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DOJ OIG FISA REPORT: METHODOLOGY, SCOPE, AND FINDINGS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

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WEDNESDAY, DECEMBER 18, 2019

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 o'clock a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Paul, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON[1]

Chairman JOHNSON. This hearing will come to order.

I want to thank Inspector General (IG) Horowitz and his team for being here. I know in the Judiciary Committee hearing you had everybody raise their hands, so if you would raise your hands and identify yourselves, all the people who did this excellent work, we appreciate that. But I want to thank you for all your hard work and efforts preparing the report that is the main subject of our hearing today.

The bipartisan praise you have already received for your efforts is well deserved, and I share those sentiments. The release of this report is an important step in providing the public answers to many of the questions that have festered for far too long. But as thorough as this report is, its scope is also narrow, and many important questions remain unanswered.

Much attention has been paid to the report's conclusion that the Crossfire Hurricane investigation did have adequate predicate, but that inaccuracies and omissions in the Foreign Intelligence Surveillance Act (FISA) application and renewals call into question the integrity of that process. Yesterday's order by the presiding judge of the Foreign Intelligence Surveillance Court (FISC) is a dramatic rebuke and underscores how serious the FISA warrant abuses are. I would argue that, based on what the report reveals about early knowledge within the Federal Bureau of Investigation (FBI), we should be asking a more fundamental question: At what point should the investigation into possible collusion between Russia and the Trump campaign have been shut down?

Although the IG concluded the investigation was properly initiated, the consensual monitoring of Trump campaign officials con-

[1] The prepared statement of Senator Johnson appears in the Appendix on page 41.

ducted in the first 6 weeks did not result in "the collection of any inculpatory information." But rather than shut it down or use the "least intrusive" methods, the FBI ramped it up. Confidential human sources became FISA wiretaps, top FBI officials argued—by the way, disagreeing with the Central Intelligence Agency (CIA) on this—for inclusion of the unverified and salacious Steele dossier into the body of the Obama Administration's Intelligence Community (IC) Assessment, and, finally, the FBI investigation ballooned into a Special Counsel investigation. As a result, the Trump administration was tormented for over 2 years by an aggressive investigation and media speculation—all based on a false narrative—and our Nation has become even more divided.

For anyone willing to take the time to read the report, the report is a devastating account of investigative and prosecutorial negligence, misconduct, and abuse of the FISA Court process by FBI and Department of Justice (DOJ) officials. The most disturbing revelations of the IG investigation include reports of doctoring and using an email to mislead the FISA Court, ignoring the fact that exculpatory evidence was obtained during surreptitious recordings of investigation targets, deciding not to provide a defensive briefing to the Trump campaign, planting an FBI investigator in an intelligence briefing for Candidate Trump under false pretenses, and withholding known and significant credibility problems related to the Steele dossier.

With these abuses in mind, and in light of what became known early in the investigation, I strongly believe that Crossfire Hurricane should have been shut down within the first few months of 2017. Had the public known what the FBI knew at that time, it is hard to imagine public support for continuing the investigation, much less the appointment of a Special Counsel 4 months later. Investigations into Russian hacking, Paul Manafort, and Michael Cohen should have continued using normal FBI and Department of Justice procedures. But with a sufficiently informed public and an FBI and Department of Justice that rigorously followed their own procedures, this national political nightmare could have been avoided.

Which raises the question: Why wasn't the public properly informed? Some of the reasons are now obvious; some are speculative. What is obvious is that certain FBI and Department of Justice officials were not truthful or "scrupulously accurate" in their filings. Also, as this Committee's majority staff report on leaks in the first 4 months of the Trump administration shows, an unprecedented number of leaks—125 in the first 126 days of the administration—helped fuel the false narrative of Trump campaign collusion with Russia. The media was either duped by, or complicit in, using those leaks to perpetuate this false narrative.

The role of other Obama Administration officials and members of the intelligence community is murky and unknown, but legitimate suspicions and questions remain and must be answered. For example, who initiated the contacts between Joseph Mifsud, Alexander Downer, Stefan Halper, and Azra Turk with George Papadopolous? Was the January 6th intelligence briefing given to President-elect Trump by James Comey, John Brennan, and James Clapper orchestrated to provide a justification for the news publication of the

Steele dossier? The fact that the involvement of others outside the FBI and Justice Department remains murky and unknown after an 18-month-long Inspector General investigation is not criticism of his work but speaks to the statutory limitations of Inspectors General that should be evaluated and reassessed for reform.

Another question that needs to be asked is: Who will be held accountable? During his investigation of the FBI's handling of the Clinton email scandal, the Inspector General uncovered a treasure trove of unvarnished evidence of bias in the form of texts between FBI officials Peter Strzok, Lisa Page, and others. Were it not for the discovery of those texts, would we even be here today reviewing an IG investigation of these stunning abuses of prosecutorial power? I have my doubts. The officials involved in this scandal had plenty of time to rehearse their carefully crafted answers to the IG's questions or to use time as an excuse for their lack of recall. For example, on significant issues described in the report, Andrew McCabe told IG investigators 26 times that he did not recall.

Some of those involved are even claiming vindication as a result of the IG report. I appreciate Mr. Horowitz's testimony last week in which he stated about this report, "It does not vindicate anybody at the FBI who touched this, including the leadership."

Finally, I would argue that the process for investigating and adjudicating alleged crimes within the political realm is completely backward. Congressional oversight and, therefore, public awareness end up being the last step in the process instead of the first. Once a criminal or Special Counsel investigation begins, those investigations become the primary excuse for withholding information and documents from congressional oversight and public disclosure.

In order to avoid a repeat of unnecessary Special Counsels or improper investigations of political scandals, I would suggest that Congress should increase its demands for obtaining documentary evidence—concurrently with criminal investigations, if necessary—and hold hearings early in the process. This would result in more timely transparency while preserving an adversarial process to provide political balance and fairness. If possible criminal acts are found during congressional oversight, they can be referred to the Justice Department for further investigation. If conflicts of interest exist that prevent a fair adjudication by the Justice Department, then a Special Counsel can be appointed, but only as a last resort, not a first.

I am sure we will spend most of today's hearing discussing the Crossfire Hurricane investigation and the Inspector General's report on it. I do hope we can spend some time discussing some of the other issues I have just raised. Regardless, this Committee's oversight on the events involved with and surrounding the FBI Midyear Exam and Crossfire Hurricane investigations will continue until I am satisfied that all the important and relevant questions are being answered. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS[1]

Senator PETERS. Thank you, Mr. Chairman. Mr. Horowitz, thank you for being here today and for your testimony.

Inspectors General play a vital role in conducting oversight, offering independent assessments of how programs are working and holding agencies accountable when errors are made.

The Justice Department Inspector General's Office conducted a thorough, 19-month investigation, interviewing more than 100 witnesses, and analyzed more than 1 million pages of materials to complete the report that we are going to be discussing here today.

This report found unequivocally that the FBI investigation into coordination between individuals affiliated with President Trump's campaign and the Russian government had a proper legal and factual basis and found no evidence that the investigation was affected by political bias.

Politically motivated investigations are a betrayal of our bedrock democratic principles, and this institution should speak with one voice to say that we will not tolerate them, no matter who is in power.

In this case, the report found that the investigation was rooted in identifying any Federal criminal activity or threats to American national security. The Inspector General verified that politics played no role whatsoever in opening this investigation.

Importantly, the report did find that there are areas that do need improvement, including the process used to obtain FISA warrants.

Identifying these areas for improvement is a key part of an Inspector General's role, and I applaud the Inspector General's robust and thorough work to shine light on the FBI as well as the Justice Department's shortcomings.

It is this independence and commitment to the rule of law that sets our institutions apart.

FBI Director Wray has received this report and agreed with its core conclusion that political bias played no role in opening the investigation.

Director Wray also accepted the Inspector General's findings that errors occurred in the FISA process and ordered more than 40 corrective actions to improve and reform this important process.

I hope that today's hearing provides this Committee with the opportunity to carefully examine this report's recommendations and determine whether there are areas that we can help strengthen as well.

However, the most important fact that we should take away from this report and this hearing is that Russia, a foreign adversary, engaged in a sweeping and systematic effort to interfere in the 2016 Presidential election and that the FBI was right in investigating those who may have been involved.

The Russian government's effort was an attack on our democracy and on our national security, and it is happening again.

The Russian government is intent on sowing distrust, spreading misinformation, and undermining democracy, and they will pursue these efforts at all costs.

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[1] The prepared statement of Senator Peters appear in the Appendix on page 44.

Members of both parties must come together to pass legislation strengthening election security and ensure that no foreign adversary can meddle in our elections again.

I had the opportunity to work with Chairman Johnson and Senator Lankford on bipartisan legislation to strengthen cybersecurity standards for our voting machines. And I hope that we can continue working together to identify these kinds of commonsense steps that will protect the very heart of our democracy.

Finally, Inspector General Horowitz, I would like to thank you and your team for your independence, your integrity, and your hard work in completing this report. And I look forward to your testimony.

Chairman JOHNSON. Thank you, Senator Peters.

It is the tradition of this Committee to swear in witnesses, so if you would please stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOROWITZ. I do.

Chairman JOHNSON. Please be seated.

Mr. Michael Horowitz has served as the Inspector General of the Department of Justice since April 16, 2012. He also chairs the Council of Inspectors General on Integrity and Efficiency (CIGIE).

Prior to joining the Inspector General's Office, Mr. Horowitz worked in private practice and before then as a Federal prosecutor in the Department of Justice. Mr. Horowitz.

TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Thank you, Mr. Chairman, Ranking Member Peters, members of the Committee. Thank you for inviting me to testify today.

The report that my office released last week is the product of a comprehensive review that examined over 1 million documents and conducted over 170 interviews involving more than 100 witnesses, all of which is documented in our 417-page report. It also includes a 19-page executive summary, which, if folks do not have the time to read 400-plus pages, I would certainly encourage people to read the 19-page executive summary.

I want to commend also the tireless efforts of the team that did this. They worked rigorously through long hours to complete this review.

The investigation that is the subject of our report, the Crossfire Hurricane investigation, was opened in July 2016, days after the FBI received reporting from a friendly foreign government (FFG) stating that in May 2016 Trump campaign foreign policy advisor George Stephanopoulos "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 that would be damaging to Candidate Clinton and then-President Obama.

We determined that the decision to open Crossfire Hurricane was made by the FBI's then Counterintelligence Division Assistant Di-

[1] The prepared statement of Mr. Horowitz appears in the Appendix on page 46.

rector, Bill Priestap, and that this decision reflected a consensus reached after multiple days of discussions and meetings among senior FBI officials. We reviewed Department and FBI policies and concluded that Assistant Director Priestap's exercise of discretion in opening the investigation was in compliance with those policies. We also reviewed his emails, texts, and other documents, 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 purpose and with sufficient factual predication.

This decision to open Crossfire Hurricane was under Department and FBI policy a discretionary judgment left to the FBI. There was no requirement that Department officials be consulted or even notified prior to the FBI making that decision. Consistent with this policy, the FBI advised the Department's National Security Division (NSD) of the investigation days after it had been initiated.

As we detail in our report, advance Department notice and approval is required in other circumstances where investigative activity could substantially impact certain civil liberties, allowing Department officials to consider the potentially constitutional and prudential implications in advance of these activities. We concluded that similar advance notice should be required in circumstances such as those present here.

Shortly after the FBI opened the Crossfire Hurricane investigation, the FBI monitored meetings and recorded several conversations between FBI confidential human sources (CHSs), 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 FBI supervisor could have approved it, 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 documentary or testimonial evidence that political bias or improper motivation influenced the decision to conduct these operations. Additionally, we found no evidence that the FBI attempted to place CHSs within the Trump campaign or report on the Trump campaign or to recruit members of the Trump campaign to become FBI CHSs.

However, we are concerned that, under applicable FBI and Department 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 Department or FBI policy requiring the FBI to notify Department officials of a decision to task CHSs to record conversations with members of a political Presidential campaign. We concluded that current Department and FBI policies are not sufficient to ensure appropriate oversight and accountability of such operations.

One investigative tool for which Department and FBI policy expressly requires advance approval by a senior Department official is the seeking of a court order under 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," and a FISA order was not sought at that time. However, in September 2016, immediately after the Crossfire Hurricane team received reporting from Christopher Steele containing allegations regarding Page's alleged activities with certain Russian officials, FBI attorneys advised the Department that it was ready to move forward with a request to obtain FISA authority to surveil Page. We concluded that the Steele reporting played a central and essential role in the decision to seek a FISA order.

As we describe in our report, the FISA statute and Department and FBI policies and procedures have established important safeguards to protect the FISA application process from irregularities and abuse. Among the most important are the requirements that every FISA application contain a "full and accurate" presentation of the facts, and that all factual statements are "scrupulously accurate."

We found that investigators failed to meet their basic obligation that the FISA applications be "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.

As a result of these significant inaccuracies and omissions, the FISA applications made it appear as though the evidence supporting probable cause was stronger than it actually was. 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.

Department lawyers and the Court should have been given complete and accurate information so they could have meaningfully evaluated 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 evidence and information that weakened the assessment of probable cause and made the FISA applications less accurate.

We concluded that as the investigation progressed and as more information was gathered to undermine the assertions in the FISA applications, investigators did not reassess the information supporting probable cause. Further, the agents and supervisory agents 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, we also did not receive satisfactory explanations for the errors or the missing information and the failures that occurred.

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 the 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. 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 senior FBI senior officials who were briefed as the investigation progressed. Oversight by these officials required greater familiarity with the facts than we saw in this review where time and again during the Office of Inspector General (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.

That is why we recommended that the FBI review the performances of and hold accountable all individuals, including managers, supervisors, and senior officials, who had responsibility for the preparation or approval of the FISA applications as well as the handling of the Woods Procedures. Additionally, in light of the significant concerns we identified, the OIG initiated an audit last week that will further review and examine the FBI's compliance with its Woods Procedures in FISA applications that target U.S. persons in both counterintelligence and counterterrorism investigations.

The OIG report made a number of other recommendations that we believe will help the FBI more appropriately use this highly intrusive surveillance authority and that will also strive to safeguard the civil liberty and privacy of impacted U.S. persons. We will continue as an OIG our rigorous independent oversight as these processes move forward in the months and years ahead.

That concludes my prepared remarks, and I look forward to answering the Committee's questions.

Chairman JOHNSON. Thank you, Inspector General Horowitz.

These Greek names are hard. I just want to give you the opportunity. You made the same mistake I did. I started saying "George Stephanopoulos," but you really meant George Papadopoulos. Correct?

Mr. HOROWITZ. Papadopoulos, correct. And my apologies to George Stephanopoulos if that is what I said. [Laughter.]

Chairman JOHNSON. Mine as well.

Before we start the clock on me, I did want to provide some clarity. I was going to do this in my opening statement, but I think it is best to have just a quick little exchange here. In a number of places, not only this Inspector General's report but also in the Midyear Exam, you have a similar statement, and I am going to quote: "We did not find documentary or testimonial evidence that political bias or improper motivation influenced the decisions" fill in the blank. You have used it in a number of cases now. I know we talked earlier about you are pretty confident there was no political bias in the opening of the investigation with Bill Priestap.

Mr. HOROWITZ. We did not find evidence, and as to him, we knew who made the decision. We could focus specifically on him.

Chairman JOHNSON. But in both these investigations, you found political bias?

Mr. HOROWITZ. We found through the text messages evidence of people's political bias, correct.

Chairman JOHNSON. Also political motivation, for example, Bruce Ohr talked about how Christopher Steele was desperate to make sure that President Trump did not become President.

Mr. HOROWITZ. As to Mr. Steele, that was, of course, a very important part of this discussion, is when they understood his motivations and his potential bias, and we have the November statement from Mr. Ohr that he had been told by Mr. Steele that he was desperate to prevent——

Chairman JOHNSON. So, again, you are not denying there is certainly evidence of bias; there is certainly evidence of political motivation. But what you are saying—and this is what I want to clarify because I think this has been misconstrued and misused, depending on where you put it. You are not saying that that bias did not potentially influence that. You are just saying you had no evidence that it did. Is that an accurate statement?

Mr. HOROWITZ. We have no evidence that it did. We laid out here what we did to find bias or evidence of bias. We put this report out here so the public can read it, look at the facts themselves. But we did not find exactly what we said, documentary or testimonial evidence of bias. Nothing more, nothing less.

Chairman JOHNSON. But you are not saying you did not, that it did not. You did not find evidence that it did, but you also did not find evidence that it did—you are not saying that this bias or motivation did not influence. You are not making that declarative conclusion. Correct?

Mr. HOROWITZ. Again, I want to carve out the opening and the predication.

Chairman JOHNSON. Priestap versus the others.

Mr. HOROWITZ. Because that decision was made by one person, we knew who made the decision, understanding that there were questions raised by people above and below him. As to the other decisions, for example, the FISA decisions and the errors and the problems, we do not reach a motivation conclusion precisely because of the concerns we have on that. So I think it is important for readers to read the report themselves. We talked about this before the hearing. Our job as Inspectors General is to do what I know all of you expect us to do: transparency, get the facts out there. And that is what we have tried to do here.

Chairman JOHNSON. So you are leaving it up to the reader, to the American public, to judge whether the bias and the motivation that you have uncovered, to what extent did that potentially influence decisions throughout this process.

Mr. HOROWITZ. We are drawing the only conclusions we felt comfortable drawing here, and the public can read, and an informed public is very important for all of these purposes.

Chairman JOHNSON. Just one final follow-up. What kind of evidence would you require, literally an oral confession or a text saying, "I so hate this guy that I am going to choose this path versus the other"?

Mr. HOROWITZ. So it was very hard to look at all this evidence and obviously, as we all know, get in people's minds. What was the motivation for decisions to be made? What we looked at was: Who

touched the decision? Did we find evidence through text messages, emails, witness interviews? We sometimes do get—not in this case, but we do sometimes get whistleblowers and other people coming to us and saying, "I think so-and-so made a decision for an improper purpose," and we as IGs look at that.

We were looking for that kind of evidence. As you noted, as to some people we had concerns about that. Our last report lays out not just as to, for example, Mr. Strzok or Ms. Page, but as to others, concerns about certain text messages. What we were trying to figure out is: What was the evidence? Who was involved in decisions? And was there evidence linking those biased texts or other evidence connected to decisions? Could we bring them together? That was what we were trying to do.

Chairman JOHNSON. I know in your report you say the text messages were not only indicative of a biased State of mind—these are the Strzok-Page texts—even more seriously imply a willingness to take official action to impact Trump's electoral prospects. So that is a statement you also make.

Mr. HOROWITZ. Right.

Senator CARPER. Mr. Chairman, would you yield to me for just a moment?

Chairman JOHNSON. Sure. Stop the clock.

Senator CARPER. Is it fair to say that there are FBI agents who were pro-Trump and anti-Trump, including some fairly senior people that were pro-Trump and made it very clear that they were?

Mr. HOROWITZ. We found in both reports evidence of political views disassociated from action, and I think that is very important, and I tried to emphasize this last year as well as last week. We are not concluding that someone is biased simply because they supported one candidate or another. Frankly, they should not be using their devices for any purposes that are political. It raises Hatch Act, potentially, and other issues that are not bias, but other legal issues. But what we are looking at are were the comments so significant that it concerned us that they might have caused them to influence decisions they made, and that is, particularly in last year's report, where we had far more evidence of text messaging. We had some people who had expressed political views but did not act on them.

Again, here we have some members that we have in here that reference their political views, but no information and they are not the kind of written texts that suggest a potential State of mind that would cause us concern.

Senator CARPER. All right. Thank you.

Chairman JOHNSON. I think we have that covered.

So my first question—and I am not asking you to speculate, but based on your knowledge of FBI policies regarding investigation closures and also based on what you found out that the FBI knew pretty early in the process that consensual monitoring and what they found out once they finally interviewed the primary subsource, would it have been consistent with FBI and Department of Justice guidelines to close Crossfire Hurricane shortly after the FBI first interviewed Steele's primary sub-source in January 2017? And would that have been a reasonable discretionary decision?

Mr. HOROWITZ. Certainly one of our criticisms that we have laid out here is that as the team was gathering this evidence as to the Carter Page FISA in particular, they were not reassessing it, including primarily, as I am sure we will talk about, the information from the primary sub-source that was inconsistent with the Steele reporting. We even have in here in the report a reference on page 212 where we have agents talking with one another about why is Page even a subject anymore. To your question of why are they still looking at him, they were actually asking that question not just as to the FISA but the foundational question of Carter Page, we are not finding anything as to him, why are we not reassessing.

Chairman JOHNSON. So, again, it would have been within their guidelines. If they had done that and you were doing an investigation, you would go that is a reasonable discretionary decision to close this thing down.

Mr. HOROWITZ. Certainly as someone who has done these cases in Assistant United States Attorney (AUSA) and working with agents, if you are getting information that is not advancing and, in fact, potentially undercutting or significantly undercutting your primary theme or theory, as was happening here with the Carter Page file, so you would look at the Carter Page file and say, "Should I keep going on this Carter Page-related matter?"

Chairman JOHNSON. I believe this is going to be outside—and I think I know what your answer is going to be, but I want to ask the question. In the course of your investigation, did you ever find out how George Papadopoulos was put in touch with Mifsud, Downer, Halper, or Turk?

Mr. HOROWITZ. That was not something within the scope of our review. If we would have seen something in FBI records about that, we would have assessed it. But we were focused, as I said in my opening——

Chairman JOHNSON. And so you saw nothing in the records that would answer those questions?

Mr. HOROWITZ. We did not find anything that would connect all of that from the FBI side of the information.

Chairman JOHNSON. According to James Comey's May 28, 2019, op-ed in the *Washington Post*, Joseph Mifsud, unnamed at the time, was a "Russian agent." Again, did you find anything in the FBI documents that would support James Comey's conclusion about that?

Mr. HOROWITZ. I want to be careful on that because I think if I answer either way, I might be touching on information I am not sure I can speak to in this setting.

Chairman JOHNSON. OK.

Mr. HOROWITZ. But let me be clear. We certainly would have looked to see if what the FBI——

Chairman JOHNSON. We will follow up in a different setting.

Did you ever determine why on April 1, 2016, FBI headquarters directed FBI's New York field office to open a counterintelligence investigation on Carter Page? Did you ever get to the bottom of why that happened?

Mr. HOROWITZ. I am sorry. Could you——

Chairman JOHNSON. Again, on April 1, 2016, FBI headquarters directed the field office in New York to open up a counterintel-

ligence investigation on Carter Page. Did you ever figure out what caused that?

Mr. HOROWITZ. The primary purpose of this was not to look at that investigation. We did get some testimony we describe here about that investigation and what prompted them to open it. It grew out of a Southern District of New York case. But we did not go beyond that and dig into the files.

Chairman JOHNSON. So you never found out why FBI headquarters directed that it should not be a sensitive investigative matter?

Mr. HOROWITZ. Again, we did not go into the specifics of how they precisely decided to open it other than interviewing some of the witnesses to understand a little bit for background purposes.

Chairman JOHNSON. Neither of Peter Strzok's immediate bosses, Bill Priestap or Assistant Director Steinbach, wanted him to run the investigation, mainly because of the relationship with Lisa Page as well as kind of a tendency to go around particularly Steinbach and go right to McCabe. But Andrew McCabe overruled that decision. Did you ever find out why?

Mr. HOROWITZ. So we talk about that in the report, page 64 and 65, about that very issue, and Mr. Priestap recalls it as you describe. Mr. McCabe—we have his explanation in there—did not precisely recall certain of the events, recalled some other events, and, again, we laid out there what he was involved in in terms of selecting or, as Mr. Priestap described it, having Mr. Strzok stay on the investigation.

Chairman JOHNSON. On August 25, Deputy Director McCabe directed Crossfire Hurricane to contact the New York field office for helpful information. It turned out that that helpful information was the Steele reporting. Now, this is 25 days before the FBI actually received the first six Steele reports. Did you ever get to the bottom of how Andrew McCabe was so far ahead of the rest of the FBI on that?

Mr. HOROWITZ. Again, we asked witnesses about that, including Mr. McCabe, and we ultimately were unable to get to the bottom of exactly what caused that delay or what prompted that call.

Chairman JOHNSON. Now, McCabe told people he did not remember doing this. But, in fact, McCabe told your team he did not remember details about 26 significant events in your report. Did you find his memory lapses credible? He seemed to be pretty involved in this investigation, I mean overruling to make sure Peter Strzok would be named the director, contacting the New York field office. He seemed to be pretty involved, and yet on some pretty significant issues in your report, he just does not recall. Do you find those memory lapses credible?

Mr. HOROWITZ. We did find he was briefed on the investigation, and as you noted, there were several points at the beginning where he was involved. We do not make a determination or credibility finding on that issue.

Chairman JOHNSON. OK. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman.

I just want to clarify, after some of that line of questioning, just so we are clear for the record, and you can answer these first couple of questions with yes or no if that works for you, Mr. Horowitz.

Did you find any documentary or testimonial evidence that the decision to open the investigation was political?

Mr. HOROWITZ. We did not.

Senator PETERS. Did you find any documentary or testimonial evidence that the decision to open the investigation was motivated by bias against President Trump?

Mr. HOROWITZ. We did not.

Senator PETERS. Your report states that in mid-2016 the FBI was investigating attempts by Russia to hack into political campaigns, parties, and election interference. Is that correct?

Mr. HOROWITZ. Right. We put that in there for background purposes. Correct.

Senator PETERS. Your report also states that the FBI received information from a friendly foreign government that Russia offered to assist the Trump campaign. Is that correct?

Mr. HOROWITZ. Correct. We lay out the precise words that Mr. Papadopoulos reportedly stated to the friendly foreign government.

Senator PETERS. Now, your report does outline a number of problems with the FISA process, as you have elaborated on, particularly when it relates to questions from the Chairman regarding Carter Page. My question is: Did the FISA errors affect the investigation's other three subjects in your analysis?

Mr. HOROWITZ. We did not see information from the Carter Page events in the FISAs affecting the others. In fact, part of the concerns that we outline here is the lack of developing of information as to Mr. Page. So it was not developing, advancing the investigation precisely for the reasons we outline here, and by definition, therefore, not being of assistance or impacting the others.

Senator PETERS. So it had no impact on the other investigations?

Mr. HOROWITZ. As to the other three, we did not see any connection between this and the others with, I will say, this caveat, which is the Papadopoulos information was being used in the Page FISAs, and so the extent to which the Page FISAs were not advancing information as to Mr. Page, they arguably were not advancing information as to Mr. Papadopoulos because that was the linchpin fact, initially at least, to go for opening all of the cases.

Senator PETERS. OK. So as you have identified a number of issues related to how the FBI used the FISA process, certainly those are things that need to be addressed, the Director has said that he is working to address. So my question is: Do you have any idea if, as you are quoted as saying, basic and fundamental errors were made in this process, is there any idea that this is kind of a systemic problem in the FBI? Or did this only occur with this particular investigation? Or do you think this is much broader that we have to deal with in a broader sense?

Mr. HOROWITZ. As you know, as an IG I will speak to what we found here, and that is, frankly, why we started the audit, because the concern is this is such a high-profile, important case. If it happened here, is this indicative of a wider problem? And we only will know that when we complete our audit. Or is it isolated to this event? Obviously, we need to do the work to understand that.

Senator PETERS. You mentioned the audit. Could you describe the scope of the audit for us, please?

Mr. HOROWITZ. So what we are going to do in the first instance, since we do not know what we do not know, and this is, to our knowledge, the first ever deep dive anyone has taken in a FISA, what we are going to do in the first instance is have our auditors do some selections of counterintelligence and counterterrorism—this was a counterintelligence FISA. We have heard lots of concerns about counterterrorism FISAs about targeting and other issues there. We are going to take a sampling. We are going to look and compare and see how the Woods Procedures played out in those FISAs by comparing the Woods binders to the FISAs and seeing if the same basic errors are occurring there. If they are, then what we will do is we will make further selection to do deeper dives as appropriate. But we first want to get a window into these. We have limited resources, and we want to make sure we are targeting them in the right places.

Senator PETERS. So if I recall from your testimony here today, the errors that were occurring, the fundamental errors and basic errors related to the FISA process, you did not find any evidence that there was political bias there, no documentary evidence. The errors occurred and those are troublesome, but you did not necessarily link those to any political bias. Is that accurate?

Mr. HOROWITZ. I want to draw a distinction there. What we did not find was, as they were considering in August and September whether to seek a FISA, we did not see evidence there in those communications. But as to the failures that occurred, we did not find any of the explanations particularly satisfactory—in fact, unsatisfactory across the board. In the absence of satisfactory answers, I cannot tell you as I sit here whether it was gross incompetence—and I think with the volume of errors you could make an argument that that would be a hard sell, that it was just gross incompetence—to intentional or somewhere in between and what the motivations were. I can think of plenty of motivations that could have caused that to occur, but we did not have any hard evidence that I can sit here and tell you why did these occur. I can tell you they occurred. I can tell you we did not get good explanations. But I cannot tell you why.

Senator PETERS. But it is conceivable those bad explanations are a result of a systemic problem with the FISA process, so it is difficult—I would ask—it would probably be extremely difficult to answer that question until you complete your further audit to see whether or not this is a systemic problem within the FBI that has to be corrected. It was not something just with this particular case. Is that accurate? How would you look at that?

Mr. HOROWITZ. We certainly would not make any conclusion about systemic or not. As to the failures here, in the absence of the satisfactory answers and given how basic some of these were, how fundamental, this was not an error because this was too complex, you did not understand that the fact you gathered here was inconsistent with the fact you were relying on the error in the FISA. These should have been told, and I think you see this in the FISA Court opinion yesterday.

Senator PETERS. Right.

Mr. HOROWITZ. These should have been told. These were basic, fundamental errors. It is hard to figure out what the rationale is, which is why we are not sure what the motivation was.

Senator PETERS. I just want to clarify. The way you will know that is, as you are looking at other cases through your audit and you find that these are occurring on a pretty regular basis, that may be something that—why we have to correct the FBI, the reason they were fundamental is because they are making these fundamental errors in a lot of other cases, and we need to make some reforms.

Mr. HOROWITZ. Right, and it could be—if you look at the others and you find similar errors and bad explanations there, it may be one answer. Frankly, if you find no other errors there, that would be particularly concerning, right, as to this one.

Senator PETERS. Right.

Mr. HOROWITZ. Why then in this one? So I think we need to understand——

Senator PETERS. But that is why we need the audit.

Mr. HOROWITZ. Right.

Senator PETERS. Thank you.

Chairman JOHNSON. So I want to just quick consult Committee members here. The vote has been called. We could continue with this. The next questioner is Rand Paul, then Senator Hassan, and then Rick Scott. Or we could recess, go vote and come back so we do not miss any of the testimony.

Senator PAUL. I would kind of like to get mine done and continue on, if we could.

Chairman JOHNSON. One vote. So it is very easy for us to manage this, but we are going to keep going?

Senator PETERS. Yes.

Chairman JOHNSON. OK. So what I would suggest is, Rand, you stick around, certainly Rick, and maybe all of you quick skedaddle and get back. OK? Then I will go vote. Senator Paul.

OPENING STATEMENT OF SENATOR PAUL

Senator PAUL. Thank you for coming, and much has been said of bias and, in a town that is full of politics and opinions, it is kind of hard to be anybody without bias. But I do appreciate that you and your team try to avoid having bias in your reporting and try to be as objective as possible. I appreciate that. I think you and other Inspectors General do a great service to our country, trying to figure out and make things better and root out where there are problems.

I would say that when we look at bias, I guess the first question would be a short question, just to reiterate and make sure it is very clear. You did find evidence of biased individuals who were involved with the investigation.

Mr. HOROWITZ. That is correct.

Senator PAUL. OK. I think that is very clear. And is it difficult to determine what people's motives are, whether biased or not biased?

Mr. HOROWITZ. It is very difficult.

Senator PAUL. Right. And so just by saying you did not find it, it does not mean it did not exist; it does not mean you could not

have had 15 people very biased who influenced every one of their decisions. You just cannot prove it.

Mr. HOROWITZ. We could not prove it. We lay out here what we can prove.

Senator PAUL. OK. One specific instance I would like to ask you about, though. The Office of General Counsel (OGC) attorney is the one I think you have referred for criminal evaluation. Correct?

Mr. HOROWITZ. I will just say we have referred it to the Attorney General (AG) and the FBI.

Senator PAUL. OK, and that is the possible criminal evaluation. He also had text messages that said "Viva la resistance." Did you interpret those to be—or what is your opinion? Does that show that he might have had some bias against the Trump administration?

Mr. HOROWITZ. He was one of the individuals in last year's report precisely for those text messages that we referred to the FBI precisely for that concern.

Senator PAUL. You interpreted that as evidence of bias, but I guess my question would be, if you saw that he was biased, he has obviously made errors that you think actually may have been intentional. Why in that instance would you not be free to say that there is documentary evidence of not only bias but then malfeasance?

Mr. HOROWITZ. That is precisely why we do not say that as to the errors, the failures in the FISA process.

Senator PAUL. Could you then specifically say the opposite, that actually in this instance there actually was evidence of political bias and evidence of record changing that looks like malfeasance?

Mr. HOROWITZ. There is evidence of both. I agree with you. But I want to make sure there is a fair process——

Senator PAUL. That is fine, and I think the Chairman is very correct that the media has misinterpreted what you have said and drawn conclusions that I do not think are accurate as to what you are saying, and people should read the report, and the report is very damning as to the process. Whether there is bias or not, there are problems.

Now, getting to your solutions, you have suggested that—and I think you are attempting to make valid suggestions as to how the process would be better. I would make the argument that the process cannot be corrected, and the reason I would say this is that the FISA Court system requires this high scrupulous nature for the agents, and they are both the prosecutors and supposed to be defense at the same time. There is not anybody on the other side. And this is not the standard of the Constitution, and we have allowed this to happen because we are going after foreigners, and we just frankly say, well, we are not going to have all the constitutional protections for listening to Gaddafi's phone calls or Saddam Hussein. We are just not going to have all these protections.

My point is we are now getting into something that is at the root of our democracy or of our republic, and that is political debate and discourse and the First Amendment. I do not think the tweaks to the FBI will work. I frankly think what we have to understand is the FISA Court is for foreigners. It is at a lower than constitutional level. And so I guess my question to you would be: Do you think it is within the realm of the reforms that we should consider

whether or not political campaigns should be investigated using a secret Court where there is no legal representation for the defense?

Mr. HOROWITZ. And you raise excellent questions here, and one of the things that we are careful not to do when we make recommendations is make recommendations to Congress on statutory changes. So we try and work with the process, as you noted. There will be a lot of debate that goes well beyond what we are recommending to try and fix what is existing. There is going to be a legislative look. The FISA Court clearly is going to look at some of these issues now. And we are prepared to come meet with legislators and talk through these issues as you all consider things that go beyond the four corners of what exists.

I think one of the issues here—and we reference this. Having been a prosecutor where you go ex parte to a court for search warrants and wiretaps and the criminal process, but you also know that at some point the defense lawyer is going to get those if there is a case made, and there is the potential for a litigation in an open courtroom before a judge with a defense lawyer cross-examining, and that alone, that understanding that that could happen, has some effect.

Senator PAUL. I agree, and I think if you do not have that in the FISA system, no matter what you do, you tweak the system. When you are telling me it requires FBI agents to always be scrupulous and never have bias enter into that we are trying to prevent bias from entering in. I think it is a standard that is too high for individuals to take, and there will always be people on both sides of the political spectrum who may let their biases enter into that, and the check is to have a defense attorney, to have a public trial. And secret courts really were not intended to examine crime in America or to examine political campaigns. And I think that is the thing that needs to come out of this, is that we do not—and while I do not fault your recommendations for FBI process to make it better, there is a big danger that we take that politically and say, oh, that is the end answer to that.

No, the lesson to me on this is that—and I do believe both sides could be equally culpable of this—is that we should not subject our political campaigns to secret courts and to secret warrants and secret surveillance. And there are all these questions still of, were all these encounters that Papadopoulos had just accidental? Did the government instigate these encounters? And if they did, that is very troublesome to me that our own government would be sending informants into campaigns to try to have chance encounters with different people.

So I am very worried about it, and I hope other Members of the Committee will consider as we look at FISA reform that what we have to do is Americans should not be caught up in this. American citizens were not the target of this. And even American citizens who talk to foreigners—can you imagine in campaigns moving forward that if you are appointed to a high-level foreign policy position, is there a likelihood that you may have talked to Russians or Chinese in your career? If you have been in a foreign policy career for 40 years, you have talked to many Russians. And so to say you are an agent, well, he had 16 conversations with different members of the Russian government. Is that enough to open like a FISA

process into that he might be a foreign agent? And it is not the Constitution. It is showing that you have evidence that someone may be related to a government. It is not evidence of a crime.

And so I think we ought to really consider as we move forward that this is not the appropriate vehicle for investigating political campaigns.

Thank you.

Mr. HOROWITZ. And if I could just add on that, Senator, I think one of the things also here that we uncovered and learned as we did this, for example, you mentioned the confidential human source issue separate from the FISA. The absence of rules there applies whether this was counterintelligence or criminal. There did not need to be notice to the Department even had this been a criminal investigation. So I think there are some issues here that cover broader than just the FISA issue that you have raised and are concerned about.

Chairman JOHNSON. Senator Hassan, I am assuming you voted?

Senator HASSAN. I did.

Chairman JOHNSON. So we are doing this as the vote is going. I actually asked Senator Scott to stay, so if you do not mind, I would like to give it to him so he can go vote. OK. Senator Scott.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thanks for being here. First, I want to thank FBI Director Christopher Wray for reporting more than 40 changes in how the FBI's seeks secret surveillance warrants after you pointed out a series of flaws and the FBI's efforts to monitor a foreign campaign adviser. I think it is very important that safeguards be put in place to prevent a politically motivated rogue agent or agents from being able to manipulate any processes to pursue their own agenda.

We had the Parkland shooting down in Florida. We lost 17 wonderful individuals there. And after that, the FBI Director did the right thing. He held individuals accountable at the FBI, and I had the opportunity to go out, as I told you, to West Virginia and I saw some of the processes that they worked really hard to improve.

Now, the errors committed by the FBI and abuse of authority presented in your report should alarm every American. Federal officials motivated by political bias and hatred for our President abused the FISA process in order to surveil people affiliated with the campaign of President Trump, and that is wrong. We are talking about liberal FBI officials abusing their power in an attempt to discredit and undermine the legitimacy of a candidate and his campaign.

We should all be greatly concerned about this, and I think you brought this up in your report. Where was the oversight? Where was the oversight when the FBI did not bother to confirm any of the claims in the Steele dossier before presenting them to the Court as evidence to surveil Carter Page? Where was the oversight while the FBI was making seven key errors or omissions in its original FISA application and ten more in the three subsequent applications? Again, where was the oversight?

It was not there. The decision whether to open this investigation was a discretionary judgment call left to the FBI.

So, Mr. Horowitz, to your knowledge, has the FBI ever spied on any other Presidential campaigns? And if so, which ones?

Mr. HOROWITZ. So we did not go and look, Senator, historically at what other investigations the FBI conducted of various campaigns, so I am not in a position to answer that.

Senator SCOTT. Do you know of any investigations that have ever happened to see if there were investigations of Presidential campaigns or spying?

Mr. HOROWITZ. Certainly as I sit here, I am not aware of any surveillance that was done or use of confidential human sources. But I certainly cannot say it did not happen. I just cannot tell you as I sit here that I know of any.

Senator SCOTT. OK. I know some people do not like the word "spying," but I think that is exactly what Comey's FBI did. It is very similar to the Obama Administration's Internal Revenue Service (IRS) deciding to target conservative organizations. I think the business of weaponizing Federal bureaucracies for political purposes is dangerous and disastrous. I cannot imagine any sane person really wanting to go down this road. I do not know anybody I work with that wants to do this.

Can you just go through some of the recommendations you think that are the big, most important ones that the FBI has to do to make sure this does not happen again?

Mr. HOROWITZ. I think first and foremost there needs to be a change in practice and policies that involves consultation and discussion with the Department lawyers before moving forward, whether on opening a case or involving these kind of constitutional issues or sending in confidential human sources. The level of discussion—I did public corruption cases when I was a prosecutor in New York many years ago, and you would want to talk through very carefully before moving forward in a case like this in all steps, both the opening and the investigations.

On the FISA side, there has to be a fundamental understanding that decisions about evidence that is un the dercutting, inconsistent with the theory of the case, has to go to lawyer, the lawyer who is handling it for the Department, and it has to move up the chain in the Justice Department because they have to make the judgment calls. They are the gatekeepers. They are the ones who are there to understand is there enough for this FISA or isn't there, and if there is, we have to make sure this application fairly represents to the Court all the evidence and all the information. That is what did not happen here, and that is, I think, why you see the FISA Court order yesterday.

Senator SCOTT. Do you think the FBI is going to make the changes that they need to?

Mr. HOROWITZ. I certainly understand that from Director Wray that that is the plan.

Senator SCOTT. OK. Do you think he is committed?

Mr. HOROWITZ. Yes. Everything I have heard, he has made it clear he is committed to it.

Senator SCOTT. Given the abuses that were found during this investigation, what should the vetting process be for assets and criminal informants? What do you think the——

Mr. HOROWITZ. There clearly on the FBI side needs to be a better process or a more effective process and understanding in place on how to vet individuals and how to make sure that managers are supervising, and the reason we made the referrals for accountability of the supervisors is this is not only a failure of the line agents; this is a failure of management from the first level all the way up to ensure hard questions are being asked. When you are running something like this, you have to ask insightful, targeted questions. You have to know the answers. And you have to make sure that managers understand what their responsibilities are.

So on the easier end is training. On the harder end is making people realize that they cannot be making all these discretionary judgments for themselves. Other people need to know about them.

Senator SCOTT. Mr. Horowitz, to your understanding, was Christopher Steele ever polygraphed?

Mr. HOROWITZ. I do not believe we saw any evidence of that.

Senator SCOTT. Does that surprise you?

Mr. HOROWITZ. I would probably want to talk further with my team about making sure I understand what the rules are at the FBI in terms of doing it, but you could see—presuming it is within the rules at the Bureau to do that, it is certainly a reasonable question to ask.

Senator SCOTT. So when the FBI finds an asset that they determine not to be credible, what should they be doing?

Mr. HOROWITZ. Well, they should——

Senator SCOTT. What would be the process?

Mr. HOROWITZ [continuing]. Cut that person off as a confidential human source, full stop.

Senator SCOTT. Do they have an obligation to go back and tell everybody that he was providing information based on a now not credible source, that they were wrong?

Mr. HOROWITZ. They have an obligation to close the person, put it in what is called the "delta file" so it is in the FBI's system so that every single person who has relied on that informant can see that information. It is one of the criticisms we have here, that not all information went into the delta system as they were learning information about Mr. Steele. And as needed, they should be alerting not only the agents who have relied on it, but if it is criminal, they should also be telling the prosecutors what they have learned.

Senator SCOTT. Thank you. Senator Hassan, thank you again for letting me go.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Oh, sure. My pleasure.

Thank you, Inspector General Horowitz, for being here. I am grateful to the Chairman and the Ranking Member for having this hearing. And, Mr. Horowitz, I also just wanted to thank your team for all of their extraordinary hard work because I think the role of Inspectors General is incredibly important. So let me just start with a couple of general questions about the tools that you all have to work with and really the function that you perform.

First of all, I believe you all do a great service to the country. Inspectors General not only evaluate Federal programs and spending to ensure that taxpayer dollars are well spent, but they also

confront wrongdoing that threatens to undermine our democratic institutions and the specific missions of the agencies that they serve.

Consequently, Congress has to do everything it can to support the work of Inspectors General and establish safeguards to protect their work against agency interference or political influence.

So, Mr. Horowitz, can you discuss the importance of maintaining the independence of the Office of the Inspector General as it reviews agency actions and makes recommendations for improvements? And, in particular, how does maintaining that independence help you do your job?

Mr. HOROWITZ. Thank you, Senator. It is foundational to what we do.

Senator HASSAN. Right.

Mr. HOROWITZ. This report has credibility because the folks who worked on it behind me and who have worked on other reports go at it in just a down-the-middle-of-the-road way, completely independent. We want to put forward information so the public can make its assessment of what happened with a government program, whether it is FISA, whether it is a taxpayer-funded program of another sort. But we are all about transparency, putting information out there, and not being swayed by what maybe the FBI or the Justice Department leadership want to see happen or want to see a particular outcome. We have to be completely independent of that, be able to lay out what we think.

The Attorney General disagrees with our finding on predication. That is fine. I did not take this job to always agree with the leadership of the Justice Department. That is not what this job is about. And that has to be built into the system, and there has to be respectful disagreements.

Senator HASSAN. Right.

Mr. HOROWITZ. But there has to be that ability to have disagreements.

Senator HASSAN. Great. Thank you for articulating that so well. It is something I think we need to stay focused on.

Now let us get to a couple of the tools that I would like to ask you about. The Inspector General Act gives IGs numerous tools to conduct their evaluations, audits, and investigations in a thorough and objective way. However, additional tools may be required to adequately perform what is really important work.

One of these additional tools is the ability of the IG to subpoena witnesses who operate outside of the agency or its programs, including former Federal employees.

How would the ability to compel testimony from these witnesses enhance the investigative capabilities of the IG community?

Mr. HOROWITZ. So it is a critical tool that we have advocated for for many years. This Committee has been very supportive of us getting it. As an example in this review, we had two witnesses who would not speak with us—Mr. Simpson and Mr. Winer—and we had no ability to get their testimony.

Most importantly, also, though, partly the reason this took 18 or 19 months is because many witnesses initially declined to speak to us and only toward the end of the investigation reengaged and said

now they were interested in speaking with us. We were not going to turn down their testimony.

Senator HASSAN. Right.

Mr. HOROWITZ. That required us to extend our timing. So having subpoenas not only would have led us to get evidence we did not get, but it would have led us to move this more rapidly to a conclusion.

Senator HASSAN. Right.

Mr. HOROWITZ. Very importantly, on programs that cost the taxpayers money, grant recipients, contractors of the Federal Government, those are people who are not Federal employees who do not have an obligation to cooperate. That would be very helpful in that regard. Former employees, I could go over and over and over with you, and we have sent many examples to the Committee, of individuals who engaged in misconduct at the Justice Department and retired on the eve of us questioning them, and then they do not come in. And valuable evidence is lost. Sometimes they are the subject. Sometimes, frankly, they are the critical witness.

Senator HASSAN. Right.

Mr. HOROWITZ. They retire, they have their pension, they move on. And, in fact, actually if they become contractors, they can come back and work for the Federal Government, and we cannot subpoena them in that position.

Senator HASSAN. OK.

Mr. HOROWITZ. So there are a lot of reasons why that is a very important provision, and, by the way, the Defense Department (DOD) IG has that authority. It has been used very sparingly in all the years because when you have the authority, people work out voluntary arrangements to come in and talk with us.

Senator HASSAN. Right. Of course. Well, thank you for that explanation, and that is something I hope we can work on in a bipartisan way.

Another one of the tools that could aid your office in particular is the ability to investigate misconduct of Department of Justice attorneys. Can you provide us with more background on why this particular policy is in place and whether in your view it is an appropriate exception to your authority?

Mr. HOROWITZ. Absolutely, and thank you for asking about that. This has been something we have advocated for 30 years since we came into existence in 1988. The deal that was struck in 1988 that allowed the Justice Department to have an IG with the Attorney General at the time was to carve out lawyers and actually at the time to carve out the FBI and the Drug Enforcement Administration (DEA) from oversight by the independent Inspector General. So when we started, we largely oversaw the Immigration and Naturalization Service (INS), which was at the Department at the time, and a few other entities.

In 2001, at the time it was within the discretion of the Attorney General to change that, Attorney General Ashcroft, after the Aldrich Ames scandal, gave us authority over the FBI and DEA. Congress legislated that a year later. Lawyers continued to be carved out. The discretion to change that is no longer with the Attorney General. It is Congress that would have to change the law. We are the only Inspector General Office that I am aware of that does not

have authority over misconduct by any employee in the agency they oversee. And so if the misconduct is by the line prosecutor in a courtroom prosecuting someone criminally to the Attorney General, we do not have the authority to look at that. That goes to the Office of Professional Responsibility (OPR), which does not have the statutorily protected independence and transparency that we have.

Senator HASSAN. OK. Thank you. It is my understanding that legislation is required to provide the IG community with these tools, and I look forward to working with you to explore this further in order to find a bipartisan way to strengthen the investigative capabilities of the IG community. You really do important work, and we are very grateful. Thank you.

Mr. HOROWITZ. Thank you, Senator. I would just add on that OPR bill, and our ability to oversee prosecutors, the House has passed a bill, voice vote, bipartisan, unanimous. Senator Lee has a bill pending in the Senate with bipartisan cosponsorship, and I know this Committee has cared deeply about it, and I look forward to working with you on it.

Senator HASSAN. OK. Thank you, and thank you, Mr. Chair.

Chairman JOHNSON. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman.

Mr. Horowitz, I see that the FBI continues to persist in characterizing the problem related to their surveillance issues here as "limited." And I see the FBI Director's statement yesterday, the FBI's statement yesterday makes it sound as if there is a limited problem. So let us just talk a little bit, if we could, about the scope of the problem at the FBI and how it is that the FBI came to be intervening in a Presidential election while the election was ongoing in the fall of 2016.

First, let me just ask you when it comes to FISA warrants, surveillance warrants, are the targets of those warrants given an opportunity to defend themselves in court at the time the warrant is sought?

Mr. HOROWITZ. No.

Senator HAWLEY. So the Court relies on who to establish the facts?

Mr. HOROWITZ. The FBI and the Justice Department.

Senator HAWLEY. So there is nobody there to contest the facts. The Court only hears from one side. Is that correct?

Mr. HOROWITZ. Correct.

Senator HAWLEY. Is it normal in your experience, your knowledge, for the FBI to use as the principal basis for a surveillance warrant political opposition research paid for by a major political party?

Mr. HOROWITZ. I cannot say that we have looked at any other FISA——

Senator HAWLEY. Have you heard of that being done before?

Mr. HOROWITZ. I have not heard of it, and I can tell you there was obviously, as we lay out here, concern at the Justice Department among the lawyers involved as to that question.

Senator HAWLEY. And, indeed, the FBI, of course, knew very well the nature and source of this Steele dossier on October 11, 2016. After they were asked three times by a DOJ attorney, the FBI responded that Steele, and I am quoting now, "had been paid to develop political opposition research." This is right at the time that the FBI was going to the FISA Court and asking for a surveillance warrant in the middle of a Presidential campaign. Correct?

Mr. HOROWITZ. That is correct.

Senator HAWLEY. And so the FBI absolutely knew where this was coming from. What about the number of people involved? How many people at the FBI were involved in misleading the FISA Court by your count, your estimation?

Mr. HOROWITZ. We do not have a precise number of exactly who knew what when, but there were four different FISAs. There is a case agent, there is a supervisory agent who are reviewing each. There was some overlap so it is not eight. I think it is either six or seven who had both of those responsibilities, some of which, to be fair, were more egregious than others in terms of the mistakes and the failures that occurred. And then, of course, as we note here, the reason we refer people up the chain is there is information flow up the chain, and even though those individuals did not have direct responsibility under the Woods Procedures, as managers and supervisors, we believe they had a responsibility to ask probing questions they should have been asking and followed up on information they were getting to make sure they were in a position to effectively supervise.

Senator HAWLEY. I want to come back to the information flow up the chain in just a second. You say on page 65 of the report there were over a dozen agents, analysts, and one staff operations specialist in the original Crossfire Hurricane team, which would have included at least nine FBI agents and supervisors involved in overseeing the Carter Page investigation. By my count, just what you have said in the report, looking at an organizational chart, we are talking probably at least a dozen individuals who were directly involved in the Carter Page warrants the four times. Does that sound approximately correct to you?

Mr. HOROWITZ. In fact, there is the org chart here at the end of Chapter 3.

Senator HAWLEY. Exactly.

Mr. HOROWITZ. There were different organizational charts, and people can see and follow this for themselves.

Senator HAWLEY. So we have about a dozen people at the FBI directly involved. That is a lot of people. The FISA Court pointed out yesterday that an electronic surveillance application under Federal law must be made by a Federal officer in writing upon oath or affirmation, and those individuals swear to the facts of the application. Yet we now know that in October and then three times—October 2016 and three times in 2017, these individuals deliberately, knowingly misled the FISA Court. I mean, that is really the nicest way to put it. Basically they lied to the FISA Court to get a surveillance warrant of an American citizen.

Why would so many people do that?

Mr. HOROWITZ. So we lay out here the reasons. As I said, there are multiple teams, there are some more senior people, more junior

people. We obviously try very carefully to lay out who knew what when and which people—so I want to be careful and not——

Senator HAWLEY. Were they just all incompetent? I mean, all of these people, they just could not—they did not—I mean, they were competent enough to deliberately mislead the FISA Court, to change submissions to the FISA Court, to alter emails. So it does not sound like they are very stupid to me. But, what is the explanation? Why over time, why would all of these people, four times over the space of half a year, deliberately mislead a Federal Court?

Mr. HOROWITZ. We do not make a conclusion as to the intent here, so I want to be clear about that. But that was precisely the concern we had, is what you lay out. There are so many errors. We could not reach a conclusion or make a determination on what motivated those failures other than we did not credit what we lay out with the explanations we got.

Senator HAWLEY. Yes, it certainly was not the reasons that they offered to you, is what you——

Mr. HOROWITZ. We did not credit that, and, frankly, this is one of the reasons we were not able to but did not reach a conclusion, is we now have the Court weighing in and the Court wanting to understand what happened here as well.

Senator HAWLEY. Yes. I think the scope here is what really alarms me, the number of people directly involved at the FBI, the repeated decisions to mislead, outright lie to the FISA Court, and the total implausibility of the explanations that these people offered you, I mean, again maybe they are incompetent, or maybe they had an agenda here. And I just want to put a fine point on that. Was it your conclusion that political bias did not affect any part of the Page investigation, any part of Crossfire Hurricane? Is that what you concluded?

Mr. HOROWITZ. We did not reach that conclusion.

Senator HAWLEY. Because I could have sworn—in fact, I know for a fact that I have heard that today from this Committee, but that is not your conclusion?

Mr. HOROWITZ. We have been very careful in connection with the FISAs for the reasons you mentioned to not reach that conclusion, in part, as we have talked about earlier, the alteration of the email, the text messages associated with the individual who did that, and our inability to explain or understand what—to get good explanations so that we could understand why this all happened.

Senator HAWLEY. I think we are left with really—I mean, it is two possibilities here. You have three different investigative teams, as you testified earlier. You have a dozen people at the FBI. You have the decisions made over time to mislead the FISA Court. Either these people were really incompetent and bad at their jobs, or they had an agenda that they were pursuing. And having an agenda, I do not care what word you put in front of it, political agenda, personal agenda, but whatever it is, it is antithetical to democracy.

Let me just ask you about the information flow up the chain. We see that Director Comey, we know that Director Comey was briefed about Crossfire Hurricane in August 2016. Who else knew about this? On October 14, 2016, we know that Deputy Director McCabe gets a text message saying that the Deputy Attorney General wants to be part of a meeting, and the White House has asked the

Department of Justice to host. Who at the White House knew about the Crossfire Hurricane investigation?

Mr. HOROWITZ. So as you know, we are not the Inspector General, over the White House or the Executive Office of the President, and so what we have access to are the records at the FBI and the Justice Department. I cannot answer questions about that as to who knew or who was involved beyond people in the Justice Department and the FBI.

Senator HAWLEY. I will say in closing, Mr. Chairman, I find it very hard to believe that the Deputy Attorney General of the United States, the FBI Director, all knew about this, but that the senior leadership, the Attorney General herself or, for that matter, the President of the United States would not know about a surveillance program of a major party candidate in the midst of a Presidential campaign. That just boggles the mind.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Hawley. By the way, good line of questioning.

I want to take this opportunity real quick to put a little meat on the bones here. You talked about mid-October. October 11th and 12th, Christopher Steele's meeting at the State Department with Kathleen Kavalec and Jonathan Winer, who refused to cooperate with this investigation, is also the same day, October 11th, that Stu Evans is raising questions about Steele, going, "Where is this coming from?" Three times asked the question. Did not get a satisfactory answer three times.

Also, I think the next day, October 12th—the 11th and 12th, Lisa Page is texting Strzok and McCabe saying that there are some problems with Stu Evans, and, oh, by the way, in order to break down his resistance—my words, not hers—basically she might have to use McCabe's name to get Stu Evans to basically agree to letting this FISA warrant go through.

So talking about information up the chain, you have McCabe, you have Strzok, you have Page, that little cabal—I know they did not call themselves a "secret society," but it sure sounds like they had a little bit of a cabal going here, and that is being really influenced. You can see it right there in those texts. That is why the timeline is so important. Take a look at the lineup. These unvarnished truths that the texts reveal combined with the timeline of events happening, it is pretty revealing. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Mr. Chairman, I would like to ask unanimous consent that we enter into today's record the Foreign Intelligence Surveillance Court's order[1] that they put out yesterday.

Chairman JOHNSON. Without objection.

Senator LANKFORD. It is pertinent, obviously, to this conversation today.

Mr. Horowitz, thank you. Thanks for your leadership not only at CIGIE but also, obviously, what you are doing there at DOJ. I appreciate your whole team and the work that you continue to do.

[1] The FISA Court Order appears in the Appendix on page 93.

You used the term, when talking about the mistakes that were made, saying there were so many mistakes, this was either somewhere between "gross incompetence" to "intentional," but you did not try to be able to determine the motivation of all these. It gets a little more harsh when the FISC responds back to this in the letter that they sent out in their order yesterday. They said, "Because the conduct of the OGC attorney gave rise to serious concerns about the accuracy and completeness of the information provided to the FISC in any matter in which the OGC attorney was involved, the Court ordered the government on December 5, 2019, to, among other things, provide certain information addressing those concerns."

Then this: "The FBI's handling of the Carter Page applications, as portrayed in the OIG report, was antithetical to the heightened duty of candor described above. The frequency with which representations made by the FBI personnel turned out to be unsupported or contradicted by information in their possession and with which they withheld information detrimental to their case calls into question whether information contained in other FBI applications is reliable."

One of the reasons this hearing is so incredibly important is because what this group did at the FBI not only took our Nation down years of turmoil, but they are now calling into question every FISA application. I am confident every attorney is going to bring this case up and say we cannot rely on the FISA process now, and it will cause turmoil in the FISA Court for a very long time. So the Crossfire Hurricane team not only did damage to our Nation, did damage to our justice system, and potentially damage to what we are doing in counterintelligence and counterterrorism. So we appreciate your work because this is incredibly important to actually get to the bottom of this process.

Can you compare the quality of work as you went through the interviews with the Crossfire Hurricane team at headquarters with the Washington field office and those agents and the quality of their work? Did you see the same number of mistakes made in what was done between the Crossfire Hurricane team and the Washington field office team?

Mr. HOROWITZ. So many of the problems that come up here flow from the earliest parts of the investigation, which were the headquarters-based team. As you know, the teams got mixed as they went along. It went out to the field; then it came back at various times, which is a problem we identified here. Most of the problems are occurring at the headquarters-based times when the teams are together. It is not exclusive because it goes to the field as well.

Senator LANKFORD. The Washington field office seemed to handle documents and procedures better than headquarters handled it.

Mr. HOROWITZ. I think on balance that is a fair comment, although, frankly, we do not go into trying——

Senator LANKFORD. Right, you are not trying to compare the two. I am asking for an opinion after you have gone through the process.

Mr. HOROWITZ. And there are so many problems here. We decided not to sort of——

Senator LANKFORD. Try to separate it out.

Mr. HOROWITZ [continuing]. Work out exactly where things might have been not as problematic as others.

Senator LANKFORD. Let me follow on what the Chairman was talking about with Jonathan Winer. The meetings in the State Department are very curious to me, that Steele somehow either initiates or he says was invited by State Department officials on October the 11th to be able to come sit down with officials at the State Department. He made very clear he is trying to get documents into the public eye before the election and to try to get all these things made public. That meeting happens on October the 11th.

On October the 19th, Steele delivers to an FBI handling agent what he received from Jonathan Winer, from the State Department. So Steele is coming to make his case to the State Department. He makes his case. Apparently Jonathan Winer then takes a document, gives it to Steele, since he is getting things out into the public, and he sends that out. So someone from the State Department is trying to get out into the public what he described as "a friend of a well-known Clinton supporter who received this from a Turkish businessman with strong links to Russia."

So, apparently, someone from the State Department is taking a foreign document or a foreign source, getting it to Steele, who he knows is trying to get it out into the public. Were you able to close the loop on what that document is, how that happened, where that document came from?

Mr. HOROWITZ. We did not, and partly the issue, as you know, is the inability to talk to Mr. Winer about where the document came from, that meeting, those connections, but also our access here and our review here was focused on FBI conduct and conduct by FBI personnel.

Senator LANKFORD. So just to clarify on this, this is very apparent to your team, though, that this is someone in the State Department trying to take a foreign source document and trying to get it into the public to affect the campaign against Mr. Trump.

Mr. HOROWITZ. I can only tell you what we gathered here. We did not have a chance to question people on it. So I want to be careful. We did not reach conclusions. We are just presenting——

Senator LANKFORD. You are just saying what you saw at this point.

Mr. HOROWITZ. Right.

Senator LANKFORD. Bruce Ohr is very curious in this process. The FBI "cuts off a relationship with Steele" early November and then makes it official November 17, 2016, saying we are going to have no more contact with Steele at all. But yet the next day the FBI for the first time pulls Steele's file, and they are still going through this after they have "cut him off," and then within days Bruce Ohr is then doing back-channel communications with Steele, and they continue to maintain back-channel communications with Steele.

So was Steele cutoff as a source, or was the Crossfire Hurricane continuing to use him as a source, just not officially?

Mr. HOROWITZ. We concluded the latter, that while he was cutoff officially in FBI records, the FBI continued to meet with him through Bruce Ohr as the conduit on 13 different occasions.

Senator LANKFORD. Why would Bruce Ohr continue to be able to meet with him? And why would he continue to be tasked to do that?

Mr. HOROWITZ. Well, let me just be clear. He was not tasked to do it. As he said, he understood what the FBI was looking for from him. But he was able to do it because there were no clear rules that prohibited him from doing it, and he intended and desired to do it. There was nothing that he——

Senator LANKFORD. He maintained that. On page 188 of your report, you make this comment: "that Steele tasked [his primary subsource] after the 2016 elections to find corroboration for the election reporting and that the Primary Sub-source could find zero." He reported that to the FBI he could find zero. He reported that to the Washington field office when they met with him in May 2017. What I am trying to figure out is Steele is tasking his sub-source to go find corroboration after the election is even over. This was at least a month through this process and cutting off from the FBI. Who is tasking Steele to continue to go chase down more information?

Mr. HOROWITZ. We do not have evidence as to anybody specifically tasking Steele to go chase down evidence, but it is pretty clear from what we are laying out here that the FBI from day one was asking questions about the corroboration for the Steele reporting and not getting it. So it would not be surprising that Steele was still trying to see if anybody could find corroboration so he could demonstrate that there was support for his reporting when, in fact, what we had here——

Senator LANKFORD. It was zero.

Mr. HOROWITZ [continuing]. That was not what was happening.

Senator LANKFORD. It was zero, and it was known immediately by FBI at that point that there was zero corroboration for this. In fact, the State Department personnel, even when they met with Steele, noted that he had his facts wrong, even what he was presenting at that point, and they knew it all immediately.

Mr. HOROWITZ. They referenced, I think it was, the purported Miami consulate, that there was no such Miami consulate.

Senator LANKFORD. All right. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Lankford, just real quick, your line of questioning, again, reveals the shortcomings—again, not because of Inspector General Horowitz's fault, but just the fact that he is constrained in terms of what information he can really gather, which is why I am basically reaffirming to you, our Committee's investigations have kind of combined, Senator Grassley in Finance, Senator Graham in Judiciary, and this Committee. We have begun the process of requesting voluntary interviews on a host of different issues. This is just one of the areas. Again, our investigation started with the Clinton email scandal, kind of morphed into this because it is the same cast of characters moving into this.

So as I said in my opening statement, I am not going to stop our oversight, our investigation, until I get all the answers to all the questions. The ones you and Senator Hawley raised are very valid, but, again, the constraints of Inspectors General, the way they are pretty well siloed in their departments really prevents those ques-

tions being answered, even though it was an 18-, or 19-month investigation. So we will continue our efforts. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. Mr. Horowitz, very good to see you. Thank you for your service to our country. For how many years?

Mr. HOROWITZ. Seven and a half.

Senator CARPER. It seems longer.

Mr. HOROWITZ. It seems longer, but it is 7½.

Senator CARPER. We are glad you are here. We appreciate the work you are doing and the leadership you provide. Some of the folks behind you, are they part of your team?

Mr. HOROWITZ. Yes.

Senator CARPER. Would you all raise your hands, please? All right. Thank you very much.

I think it was Thomas Jefferson who once said if the people know the truth, they will not make a mistake. Think about that. If the people know the truth, they will not make a mistake.

Sergeant Joe Friday on the TV show "Dragnet" said it differently. My sister and I used to love that show, and he would be making a visit to someone to try to get information from them, a man or a woman, about a crime or an investigation, and he would always knock on the door, they would open the door, he would say: "Just the facts, ma'am," or, "Sir, just the facts." So that is what we are interested in.

For a long time there was an older Methodist minister in the southern part of Delaware in a town called Seaford. His name was Reynolds, Reverend Reynolds. And when I was elected Governor in 1992, he was nice enough to come and visit me and just give me some advice. And one of the pieces of advice he gave me was he said, "Governor, just remember to keep the main thing the main thing." And I said, "Pardon me?" And he said, "The main thing is to keep the main thing the main thing." And it took me about 2 years to figure out what he was talking about, but I am reminded of those words today as we try to figure out the truth and to figure out what is indeed the main thing as it flows from your investigation and your work.

In preparing for this hearing—I was speaking of Methodist ministers—I was reminded of a verse of Scripture, I think it might be in the book of Matthew, that warns those who see the speck in their brother's eye but do not consider the beam that is in their own eye.

Over the past few years, the media and some of my colleagues have focused extensively on text exchanges between FBI officials Lisa Page and Peter Strzok which have been cited as proof of political motivation behind the Crossfire Hurricane investigation. But, Mr. Horowitz, your report I believe notes that other agents exchanged pro-Trump texts and instant messages during the course of the investigation.

For example, one supervisory special agent wrote in November 2016—I think it was just after the election—and this is a quote from him, that he was "so elated with the election" and compared election coverage to "watching a Super Bowl comeback." He later

explained his comments by stating that he "did not want a criminal to be in the White House," referring, I presume, to Hillary Clinton.

Mr. Horowitz, this agent was supervising the use of a confidential human source in the investigation. Is that correct?

Mr. HOROWITZ. So the individual was in a field office with a confidential human source who provided certain information but was not ultimately used by the Crossfire Hurricane investigation.

Senator CARPER. All right. And you found other examples of pro-Trump exchanges between FBI personnel. Is that true?

Mr. HOROWITZ. Yes, generally.

Senator CARPER. Mr. Horowitz, did you or your team find any evidence that the agents who exchanged pro-Trump messages were influenced by political bias?

Mr. HOROWITZ. We did not find evidence of action there. And, again, as I mentioned earlier, we were very careful to separate out general statements pro or anti a candidate compared to text messages that went a step further and suggested some intent potentially to act on them or that had wording that was concerning. FBI employees, like any other employee in the Federal Government, are allowed to have personal views on which candidate they support or do not support. What they cannot do is act on them. What they have to do is check them at the door before they get to work. And that is what we were trying to sort through here.

Senator CARPER. I think that is the main thing. All of us have our political views. We certainly have them on this Committee and in the body where we serve. And the question is: To what extent do they impede or promote our ability to get things done?

But I will just ask the question again. I just want to make sure I understand. Did your team find any evidence that the agents who exchanged pro-Trump messages were influenced by political bias?

Mr. HOROWITZ. No, we did not.

Senator CARPER. All right. Thank you. And this is consistent, I believe, with the standard of behavior one would expect from FBI professionals. Is that right?

Mr. HOROWITZ. That is correct.

Senator CARPER. And, similarly, did you find any evidence that political beliefs affected the work of Mr. Strzok and Ms. Page?

Mr. HOROWITZ. On this investigation, what we looked for very carefully was whether they had the ability to impact the decision specifically, and on the issues we looked at—the confidential human source decisions, the FISA decisions, and the opening—we found that they were not the decisionmaker on them, so that we could segregate out their views and their activities from those decisions.

Senator CARPER. All right. Thank you.

Let me just follow up. During your appearance before, I think it was, the Senate Judiciary Committee last week, Mr. Strzok and Ms. Page were described by some of my colleagues as the "people in charge." But a witness your team interviewed stated that Mr. Strzok was, in fact, "not the primary or sole decisionmaker on any investigative step in Crossfire Hurricane". Witnesses also stated that Ms. Page "did not work with the team on a regular basis or make any decisions that impacted the investigation."

Is it fair to describe Mr. Strzok and Ms. Page as the "people in charge" of the Crossfire Hurricane investigation?

Mr. HOROWITZ. So Ms. Page was not in the chain of command at any point in time. Mr. Strzok was in the chain of command, so he did have supervisory authority for a period of time. He rotated off the organizational chart in roughly January when the second team came into being, and there were a series of problems that occurred after that as well. And so I think he is in a different position in terms of the chain of command certainly than she was.

Senator CARPER. All right. In March 2017, President Trump alleged that "Obama had my wires tapped in Trump Tower just before the victory". Later he retweeted a statement that "the DOJ put a Spy in the Trump campaign." Attorney General Barr repeated these accusations in April of this year when he testified that he thought "spying did occur" on the Trump campaign.

I would just ask, Mr. Horowitz, did you find any evidence that the FBI engaged in spying on the Trump campaign?

Mr. HOROWITZ. So we are very careful to use the words, the legal words that are used here, which is "surveillance." There was the Carter Page surveillance that we have identified here. We did not find evidence of other court-authorized surveillance. We found the confidential human source activity that we detail here and did not find additional confidential human source activity prior to the election.

Senator CARPER. If I could close with this, does the report find that the FBI engaged in surveillance at Trump Tower?

Mr. HOROWITZ. We did not find evidence of surveillance on Trump Tower.

Senator CARPER. And did the report find that any monitoring of Trump campaign officials occurred without necessary FBI approvals?

Mr. HOROWITZ. All of the monitoring activities were approved.

Senator CARPER. And is it fair to say that the statements by President Trump and Attorney General Barr that I have described are incorrect?

Mr. HOROWITZ. Again, we do not use the term "spying." We are looking at whether there was court-authorized surveillance or not.

Senator CARPER. Thank you so much.

Mr. HOROWITZ [continuing]. I will stick to what we have here.

Chairman JOHNSON. I want to go back to October 11th's activities. After being asked three times by Department of Justice attorney Stu Evans, the FBI finally responds that "Steele had been paid to develop political opposition research."

In your report, you write that Strzok has advised Page support from McCabe might be necessary to move the FISA application forward. Strzok texts Page: "Currently fighting with Stu for this FISA." The following day, Lisa Page texts McCabe: "I communicated you and boss' green light"—I think that should be "your"—"to Stu earlier. 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." Isn't that pretty high-level pressure on Stu Evans by Peter Strzok, Lisa Page, and Andrew McCabe?

Mr. HOROWITZ. There was certainly that effort exactly as you describe. What ultimately happens is McCabe speaks with the head

of the National Security Division about it, so they ultimately do not need to do what they are talking about here. But that is absolutely what they are talking about.

Chairman JOHNSON. I want to go back to pick up a little bit what Senator Lankford was talking about with Bruce Ohr. These are quotes in your report by senior Department of Justice and FBI officials describing Ohr's ongoing interactions with Steele and the FBI. These are just basic descriptions of how these officials thought about it: "outside of Ohr's lane"; they were "stunned"; they were "uncomfortable" with it; "out of the norm"; "bad idea"; "raised red flags"; "flabbergasted"; "FBI should have alerted DOJ"; "shocking"; "inconceivable." Again, those are a lot of senior Department of Justice and FBI officials.

What is interesting is how Andrew McCabe responded to Ohr's activities. He said it was the "responsible thing" to do.

How do you explain that discrepancy from most of the FBI and Department of Justice officials and Andrew McCabe thinking, not a problem, it was the "responsible thing" to do?

Mr. HOROWITZ. Look, I cannot explain why that view would be there. I think it is perfectly understandable why, if you are in the Deputy Attorney General's Office, whether you are the Deputy Attorney General or right below the Deputy Attorney General, to have someone on your staff doing what was going on and not telling anybody is highly problematic. And as we point out here, the net result of that is the Deputy Attorney General was signing a warrant that did not include key information that someone on her staff knew and had told the FBI, but the FBI had not come back and told the Justice Department. That was the net outcome of that. That is a problem.

Chairman JOHNSON. Again, I am seeing Andrew McCabe's fingers all over this thing. I am also seeing him saying he cannot recall 26 times on significant issues. I am not buying it.

Let me go back to the State Department involvement. I realize that you are limited, but I just want to ask some questions. Are you aware of why high-level State Department officials were meeting with Steele and forwarding his reporting to the FBI?

Mr. HOROWITZ. The only thing I could say is from speaking with Ms. Kavalec, it was because she thought she had to tell them because they needed to know. But as to the others, why they were doing what they were doing, I do not know the answer.

Chairman JOHNSON. Did you obtain any information, meeting notes or any other documentation, based on those meetings and contacts?

Mr. HOROWITZ. We obtained certain information from the State Department, including, for example, Ms. Kavalec's notes, and we were able to speak with her.

Chairman JOHNSON. You did request interviews with Jonathan Winer, right?

Mr. HOROWITZ. Correct.

Chairman JOHNSON. Do you know why he refused to cooperate?

Mr. HOROWITZ. I do not know.

Chairman JOHNSON. Why did you want to interview him? What information did you feel he had that you wanted to know?

Mr. HOROWITZ. Precisely because of his interactions with Mr. Ohr and Mr. Steele, much like we wanted to talk with Ms. Kavalec, because we wanted to tie off an understanding as to what was happening between the Justice Department and the State Department.

Chairman JOHNSON. On September 30, 2016, Peter Strzok texts Lisa Page, "Remind me tomorrow what Victoria Nuland said." Did you ever find out from Lisa Page what Victoria Nuland had told her somewhere on or about September 30th?

Mr. HOROWITZ. I do not recall as I sit here whether we heard about it. I would have to follow up with that, Senator.

Chairman JOHNSON. Senator Peters, do you have—I am going to organize my thoughts here. Do you have some other questions?

Senator PETERS. I do. Yes, thank you, Mr. Chairman.

Mr. Horowitz, in addition to your role as the DOJ Inspector General, you also serve as the Chair of the Council of Inspectors General on Integrity and Efficiency. I have a question. I know you have addressed this somewhat with a previous question, although I was out voting at the time. If you could speak a little bit again to the importance of the Inspector General independence and, in particular, why CIGIE is important to the work of Inspectors General and what we need to do to strengthen that organization as it ties into the general theme of why independence is so important, that would be very helpful.

Mr. HOROWITZ. Absolutely. So the foundation of what we do as Inspectors General is our independence, is our ability to both report to our agency heads and Congress about what we find. We are not, very importantly, untethered from the departments we are in but, rather, serve that dual purpose and that ability to report to both. And the independence is critical because we have the ability to get information like we did here, to use our own judgments without influence from the leadership of the Justice Department, the FBI, or others, but to make unbiased decisions based on our historical reviews of Department activities. And that is critical.

The foundation also is our ability to be transparent and our ability to produce reports like this so that the public can decide for themselves what they think of our factual findings, which hopefully are 100 percent accurate. And I note here no one is taking issue with our factual findings but, rather, inferences drawn from them, and that is critical.

So we have to be able to do that. We have to be able to have robust dialogue. As I mentioned earlier, the fact that I may disagree or the Attorney General may disagree with me is not a problem. In fact, it in some respects demonstrates the importance of our independence and our independence.

Some of the things that CIGIE does, that is important is pull together all 73 Federal IGs and bring us together for common goals, common purposes, common issues that we should have oversight of, training, but most importantly, being able to advance independence and transparency in the government, represent the taxpayers in our agencies, support the ability to get information out there to the public so that the taxpayers know where their money is going, how their money is being used, whether programs they are authorizing—in this case, FISA—that are highly intrusive programs are being used wisely or not being used wisely, and making rec-

ommendations to fix them, and then doing follow-up to make sure that is done, and being able to come up here, frankly, like I did for many years before this Committee and the Chairman on access to records and other issues that we were having problems with so we could do our jobs.

In fact, this Committee, as it is aware, this report would not have been possible but for the IG Empowerment Act that you all passed, because this was one of the areas we were being hamstrung on in being able to oversee.

And so that is the kind of independence we need. We need, for the reasons I mentioned earlier, testimonial subpoena authority. We cannot get relevant evidence at key times, including when individuals resign on the eve of being questioned by IGs, contractors who get sometimes tens, hundreds of millions of dollars, at some agencies billions of dollars in contracts potentially, and grant recipients who get a considerable amount of money.

So there are a lot of tools we need to further our efforts. The Committee has always been very supportive of our work, and I certainly appreciate it, and I know as Chairmen and Ranking Members you both led the way on that for us.

Senator PETERS. Mr. Horowitz, as our Committee states in questionnaires that we present to every nominee who comes before us, "Protecting whistleblower confidentiality is of the utmost importance to this Committee," something that, as you know, is absolutely vital for us to do our work in oversight. But, in your words, why are whistleblowers important, and why is protecting whistleblowers of critical importance?

Mr. HOROWITZ. So precisely for the reasons you indicated, Senator. We get a significant amount of our information from individuals who are willing to blow the whistle. Some call themselves whistleblowers. Some do not call themselves whistleblowers. But they are willing to come in and blow the whistle on wrongdoing and misconduct.

In July, we issued a report at CIGIE, the Council of IGs—it is on our website—about cases that move forward precisely because whistleblowers were willing to come in and report to us. Many of them are willing to come in and use their names, have their identities known, and are not afraid to do it. They are incredibly courageous for doing that. But they do it. Many are afraid and do not want their names known. They want to be anonymous. Others send us information through our hotlines, and we never learn their names. It does not mean we cannot follow up on it, but what we have to do in those instances in particular is see if we can corroborate the information. And that is really what we are charged with doing. We want information. We want people to come in. We get in my office over 10,000 calls to our hotline a year. We have to sort through them. Not all of them develop into leads. Not all of them, when we investigate them, develop into findings. But they are critically important, and that ability to come in and without fear of retaliation or the threat of retaliation is critical. And we as IGs have to do our job not only educating people so they will come in, but also making sure that if anybody is threatened with retaliation, we do our jobs to ensure that there is accountability if that occurs.

Senator PETERS. I certainly get this from your testimony, but I just wanted to reiterate and get your response. It seems to me, based on the importance of confidentiality and the fact that you do not just act based on a confidential report, you actually have to corroborate it with actual evidence, but you mentioned how important confidentiality is, so I suspect that identifying the identity of a whistleblower without their consent would likely have a very significant chilling effect on whistleblowers generally. Is that an accurate statement? If you could expand.

Mr. HOROWITZ. That is a fair statement, and, in fact, Congress in the IG Act has told us we are not allowed to disclose whistleblower identities precisely because of that reason unless there is a legal requirement that we do so, unless we are unable through other means to protect their identity. So people who come forward, it takes great courage.

My first involvement in this as IG was when I walked in and Fast and Furious was ongoing. We had courageous whistleblowers from ATF come in and report that information to us. Most of those individuals put their names with the information. But people should not have to do that. That does not mean their information is no less important that we consider, but it does mean, as you indicated, we do not act on purely anonymous, uncorroborated information. The obligation is then on us to corroborate the information and be able to move forward. But it takes great courage to come in as a whistleblower. We have to protect identities as the law requires us to do as IGs. And we have to make sure, if there is retaliation or threats of retaliation, that we take action.

Senator PETERS. So in September, the DOJ's Office of Legal Counsel (OLC) issued an opinion that attempted to justify inappropriately withholding an intelligence community whistleblower disclosure from Congress, as I am sure you are very aware of. What is your view of the Office of Legal Counsel's opinion in that case?

Mr. HOROWITZ. So in response to that, one of the things we did as the Council of Inspectors General is put together a letter that we sent to the Office of Legal Counsel on behalf of the IG community—it is posted on our website—that expressed our serious concern about an IG's inability in that instance to be able to present the information that he believed should go to Congress in that circumstance. And that is something that concerns all of us in the IG community.

Again, the law as it is set up provided a mechanism by which an allegation could get to Congress. It required a judgment by the IG, and then it required Congress to be given that information, and then, frankly, it is up to Congress to decide what to do with that. It does not have to act on that. It can act on that. It makes, obviously, in all instances its own determinations. But that is a process that Congress carefully considered and put in place in the law. I am of the view and we were of the view as the IG community that that is the way the process should have played out.

Senator PETERS. So the letter you reference from October 22 I have, Mr. Chairman, if I could enter that into the record without objection.[1]

[1] The letter referenced by Senator Peters appear in the Appendix on page 87.

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

One final question. I understand that the Office of Legal Counsel responded on October 25th to this letter. Are you satisfied with that response? If you could elaborate.

Mr. HOROWITZ. They ultimately responded in the way they did. We had a respectful dialogue back and forth. As I said earlier, as an IG I did not take this job to be in agreement all the time with everybody. We disagree, as our letter says. We stand by our views in our letter. OLC has their point of view, and I will let readers—those are both public, and, again, the public should make their own determination. That is really what we are foundationally about as IGs, is putting out information and letting the public, an educated and informed public, read them and make their own decisions.

Senator PETERS. So I gather, if I may summarize, as a professional, highly trained IG, you were not satisfied with the response.

Mr. HOROWITZ. I stand by our letter and our legal position and our views.

Senator PETERS. Thank you.

Chairman JOHNSON. Thank you, Senator Peters.

Let me just quick talk a little bit about whistleblowers. I would share Senator Peters' and I think everybody on this Committee's and your desire to afford those whistleblower protections. There is no doubt about it. I am shocked, quite honestly, coming from the private sector at the level of retaliation against people that come forward. But I do want to clarify the law.

As Inspectors General, you are by law barred from providing—or basically blowing the confidentiality, identifying the whistleblower. But the statute actually does contemplate if somebody is accused of something by a whistleblower and they are in a court of law, it actually contemplates the person being accused being able to confront his accuser—correct?—the whistleblower.

Mr. HOROWITZ. It basically says by operation of law. It would be up to the judge to make a consideration of that, but certainly, if it was in a criminal case and you intended to rely on the witness, the witness would have to be there. What you would try and do—I mean, in police corruption cases, I have had this issue, and you have some people willing to come forward and some people not willing to come forward. If they are not willing to come forward, you have to figure out how that information, if possible—and it not always is—if possible, can be translated into the Federal Rules of Evidence allowing that information in a courtroom.

Chairman JOHNSON. Again, there is no absolute statutory protection in terms of a whistleblower's confidentiality.

Mr. HOROWITZ. The IG Act says we have an obligation to keep it unless the law requires us to do otherwise.

Chairman JOHNSON. I just want to kind of tie up a few things here. I have a lot of questions, which we will submit as questions for the record,[1] and we would appreciate you being responsive on that.

Real quick, going back to the Bruce Ohr activity in terms of being a conduit between Christopher Steele and the FBI, Peter

[1] The questions of Senator Johnson appear in the Appendix on page 102.

Strzok in your report has handwritten notes which pretty well demonstrate he knew about Ohr's activity. And yet in his interview with the Inspector General team, he denied that he was aware of what Ohr was doing. Are you buying his denial?

Mr. HOROWITZ. I would have to go back and, frankly, refresh my recollection on the notes versus what he told us. I would want to just double-check on the breadth of what he knew because Bruce Ohr having 13 meetings, he clearly knew, for example, about the Manafort-related meetings because he was at some of the Manafort-related meetings.

Chairman JOHNSON. OK. We will put that in questions for the record.

I do want to talk a little bit about monitoring or surveiling the—what is the euphemism? "Consensual monitoring"? In other words, you are wiring somebody to surreptitiously record——

Mr. HOROWITZ. Right.

Chairman JOHNSON [continuing]. Someone associated with the Trump campaign versus the Trump campaign. I think it is a difference without a distinction, but there is a distinction because there is a difference in terms of what authority, what approvals the FBI would have to get. Correct?

Mr. HOROWITZ. Correct. That is the reason for the distinction, but I agree with you, there is varying degrees here of what occurred.

Chairman JOHNSON. So they were trying to be pretty scrupulous about it, saying, "Oh, we are not surveiling the campaign. We are just surveiling people associated with the campaign."

Mr. HOROWITZ. So what ended up happening here is, as you said—and we will try and—what they did was they took individuals, informants that were signed-up informants for the FBI, wired them up so they could be recording conversations they had without the person they were speaking with knowing that they were being recorded. That is in essence what a consensual monitoring is.

Chairman JOHNSON. It sounds really close——

Mr. HOROWITZ. One party's consent——

Chairman JOHNSON. It sounds really close like you are monitoring the campaign, but, again, just lay that aside. That is my own personal opinion.

Did you ever determine why the FBI changed its opinion? I think early on when they interviewed—and, again, this was not exactly done aboveboard, but they interviewed Michael Flynn. At that point in time, I think the agent did not feel that Michael Flynn was dishonest with him. Somehow that changed. Do you have any idea why that opinion changed?

Mr. HOROWITZ. I do not know. I have heard that, but we actually have no insight into what happened there on that case specifically.

Chairman JOHNSON. A quick follow-up on Senator Paul's line of questioning, and we spoke about this a little bit earlier, too. There really are a lot of controls in current law that, had they been followed, the Woods Procedure, other requirements that the FBI and everybody knows this, they have to be scrupulously accurate, so there are plenty of layers of control over this FISA application. Correct?

Mr. HOROWITZ. There are a lot of layers of control.

Chairman JOHNSON. And I realize your limitation. You cannot really recommend legislation. You have to kind of stay within your lane at the Justice Department. But do you really think another layer of controls is going to fix this problem? Because this was caused by people circumventing——

Mr. HOROWITZ. Right. There are certainly some additional controls that could help, for example, on some of the informant activity and others.

With regard to the FISA, I agree, I think there is—and this is at the hearing last week and this week—real questions about are there legislative—does there need to be legislative activity here? And, of course, also now the FISA Court has put out its order, and they are going to have some involvement, obviously, in a significant way in that decisionmaking as well. That is well beyond the Executive Branch figuring out which——

Chairman JOHNSON. My own personal opinion for somebody who is definitely supportive of the FISA Court, largely because we were told, well, show us where the abuse has been, that these applications are approved at such a high level because it is so rigorous, it is so scrupulously accurate. Now, that has been completely blown. I think the FISA Court is in jeopardy, personally, and I view that as a very serious issues in terms of our national security. I think it was James Lankford talking about that, so I agree with his concerns.

The final two questions really speak to the limitations that you have in terms of conducting an investigation like this. So real quick, who couldn't you investigate? Or what couldn't you investigate? Who couldn't you talk to that, if you had been able to, you would have been able to tell a fuller story here? Because there is still a bigger story to be told.

Mr. HOROWITZ. So our review, as we made clear here, is about the Justice Department and the FBI's handling of the opening of the Crossfire Hurricane investigation and the Carter Page-related FISAs, along with the FBI's activities on their confidential human sources and surveillance that the FBI did. We did not go and look at or try to assess allegations about what the State Department activities——

Chairman JOHNSON. So you would have kind of liked to have known that, right?

But you could not do it.

Mr. HOROWITZ. We certainly wanted to know from the State Department side, which is why we went to Mr. Winer, what Bruce Ohr and Mr. Steele's activities were with them. What we were not trying to figure out is separately what the State Department might have been doing on their own or their own interests if they had any. I do not know as I sit here today if they have any.

People have asked questions about what did other intelligence agencies know. If that information was sitting in the FBI's files, we had access to it. If it is something they did separate and apart from the FBI, that was beyond the scope of this review.

Chairman JOHNSON. But you would kind of like to know how George Papadopoulos met all these individuals who just happened to be connected in different ways.

Mr. HOROWITZ. I think you would want to—it would be interesting to know a lot of pieces of information that are strands here. I do not necessarily believe it would have—well, based on the access we had at the FBI and the information we had at the FBI in terms of the FBI—what affected the FBI's decisions, I have no reason to think there is something else out there that we did not see.

Chairman JOHNSON. OK. This is very similar, but what other big questions are outstanding?

Mr. HOROWITZ. It depends what—at the FBI? I am not sure what other questions are out there other than what I mentioned earlier, which is how did all of these failures in the FISA process that is layered with all of these controls happen and why. And I know that is a big question for people to know an answer to, and I understand why. But, at this stage that I think we did not get good explanations about, and that was something we frankly would have liked to have gotten good explanations about.

Chairman JOHNSON. I want to thank you and your team for really an extraordinarily good piece of work here, understanding the limited nature of the scope. We will be providing additional questions for the record. We have obviously been looking for this to guide our actions, and one of the reasons I asked those last two questions is that will also help guide our future oversight as well. You are obviously steeped in this. You have the details. So I would just ask your entire team, who else would you want to have interviewed that you did not have access to? What other questions do you think remain? And I will just kind of throw that out as an open-ended question for our questions for the record.

Mr. HOROWITZ. OK.

Chairman JOHNSON. But, again, I want to thank you for your integrity, for all your hard work and efforts. This is unbelievably important what you have revealed, and we have a lot of work ahead of us.

Senator Peters, do you want——

Senator PETERS. That is good.

Chairman JOHNSON. OK. With that, the hearing record will remain open for 15 days until January 2nd at 5 o'clock p.m. for submission of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 12 o'clock p.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"DOJ OIG FISA Report: Methodology, Scope, and Findings"
December 18, 2019

I want to thank Inspector General Horowitz and his team for being here, and for all your hard work and efforts preparing the report that is the main subject of our hearing today. The bipartisan praise you have already received for your efforts is well deserved, and I share those sentiments. The release of this report is an important step in providing the public answers to many of the questions that have festered for far too long. But as thorough as this report is, its scope is also narrow, and many important questions remain unanswered.

Much attention has been paid to the report's conclusion that the Crossfire Hurricane investigation did have adequate predicate, but that inaccuracies and omissions in the FISA application and renewals call into question the integrity of that process. Yesterday's order by the presiding judge of the Foreign Intelligence Surveillance Court is a dramatic rebuke, and underscores how serious the FISA warrant abuses are. But I would argue that, based on what the report reveals about early knowledge within the FBI, we should be asking a more fundamental question: At what point should the investigation into possible collusion between Russia and the Trump campaign have been shut down?

Although the IG concluded the investigation was properly initiated, the consensual monitoring of Trump campaign officials conducted in the first six weeks did not result in "the collection of any inculpatory information." But rather than shut it down or use the "least intrusive" methods, the FBI ramped it up. Confidential human sources became FISA wiretaps, top FBI officials argued — disagreeing with the CIA — for inclusion of the unverified and salacious Steele dossier into the body of the Obama administration's Intelligence Community Assessment, and, finally, the FBI investigation ballooned into a Special Counsel investigation. As a result, the Trump administration was tormented for over two years by an aggressive investigation and media speculation — all based on a false narrative — and our nation has become even more divided.

For anyone who is willing to take the time, the report is a devastating account of investigative and prosecutorial negligence, misconduct, and abuse of the FISA Court process by FBI and Department of Justice officials. The most disturbing revelations of the IG investigation include reports of doctoring and using an email to mislead the FISA court, ignoring the fact that exculpatory evidence was obtained during surreptitious recording of investigation targets, deciding not to provide a defensive briefing to the Trump campaign, planting an FBI investigator in an intelligence briefing for candidate Trump under false pretenses, and withholding known and significant credibility problems related to the Steele dossier.

With these abuses in mind, and in light of what became known early in the investigation, I strongly believe Crossfire Hurricane should have been shut down within the first few months of 2017. Had the public known what the FBI knew at that time, it's hard to imagine public support for continuing the investigation, much less the appointment of a special counsel four months later. Investigations into

Russian hacking, Paul Manafort, and Michael Cohen should have continued using normal FBI and DoJ procedures. But with a sufficiently informed public, and an FBI and DoJ that rigorously followed their own procedures, this national political nightmare could have been avoided.

Which raises the question: Why wasn't the public properly informed? Some of the reasons are now obvious; some are speculative. What is obvious is that certain FBI and Department of Justice officials were not truthful or "scrupulously accurate" in their filings. Also, as this committee's majority staff report on leaks in the first four months of the Trump administration shows, an unprecedented number of leaks — 125 in the first 126 days — helped fuel the false narrative of Trump campaign collusion with Russia. The media was either duped by, or complicit in, using those leaks to perpetuate that false narrative.

The role of other Obama administration officials and members of the intelligence community is murky and unknown — but legitimate suspicions and questions remain and must be answered. For example, who initiated the contacts between Joseph Mifsud, Alexander Downer, Stefan Halper and Azra Turk with George Papadopolous? Was the January 6th intelligence briefing given to President-elect Trump by James Comey, John Brennan and James Clapper orchestrated to provide a justification for the news publication of the Steele dossier? The fact that the involvement of others outside the FBI and Justice Department remains murky and unknown after an 18-month inspector general investigation is not criticism of his work but speaks to the statutory limitations of inspectors general that should be evaluated and reassessed for reform.

Another question that needs to be asked is: Who will be held accountable? During his investigation of the FBI's handling of the Clinton email scandal, the inspector general uncovered a treasure trove of unvarnished evidence of bias in the form of texts between FBI officials Peter Strzok, Lisa Page and others. Were it not for the discovery of those texts, would we even be here today reviewing an IG investigation of these stunning abuses of prosecutorial power? I doubt it. The officials involved in this scandal had plenty of time to rehearse their carefully crafted answers to the IG's questions, or to use time as an excuse for their lack of recall. For example, on significant issues described in the report, Andrew McCabe told IG investigators 26 times that he did not recall.

Some of those involved are even claiming vindication as a result of the IG report. I appreciate Mr. Horowitz's testimony last week in which he stated about his report, "It doesn't vindicate anybody at the FBI who touched this — including the leadership."

Finally, I would argue that the process for investigating and adjudicating alleged crimes within the political realm is completely backward. Congressional oversight and therefore public awareness end up being the last step in the process instead of the first. Once a criminal or special counsel investigation begins, those investigations become the primary excuse for withholding information and documents from congressional oversight and public disclosure.

In order to avoid a repeat of unnecessary special counsels or improper investigations of political scandals, I would suggest that Congress should increase its demands for obtaining documentary evidence — concurrently with criminal investigations, if necessary — and hold hearings early in the process. This would result in more timely transparency while preserving an adversarial process to provide political balance and fairness. If possible criminal acts are found during congressional oversight, they can be referred to the Justice Department for further investigation. If conflicts of interest exist that prevent a fair adjudication by the Justice Department, then a special counsel can be appointed, but only as a last resort, not the first.

I'm sure we will spend most of today's hearing discussing the Crossfire Hurricane investigation and the inspector general's report on it. But I do hope we can spend some time discussing some of the other the issues I have just raised. Regardless, our oversight on the events involved with and surrounding the FBI Midyear Exam and Crossfire Hurricane investigations will continue until I am satisfied all the important and relevant questions have been answered.

U.S. Senate Committee on Homeland Security and Governmental Affairs
DOJ OIG FISA Report: Methodology, Scope, and Findings

OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
DECEMBER 18, 2019
AS PREPARED FOR DELIVERY

Inspectors General play a vital role in conducting oversight, offering independent assessments of how programs are working, and holding agencies accountable when errors are made.

The Justice Department Inspector General's Office conducted a thorough, 19-month investigation, interviewed more than 100 witnesses, and analyzed more than 1 million pages of materials to complete the report we are discussing today.

This report found, unequivocally, that the FBI investigation into coordination between individuals affiliated with President Trump's campaign and the Russian government had a proper legal and factual basis and found no evidence that the investigation was affected by political bias.

Politically-motivated investigations are a betrayal of our bedrock democratic principles, and this institution should speak with one voice to say that we will not tolerate them, no matter who is in power.

In this case, the report found that the investigation was rooted in identifying any federal criminal activity or threats to American national security. The Inspector General verified that politics played no role whatsoever in opening this investigation.

Importantly, the report did find that there are areas that need improvement, including the process used to obtain FISA warrants.

Identifying these areas for improvement is a key part of an Inspector General's role, and I applaud the Inspector General's robust and thorough work to shine a light on the FBI and Justice Department's shortcomings.

It is this independence and commitment to the rule of law that sets our institutions apart.

FBI Director Wray has received this report and agreed with its core conclusion that political bias played no role in opening the investigation.

Director Wray also accepted the Inspector General's findings that errors occurred in the FISA process and ordered more than forty corrective actions to improve and reform that important process.

I hope that today's hearing provides this Committee with the opportunity to carefully examine this report's recommendations and determine whether there are areas we can help strengthen as well.

However, the most important fact that we should take away from this report and this hearing is that Russia, a foreign adversary, engaged in a sweeping and systemic effort to interfere in the 2016 Presidential election, and that the FBI was right in investigating those who may have been involved.

The Russian government's effort was an attack on our democracy and our national security, and it's happening again.

The Russian government is intent on sowing distrust, spreading disinformation, and undermining our democracy. And they will pursue those efforts at all costs.

Members of both parties must come together to pass legislation strengthening election security and ensure no foreign adversary can meddle in our elections again.

I had the opportunity to work with Chairman Johnson and Senator Lankford on bipartisan legislation to strengthen cybersecurity standards for our voting machines.

I hope that we can continue working together to identify these kinds of commonsense steps that will protect the very heart of our democracy.

Finally, Inspector General Horowitz, I'd like to thank you and your team for your independence, your integrity, and your hard work in completing this report. I look forward to your testimony.

Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. Senate Committee on
Homeland Security and Governmental Affairs

concerning

"DOJ OIG FISA Report: Methodology, Scope, and Findings"

December 18, 2019

Mr. Chairman, Senator Peters, and Members of the Committee:

Thank you for inviting me to testify at today's hearing to examine the report that my office issued last week entitled, "Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation."

In July 2016, three weeks after then FBI Director James Comey announced the conclusion of the Federal Bureau of Investigation's (FBI) "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 our 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.

In my statement today, I highlight some of the most significant findings in our report. A more detailed overview of our findings can be found in the report's Executive Summary. Our findings are the product of a comprehensive review that examined more than one million documents in the Department's and FBI's possession, including documents that other U.S. and foreign government agencies provided the FBI during the Crossfire Hurricane investigation. Our team conducted over 170 interviews involving more than 100 witnesses, and we documented all of our findings in a 417-page report. I want to commend the work of our review team for conducting rigorous and effective oversight, and for producing a report and recommendations that we believe will improve the FBI's ability to most effectively utilize the national security authorities analyzed in this review, while also striving to safeguard the civil liberties and privacy of impacted U.S. persons.

The Opening of Crossfire Hurricane and the Use of Confidential Human Sources

Following receipt of the FFG information, a decision was made by the FBI's then Counterintelligence Division (CD) Assistant Director (AD), E.W. "Bill" Priestap, to open Crossfire Hurricane 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 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 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, and we concluded that the Steele reporting played a central and essential role in the decision to seek a FISA order. 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 the only party present for the proceedings. 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. This was particularly noteworthy because the FISA applications relied entirely on information from the Steele reporting to support the allegation that Page was coordinating with the Russian government on 2016 U.S. presidential election activities. However, members of the Crossfire Hurricane team failed to share the information about the Primary Sub-source's information with the Department, and it was therefore omitted from the three 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, 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), and that an employee of the other agency assessed that Page had been candid.

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 Supervisory Special Agents (SSA) 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 has 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 made the following recommendations to assist the Department and the FBI in avoiding similar failures in future investigations.

Recommendations

For the reasons fully described in our report, 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 administrating 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.

After reviewing a draft of this report and its recommendations, FBI Director Christopher Wray accepted each of the recommendations above, and we were told ordered more than 40 corrective actions to date to address our recommendations. However, more work remains to be done by both the FBI and the Department. As I noted above, we believe that implementation of these recommendations, including those that seek individual accountability for the failures identified in our report, will improve the FBI's ability to more carefully and effectively utilize its important national security authorities like FISA, while also striving to safeguard the civil liberties and privacy of impacted U.S. persons. The OIG will continue to conduct independent oversight on these matters in the months and years ahead.

This concludes my prepared statement, and I am pleased to answer any questions the Committee may have.

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:

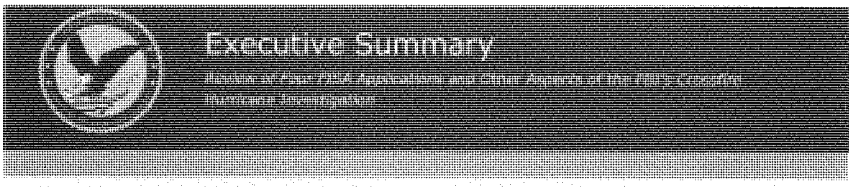
- The decision to open Crossfire Hurricane and four individual cases on current and former members of the Trump campaign, George Papadopoulos, Carter Page, Paul Manafort, and Michael Flynn; the early investigative steps taken; and whether the openings and early steps complied with Department and FBI 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



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 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)." 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.

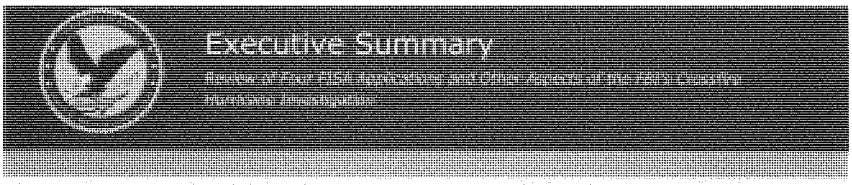
The FBI assembled a Headquarters-based investigative team of special agents, analysts, and supervisory special agents (referred to throughout this report as "the Crossfire Hurricane team") who conducted an initial analysis of links between Trump campaign members and Russia. Based upon this analysis, 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



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

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

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)

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

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 Divyekin, 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

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,"

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;

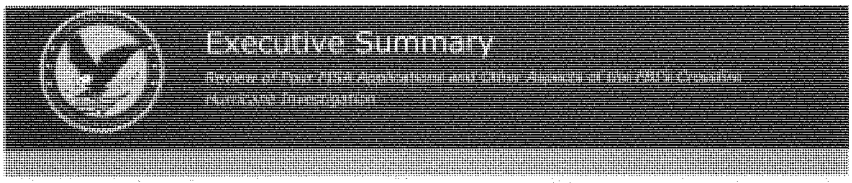
6. Omitted Page's consensually monitored statements to an FBI CHS in August 2016 that Page had "literally never met" or "said one word to" Paul Manafort and that Manafort had not responded to any of Page's emails; if true, those statements were in tension with claims in Report 95 that Page was participating 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 candor.

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



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

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.

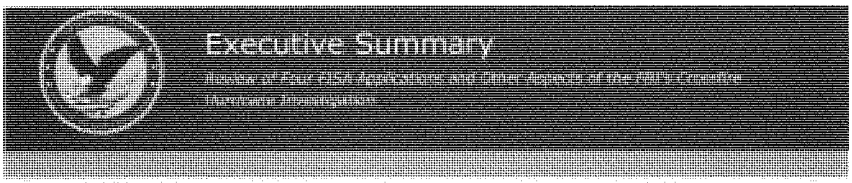
We further determined that the Crossfire Hurricane team was unable to corroborate any of the specific substantive allegations regarding Carter Page contained in Steele's election reporting which the FBI relied on in the FISA applications. We were told by the Supervisory Intel Analyst that, as of September 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.

[redacted]

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";



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 inconsistences, 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

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 no need to carry it any further." However, when the OGC 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

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.

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

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

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 predicating 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

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 [redacted]—and the handling agent forwarded the material, through his supervisor and FBI Headquarters, to the Crossfire Hurricane team. [redacted] 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.

- 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 administrating 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.

Abbreviated Timeline of Key Events Related to Crossfire Hurricane Investigation
Prepared for 12/18/19 Hearing with IG Michael Horowitz

- **June 2009:** FBI NYFO interviews Carter Page, who "immediately advised [them] 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."[1]

- **Mar. 2, 2015:** *NY Times* reports that Secretary Clinton uses private email account.[2]

- **July 10, 2015:** FBI opens "Midyear Exam" investigation (MYE).[3]

- **Mar. 21, 2016:** Carter Page joins the Trump campaign.[4]

- **Apr. 1, 2016:** FBI HQ advises NYFO to investigate Carter Page (opened Apr. 6).[5]

- **May 2016:** George Papadopoulos meets with a Friendly Foreign Government (FFG).[6]

- **May 4, 2016:**
  - Donald Trump becomes the presumptive GOP nominee.[7]
  - FBI DAD Peter Strzok texts FBI Special Counsel Lisa Page: "Now the pressure really starts to finish MYE." Page responds: "It sure does."[8]

- **July 5, 2016:**
  - FBI Director Comey statement ending MYE investigation[9]
  - Christopher Steele provides an election report to FBI handling agent in Europe.[10]

- **July 22, 2016:** WikiLeaks releases DNC emails.[11]

- **July 28, 2016:**
  - FBI HQ counterintelligence division (CD) receives FFG information.[12]
  - FBI NYFO receives two Steele election reports.[13]

- **July 28-31, 2016:**[14]
  - Neither CD AD Priestap nor EAD Steinbach want Strzok to lead the investigation because of his personal relationship with L. Page and instances of Strzok-Page bypassing the chain of command to advise FBI Deputy Dir. Andrew McCabe.[15]
  - McCabe overrules decision to exclude Strzok.[16]
  - Priestap rejects idea of defensively briefing Trump campaign.[17]

- **July 31, 2016:**
  - FBI opens the "Crossfire Hurricane" investigation (CFH).[18]
  - Strzok texts 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."[19]

- **Aug. 6, 2016:** Page texts Strzok: "And maybe you're meant to stay where you are because you're meant to protect the country from that menace."[20]

- **Aug. 8, 2016:** L. Page texts Strzok, "[Trump's] not ever going to become president, right? Right?!" and Strzok replies, "No. No he's not. We'll stop it."[21]

- **Aug. 10, 2016:** FBI NYFO's investigation of Carter Page is transferred to CFH.[22]

- **Aug. 11, 2016:** Strzok texts L. Page: "So. You come up with a codename? " Page responds, "Latitude." Strzok responds, "[REDACTED] Yuuuuuge. Though we may save that for the man, if we ever open on him."[23]

- **Aug. 15, 2016:**
  - CFH Case Agent 1 tells FBI OGC there is "a pretty solid basis" for requesting FISA authority on C. Page.[24]
  - FBI OGC responds that they "need more for P[robable C[ause]"[25]
  - Strzok texts L. Page: "I want to believe the path you threw out for consideration in Andy [McCabe]'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...."[26]
  - Comey is briefed on CFH.[27]

- **Aug. 17, 2016:** FBI and ODNI provide a strategic intelligence briefing for Trump and selected advisors.[28] This briefing did not address the allegations contained in the FFG information;[29] a CFH agent attends and memorializes the results of the briefing.[30]

- **Aug. 25, 2016:** McCabe directs CFH to contact FBI NYFO for helpful information.[31]

- **Aug. 31, 2016:** FBI joins ODNI's strategic intelligence briefing for Trump.[32]

- **Sept. 8, 2016:** Comey, DHS Secretary Jeh Johnson, and President Obama's Homeland Security Advisor Lisa Monaco brief Members of Congress about the Russian Government's attempts to interfere in the 2016 election. The briefers assured Members that the Administration had the matter under control and asked for Congress's help in reinforcing public confidence in the election.[33]

- **Sept. 19, 2016:** CFH team receives six Steele reports.[34]

- **Sept. 19, 2016:** Strzok texts Page: "See, this is the crap that aggravates me: I specifically DIDN'T tell Bill about the new Intel we got on Fri on CH so that Jon [Moffa] could present it. Then Jon runs in this morning and does it without me. Whatever..."[35]

- **Sept. 23, 2016:** *Yahoo News* publishes story about C. Page similar to Steele reporting.[36]

- **Sept. 26, 2016:** C. Page ends association with the Trump campaign.[37]

- **Sept. 30, 2016:** Strzok texts Page: "Hey I'm almost home, sorry. Remind me tomorrow what victoria nuland said."[38]

- **Early Oct. 2016:** Papadopoulos is dismissed from Trump campaign.[39]

- **Oct. 7, 2016:** DNI and DHS attribute DNC hack to Russia[40]

- **Oct. 11, 2016:** Steele meets at the State Department.[41]

- **Oct. 11, 2016:**
  - After being asked three times by DOJ attorney Stu Evans, FBI responds that Steele "had been paid to develop political opposition research";[42] DOJ holds FISA application because of concerns of bias that may need to be disclosed to the court[43]
  - Strzok advises L. Page that, the IG writes, "support from McCabe might be necessary to move the FISA application forward."[44]
  - Strzok texts Page: "Currently fighting with Stu [Evans] for this FISA."[45]

- **Oct. 12, 2016:** Comey and McCabe are briefed about Evans' concerns by Priestap, Strzok, L. Page, and others; Comey and McCabe both were "'supportive' of moving forward despite those concerns."[46]
  - L. Page texts McCabe: "I communicated you and boss's green light to Stu earlier. . . . 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[.]"[47]

- **Oct. 13, 2016:** FBI Transnational Organized Crime Section Chief informs DOJ Attorney Bruce Ohr that FBI counterintelligence agents were examining Steele's reporting.[48]

- **Oct. 14, 2016:** McCabe receives text message from an unknown individual: "Just called. Apparently the DAG [Yates] wants to be there, and WH wants DOJ to host. So we are setting that up now. We will very much need to get [REDACTED] view before we meet with her. Better, have him weigh in with her before the meeting. We need to speak with one voice, if that is in fact the case."[49]

- **Oct. 18, 2016**:
  - Steele emails DOJ Attorney Bruce Ohr about a "quite urgent" matter to discuss.[50]
  - Ohr schedules meeting with McCabe; Ohr meets with McCabe and L. Page, he explains Steele's connection to Glen Simpson and his wife, and they tell Ohr to contact the FBI if he heard again from Steele.[51]
  - Either McCabe or L. Page briefs Strzok about their meeting with Ohr.[52]

- **Oct. 21 2016:** FISC approves FISA warrant for Carter Page (Yates).[53]

- **Oct. 31, 2016:** *Mother Jones* publishes article based on information from Steele.[54]

- **Nov. 1, 2016:** FBI terminates relationship with Steele.[55]

- **Nov. 8, 2016:** Trump is elected President.

- **Nov. 9, 2016:** FBI attorney instant messaged another FBI employee: "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."[56]

- **Nov. 17, 2016:** FBI officially closes Steele as a source for cause.[57]

- **Nov. 17, 2016:** Strzok texts L. Page about the possibility of "develop[ing] potential relationships" at a November 2016 FBI briefing for the Trump presidential transition team staff.[58] They discuss sending someone who can "assess … any new[] Q[uestion]s, or different demeanor."[59]

- **Nov. 21, 2016:** Bruce Ohr meets with L. Page, Strzok, and other FBI officials to discuss "Steele's background and reliability as a source and to identify his source network."[60]

- **Nov. 23, 2016:** During a discussion of how much a subject was paid to work on the Trump campaign, an FBI colleague instant messaged an FBI attorney, "Is it making you rethink your commitment to the Trump administration?" The FBI attorney responds, "Hell no," and "Viva le resistance."[61]

- **Nov. 28, 2016:** McCain Institute staffer meets with Steele in Europe. Staffer later obtains the Steele reports from Glen Simpson.[62]

- **Dec. 9, 2016:** Sen. McCain provides Comey with 16 Steele election reports (including five reports that Steele had not given the FBI).[63]

- **Dec. 10, 2016:** Ohr receives thumb drive from Simpson containing Steele's reports.[64]
    - Ohr gives thumb drive to the FBI.[65]
    - Thumb drive contains all but one of the reports Sen. McCain provided Comey.[66]

- **Dec. 15, 2016:** Strzok texts L. Page, "Think our sisters have begun leaking like mad. Scorned and worried and political, they're kicking in to overdrive."[67]

- **Dec. 16, 2016**:
  - McCabe insists that Steele reporting is included in the Intelligence Community Assessment (ICA) about Russian interference in the 2016 election;[68] Comey informs DNI Director that FBI will submit the Steele reporting to the assessment.[69]
    - The Intel Section Chief said to the OIG, "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."[70]
    - CIA viewed Steele reporting as "not completely vetted" and "internet rumor"[71]
  - *Washington Post* story, "FBI in agreement with CIA that Russia aimed to help Trump win White House."[72]
  - Strzok texts Page: "And just talked with Kortan, he was just on with editor of WP." Page responds: "They going to change it?" Strzok said: "Not certain. Sounds like something. Mike [Kortan] was worried, like me, that the tone was WE [FBI] had shifted our position. Because the agency plays this game better than we do. Gotta say the new WP article angle really infuriates me – and Kortan echoed it – the notion that somehow we've come around to the agency's position. The point now is there were a variety of motives. That's [*sic*] been our position all along. Only the agency's has changed. Why is that so hard to see? The re-write headline is still wrong - "FBI in agreement with CIA that Russia aimed to help Trump win White house"[73]

- **Dec. 19, 2016:** Strzok texts Page: "I hope this upcoming presidency doesn't fill my years with regret, wonderwishing [*sic*] what we might have done differently."[74]

- **Dec. 20, 2016:** Strzok texts Page: "Remind me [REDACTED] met with Bruce and got.[*sic*]more stuff today." Page responds: "Yeah, lots to read, but it all stressed me Out [*sic*] too much."[75]

- **Dec. 22, 2016:** Page texts Strzok: "The election stuff makes me want to cry." Strzok responds, "I know. Me too. And I don't see it getting better…" Page responds: "As you said last night, I'm really scared for our country. And there's practically no one I can talk to about it."[76]

- **Dec. 22, 2016:**[77] Strzok texts L. Page: "Where it says we 'changed' our assessment to the Russians helping T."
  - Page texts Strzok: "Yup. Infuriating. The hrc stuff was accurate, the Russia stuff not really at all."
  - Strzok texts Page: "Again. Agency's pr masterful, ours, meh. Yet THEY'RE resisting putting the C stuff in. Maybe there's a lesson in there."
  - Page texts Strzok: "What the lesson?"
  - Strzok texts Page: "Play the political game better. I don't know. We seem to irritate everyone at every turn."

- **Dec. 28, 2016:** McCabe emails ODNI Principal Deputy Director objecting to CIA's proposal to present Steele information in an appendix to the ICA.[78]

- **Jan. ?, 2017:** FBI interviews Steele's primary sub-source for the first time,[79] and reports:
  - Steele's reporting was "misstated or exaggerated," and some of the primary sub-source's information was based on "rumor and speculation";[80]
  - "he/she never expected Steele to put the Primary Sub-source's statements in reports or present them as facts";[81]
  - "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'";[82]
  - Information was "word of mouth and hearsay"; "conversations that [he/she] had with friends over beers"; statements made in '"jest."[83]

- **Early Jan. 2017:** ICA is completed and includes a short summary and assessment of the Steele election reporting as an appendix.[84]

- **Jan. 3, 2017:**[85] Strzok texts L. Page: "Our material in the report is much better now. Don't like an annex, but is what it is. Did you follow the drama over the P[residential] D[aily] B[riefing] last week?"
  - L. Page: "Yup. Don't know how it ended though."
  - Strzok: "They didn't include any of it and Bill didn't want to dissent."
  - L. Page: "Wow. Bill should make sure Andy knows about that, since he was consulted numerous times about whether to include the reporting."

- **Jan. 3, 2017:** Strzok texts Page: "[Bill Priestap], like us, is concerned with over sharing. Doesn't want Clapper giving CR cuts to WH. All political, just shows our hand and potentially makes enemies." Page responds: "Yeah, but keep in mind we were going to put that in the doc on friday, with potentially larger distribution than just the dni." Strzok says, "The question is should we, particularly to the entirety of the lame duck usic with partisan axes to grind."[86]

- **Jan. 5, 2017:** Clapper, Michael Rogers, Brennan, and Comey brief the ICA report to Obama and his national security team.[87]

- **Jan. 6, 2017:**
  - Clapper, Brennan, Rogers, and Comey brief Trump on ICA at Trump Tower; after the briefing, pursuant to Clapper's suggestion, Comey alone briefs Trump on Steele reporting.[88]
  - Comey told Trump that the "FBI did not know whether the allegations were true or false and that the FBI was not investigating them."[89]
  - Congressional leadership briefed on ICA.[90]

- **Jan. 7, 2017:** Comey memorializes his discussion with Trump and writes, "I [] executed the session exactly as I had planned."[91]

- **Jan. 10, 2017:** *Buzzfeed* publishes Steele reports after obtaining them from McCain Institute staffer.[92]

- **Jan. 12 2017:** FISC grants 1st renewal for C. Page FISA (Yates).[93]

- **Jan. 20, 2017:** Trump's inauguration
  - The same day before leaving the White House, National Security Advisor Susan Rice sends herself an email memorializing an Intelligence briefing she attended with Obama on Jan. 5, 2017 that reportedly included a discussion on the Steele dossier and the FBI's investigation.[94]
  - Rice writes that that Obama stressed that he wanted "every aspect of this issue [] handled by the Intelligence and law enforcement communities [to be done] 'by the book.'"[95]

- **Feb. 2, 2017:** Strzok texts Page: "I mean, I feel like we're living on borrowed time before some massively disastrous event." Page responds: "Same here."[96]

- **Feb. 15, 2017:** After interviewing a primary sub-source in January, Strzok emails Priestap and states that "recent interviews and investigation [] reveal [Steele] may not be in a position to judge the reliability of his sub-source network."[97]

- **Mar. ?, 2017:** FBI interviews Steele's primary sub-source a second time.[98]

- **Apr. 7, 2017:** FISC grants 2nd renewal for C. Page FISA (Boente).[99]

- **Apr. 13, 2017:** Strzok emails FBI colleagues: "I'm beginning to think the agency got info a lot earlier than we thought and hasn't shared it completely with us. Might explain all these weird/seemingly incorrect leads all these media folks have. Would also highlight agency as source of some of the leaks."[100]

- **May ?, 2017:** FBI interviews Steele's primary sub-source for the third time.[101]

- **May 9, 2017:** Comey is fired.[102]

- **May 17, 2017:** CFH transferred to Office of Special Counsel.[103]

- **May 19, 2017:**[104]
  - Strzok texts Page: "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."
  - Strzok texts Page: "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."

- **June 19, 2017:** FBI Attorney alters email to read that C. Page was not a source for another U.S. government agency[105]

- **June 29, 2017:** FISC grants 3rd renewal for C. Page FISA (Rosenstein).[106]
- **July 27, 2017:** McCabe removes Strzok from Special Counsel team.[107]
- **Sept. 22, 2017:** FISA coverage of Carter Page ends.[108]
- **Dec. 2017:** FBI memo for Congressional briefing states it "did not assess it likely that the [Steele election reporting] was generated in connection to a Russian disinformation campaign."[109]
- **Dec. 12, 2017:** Initial press reports on the content of the Strzok/Page text messages.[110]
- **Jan. 19, 2018:** FBI notifies Congress that it did not preserve five months of Strzok/Page text messages.[111]
- **Jan. 23, 2018:** Chairman Johnson releases Strzok-Page text messages. "no big there there" text released.[112]
- **Mar. 16, 2018:** McCabe is fired.[113]
- **Apr. 19, 2018:** Reports indicate DOJ OIG referred McCabe to federal prosecutors for lying.[114]
- **May 4, 2018:** L. Page resigns from the FBI.[115]
- **June 14, 2018:** IG Horowitz releases his 2016 election report.[116]
- **Aug. 10, 2018:** Strzok is fired.[117]
- **Dec. 13, 2018:** DOJ IG issues report about recovering 20,071 total Strzok/Page texts.[118]
- **Apr. 18, 2019:** Mueller report becomes public.[119]
- **Dec. 9, 2019:** IG Horowitz releases his FISA report.[120]

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[13] *Id.* at 98.
[14] *Id.* at 52.
[15] *Id.* at 64.
[16] *Id.*
[17] *Id.* at 52, 55.
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[25] *Id.*
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[29] *Id.* at 77.
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[66] *Id.*
[67] Text message from Peter Strzok to Lisa Page (Dec. 15, 2016), Strzok-Page Texts Second production at 5. (on file with Comm.).
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[71] *Id.*
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[88] *Id.*; Rowan Scarborough, *How James Clapper laid bare to Trump prostitute tale in debunked dossier*, WASH. TIMES, Apr. 20, 2018, https://www.washingtontimes.com/news/2018/apr/20/james-clapper-insisted-trump-receive-prostitute-br/.
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Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

October 22, 2019

Honorable Steven A. Engel
Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Engel:

Thank you for your interest in the views of the Inspector General community on the concerns raised by the Inspector General of the Intelligence Community (ICIG) in response to the Office of Legal Counsel's (OLC) September 3, 2019 Memorandum for the Office of the Director of National Intelligence (ODNI). That memorandum effectively overruled the determination by the ICIG regarding an "urgent concern" complaint under the Intelligence Community Whistleblower Protection Act (ICWPA) that the ICIG concluded appeared credible and therefore needed to be transmitted to Congress. This letter from the Council of the Inspectors General on Integrity and Efficiency, on behalf of the undersigned federal Inspectors General (IG), expresses our support for the position advanced by the ICIG and our concern that the OLC opinion, if not withdrawn or modified, could seriously undermine the critical role whistleblowers play in coming forward to report waste, fraud, abuse, and misconduct across the federal government. Further, as addressed in detail below, OLC's interpretation regarding the ICWPA procedure in question, which mirrors the procedure that Congress included in Section 5(d) of the Inspector General Act of 1978 (IG Act), has the potential to undermine IG independence across the federal government.

As an initial matter, we find the arguments and concerns raised by the ICIG in his September 17, 2019 response to the OLC memorandum compelling. OLC concluded that the foreign election interference alleged by the whistleblower was not an "urgent concern" within the meaning of the ICWPA because it did not concern "the funding, administration, or operation of an intelligence activity" under the authority of the DNI. In his response, by describing and citing to the DNI's relevant legal authorities, the ICIG showed that the DNI has a broad legal mandate to address intelligence matters related to national security, as well as the specific responsibility to assess instances of possible foreign interference in United States elections and identify, to the maximum extent possible, the methods used and persons and foreign governments involved in the interference. These responsibilities support the ICIG's conclusion that the protection of federal elections from foreign interference is squarely within the DNI's "operations". The legal authorities cited in his letter also support the ICIG's determination that the whistleblower raised a claim of a serious or flagrant problem that relates to an intelligence activity within the DNI's jurisdiction. It surely cannot be the case that the DNI has responsibilities related to

foreign election interference but is prohibited from reviewing the cause of any such alleged interference.[1]

We further note that the DNI has jurisdiction over the handling of classified and other sensitive information. As a result, the whistleblower's allegation that certain officials may have misused an intelligence system also raises an additional claim of a serious or flagrant problem that relates to the operations of the DNI and therefore may properly be considered an urgent concern under the statute.[2]

The OLC memorandum also confuses whether the ICIG has jurisdiction to investigate alleged foreign interference with U.S. elections with the question of whether the DNI has the responsibility to address that issue. The ICIG determined that the whistleblower complaint relates to intelligence activities subject to the DNI's responsibility and authority, and the ICIG is responsible, under the ICWPA, for making an independent judgment as to what disclosures represent an "urgent concern" related to DNI's jurisdiction. The two cases cited in the OLC opinion, which narrowly question an IG's authority to conduct specific regulatory compliance investigations on behalf of its establishment agency, are distinguishable from the ICIG's ability to accept, review, and transmit whistleblower allegations related to DNI responsibilities.[3] They do not undermine the responsibility, under the ICWPA, for the DNI to transmit to Congress what the ICIG determined to be an urgent concern related to the DNI's jurisdiction.

We also share the ICIG's concern that the OLC opinion could seriously impair whistleblowing and deter individuals in the intelligence community and throughout the government from reporting government waste, fraud, abuse, and misconduct. Whistleblowers play an essential public service in coming forward with such information, and they should never suffer reprisal or

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[1] The fact that other parts of the government, such as the Federal Bureau of Investigation and the Department of Justice, also have responsibilities in this area does not divest the DNI of such duties as a matter of law or practice. The ICWPA does not require that the activity that is the subject of an urgent concern be exclusively within the purview of the DNI, but only that it is "relating" to such operations,

[2] The suggestion in the OLC memorandum that the jurisdiction of the DNI, or any federal agency head, is limited to the conduct of their own employees is not correct as a matter of law or practice. In this example, the misuse of federal intelligence systems within the oversight of the DNI, by whomever it may allegedly have been done, would relate to the administration or operation of an intelligence operation or activity within the responsibility of the DNI and, therefore, properly be the subject of an urgent concern.

[3] Courts have routinely denied challenges raised by regulated entities to OIG jurisdiction, including challenges relying on the notion that OIGs cannot be involved in a "routine agency investigation". *See, e.g. Univ. of Med. & Dentistry of New Jersey v. Corrigan,* 347 F.3d 57, 66 (3d Cir. 2003) ("[W]e see no basis for concluding that the inspector general's authority cannot overlap with that of the department. As the Court of Appeals for the Fifth Circuit stated, "Section 9(a)(2) prohibits the transfer of 'program operating responsibilities,' and not the duplication of functions or the copying of techniques." (internal citation omitted)); *Adair v. Rose Law Firm,* 867 F. Supp. 111, 1117 (D.D.C. 1994) ("*Burlington Northern* imposed limits on the authority of Inspectors General that do not appear on the face of the statute or in its legislative history."). The OLC opinion suggests a clear delineation, when none exists, between what an OIG may not investigate (a "routine agency investigation") and what it may ("an investigation relating to abuse and mismanagement in the administration" of the programs and operations of the agencies subject to OIG oversight).

even the threat of reprisal for doing so. For over 40 years, since enactment of the Inspector General Act in 1978, the IG community has relied on whistleblowers, and the information they provide, to conduct non-partisan, independent oversight of the federal government. Because the effectiveness of our oversight work depends on the willingness of government employees, contractors, and grantees to come forward to us with their concerns about waste, fraud, abuse, and misconduct within government, those individuals must be protected from reprisal. Indeed, just three months ago, in July 2019, the Council of the Inspectors General on Integrity and Efficiency released a report that highlights the many contributions whistleblowers have made to uncovering waste and abuse in federal agencies. We agree with Senator Charles Grassley, Chairman and co-founder of the U.S. Senate's Whistleblower Caucus, who noted recently regarding this matter, that whistleblowers "ought to be heard out and protected" and "we should always work to respect whistleblowers' requests for confidentiality." Similarly, Senator Mark Warner, Vice Chairman of the Senate Select Committee on Intelligence, noted that intelligence community leaders have a responsibility to protect any "individual within the intelligence community who steps forward to lawfully report illegal or unethical behavior within the federal government."

Given the nature of the information handled within the intelligence community, Congress passed the ICWPA to ensure that employees and contractors in that community have a safe, lawful channel to disclose classified information to Congress that evidences alleged wrongdoing without fear of reprisal. As Congress has done in every other whistleblower law passed since 1978, it entrusted IGs to play a central role in the evaluation of the information provided. Specifically, the ICWPA requires an IG to make within 14 days a factual determination as to whether an alleged urgent concern provided to the IG "appears credible." If the IG determines that the allegation appears credible, which necessarily includes a determination by the IG that it involves an "urgent concern," the IG is required to forward the allegation to the head of the agency and the agency head "shall" forward it to Congress within 7 days "with any comments." The ICWPA's use of the word "shall" makes it clear that the statute does not authorize the agency head, or any other party for that matter, to review or second-guess an IG's good faith determination that a complaint meets the ICWPA's statutory language. Indeed, an earlier Senate version of the ICWPA would have authorized Intelligence Community employees to report urgent concerns directly to Congressional committees of jurisdiction. However, in response to Executive Branch constitutional concerns, Congress ultimately created the current procedure by which IGs would be entrusted with the assessment of the urgent concern and would trigger production to Congress if the IG determined that the allegation "appears credible."[4]

This ICWPA procedure, which Congress created in 1998, mirrors the procedure that Congress included in Section 5(d) of the IG Act. Under that provision, when an IG identifies "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs

[4] The additional Executive Branch role under the ICWPA was added to protect potentially highly classified information. For example, for highly classified intelligence information or activities, notification could be restricted to the chair and ranking members of the appropriate committees and chambers of Congress.

and operations" of the agency, the IG must notify the agency head in writing of such matters. Section 5(d) requires that the agency head, within 7 days of receipt of the letter, "shall" transmit the IG's written concerns to Congress along with "any comments [the agency head] deems appropriate." It would be wholly inconsistent with the IG Act, and undermine IG independence, if the agency head – instead of forwarding the IG's concerns to Congress as the law requires – sought OLC's advice so that OLC could consider, and then potentially second-guess, the IG's determination (a) that the problem, abuse, or deficiency was a "serious" or "flagrant" one, or (b) that it related to the administration of agency programs and operations.

In this matter, OLC did not find that production to Congress was limited due to a valid constitutional concern. Rather, OLC substituted its judgment and reversed a determination the statute specifically entrusted to the ICIG because of its independence, objectivity, and expertise to credibly assess the information. In our view, the OLC's opinion undermines the independence of the ICIG and wrongly interprets the respective roles and responsibilities of IGs and agency heads under the ICWPA. Further, the opinion potentially creates space for agency heads across government to make their own determinations related to IG jurisdiction or reporting. Such a result would be contrary to IG independence and congressional intent in requiring IGs to maintain independent legal counsel and may impede the ability of Congress and taxpayers to obtain the objective and independent oversight they rely on from IGs.

Perhaps most concerning to the IG community, we believe that the OLC opinion creates uncertainty for federal employees and contractors across government about the scope of whistleblower protections, thereby chilling whistleblower disclosures. As the ICIG noted in his letter to OLC, "because OLC's opinion determined that the DNI is not required to transmit the complaint to the intelligence committees, a question has arisen about whether the Complainant has the statutory protections against a reprisal, or threat of reprisal, for submitting the disclosure pursuant to the 'urgent concern' process." Given their importance to accountability in government, it is critical that the protection of whistleblowers from retaliation not be diminished by OLC's narrow interpretation of the ICPWA.

If intelligence community employees and contractors believe that independent IG determinations may be second guessed, effectively blocking the transmission of their concerns to Congress and raising questions about the protections afforded to them, they will lose confidence in this important reporting channel and their willingness to come forward with information will be chilled. More generally, this concern is not limited to the intelligence community but will have a chilling effect that extends to employees, contractors, and grantees in other parts of the government, who might not consider it worth the effort and potential impact on themselves to report suspected wrongdoing if they think that their efforts to disclose information will be for naught or, worse, that they risk adverse consequences for coming forward when they see something they think is wrong. That would be a grave loss for IG oversight and, as a result, for the American taxpayer.

For these reasons, we agree with the ICIG that the OLC opinion creates a chilling effect on effective oversight and is wrong as a matter of law and policy. We urge you to reconsider the conclusions of the OLC opinion and withdraw or modify it.

Sincerely,

Michael E. Horowitz
Chairperson
IG, U.S. Department of Justice

Allison C. Lerner
Vice Chairperson
IG, National Science Foundation

Additional Signatories:

The Honorable Ann Calvaresi-Barr, Inspector General, Agency for International Development
The Honorable Phyllis Fong, Inspector General, Department of Agriculture
Kevin H. Winters, Inspector General, Amtrak
Hubert Sparks, Inspector General, Appalachian Regional Commission
Christopher Failla, Inspector General, Architect of the Capitol
Michael A. Bolton, Inspector General, U.S. Capitol Police
Christine Ruppert, Acting Deputy Inspector General, Central Intelligence Agency
The Honorable Peggy Gustafson, Inspector General, Department of Commerce
Thomas Lehrich, Inspector General, Committee for Purchase from People who are Blind or Severely Disabled (Ability One)
A. Roy Lavik, Inspector General, Commodity Futures Trading Commission
Christopher W. Dentel, Inspector General, Consumer Product Safety Commission
Kimberly A. Howell, Inspector General, Corporation for Public Broadcasting
The Honorable Deborah Jeffrey, Inspector General, Corporation for National and Community Service
Glenn Fine, Principal Deputy Inspector General Performing the Duties of the Inspector General, Department of Defense
Kristi M. Waschull, Inspector General, Defense Intelligence Agency
Sandra D. Bruce, Deputy Inspector General Delegated the Duties of the Inspector General, Department of Education
Patricia Layfield, Inspector General, U.S. Election Assistance Commission
The Honorable Teri Donaldson, Inspector General, Department of Energy
Milton Mayo, Inspector General, Equal Employment Opportunity Commission
Jennifer Fain, Acting Inspector General, Export-Import Bank of the United States
Wendy Laguarda, Inspector General, Farm Credit Administration
The Honorable Jay Lerner, Inspector General, Federal Deposit Insurance Corporation
Christopher Skinner, Inspector General, Federal Election Commission
The Honorable Laura S. Wertheimer, Inspector General, Federal Housing Finance Agency
Dana Rooney, Inspector General, Federal Labor Relations Authority
Jon Hatfield, Inspector General, Federal Maritime Commission

Mark Bialek, Inspector General, Board of Governors of the Federal Reserve System/Consumer Financial Protection Bureau
Andrew Katsaros, Inspector General, Federal Trade Commission
The Honorable Carol F. Ochoa, Inspector General, General Services Administration
Adam Trzeciak, Inspector General, Government Accountability Office
Michael P. Leary, Inspector General, Government Publishing Office
Joanne Chiedi, Acting Inspector General, Department of Health and Human Services
The Honorable Joseph V. Cuffari, Inspector General, Department of Homeland Security
The Honorable Rae Oliver Davis, Inspector General, Department of Housing and Urban Development
The Honorable Mark L. Greenblatt, Inspector General, Department of Interior
Philip M. Heneghan, Inspector General, U.S. International Trade Commission
The Honorable Scott Dahl, Inspector General, Department of Labor
Kurt W. Hyde, Inspector General, Library of Congress
The Honorable Paul K. Martin, Inspector General, National Aeronautics and Space Administration
James Springs, Inspector General, National Archives and Records Administration
James Hagen, Inspector General, National Credit Union Administration
Ron Stith, Inspector General, National Endowment for the Arts
Laura Davis, Inspector General, National Endowment for the Humanities
Cardell Richardson, Inspector General, National Geospatial-Intelligence Agency
David Berry, Inspector General, National Labor Relations Board
The Honorable Susan S. Gibson, Inspector General, National Reconnaissance Office
The Honorable Robert P. Storch, Inspector General, National Security Agency
David C. Lee, Deputy Inspector General Delegated the Duties of the Inspector General, Nuclear Regulatory Commission
Norbert Vint, Deputy Inspector General Performing the Duties of the Inspector General, Office of Personnel Management
Kathy A. Buller, Inspector General, Peace Corps
Robert Westbrooks, Inspector General, Pension Benefit Guaranty Corporation
Jack Callender, Inspector General, Postal Regulatory Commission
Tammy Whitcomb, Inspector General, U.S. Postal Service
The Honorable Martin J. Dickman, Inspector General, Railroad Retirement Board
Carl Hoecker, Inspector General, Securities and Exchange Commission
The Honorable Hannibal "Mike" Ware, Inspector General, Small Business Administration
Cathy Helm, Inspector General, Smithsonian Institution
The Honorable Gail S. Ennis, Inspector General, Social Security Administration
John F. Sopko, Special Inspector General, Special Inspector General for Afghanistan Reconstruction
The Honorable Christy Goldsmith Romero, Special Inspector General, Special Inspector General for the Troubled Asset Relief Program
The Honorable Steve A. Linick, Inspector General, Department of State
Jill Matthews, Deputy Inspector General Performing the Duties of the Inspector General, Tennessee Valley Authority
The Honorable Calvin L. Scovel, III, Inspector General, Department of Transportation
Richard K. Delmar, Acting Inspector General, Department of Treasury
The Honorable Michael J. Missal, Inspector General, Department of Veterans Affairs

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE ACCURACY CONCERNS REGARDING FBI MATTERS SUBMITTED TO THE FISC

Docket No. Misc. 19-02

ORDER

This order responds to reports that personnel of the Federal Bureau of Investigation (FBI) provided false information to the National Security Division (NSD) of the Department of Justice, and withheld material information from NSD which was detrimental to the FBI's case, in connection with four applications to the Foreign Intelligence Surveillance Court (FISC) for authority to conduct electronic surveillance of a U.S. citizen named Carter W. Page.[1] When FBI personnel mislead NSD in the ways described above, they equally mislead the FISC.

In order to appreciate the seriousness of that misconduct and its implications, it is useful to understand certain procedural and substantive requirements that apply to the government's conduct of electronic surveillance for foreign intelligence purposes. Title I of the Foreign Intelligence Surveillance Act (FISA), codified as amended at 50 U.S.C. §§ 1801-1813, governs such electronic surveillance. It requires the government to apply for and receive an order from the FISC approving a proposed electronic surveillance. When deciding whether to grant such an application, a FISC judge must determine, among other things, whether it provides probable cause to believe that the proposed surveillance target is a "foreign power" or an "agent of a foreign power." *See* § 1805(a)(2)(A). Those terms are defined by FISA. *See* § 1801(a)-(b). A finding of probable cause to believe that a U.S. citizen (or other "United States person" as defined at Section 1803(i)) is an agent of a foreign power cannot be solely based on activities protected by the First Amendment. *See* § 1805(a)(2)(A).

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[1] The government reported to the FISC certain misstatements and omissions in July 2018, *see* Department of Justice Office of Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (Dec. 9, 2019), at 167-68, 230-31 (OIG Report); however, the FISC first learned of the misstatements and omissions discussed herein on December 9, 2019, or, in the case of the conduct of the FBI attorney discussed below, from submissions made by the government on October 25, 2019, and November 27, 2019.

An electronic surveillance application must "be made by a Federal officer in writing upon oath or affirmation." § 1804(a).[2] When it is the FBI that seeks to conduct the surveillance, the Federal officer who makes the application is an FBI agent, who swears to the facts in the application. The FISC judge makes the required probable cause determination "*on the basis of the facts submitted by the applicant*." § 1805(a)(2) (emphasis added); *see also* § 1804(c) (a FISC judge "may require *the applicant* to furnish such other information as may be necessary to make the determinations required by" Section 1805) (emphasis added). Those statutory provisions reflect the reality that, in the first instance, it is the applicant agency that possesses information relevant to the probable cause determination, as well as the means to potentially acquire additional information.

Notwithstanding that the FISC assesses probable cause based on information provided by the applicant, "Congress intended the pre-surveillance judicial warrant procedure" under FISA, "and particularly the judge's probable cause findings, to provide an external check on executive branch decisions to conduct surveillance" in order "to protect the fourth amendment rights of U.S. persons."[3] The FISC's assessment of probable cause can serve those purposes effectively only if the applicant agency fully and accurately provides information in its possession that is material to whether probable cause exists. Accordingly, "the government . . . has a heightened duty of candor to the [FISC] in *ex parte* proceedings," [4] that is, ones in which the government does not face an adverse party, such as proceedings on electronic surveillance applications. The FISC "expects the government to comply with its heightened duty of candor in ex parte proceedings at all times. Candor is fundamental to this Court's effective operation . . . ."[5]

With that background, the Court turns to how the government handled the four applications it submitted to conduct electronic surveillance of Mr. Page. The FISC entertained those applications in October 2016 and January, April, and June 2017. *See* OIG Report at vi.

On December 9, 2019, the government filed with the FISC public and classified versions of the OIG Report.[6] The OIG Report describes in detail the preparation of the four applications for electronic surveillance of Mr. Page. It documents troubling instances in which FBI personnel provided information to NSD which was unsupported or contradicted by information in their

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[2] The application must also be approved by the Attorney General, Deputy Attorney General or, upon designation, the Assistant Attorney General for National Security (who is the head of NSD) "based upon his finding that it satisfies the criteria and requirements" of Title I of FISA. §§ 1801(g), 1804(a).

[3] Docket No. [Redacted], Order and Mem. Op. issued on Apr. 3, 2007, at 14 (footnotes and internal quotation marks omitted), *available at* https://repository.library.georgetown.edu/bitstream/handle/10822/1052774/gid_c_00012.pdf?sequence=1&isAllowed=y.

[4] Docket No. BR 14-01, Op. and Order issued on Mar. 21, 2014, at 8, *available at* https://repository.library.georgetown.edu/bitstream/handle/10822/1052715/gid_c_00098.pdf?sequence=1&isAllowed=y.

[5] Docket No. [Redacted], Mem. Op. and Order issued on Nov. 6, 2015, at 59, *available at* https://repository.library.georgetown.edu/bitstream/handle/10822/1052707/gid_c_00121.pdf?sequence=1&isAllowed=y.

[6] This Order cites the public version of the OIG Report.

possession.[7] It also describes several instances in which FBI personnel withheld from NSD information in their possession which was detrimental to their case for believing that Mr. Page was acting as an agent of a foreign power.[8]

In addition, while the fourth electronic surveillance application for Mr. Page was being prepared, an attorney in the FBI's Office of General Counsel (OGC) engaged in conduct that apparently was intended to mislead the FBI agent who ultimately swore to the facts in that application about whether Mr. Page had been a source of another government agency. *See id.* at 252-56. The information about the OGC attorney's conduct in the OIG report is consistent with classified submissions made to the FISC by the government on October 25, 2019, and November 27, 2019. Because the conduct of the OGC attorney gave rise to serious concerns about the accuracy and completeness of the information provided to the FISC in any matter in which the OGC attorney was involved, the Court ordered the government on December 5, 2019, to, among other things, provide certain information addressing those concerns.

The FBI's handling of the Carter Page applications, as portrayed in the OIG report, was antithetical to the heightened duty of candor described above. The frequency with which representations made by FBI personnel turned out to be unsupported or contradicted by information in their possession, and with which they withheld information detrimental to their case, calls into question whether information contained in other FBI applications is reliable. The FISC expects the government to provide complete and accurate information in *every* filing with the Court. Without it, the FISC cannot properly ensure that the government conducts electronic surveillance for foreign intelligence purposes only when there is a sufficient factual basis.

THEREFORE, the Court ORDERS that the government shall, no later than January 10, 2020, inform the Court in a sworn written submission of what it has done, and plans to do, to ensure that the statement of facts in each FBI application accurately and completely reflects

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[7] *See* OIG Report at 157-59, 365-66 (in September 2016, an FBI agent provided an NSD attorney with information about the timing of Mr. Page's source relationship with another government agency and its relevance to the FISA proffer that was contradicted by a memorandum received from the other agency in August 2016); *id.* at 160-62, 364, 367 (FBI personnel exaggerated the extent to which Christopher Steele's reporting had been corroborated and falsely represented that it had been used in criminal proceedings).

[8] *See, e.g., id.* at 186-90, 368-70 (statements made by Mr. Steele's primary sub-source that undermined Mr. Steele's reporting); *id.* at 168-69, 364, 366-67 (statements made by Mr. Page to an FBI source in August 2016 that he had never met or spoken with Paul Manafort and that Mr. Manafort did not return his emails were first provided to NSD in June 2017; all four applications included reporting that Mr. Manafort used Mr. Page as an intermediary with Russia but did not include those statements by Mr. Page); *id.* at vii, 170-71, 364-65, 367 (statements made by Mr. Page to an FBI source in October 2016 that he had never met with Igor Sechin or Igor Divyekin were first provided to NSD in January 2017; all four applications included reporting that he met with both men in Russia in July 2016 and discussed lifting sanctions against Russia with the former and receiving derogatory information about Hillary Clinton with the latter, but did not include the denials by Mr. Page). Moreover, all four applications omitted statements made by Mr. Steele in October 2016 that detracted from the reliability of another of his sub-sources whose reporting was included in the applications, even though the FBI provided a document to an NSD attorney that included those statements prior to the submission of the first application. *See id.* at 163-64, 364-65, 367.

information possessed by the FBI that is material to any issue presented by the application. In the event that the FBI at the time of that submission is not yet able to perform any of the planned steps described in the submission, it shall also include (a) a proposed timetable for implementing such measures and (b) an explanation of why, in the government's view, the information in FBI applications submitted in the interim should be regarded as reliable.

IT IS FURTHER ORDERED, pursuant to FISC Rule of Procedure 62(a), that the government shall, no later than December 20, 2019, complete a declassification review of the above-referenced order of December 5, 2019, in anticipation of the FISC's publishing that order. In view of the information released to the public in the OIG Report, the Court expects that such review will entail minimal if any redactions.

SO ORDERED.

Entered this 17th day of December, 2019.

Rosemary M Collyer

ROSEMARY M. COLLYER
Presiding Judge, United States Foreign
Intelligence Surveillance Court

December 16, 2019

The Honorable Ron Johnson
Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Gary Peters
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President

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RE: "DOJ OIG FISA Report: Methodology, Scope, and Findings" Hearing

Dear Chairman Johnson and Ranking Member Peters,

On behalf of the American Civil Liberties Union ("ACLU"), we submit this letter for the record in connection to the committee's upcoming hearing "DOJ OIG FISA Report: Methodology, Scope, and Findings" on December 18, 2019, which will examine the Department of Justice (DOJ) Inspector General's (IG) report, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation.*

While the IG report concluded that there was proper purpose and initiation of the investigation into Trump campaign ties to Russian efforts to interfere with the 2016 election, many of its findings are alarming.[1] The IG report underscores the lack of basic safeguards to protect Americans against unwarranted surveillance and intrusive investigative techniques. Among other things, these include the failure of DOJ guidelines to require a sufficiently high factual predicate prior to initiating or continuing an investigation, as well as insufficient safeguards for sensitive investigations that implicate First Amendment activity. These deficiencies have long contributed to improper surveillance and targeting of Muslims, racial minorities, and activists.

There are numerous important findings in the report. However, we write specifically to highlight portions of the report that reveal deficiencies with existing foreign intelligence surveillance practices. These findings are particularly relevant given the upcoming expiration of Patriot Act provisions on March 15, 2020, which provides a unique opportunity for Congress to enact broad and meaningful surveillance reforms.

The IG found that there were a litany of inaccuracies and omissions in the initial Carter Page surveillance application and subsequent renewal application. Even more, these problems went largely unchallenged by the Foreign Intelligence Surveillance Court (FISC) – and would likely have never been revealed but for the significant attention this investigation has received by the IG and members of Congress.[2] In light of these findings, the ACLU urges the committee to enact legislation to enhance accountability, oversight, and transparency within the FISA process by:

- Requiring a FISA court amicus to participate in cases involving sensitive matters, such as the targeting of political campaigns;
- Ensuring individuals who are prosecuted with the aid of FISA surveillance have the opportunity to access and review the government's surveillance applications and orders;
- Strengthening existing laws to ensure US persons targeted by FISA surveillance are provided appropriate notice following termination of surveillance;
- Strengthening existing First Amendment protections in FISA;
- Requiring declassification of novel or significant FISA court opinions; and
- Requiring the government to adopt procedures to ensure that irrelevant information is promptly purged.

The IG Report & the FISA Process

The IG report found that there were a series of inaccuracies and omissions in the initial Carter Page surveillance application and subsequent renewal applications—yet these problems went largely undiscovered and unchallenged as part of the secret, one-sided FISA process.[3] Among other things, the initial application relied on representations by former British intelligence officer Christopher Steele, but mischaracterized his background and excluded facts relevant to his reliability.[4] In addition, the initial application failed to accurately reflect Page's prior relationship with another government agency—despite the fact that "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."[5] These and several other significant errors were repeated in three subsequent renewal applications.[6] These problems are particularly striking given that the Page surveillance applications received *more* scrutiny within DOJ than typical FISA

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[1] OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF JUSTICE, REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI'S CROSSFIRE HURRICANE INVESTIGATION (December 2019) at ii (concerning Crossfire Hurricane operation).
[2] *Id.* at 229.
[3] *Ibid.*
[4] *Id.* at 130.
[5] *Id.* at xi (explaining that renewal applications "[o]mitted 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," and that "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").
[6] *Id.* at 197.

surveillance applications.[7] As the IG observed, "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" about the FISA application process.[8]

As the IG report shows, the secretive, one-sided nature of FISA proceedings before the FISC allowed the errors within the Page application to accumulate and continue largely unchallenged. In most cases, including Page's, there is no entity within the FISA court charged with challenging government claims, or raising potential civil liberties concerns. Targets of FISA surveillance are almost never notified, even after surveillance has been concluded, insulating the FBI from scrutiny in cases where surveillance is unwarranted or otherwise raises constitutional concerns. And, the vast majority of surveillance applications and orders are never declassified, which dramatically limits even after-the-fact scrutiny. For example, press reports in 2014 revealed that five prominent Muslim Americans never charged with a crime, including individuals who served in the Bush administration, were targeted by FISA surveillance. To date, the applications and orders related to this surveillance have not been declassified, nor has the public received any information that about why these individuals were targeted.[9]

Even in cases in which individuals are criminally prosecuted with the aid of FISA surveillance, the government has used secrecy to thwart any meaningful scrutiny. Defense attorneys have been unable to challenge the accuracy or completeness of the government's surveillance applications—as the Inspector General did here—because they have never been granted access to underlying FISA court applications and orders. Since FISA was enacted in 1978, the government has successfully opposed disclosure of FISA applications, orders, and related materials in every single criminal case in which a defendant has sought to challenge the surveillance used against him. As a result, important questions about the constitutionality of novel forms of FISA surveillance have not been subject to adversarial process, in violation of defendants' right to a meaningful opportunity to seek suppression. Moreover, individuals are unable to challenge potential government errors and omissions, which may be analogous to the errors and omissions in the Page applications.[10] The IG report shows that the FISC cannot identify every inaccuracy or abuse on its own, in part because it relies so heavily on one-sided government submissions. And defendants cannot meaningfully challenge errors in FISA applications they have not seen.[11]

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[7] *Id.* at 375.
[8] *Id.* at xiv.
[9] Glenn Greenwald and Murtaza Hussain, *Meet the Muslim-American Leaders the FBI and NSA Have Been Spying On*, The Intercept (July 9, 2014), https://theintercept.com/2014/07/09/under-surveillance/.
[10] *See In re All Matters Submitted to the Foreign Intelligence Surveillance Court*, 218 F.Supp.2d 611, 620 (FISC 2002) (describing 75 FISA applications containing misstatements and omissions of material facts).
[11] *See United States v. Daoud*, 755 F.3d 479, 490-96 (7th Cir. 2014) (Rovner, J., concurring) (calling on Congress to consider reforms that would "function as a check on potential abuses of the warrant process in FISA cases," consistent with defendants' Fourth Amendment and due process rights).

ACLU Recommendations

In order to address these deficiencies, Congress should pass legislation to enhance accountability, oversight, and transparency within the FISA process. Among other things, the ACLU recommends that such legislation include reforms:

- Requiring a FISA court amicus, tasked with raising potential civil liberties concerns, to participate in cases involving sensitive matters, such as the targeting of political campaigns, or cases involving other heightened constitutional concerns. Pursuant to the *USA Freedom Act*, the FISA court has the discretion to appoint an amicus in "novel and significant" cases. However, the Carter Page FISA application did not meet this threshold and an amicus was not appointed. If an amicus had been appointed, it is possible the application would have received additional scrutiny within the FISC, and that certain of its deficiencies would have been detected sooner. The IG report's findings illustrate why existing law should be expanded to require the appointment of an amicus in cases involving sensitive targets or raising heightened constitutional concerns. The current amicus provision should also be strengthened to permit the amicus to recommend a case for higher review in cases where they believe the FISC has reached an erroneous conclusion.

- Ensuring individuals who are prosecuted with the aid of FISA surveillance have the opportunity to access and review the government's surveillance applications and orders. The government's blanket secrecy shrouding its FISA surveillance is at odds with due process and criminal defendants' Fourth Amendment rights. Individuals who are prosecuted with the aid of FISA surveillance must have the opportunity to review the government's FISA applications and orders for inaccuracies, exaggerations, or material omissions. Americans subjected to FISA surveillance generally do not have the benefit of presidential intervention or an investigation by DOJ's inspector general to uncover any misrepresentations. The IG report shows why that is a very real problem—and why Congress should legislate to require disclosure of FISA materials to defendants and their counsel, pursuant to appropriate security procedures.

- Strengthening existing laws to ensure that, absent appropriate cause, US persons targeted by FISA surveillance are provided notice following termination of the surveillance. Numerous laws, including the Wiretap Act, require notice to targets once surveillance has terminated, unless the government obtains a court order permitting delayed disclosure. This notice is critical, as it facilitates additional scrutiny of surveillance decisions and permits those impacted to raise challenged in cases where their rights may have been violated.

- Strengthening existing First Amendment protections in FISA to prohibit targeting of US persons in cases where either the purpose of the investigation or the factual predicate for the surveillance is First Amendment protected activities. Under existing law, the government is prohibited from targeting an individual under FISA based "solely" on First Amendment protected activity. This language is insufficient for several

reasons.[12] One, it fails to address circumstances in which the government may be targeting someone in part based on constitutionally protected conduct, but may be able to manufacture a second legitimate purpose. Two, it fails to make clear that, regardless of the purpose, the government cannot initiate surveillance where the factual predicate is based substantially on First Amendment protected activity.

- Requiring declassification of all novel or significant FISA court opinions to give the public and Congress a better understanding of how surveillance laws are being interpreted. Under the USA Freedom Act, the government is required to declassify all novel and significant FISA court opinions.[13] However, the government has applied this requirement only to opinions issued after May 2015. Congress should make clear that this requirement applies to decisions issued prior to 2015 and, should further require additional declassification of underlying FISA applications.

- Requiring the prompt purging of information collected pursuant to FISA authorities, unless the government affirmatively determines that it is evidence of a crime or foreign intelligence. FISA surveillance can often sweep in large swathes of sensitive information, including information that raises pronounced privacy and constitutional concerns. In light of this, we urge Congress to ensure that information is promptly purged within a specific timeframe, unless the government makes an affirmative determination that it is foreign intelligence or evidence of a crime.

The IG report should serve as a wake-up call and prompt urgent action from Congress to reform our intelligence laws and practices. Thus, we urge the committee to advance the reforms highlighted above as part of the ongoing debate over provisions of the Patriot Act set to expire on March 15, 2020.

If you have questions, feel free to contact Senior Legislative Counsel, Neema Singh Guliani (nguliani@aclu.org).

Sincerely,

Ronald Newman
National Political Director

Neema Singh Guliani
Senior Legislative Counsel

cc: Members of the U.S. Senate Committee on Homeland Security and Governmental Affairs

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[12] 50 U.S. Code § 1881b(c)(2).
[13] USA Freedom Act of 2015 § 402, 50 U.S. Code § 1872.

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

July 21, 2020

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnson:

I am writing in response to your letter dated January 3, 2020, in which you forwarded questions for the record following the December 18, 2019, hearing before the Committee concerning the Department of Justice Office of the Inspector General's (OIG) *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation.* Enclosed please find responses to your questions.

Thank you for your support for the OIG's work. If you have further questions, please feel free to contact me or Adam Miles, Counselor to the Inspector General, at (202) 514-3435.

Sincerely,

Michael E. Horowitz
Inspector General

Enclosure

Post-Hearing Questions for the Record
Submitted to the Honorable Michael E. Horowitz
From Chairman Ron Johnson

"DOJ OIG FISA Report: Methodology, Scope, and Findings"
Dec. 18, 2019

Crossfire Hurricane Investigation Generally

1. Did the Department of Justice (DOJ) Office of the Inspector General (OIG) ever determine/examine why, on April 1, 2016, officials at Federal Bureau of Investigation (FBI) headquarters directed its New York Field Office (NYFO) to open a counter-intelligence investigation of Carter Page but that it should not be designated as a sensitive investigative matter?[1]

   We did not find that FBI Headquarters directed NYFO to open a counterintelligence investigation on Carter Page. Instead, for the reasons described on pages 61-62 of our report, an NYFO counterintelligence agent and her supervisor told the OIG that they decided to open a case on Carter Page, and received advice from FBI Headquarters on which classification of counterintelligence case to open. As indicated on page 62 of our report, FBI documents indicate that FBI Headquarters determined that the new counterintelligence case was not a sensitive investigative matter (SIM). The scope of the OIG's review did not include examination of the NYFO investigation of Carter Page, which pre-existed the opening of Crossfire Hurricane, or the reasons why it was not designated as a SIM. As described on pages 57-59 and 352-354 of our report, Crossfire Hurricane and the four related cases on Carter Page, George Papadopoulos, Paul Manafort, and Michael Flynn were appropriately designated as SIMs.

2. Email traffic reflects that Attorney General (AG) Lynch's Chief of Staff and National Security Counselor were aware of the Carter Page Foreign Intelligence Surveillance Act (FISA) application.[2] Who sent the emails that referenced the Page FISA application? Did the OIG question these two Lynch aides about whether they spoke to others either at the Department or outside the Department about the application?

   The two email communications referenced on page 75 of our report to or from Attorney General Lynch's Office in October 2016 that we determined were related to the first Carter Page FISA application were (i) from Tashina Gauhar, the Associate Deputy Attorney General responsible for the Office of the Deputy Attorney General's (ODAG) national security portfolio during times relevant to our review, to Attorney General Lynch's National Security Counselor, and (ii) from

[1] U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI'S CROSSFIRE HURRICANE INVESTIGATION 62 (2019) [hereinafter OIG Report].
[2] *Id.* at 75.

Attorney General Lynch's Chief of Staff to Tashina Gauhar. We determined, and noted on page 75 of our report, that these email communications show that the Attorney General's Chief of Staff and National Security Counselor were aware that the FBI was seeking FISA authority targeting Carter Page before the first application was filed with the court. The OIG interviewed the Chief of Staff and National Security Counselor, and as described on page 75 of our report, the Chief of Staff told us that she had no independent recollection of the email she sent to Gauhar, having a conversation with Gauhar about the Carter Page FISA application, or having any contemporaneous knowledge of the Carter Page FISA application. As also noted on page 75 of our report, the National Security Counselor told us that she did not specifically recall advising Attorney General Lynch of the Carter Page FISA application but believed she would have done so.

3. In the spring of 2016, AG Lynch discussed with FBI Director Comey and Deputy Director McCabe potentially offering a defensive briefing to the Trump campaign.[3] Did the OIG find any documentation after this spring 2016-time period that the AG or her aides discussed providing a defensive briefing to the Trump campaign?

   No.

4. In late July 2016, after Director Comey briefed President Obama about FBI efforts to identify U.S. persons, including Trump campaign officials, who might be working with the Russians to interfere in the 2016 U.S. election, President Obama suggested that the FBI should consider providing defensive briefings.[4] Was the Crossfire Hurricane team aware of, or did it consider, President Obama's suggestion that defensive briefings be provided to the Trump campaign? If not, why not?

   Please refer to pages 76-77 of our report.

5. "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[.]"[5] McCabe told the OIG that he "did not remember anything specific about that discussion," but according to his handwritten notes, he was briefed ahead of a September 1, 2016, meeting between the CHS and that high-level Trump campaign official.[6] Why was McCabe briefed about it if this type of operation did not require his approval?[7]

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[3] *Id.*
[4] *Id.* at 77.
[5] *Id.* at 411.
[6] *Id.* at 326.
[7] *Id.* at 326.

As discussed on page 69 of our report, McCabe received regular briefings on the progress of the Crossfire Hurricane investigation.

a. Has this high-level Trump campaign official ever been notified that the FBI recorded his conversations?

We have no information that the high-level Trump campaign official was notified by the FBI of the consensually monitored meeting with an FBI CHS.

b. Did any surveillance ever produce inculpatory information?

The information obtained through the consensual monitoring of the high-level Trump campaign official is discussed on pages 326-329 of our report. Our findings on the use of CHS's more broadly are discussed in Chapter Ten, and our findings on the FISA surveillance of Carter Page are discussed in Chapters Five and Seven of our report.

6. The OIG found that the FBI "conducted several consensually monitored meetings between FBI CHSs and individuals affiliated with the Trump campaign, including a high-level campaign official who was not a subject of the investigation,"[8] yet the report also notes the "[a]bsence of FBI CHSs [i]nside the Trump [c]ampaign."[9] What is the practical difference between directing CHSs to surveil Trump campaign officials and placing CHSs inside the campaign? During their surveillance of Trump campaign officials, did the CHSs collect any sensitive campaign information, such as internal policy deliberations?

On pages 29-30, 46-47, and 404-407 of our report, we describe two different investigative methods that are implicated by this question: consensual monitoring is the monitoring and/or recording by the FBI of conversations, telephone calls, and electronic communications based on the consent of one party involved, such as an FBI CHS; Undisclosed Participation occurs 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. During the Crossfire Hurricane investigation, the FBI consensually monitored interactions between FBI CHSs and Carter Page, George Papadopoulos, and the high-level Trump campaign official who was not a subject of the investigation for the purpose of attempting to gather evidence relating to the Crossfire Hurricane investigations. The information obtained by the FBI through CHSs, including any campaign information, and the use, if any, that the Crossfire Hurricane team made of that information, is described on pages 317-40 of our report. The FBI did not engage in Undisclosed Participation

[8] *Id.* at 2.
[9] *Id.* at 311.

during the Crossfire Hurricane investigation, as explained on pages 311-12, 315-16, and 404 of our report.

7. The OIG found that in August 2016 Glenn Simpson of Fusion GPS met with Bruce Ohr. In House testimony, Simpson stated that he did not meet with Ohr prior to Thanksgiving 2016.[10] Has the OIG made any referrals with regard to these seemingly inconsistent responses?

   The OIG lacks authority to compel testimony of non-Department of Justice personnel. As noted on page 12 of our report, Simpson declined our request for a voluntary interview during our investigation. Department regulations and the Privacy Act preclude the OIG in this and other matters from addressing publicly questions relating to whether or not it makes referrals in specific matters.

8. Was Peter Strzok's denial to the OIG that he was unaware of Ohr's continued communications with Steele, even though his handwritten notes[11] indicate otherwise, credible?

   On page 288-89 of our report, we describe Mr. Strzok's testimony and handwritten notes on this issue. We did not make a finding regarding Mr. Strzok's credibility on this issue.

9. On August 15, 2016, Peter Strzok and Lisa Page texted about being in McCabe's office and discussing "that there's no way [Trump] gets elected," which prompted Strzok to respond that "we can't take that risk" and stated that they had "an insurance policy."[12] Is the OIG concerned that the FBI Deputy Director was holding meetings in his office with agents responsible for investigating a candidate for president, and discussing their desire to see him fail?

   As we describe on page 404-405 of our report, *Review of Various Actions in Advance of the 2016 Election,* McCabe told the OIG that he did not recall being a party to the discussion in "Andy's office" that is referenced in the text message, and we did not find evidence that McCabe received the text messages referencing the meeting. We included Strzok's and Page's explanations of these texts on pages 404-405 of the pre-election report. The OIG's concerns about the messages sent by Strzok and others are discussed at length in Chapter Twelve of the report.

10. In late July 2016, a former FBI CHS provided an FBI agent in a field office information that a colleague was hired by the Democratic National Committee (DNC) to explore ties

[10] *Id.* at 274.
[11] *Id.* at 288-89.
[12] U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., A REVIEW OF VARIOUS ACTIONS BY THE FEDERAL BUREAU OF INVESTIGATION AND THE DEPARTMENT OF JUSTICE IN ADVANCE OF THE 2016 ELECTION 404 (2018).

between Trump and Russia. "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."[13] How typical is it for the FBI Deputy Director to instruct an FBI agent in the field to refuse information from a CHS? Who is this former CHS?

We refer you to the FBI for information regarding typical interactions between the FBI Deputy Director and FBI agents in the field concerning CHSs. Information about the identity of current and former CHSs is controlled by the relevant law enforcement agency, and is generally considered to be sensitive. Accordingly, we refer you to the FBI regarding your question about the identity of the former FBI CHS.

11. Case Agent 1 and the initial draft of the Carter Page FISA application identified Steele as the source of the September 23, 2016 *Yahoo News* article, "U.S. Intel Officials Probe Ties Between Trump Advisor and Kremlin," but the final version of the FISA application stated that FBI did not believe Steele was the source.[14] What, if anything, explains this discrepancy?

As stated on page 107 of our report, "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." We also discuss this issue in detail on pages 145-146 of our report.

12. On September 30, 2016, Strzok texted Lisa Page, "Remind me tomorrow what victoria nuland said."[15] Did the OIG ask Lisa Page what Victoria Nuland said on or about September 30, 2016? Did the OIG seek to interview Victoria Nuland? If not, why not?

The OIG did not ask Lisa Page about the September 30, 2016 text or seek to interview Victoria Nuland, who at the time of our review was no longer a federal employee. However, as we note in a footuote on p. 107 of our report, the Crossfire Hurricane team learned ou September 30 that State Departmeut officials were aware of an upcoming meeting betweeu the FBI and Steele in a Europeau city.

13. On October 19, 2016, Steele sent his FBI handling agent a report that *he received* from State Department official Jonathan Winer.[16] That report, which alleged collusion with Russia and salacious conduct by then-candidate Trump, came from "a friend of a well-

[13] OIG Report at 310 n.461.
[14] *Id.* at 106-107.
[15] Text Message from Peter Strzok to Lisa Page (Sept. 30, 2016), DOJ-PROD-0000273. (on file with Comm.).
[16] OIG Report at 116.

known Clinton supporter," who in turn allegedly received it from "a Turkish businessman with strong links to Russia."[17]

a. Who is the well-known Clinton supporter?

Due to privacy considerations, we respectfully decline to identify individuals not named in our report in a public hearing record.

b. Who is the friend?

Due to privacy considerations, we respectfully decline to identify individuals not named in our report in a public hearing record.

c. Why was a State Department official sending information from a political campaign contact to an FBI CHS?

The OIG lacks authority to compel testimony of non-Department of Justice personnel. As noted on page 12 of our report, Jonathan Winer declined our request for a voluntary interview during our investigation. Therefore, we were not able to ask him about his actions.

d. How did Winer's refusal to cooperate with OIG's investigation hinder its ability to get answers?

Please see our response to part c, above.

14. On May 19, 2017, why was Peter Strzok - the FBI's lead investigator on the Trump/Russia probe - concerned "there's no big there there"[18] as he was considering joining the Special Counsel team?

Please see pages 405-406 of the OIG's report, *Review of Various Actions in Advance of the 2016 Election,* for the explanation Peter Strzok gave to the OIG for his text message.

15. On January 20, 2017, before leaving the White House, National Security Advisor Susan Rice sent herself an email memorializing an intelligence briefing she attended with President Obama on January 5, 2017 that reportedly included a discussion of the Steele dossier and the FBI's investigation.[19] Rice wrote that that Obama stressed that he wanted "every aspect of this issue [] handled by the Intelligence and law enforcement

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[17] *Id.*

[18] Text message from Peter Strzok to Lisa Page (May 19, 2017), DOJ-PROD-0000340-341. (on file with Comm.).

[19] Letter from Charles E. Grassley and Lindsey O. Graham, S. Comm. on the Judiciary, to Amb. Susan Rice (Feb. 8, 2018), https://www.judiciary.senate.gov/imo/media/doc/2018-02-08%20CEG%20LG%20to%20Rice%20(Russia%20Investigation%20Email).pdf.

communities [to be done] 'by the book.'"[20] Given the OIG's findings, would OIG agree that the FBI's Crossfire Hurricane investigation was not done "by the book"?

As described on pages 361-380, we found that the FBI did not meet its obligation to ensure that the Carter Page FISA applications were "scrupnlously accurate" and instead made 17 significant errors and omissions in the facts set forth in the applications to establish probable cause. In addition, as described on pages 395-396, we found that the FBI's repeated contacts with a closed CHS through DOJ Attorney Bruce Ohr should have triggered compliance with certain requirements in the FBI's CHS policy, but did not. As described on pages 353-354, 406-409, we also identified what we believe is an absence of sufficient Department policies to ensure appropriate Department oversight of significant investigative decisions that could affect constitutionally protected activity. Please refer to the Executive Summary and Chapter Eleven of our report for a full description on the OIG's findings.

Comey's Role in Crossfire Hurricane

16. According to James Comey's May 28, 2019, op-ed in the *Washington Post*, Joseph Mifsud was "a Russian agent." Is this accurate?

Information relevant to this question can be found in the classified version of the OIG's report in footnote 484. This footnote was declassified by the Acting Director of National Intelligence after publication of the OIG's report.

McCabe's Role in Crossfire Hurricane

17. Neither of Strzok's immediate bosses—Priestap and Steinbach—wanted him to run the investigation, but Andrew McCabe overruled them.[21] Why?

Please refer to pages 64-65 of our report for our response to this question.

18. Did the OIG ever determine why, on August 25, 2016, Deputy Director McCabe directed Crossfire Hurricane to contact the NYFO for helpful information (that turned out to be the Steele reporting) 25 days before the FBI receives the first six Steele reports?[22]

As described in footnote 225 on page 99, McCabe told the OIG that he did not remember asking SSA 1 to contact the NYFO.

19. On October 14, 2016, McCabe received a text message from an unknown individual: "Just called. Apparently the D[eputy] A[ttorney] G[eneral] [Yates] wants to be there, and WH wants DOJ to host. So we are setting that up now. We will very much need to get [REDACTED] view before we meet with her. Better, have him weigh in with her before

[20] *Id.*
[21] OIG Report at 64.
[22] *Id.* at 99.

the meeting. We need to speak with one voice, if that is in fact the case."[23] Did the OIG ask McCabe about the significance of this text message? Who sent McCabe this message and what was the topic of this meeting?

This text message exchange is described in page 3, footnote 1, of the classified appendix of the OIG's *Review of Various Actions in Advance of the 2016 Election.* The OIG determined that Lisa Page sent McCabe the text referenced in your question. We are unable to provide information about the topic of the meeting in this response for a public hearing record because the information is classified.

20. In December 2016, McCabe insisted that the Steele reporting be included in the Intelligence Community Assessment (ICA) about Russian interference even though the CIA dismissed it as "internet rumor."[24] Did the OIG find McCabe's explanations to be satisfactory?

Our report provides McCabe's rationale for wanting to include the Steele election reporting in the ICA at page 179. Our report did not make a finding regarding McCabe's rationale.

Defensive/Strategic Briefings

21. Sen. Grassley and I wrote DOJ a letter about November 17, 2016, texts between Strzok and Page about having a member of Crossfire Hurricane participating in a briefing for the presidential transition team staff to "assess … demeanor" and "see if there are people we can develop for potential relationships."[25] Did the OIG investigate whether the FBI infiltrated this briefing as well? If not, why not?

Our review did not identify evidence that the FBI participated in the briefing for the presidential transition team staff in the manner described in the text messages quoted in this question.

22. The OIG reported that the FBI decided not to provide the Trump campaign with a defensive briefing because they "had no indication as to which person in the Trump campaign allegedly received [an] offer from the Russian."[26] Yet, the FBI's investigation focused quickly on four campaign staffers—Page, Manafort, Flynn, and Papadopoulos—with ties to Russia.[27] Did the FBI ever reconsider providing the Trump campaign with a defensive briefing? How about after Page and Papadopoulos left the Trump campaign in late September and early October of 2016, respectively?

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[23] Text Message to FBI Dep. Dir. Andrew McCabe from unknown individual (Oct. 14, 2016), FBI001012. (on file with Comm.).
[24] *Id.* at 177-78.
[25] Letter from Senator Ron Johnson and Senator Chuck Grassley, to William P. Barr, Attorney General, U.S. Dep't of Justice (Apr. 25, 2019) (on file with the Committee).
[26] OIG Report at 55.
[27] *Id.* at 59.

As described at pages 55-56 of our report, the FBI decided not to provide the Trump campaign with a defensive briefing, and our review did not find evidence that the FBI subsequently considered doing so.

Leak Investigations

23. What is the status of the OIG investigations into FBI/DOJ leaks? How the OIG conducting these leak investigations? Is the OIG comparing leaks to news articles?

    The OIG has issued public summaries of completed OIG investigations of FBI employees who violated FBI policy governing interactions with the media, and we continue to investigate other instances of alleged inappropriate contacts. These investigations are ongoing.

24. How many other "leak" investigations is the OIG conducting connected to the Russia investigation? Did the OIG examine instances of Peter Strzok and Lisa Page leaking information? For example, on December 13, 2016, Strzok texted Page, "Text from reporter: retrieving my password for skype. I forgot it. Text from reporter an hour and 31 minutes later: thanks man. Awesome as usual."[28]

    The OIG respectfully declines to confirm or deny the existence of specific ongoing investigations.

25. In Peter Strzok's December 15, 2016, text, "[t]hink our sisters have begun leaking like mad,"[29] what leaks by "our sisters" was he referring to, and what did he believe they were worried about?

    This issue was not within the scope of our review. Accordingly, we have not reviewed it.

26. On January 3, 2017,[30] Strzok texted Page: "[Bill Priestap] … [d]oesn't want Clapper giving CR cuts to WH. All political[.]" Page responded: "Yeah, but keep in mind we were going to put that in the doc on friday, with potentially larger distribution than just the dni." Strzok wrote, "The question is should we, particularly to the entirety of the lame duck usic with partisan axes to grind."

    a. What was the concern about "Clapper giving CR cuts to WH"?

       This issue was not within the scope of our review. Accordingly, we have not reviewed it.

[28] Text message from Peter Strzok to Lisa Page (Dec. 13, 2016), DOJ-PROD-0000338. (on file with Comm.).
[29] Text message from Peter Strzok to Lisa Page (Dec. 15, 2016), Strzok-Page Texts Second production at 5. (on file with Comm.).
[30] Text messages between Peter Strzok and Lisa Page (Jan. 3, 2017), Strzok-Page Texts Second production at 23. (on file with Comm.).

b. What information was Page referring to when she texted, "Yeah, but keep in mind we were going to put that in the doc on Friday . . . ."?

This issue was not within the scope of our review. Accordingly, we have not reviewed it.

c. Who or what was Strzok referring to when he wrote about "partisan axes to grind"?

This issue was not within the scope of our review. Accordingly, we have not reviewed it.

27. Did the OIG determine whether the January 6, 2017, intelligence briefing given to president-elect Trump by James Comey, John Brennan, and James Clapper, was orchestrated to provide a justification for news stories about the Steele reporting?

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," issued in August 2019, we describe Comey's recollection of the purpose of the January 6, 2017 meeting at page 17.

28. Has the OIG considered whether apparent leaks to news reporters that spun up the false narrative of Russian collusion was a basis for the appointment of a Special Counsel?

This issue was not within the scope of our review. Accordingly, we have not reviewed it.

29. During a briefing by the Senate Intelligence Committee, I was told that the Intelligence Community Inspector General (ICIG) is statutorily prohibited from conducting leak investigations and that any investigations of IC leaks is done by DOJ. Is that true?

We refer you to the ICIG for additional information about any authorities or prohibitions that may be specific to that office.

Allegations of "unmasking"

30. Were any U.S. persons "unmasked" from the information collected pursuant to the Carter Page FISA applications? If so, which members of the Obama administration ordered unmasking, and why? Were any leads generated or additional investigative steps taken based on these unmaskings?

This issue was not within the scope of our review. Accordingly, we have not reviewed it.

2018 Memos

31. According to a January 2018 memo by then-Ranking Member Adam Schiff on the House Permanent Select Committee on Intelligence (HPSCI), "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...."[31] According to the OIG report, the Carter Page FISA was "essentially a single source FISA."[32]

    a. Is Mr. Schiff's January 2018 account that "DOJ cited multiple sources to support the case for surveilling Page"[33] accurate given that the OIG's finding that the Carter Page FISA was "essentially a single source FISA?"[34]

    The statement included in our report that the Carter Page FISA was "essentially a single source FISA" was made by an FBI employee. The OIG's findings regarding the sources of information, including the level of reliance on the Steele reporting, used to support probable cause in the Carter Page FISA applications are described in Chapters Five and Seven of our report. The OIG did not undertake to assess statements included in memoranda released by Members of HPSCI.

    b. Is Mr. Schiff's January 2018 memo accurate in claiming that DOJ used as information from Steele reporting "only narrow[ly]"[35] given that the OIG found that Steele's election reporting "played a central and essential role in the FBI's and Department's decision to seek the FISA ord[er]?"[36]

    On page 359 of our report we stated:

    > **We concluded that the Crossfire Hurricane team's receipt of Steele's election reporting on September 19, 2016, played a central aud 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.**

    We also stated that 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. The renewal applications also drew heavily, although not entirely, upon the Steele reporting to support

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[31] Memorandum from the H. Permanent Select Comm. on Intelligence Minority to All Members of the H. of Rep. 1 (Jan. 29, 2018), https://docs.house.gov/meetings/ig/ig00/20180205/106838/hmtg-115-ig00-20180205-sd002.pdf (hereinafter HPSCI Minority Mem.).
[32] OIG Report at 132.
[33] HPSCI Minority Mem. at 1.
[34] OIG Report at 132.
[35] HPSCI Minority Mem. at 1.
[36] OIG Report at vi.

the government's position. The OIG did not undertake to assess statements included in memoranda released by Members of HPSCI.

32. According to the then- Ranking Member Adam Schiff's HPSCI memo of January 2018, "FBI and DOJ officials did not 'abuse' the [FISA] process [or] omit material information...."[37] The OIG report, however, found that the FBI's Carter Page FISA application had several "significant inaccuracies and omissions."[38] Given the OIG's findings is Schiff's conclusion that officials did not abuse the FISA process or omit material accurate?

The OIG's findings with regard to the FISA applications and authority to surveil Carter Page are discussed in detail in Chapters Five, Seven, and Eleven of our report. The OIG did not undertake to assess statements included in memoranda released by Members of HPSCI.

OIG's Examination of Text Messages

33. During the OIG's 2016 Election review, was the OIG surprised that the FBI did not recover the five months' worth of Strozk-Page texts that the OIG and Congress had requested? Did the OIG ever determine how much effort the FBI put into recovering these text messages? Did the OIG pursue those records further as part of this review?

Please see the OIG's publicly released report of investigation, *Recovery of Text Messages from Certain FBI Devices* issued in December 2018, which provides our response to this question. In addition, in February 2019, the OIG issued a memo, *Procedural Reform Recommendation for the FBI Concerning the Collection and Retention of Text Messages Sent To or From FBI-Issued Mobile Devices.* The memo includes several recommendations to the FBI concerning the collection and retention of text messages sent to or from FBI-issued mobile devices. The recommendations are pending.

34. What type of text messages did the OIG receive as part of its review of the Crossfire Hurricane investigation? Did the OIG receive any text messages from personal phones? Emails from personal accounts? Does the OIG have any reason to believe that relevant information exists on personal phones or in personal email accounts? If so, which phones or accounts?

As we state on page 13 of our report, the OIG 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

[37] HPSCI Minority Mem. at 1.
[38] OIG Report at viii.

to or from FBI personnel who worked on the investigation. The OIG did not obtain text messages or emails from DOJ employees' personal devices or accounts.

35. The OIG recovered the texts during the investigation of the Mid-Year Exam investigation. Would the OIG's investigation or report have been as complete without those texts?

The text messages exchanged by FBI personnel provided evidence that was relevant to both OIG reviews, *Review of Various Actions in Advance of the 2016 Election* and *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*. Both reports include references to text messages we reviewed, and the relevance of the messages to our findings, throughout the reports.

Additional Questions

36. What outstanding questions does the OIG still have that are relevant to its investigation? Is there anything that OIG would have liked to investigate or individuals it would have liked to interview but could not due to the OIG's scope or jurisdiction?

As stated in footnote 20 of our report, the OIG would have directly benefited from the ability to compel the testimony of non-DOJ government employees, former government employees, and non-government individuals in the FISA review. Absent our ability to interview those individuals, we are unable to assess the significance of their information. The OIG has consistently supported the granting of testimonial subpoeua authority to OIGs so that we are able to obtain such evidence.

37. Please describe to what extent the OIG was not able to access information for its investigation.

Because of this Committee and Congress's support for the IG Empowerment Act in 2016, the OIG encountered no issues with accessing highly sensitive information in the possession of the Department and the FBI, including FBI CHS files and FISA information. We received full cooperation from the Department and FBI, without any significant impediments or challenges to our ability to access the documents we deemed relevant to this review. However, as noted above, the absence of testimonial subpoena authority limited our ability to obtain information from all relevant witnesses in this review.

38. Did the OIG evaluate the FBI's tactics regarding the raid on Roger Stone's residence?

The scope of the OIG's review did not include assessing the FBI's tactics during the execution of a search warrant on Roger Stone's residence on January 25, 2019.

Post-Hearing Questions for the Record
Submitted to the Honorable Michael E. Horowitz
From Senator James Lankford

"DOJ OIG FISA Report: Methodology, Scope, and Findings"

Wednesday December 18, 2019

Question: There were two options to start the FBI investigation in July 2016- a Preliminary Investigation or a Full Investigation. Crossfire Hurricane was opened as a Full Investigation. On page 53 of your report, you state that a Full Investigation must have an "articulable factual basis." At the time Crossfire Hurricane was opened, the only information the FBI had was a comment from an FFG that said George Papadopoulos "suggested" that the Trump team had received "some kind of suggestion" from the Russians that they could assist in the election.

How does a suggestion of a suggestion satisfy the requirement of an "articulable factual basis" needed to open a Full Investigation?

In Chapter Two, we discuss the types of investigations authorized by Department and FBI policy, including the low predication threshold for a full investigation. In Chapter Three of our report, we describe the opening of the Crossfire Hurricane investigations and the basis for the FBI's opening. As we detail in Chapter Eleven, we concluded that the evidence available to the FBI in late July 2016 was sufficient to meet the low prediction threshold for a full investigation. However, as we also note on pages 53 and 403 of our report, even if the Crossfire Hurricane investigation had been opened as a preliminary investigation, rather than as a full investigation, all of the investigative techniques that we describe the FBI used prior to obtaining the initial FISA in October 2016, such as the use of CHSs and UCEs, would have been authorized by FBI policy as part of a preliminary investigation. In addition, as we explain on page 19 of our report, a preliminary investigation may be converted by the FBI to a full investigation if information subsequently becomes available that meets the necessary predication for a full investigation.

Was a Preliminary Investigation ever seriously considered by the FBI, and if so, what were the specific reasons the FBI chose not to open Crossfire Hurricane as a Preliminary Investigation?

On pages 53-54, the report discusses the recollections of McCabe, Baker, and Priestap about the predicating information and the FBI's conclusion that the information was sufficient to support opening a Full Investigation.

Post-Hearing Questions for the Record
Submitted to Hon. Michael Horowitz
From Senator Thomas R. Carper

"DOJ OIG FISA Report: Methodology, Scope, and Findings"

December 18, 2019

Questions from Senator Carper

1. In the FBI response to your report, Director Wray repeated your finding that the investigations you examined "were opened in 2016 for an authorized purpose and with adequate factual predication." Shortly after the release of the report, however, President Trump stated: "I don't know what report current Director of the FBI Christopher Wray was reading, but it sure wasn't the one given to me. With that kind of attitude, he will never be able to fix the FBI." Have you seen any indication that Director Wray is not fully committed to addressing the problems your report identified?

   The FBI's response, appended to our report, states that the FBI embraces the need for thoughtful, meaningful remedial action in response to the OIG's findings and fully accepts the recommendations in our report. We are currently assessing the FBI's actions to date in response to the recommendations in our report. We will continue to evaluate the FBI's actions to ensure it is taking steps to implement our recommendations.

2. Although your report directs recommendations to the Department of Justice and the FBI, Congress also has a role to play in examining the FISA process and ensuring fair and accurate investigations. What issues should Congress keep in mind as it attempts to address the findings of your report in a constructive way?

   The issne of FISA reform is complex in view of the intersection of national security considerations and civil liberties issues, particularly with respect to the application of FISA authorities to U.S. persons. In writing our report, we seek to provide policy makers in the Department of Justice and Congress with factual information about the DOJ's use of the statutory authorities that have been provided to it by Congress. Our hope is that our recommendations to the Department and FBI help inform policy makers in Congress and the administration of areas to be attentive to in considering statutory reforms.

3. In a statement on December 9, 2019, U.S. Attorney John Durham, who is leading a separate inquiry into the events you examined, stated that his investigation "is not limited to developing information from within component parts of the Justice Department." Specifically, he mentioned access to information from "other persons and entities, both in the U.S. and outside of the U.S." Mr. Durham also stated that he did not "agree with some of the report's conclusions as to predication and how the FBI case was opened." Do you have reason to believe that Mr. Durham would have access to any DOJ or FBI

document concerning the justification for Crossfire Hurricane and related investigations that your team did *not* review?

No.

4. According to reporting from the *Washington Post*, Attorney General William Barr "has privately contended that Horowitz does not have enough information to reach the conclusion the FBI had enough details in hand at the time to justify opening" the Crossfire Hurricane investigation. In addition, "[h]e argues that other U.S. agencies, such as the CIA, may hold significant information that could alter Horowitz's conclusion on that point." Has Attorney General Barr identified to you or your team specific information from other government agencies that would alter your conclusions?

   The Attorney General has not identified any information to the OIG for our consideration.

5. Your report explains that FBI officials considered providing briefings for the Trump campaign to alert them to Russian interference, but ultimately decided not to do so. What issues should the FBI consider, going forward, when deciding whether to provide defensive briefings to a campaign it suspects may have ties to a foreign government?

   In the course of our review, we did not identify any Department or FBI policy that applied to the decision of when and whether to provide a defensive briefing. On page 348 of our report, we found that, in the absence of such a policy, the decision was a judgment call, left to the discretion of FBI officials. While we did not specifically recommend that the Department or FBI adopt a defensive briefing policy, we did recommend on page 415 that the Department and FBI evaluate which types of sensitive investigation matters should require advance notification to a senior Department official, such as the Deputy Attorney General, prior to the opening of an investigation, especially for case openings that implicate core First Amendment activity and raise policy considerations or heighten enterprise risk, and that the Department and FBI establish implementing policies and guidance, as necessary. Such notification would necessarily involve Department personnel in decision making relating to a sensitive investigation matter, including whether to provide a defensive briefing, and thereby better inform the decision about whether a defensive briefing would be an appropriate step to take in consideration of various factors.

6. In an order filed December 17, 2019, the Foreign Intelligence Surveillance Court (FISC) ordered the FBI to submit plans for ensuring that FISA applications accurately reflect all information material to the issues they present. How will DOJ OIG assist the FISC in examining FISA-related issues, if at all?

   The OIG does not have litigating authority that would permit it to independently appear before courts. However, at the request of FBI and NSD, the OIG has provided information obtained through our work to those components in connection

with their efforts to comply with the FISC's orders

7. During the hearing, Chairman Johnson referred to Lisa Page, Peter Strzok, and Andrew McCabe as a "little cabal" and stated that although "they didn't call themselves a secret society, it sure sounds like they had a little bit of a cabal going here." Did you find any evidence to support the notion that these individuals functioned as an organized "cabal" or "secret society" inside the FBI?

Our report includes detailed descriptions of the actions of these individuals relevant to the matters within the scope of our review. We did not characterize the conduct of these individuals, or others, in this manner.

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