment of CHSs identified in this report and, at a minimum, should:*
 - a. *revise its standard CHS admonishment form to include a prohibition on the disclosure of the CHS's relationship with the FBI to third parties absent the FBI's permission, and assess the need to include other admonishments in the standard CHS admonishments;*
 - b. *develop enhanced procedures to ensure that CHS information is documented in Delta, including information generated from Headquarters-led investigations, substantive contacts with closed CHSs (directly or through third parties), and derogatory information. We renew our recommendation that the FBI create a derogatory sub-file in Delta;*
 - c. *assess VMU's practices regarding reporting source validation findings and non-findings;*
 - d. *establish guidance for sharing sensitive information with CHSs;*
 - e. *establish guidance to handling agents for inquiring whether their CHS participates in the types of groups or activities that would bring the CHS within the definition of a "sensitive source," and ensure handling agents document (and update as needed) those affiliations and any other voluntarily provided to them by the CHS in the Source Opening Communications, the "Sensitive Categories" portion of each CHS's Quarterly Supervisory Source Report, the "Life Changes" portion of the CHS Contact Reports, or as otherwise directed by the FBI so that the FBI can assess whether active CHSs are engaged in activities (such as political campaigns) at a level that might require re-designation as a "sensitive source" or necessitate closure of the CHS; and*

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**The Federal Bureau of Investigation's Response to the Report, continued from previous page
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- f. revise its CHS policy to address the considerations that should be taken into the account and the steps that should be followed before and after accepting information from a closed CHS indirectly through a third party.*

The FBI fully accepts these recommendation and is taking the following actions, which also include improvements separately identified in the OIG's parallel review of CHS validation or by the FBI's own analysis:

1. Creating a new admonishment to sources relating to the confidential nature of the FBI-CHS relationship;
2. Adopting additional admonishments, as necessary, to manage the FBI's relationship with the CHS and to improve the FBI's ability to identify when the CHS's status has changed or should be reevaluated;
3. Creating a new subfile, which will supplement the existing Validation subfile created in 2013, specifically dedicated to holding certain information, including derogatory information, necessary for consideration when CHS-originated information is relied on;
4. Creating a mandatory checklist for CHS handlers so that, in instances where CHS-originated information is used in legal process, relevant information from the new subfile is properly disclosed to the attorneys relying on such CHS-originated information;
5. Adding new documentation requirements to ensure that CHS-originated information and contact with a CHS is captured in the correct FBI recordkeeping system(s), even when it occurs in an atypical circumstance or as part of a separate investigation;
6. Updating and modifying the Validation Management Unit's current practices regarding reporting source validation findings and non-findings to ensure all relevant information is shared with FBI and DOJ personnel;
7. Modifying policy and clarifying guidance for both new and long-term CHSs with a focus on source validation;
8. Revising the policy related to potentially higher-risk CHSs to enhance the scrutiny of those CHSs, including periodic reevaluation for potential closure of the CHS;
9. Establishing guidance and mandatory training for FBI personnel on sharing sensitive information or classified information with CHSs;
10. Expanding the definition of a sensitive source that requires additional approval, scrutiny, and oversight to include CHSs who may have access to certain categories of individuals, such as national-level campaign staff, or who report on subjects in a SIM investigation;
11. Revising policy and adding guidance for handling agents so they know when to ask a CHS about participation in the types of groups or activities that would bring the CHS within the newly expanded definition of a "sensitive source" or require their closure;
12. Requiring agents to update the designation of the CHS to a sensitive CHS if, over the course of the CHS relationship with the FBI, the CHS's position or access changes, triggering a need for additional approvals and oversight;
13. Clarifying documentation and updating requirements related to a CHS's status;
14. Clarifying and enhancing guidance on how to respond in the situation where a CHS, acting independently and not in response to an FBI tasking, provides information about a sensitive target or operation;

APPENDIX 2**The Federal Bureau of Investigation's Response to the Report, continued from previous page
December 6, 2019**

15. Revising policy to establish the requirements and procedures for receiving information from a closed source, whether directly or through a third party, and the necessary approvals and processes to permit or preclude acceptance of such information; and,
 16. Creating a CHS Management Working Group directed to identify and deliver additional improvements to FBI CHS policies and procedures.
5. *The Department and FBI should clarify the following terms in their policies:*
 - a. *assess the definition of a "Sensitive Monitoring Circumstance" in the AG Guidelines and the FBI's DIOG to determine whether to expand its scope to include consensual monitoring of a domestic political candidate or an individual prominent within a domestic political organization, or a subset of these persons, so that consensual monitoring of such individuals would require consultation with or advance notification to a senior Department official, such as the Deputy Attorney General; and*
 - b. *establish guidance, and include examples in the DIOG, to better define the meaning of the phrase "prominent in a domestic political organization" so that agents understand which campaign officials fall within that definition as it relates to "Sensitive Investigative Matters," "Sensitive UDP," and the designation of "sensitive sources." Further, if the Department expands the scope of "Sensitive Monitoring Circumstance," as recommended above, the FBI should apply the guidance on "prominent in a domestic political organization" to "Sensitive Monitoring Circumstance" as well.*

The FBI fully accepts these recommendation and is taking the following actions:

1. Assessing, in consultation with the DOJ, the current definition of a "Sensitive Monitoring Circumstance" and determining whether to expand the definition;
 2. Identifying, in consultation with the DOJ, the appropriate level of coordination for a Sensitive Monitoring Circumstance;
 3. Establishing guidance and, to the extent necessary, adding or modifying the DIOG, including by introducing examples, to better define and explain the phrase "prominent in a domestic political organization";
 4. Making any further changes to FBI policy that are required upon an expansion of the definition of a Sensitive Monitoring Circumstance; and,
 5. Ensuring that training and guidance are enhanced and provided to FBI personnel pursuant to any revised or expanded definitions.
6. *The FBI should ensure that appropriate training on DIOG § 4 is provided to emphasize the constitutional implications of certain monitoring situations and to ensure that agents account for these concerns, both in the tasking of CHSs and in the way they document interactions with and tasking of CHSs.*

The FBI fully accepts this recommendation and is taking the following actions:

1. Establishing and providing at least semiannual, mandatory training for all relevant personnel on CHS handling, source sensitivities, and other source-related topics, such

APPENDIX 2**The Federal Bureau of Investigation's Response to the Report, continued from previous page
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as the constitutional implications of certain monitoring situations. Part of this training will include discussion of the constitutional implications of certain monitoring situations, how to approach these considerations, and how to document situations where core constitutional issues, such as First Amendment activity, may be present; and,

2. Instituting regular and mandatory continuing legal training for FBI personnel at all levels and in all investigative roles, in addition to already existing legal and ethics training, to make sure that FBI personnel fully understand and apply their obligations as required by policy and law, including an emphasis on privacy and civil liberties.
7. *The FBI should establish a policy regarding the use of defensive and transition briefings for investigative purposes, including the factors to be considered and approval by senior leaders at the FBI with notice to a senior Department official, such as the Deputy Attorney General.*

The FBI fully accepts this recommendation and is taking the following actions:

1. Instituting a policy that the FBI's counterintelligence and security portion of the Office of the Director of National Intelligence-led strategic intelligence briefings (also known transition briefings) are solely intended to provide candidates and elected officials with relevant intelligence and threat awareness, and thus FBI briefers will not be associated with any ongoing FBI investigation related to any reasonably foreseeable attendee at the strategic intelligence briefing, will be selected based on their knowledge of the threat or threats to be briefed, and to the extent feasible, the same team of briefers will be used for all recipients of a particular strategic intelligence briefing; and,
2. Continuing to refine the FBI's newly implemented review process for malign foreign influence defensive briefings, and in particular briefings to Legislative and Executive Branch officials. This will encompass actions taken after receipt of specific threat information that identifies malign foreign influence operations -- that is, foreign operations that are subversive, undeclared, coercive, or criminal -- including convening the FBI's Foreign Influence Defensive Briefing Board (FIDBB) to evaluate whether and how to provide defensive briefings to affected parties. To determine whether notification is warranted and appropriate in each case, the FIDBB uses consistent, standardized criteria guided by principles that include, for example, the protection of sources and methods and the integrity and independence of ongoing criminal investigations and prosecutions.
8. *The Department's Office of Professional Responsibility should review our findings related to the conduct of Department attorney Bruce Ohr for any action it deems appropriate. Ohr's supervisors in the Department's Criminal Division should also review our findings related to Ohr's performance for any action they deem appropriate.*

This recommendation is directed to the DOJ, thus the FBI is taking the following action:

With regards to Mr. Ohr, an employee of the DOJ, the FBI respectfully defers to the DOJ for addressing the OIG's recommendation.

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**The Federal Bureau of Investigation's Response to the Report, continued from previous page
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9. *The FBI should review the performance of all employees who had responsibility for the preparation, Woods review, or approval of the FISA applications, as well as the managers, supervisors, and senior officials in the chain of command of the Carter Page investigation, and take any action deemed appropriate.*

The FBI fully accepts this recommendation and is taking the following actions:

Recognizing that many of the individuals involved in this matter are no longer with the FBI, undertaking the review of FBI personnel and taking actions as appropriate.

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