

Congress of the United States
House of Representatives
Washington, DC 20515

December 28, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Matthew Whitaker
Acting Attorney General
U.S. Department of Justice

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice

Dear Majority Leader McConnell, Attorney General Whitaker and Inspector General Horowitz:

During 2016, the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) had the candidate of one major political party under investigation for potential criminal misconduct and, within a month of concluding that investigation, launched a counter-intelligence investigation into the campaign of another major political party candidate.

Serious questions and concerns have been raised about the thoroughness and impartiality of these investigations, as well as investigative techniques used and not used. For instance, some have wondered why the existence of the investigation into Secretary Clinton's alleged mishandling of classified information was made public, but the counter-intelligence investigation into alleged coordination between some members of the Trump campaign and Russia was not made public. Moreover, with respect to the Clinton investigation, non-charging decisions were made and announced by the FBI, not the prosecutors at Main Justice, in an unprecedented way, while some of the agents and attorneys assigned to work on the investigation into potential coordination between the Trump campaign and Russia had bias, if not animus, toward the very candidate whose campaign they were assigned to dispassionately investigate.

The ramifications of decisions made and not made, the bias of some agents and attorneys involved, and the seemingly disparate treatment these investigations received have continued to reverberate into 2017, 2018, and potentially beyond.

The questions and concerns noted above prompted the DOJ Inspector General (DOJ-IG) to undertake a comprehensive review of official investigative actions. These questions and concerns also prompted the House Committees on Judiciary and Oversight and Government Reform to jointly investigate decisions made and not made by the FBI and the DOJ in 2016 and

beyond in fulfillment of Congress's constitutionally-mandated responsibility to provide oversight.

In March of 2018, our Committees called for then-Attorney General Jeff Sessions to appoint Special Counsel,¹ specifically to:

review decisions made and not made by the Department of Justice and the FBI in 2016 and 2017, including but not limited to evidence of bias by any employee or agent of the DOJ, FBI, or other agencies involved in the investigation; the decisions to charge or not charge and whether those decisions were made consistent with the applicable facts, the applicable law, and traditional investigative and prosecutorial policies and procedures; and whether the FISA process employed in the fall of 2016 was appropriate and devoid of extraneous influence.²

Then-Attorney General Jeff Sessions did not appoint Special Counsel but, recognizing the significance of the issues raised and the need for confidence in the institutions involved, did appoint United States Attorney John Huber to act as an independent United States Attorney to review the agencies' actions. It is our understanding U.S. Attorney Huber has been engaged in this review since his appointment.

During our joint investigation, House investigators reviewed thousands of documents and conducted transcribed interviews of investigative and prosecutorial decision-makers at the FBI, DOJ, and elsewhere. Those interviews revealed troubling facts which exacerbated our initial questions and concerns. Some of these concerns are set forth below:

With regard to the Clinton investigation it is clear the Bureau and the Department read elements into the "gross negligence" statute, which plainly do not exist in the text of the statute. To be more precise, investigators read into the statute a higher level of scienter, coupled with knowledge and intent; although the investigators could never clearly describe what that particular intent was supposed to be. Equally troubling, there is little to no evidence investigators made any effort to identify evidence that could have addressed the very elements they believed were missing. There is no indication those questions were even asked of witnesses that would have potentially had access to the Secretary's state of mind and no evidence she herself was asked to address questions centered on consciousness of guilt and criminal intent.

To be clear, neither of us is in a position to know whether an investigation centered on the actual elements of the offense, addressing appropriate questions to witnesses with knowledge, or waiting until the end of the interview process – as opposed to May of 2016 – to draw conclusions would have resulted in a chargeable or prosecutable case. What we can say

¹ Letter from Bob Goodlatte, Chairman, House Judiciary Comm., and Trey Gowdy, Chairman, House Oversight & Gov't Reform Comm., to Jeff Sessions, Attorney General, and Rod Rosenstein, Deputy Attorney General (Mar. 6, 2018), https://judiciary.house.gov/wp-content/uploads/2018/03/030618_Special-Counsel-Letter.pdf?utm_source=House+Judiciary+Committee+Press+Releases&utm_campaign=911e937989-EMAIL_CAMPAIGN_2018_03_06&utm_medium=email&utm_term=0_df41eba8fd-911e937989-101865997.

² *Id.*

with confidence is the manner in which this investigation was conducted ensures we may never know the answers to those seminal questions.

At the end of the Clinton investigation, then-Director James Comey chose to depart from longstanding FBI policy and appropriated from the Department of Justice the final decision on whether to charge and prosecute. Comey, as the FBI Director, was the chief investigator, not the prosecutor, and should have presented the relevant evidence to the Department of Justice. The reasons he cites, which in his judgment necessitated the extraordinary departure from Department of Justice policy – chiefly his concern about the objectivity of the Department of Justice – is not remedied by the route he took. While he contends he contemplated calling for the appointment of Special Counsel to ameliorate his concerns, the Inspector General and our Committees found no evidence to support any level of seriousness in calling for an independent review by Special Counsel.

Director Comey stated “no reasonable prosecutor” would have brought the case against Secretary Clinton and that his decision not to was “unanimous” among those involved. FBI General Counsel James Baker, however, initially did believe the case could be made from an evidentiary standpoint and multiple witnesses testified to the Committees the FBI’s decision not to recommend charges was not “unanimous.”

General Counsel Baker also testified, following the termination of Director Comey, there were discussions amongst senior FBI and DOJ officials about President Trump’s fitness for office, invoking the 25th Amendment, and the prospect of wearing a recording or transmitting device during conversations with the President. Baker relayed comments attributed to Deputy Attorney General Rod Rosenstein as relayed to him by then-Acting Director Andrew McCabe and FBI attorney Lisa Page. The Committees arranged to interview DAG Rosenstein on this and other important issues in a SCIF with a transcript made available. Regrettably that interview did not take place. There are questions DAG Rosenstein alone can answer and while the allegations are serious, his denial was forceful. The questions deserve to be asked and the DAG deserves the chance to respond.

The Committees also have concerns about not only Director Comey’s decision to appropriate charging and prosecutorial decision-making away from the Department of Justice, but also the drafting of what was tantamount to an exoneration memo months before all witnesses were interviewed. Moreover, the Committees were concerned with what was in earlier drafts of those memos but later edited out. For instance, documents provided to the Committees suggest foreign actors obtained access to some of Clinton’s emails – including at least one email classified “Secret.” There is also concern foreign actors infiltrated the private email accounts of some Clinton staffers. This is significant not only because it was included, then excluded from the exoneration memo, but also because, if true, access by foreign entities goes directly to elements of the offense Comey concluded were missing from the case.

The bias of both named and unnamed FBI employees has been widely reported. Special Counsel Robert Mueller removed Deputy Assistant Director Peter Strzok from his investigation immediately upon learning of texts and emails exhibiting manifest bias against Donald Trump. Likewise, Director Comey testified he very likely would have removed Strzok from the Clinton

investigation had he known about the bias or perception of bias. But Strzok was removed from the investigation well into 2017. This was after he participated heavily in the Clinton investigation, after he interviewed Clinton, after he initiated the Russia investigation, after he promised to stop Trump from becoming President, after he openly discussed an “insurance policy” if Trump won, after he called Trump destabilizing, after he worked on the FISA application, and after he interviewed Michael Flynn. The bias existed at each stage, it just was not discovered. It is not the discovery of bias that is so destructive to fairness, it is the existence of it. How an agent with this level of bias could have been centrally involved at each stage of three major investigations needs to be fully understood so it can be fully avoided and mitigated.

Among other issues of concern is the decision to replace “the President” with “senior government official” in Comey’s exoneration statement, and then to remove altogether information showing President Barack Obama and Hillary Clinton exchanged email communications on her private email server. So too was the decision to alert defense counsel to questions that would be asked of witnesses in the Clinton investigation and the unprecedented decision to allow fact witnesses, who happen to be attorneys, to be present during Clinton’s interview. Questions and the scope of questions were provided to witnesses in the Clinton investigation ahead of time and not only was she afforded her right to have counsel present, she had counsel who were also fact witnesses present. In stark contrast, the FBI discouraged Michael Flynn from having an attorney present and broke from protocol in not notifying the DOJ or White House Counsel.

The FBI Midyear investigative team was delayed in evaluating Anthony Weiner’s laptop, which delayed Comey’s notice to Congress by weeks placing that notice even closer to the date of the election. Coupling the decision to make her investigation publicly known with the decision to speak freely and in detail on July 5, 2016, about someone who was not going to be charged, coupled with the delays in processing the Weiner computer, coupled with the decision to publicly notify Congress her investigation had been re-opened, led to a belief among some Americans that the investigation and its aftermath cost her the November 2016 general election.

Defensive briefings provided by the FBI to the 2016 candidates indicate differences between how the FBI treated former Secretary Clinton and how they treated then-candidate Trump.

Leaks jeopardize the fairness of investigations and the confidence Americans can have in the objectivity of those conducting the investigations. It should be better understood what contact the FBI or DOJ had with the media and whether these contacts were authorized by the leaders of the Bureau and the Department.

The Committees remain concerned with how derogatory information about candidate Trump was accessed by the FBI, the sourcing of such information, the vetting of such information and government reliance on it in court pleadings. This is in addition to overarching concerns about the FISA process and what obligations exist to place a court on notice of informant or source issues and the divulging of bias information.

These are but some of the issues and concerns raised by our investigation. Each of these concerns is but an illustration of our larger objective, which is a fair, even-handed, objective review of the decisions made and not made in 2016 and 2017 so public confidence can be restored or enhanced in institutions we rely so heavily upon. Contrary to Democrat and media claims, there has been no effort to discredit the work of the Special Counsel. Quite the opposite, whatever product is produced by the Special Counsel must be trusted by Americans and that requires asking tough but fair questions about investigative techniques both employed and not employed.

Since our joint investigation began, the DOJ-IG released a report on the first installment of its investigation, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election*.³ The DOJ-IG launched additional investigations as a result of the questionable conduct and decision-making discovered during its initial investigation.⁴ The DOJ-IG continues to review potential misconduct committed in 2016 and 2017, including allegations the FISA process was abused.

Regrettably, our joint investigation was impacted by institutional protectionism on the part of DOJ and FBI. For example, the agencies delayed the production of relevant documents and failed to provide witnesses in a timely manner. DOJ continues to refuse to declassify documents necessary to the investigation despite the President's request the documents be declassified. Additionally, the Office of the Special Counsel (OSC) has cited an "ongoing investigation" to deny or delay Congressional access to relevant information and in one instance retrieved documents provided to Congress, arguing the documents were improvidently produced in the first instance.

Our Committees have assiduously avoided interfering with any ongoing criminal, counter-intelligence, administrative, or judicial reviews of conduct engaged in 2016 or 2017. Nevertheless, confidence in venerable institutions like the Department of Justice and the Federal Bureau of Investigation must be restored so the public can trust these institutions to make decisions solely on the facts and the law and totally devoid of political bias or consideration.

Our belief remains a Special Counsel should be appointed to investigate not only the decisions made and not made during the pendency of these investigations, but also the disparate way these two investigations were seemingly conducted. While Congress does not have the power to appoint a Special Counsel, Congress does have the power to continue to investigate and it is our belief the facts uncovered thus far warrant continued oversight by the Legislative Branch and the Inspector General. We invite your attention to the transcripts of witness testimony and we encourage you to continue to investigate these matters, consistent with your jurisdiction, so the final definitive accounting can be made to the American people.

³ DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., *A REVIEW OF VARIOUS ACTIONS BY THE FEDERAL BUREAU OF INVESTIGATION AND DEPARTMENT OF JUSTICE IN ADVANCE OF THE 2016 ELECTION* (June 2018), <https://www.justice.gov/file/1071991/download>.

⁴ Dep't of Justice Office of the Inspector Gen., Press Release, DOJ OIG Announces Initiation of Review (Mar. 28, 2018), <https://oig.justice.gov/press/2018/2018-03-28b.pdf>.

Thank you for your attention to these matters.

Sincerely,



Bob Goodlatte
Chairman
Committee on the
Judiciary



Trey Gowdy
Chairman
Committee on
Oversight and Government Reform

cc: The Honorable Donald J. Trump
President of the United States

The Honorable Christopher Wray
Director, Federal Bureau of Investigation

The Honorable John W. Huber
U.S. Attorney

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Lindsey Graham
Committee on the Judiciary
United States Senate

The Honorable Ron Johnson
Chairman, Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Richard Burr
Chairman, Senate Select Committee on Intelligence
United States Senate

The Honorable Jerrold Nadler
Ranking Member, Committee on the Judiciary
U.S. House of Representatives

The Honorable Elijah Cummings
Ranking Member, Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Devin Nunes
Chairman, House Permanent Select Committee on Intelligence
U.S. House of Representatives

The Honorable Doug Collins
U.S. House of Representatives

The Honorable Jim Jordan
U.S. House of Representatives

(b) (6), (b) (7)(C) (USACT)

From: (b) (6), (b) (7)(C), (USACT)
Sent: Thursday, April 18, 2019 6:49 PM
To: Blier, William M.(OIG); DuCharme, Seth (OAG); Durham, John (USACT)
Cc: Horowitz, Michael E.(OIG)
Subject: RE: responses to your requests

Bill: Thank you for the follow up information. We will reach out to other components of the Department for the transcripts referenced in the January 2, 2019 letter. Would you just clarify whether transcripts were also transmitted with the December 28, 2018 letter? The last paragraph of the December 28 letter "invites your attention to transcripts of witness testimony" but it is not clear whether transcripts were sent with the letter. Again, thank you for the taking the time to meet with us on Monday and for this additional information. (b) (6), (b) (7)(C)

-----Original Message-----

From: Blier, William M.(OIG) (b)(6), (b)(7)(C) per OIG
Sent: Thursday, April 18, 2019 8:53 AM

Duplicative Records

Durham, John (USACT)

From: Durham, John (USACT)
Sent: Sunday, April 14, 2019 10:31 PM
To: (b) (6), (b) (7)(C) (USACT)
Cc: DuCharme, Seth (OAG)
Subject: Re: follow up from yesterday

Oops, just scrolled down and saw (b) (6), (b) (7)(C); mire comprehensive response!

Sent from my iPhone

> On Apr 14, 2019, at 10:08 PM, (b) (6), (b) (7)(C) (USACT) (b) (6), (b) (7)(C) > wrote:

>
> Yes, tomorrow at 4:30 at EOUSA offices. If I followed the emails, the schedule is as follows:

> Monday, 4/15 at 1pm: Meeting with OIG at Michael's Office;

> Monday, 4/15 at 4:30pm: Meeting with John Huber at EOUSA offices;

> Tuesday 4/16 at 11:30am: Meeting with Dave Bowdich, FBI Office

> Tuesday 4/16 at 3:00pm: Meeting with David Lasseter, Rm. 1627

> -----Original Message-----

> From: DuCharme, Seth (OAG) <(b) (6)>

> Sent: Sunday, April 14, 2019 8:21 PM

> To: (b) (6), (b) (7)(C) (USACT) <(b) (6), (b) (7)(C)>

> Cc: Durham, John (USACT) (b) (6), (b) (7)(C)

> Subject: Re: follow up from yesterday

> Just want to make sure I'm tracking all of the recent scheduling. Do we have a meeting set with John Huber?

> Look forward to seeing you tomorrow.

> Sent from my iPhone

>> On Apr 12, 2019, at 11:19 PM, (b) (6), (b) (7)(C) (USACT) <(b) (6), (b) (7)(C)> > wrote:

Duplicative Records

Durham, John (USACT)

From: Durham, John (USACT)
Sent: Saturday, April 13, 2019 5:20 PM
To: Horowitz, Michael E.(OIG)
Cc: (b) (6), (b) (7)(C) (USACT); DuCharme, Seth (OAG); Blier, William M.(OIG)
Subject: Re: Logistics

Sounds good. We'll see you on Monday at 1:00.
JHD

Sent from my iPhone

> On Apr 13, 2019, at 1:17 PM, Horowitz, Michael E.(OIG) (b)(6), (b)(7)(C) per OIG wrote:

>
> Let's then meet in my office and if we need to move, we can go into our SCIF.

>
>> On Apr 13, 2019, at 10:09 AM, Durham, John (USACT) <(b) (6), (b) (7)(C)> wrote:

>>
>> Michael-
>> It would be fine to discuss at a non-classified federal level if that works. You, however, would know better than us whether that would be productive or not. Again, thanks very much for agreeing to meet with us so quickly.

>> JHD
>>
>> Sent from my iPhone

>>
>>> On Apr 13, 2019, at 8:30 AM, Horowitz, Michael E.(OIG) (b)(6), (b)(7)(C) per OIG > wrote:

>>>
>>> Happy to host the meeting or come your way. Do we need to meet in a SCIF?

>>>
>>>> On Apr 12, 2019, at 9:02 PM, (b) (6), (b) (7)(C) (USACT) (b) (6), (b) (7)(C) wrote:

>>>>
>>>> 1pm on Monday works well. Should we come to your office? Thanks

>>>>
>>>> Sent from my iPhone

>>>>
>>>>> On Apr 12, 2019, at 8:54 PM, DuCharme, Seth (OAG) <(b) (6)> wrote:

>>>>>
>>>>> That works for me.

>>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Apr 12, 2019, at 8:37 PM, Horowitz, Michael E.(OIG) (b)(6), (b)(7)(C) per OIG wrote:

>>>>>

>>>>> (b)(6), (b)(7)(C) (and others),

>>>>>

>>>>> How about 1 pm on Monday?

>>>>>

>>>>> Michael

>>>>>

>>>>>> On Apr 12, 2019, at 5:34 PM, (b)(6), (b)(7)(C) (USACT) (b)(6), (b)(7)(C) wrote:

>>>>>>

Duplicative Records

(b) (6), (b) (7)(C) (USACT)

From: (b) (6), (b) (7)(C) (USACT)
Sent: Saturday, April 13, 2019 9:49 AM
To: Horowitz, Michael E.(OIG)
Cc: DuCharme, Seth (OAG); Durham, John (USACT); Blier, William M.(OIG)
Subject: Re: Logistics

At this time, the information that we have to discuss does not require a SCIF. But, you and Bill may want to discuss information that does. So, your call. Thanks

Sent from my iPhone

> On Apr 13, 2019, at 8:30 AM, Horowitz, Michael E.(OIG) (b)(6), (b)(7)(C) per OIG > wrote:

Duplicative Records

(b) (6), (b) (7)(C) (USACT)

From: (b) (6), (b) (7)(C) (USACT)
Sent: Friday, April 12, 2019 10:17 PM
To: DuCharme, Seth (OAG)
Subject: Re: Logistics

All set and thanks.

Sent from my iPhone

> On Apr 12, 2019, at 9:19 PM, DuCharme, Seth (OAG) <(b) (6)> wrote:

>

> You all set with (b) (6) if you need them?

>

> Happy to help, just let me know.

>

>

> Sent from my iPhone

>

>> On Apr 12, 2019, at 9:02 PM, (b) (6), (b) (7)(C) (USACT) (b) (6), (b) (7)(C) wrote:

>>

Duplicative Records

EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
JOINT WITH THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: GEORGE TOSCAS

Thursday, August 16, 2018

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:01 a.m.

COMMITTEE SENSITIVE

MR. SOMERS: Good morning. This is a transcribed interview of George Toscas. Chairman Goodlatte and Chairman Gowdy requested this interview as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform regarding decisions made and not made in 2016 and 2017 by the Department of Justice and the Federal Bureau of Investigation regarding the 2016 Presidential election.

Would the witness please state his name and position at the Justice Department for the record?

Mr. Toscas. Absolutely. George Toscas, T-o-s-c-a-s. I'm a deputy assistant attorney general in the National Security Division.

Mr. Somers. Thank you. On behalf of the chairman, I want to thank you for appearing here today, and we appreciate your willingness to appear voluntarily. My name is Zachary Somers, and I'm the majority general counsel for the House Judiciary Committee.

I will now ask everyone else who is here in the room to introduce themselves for the record, starting on my right with Art Baker.

Mr. Baker. Arthur Baker, investigative counsel, House Judiciary Committee, majority.

Mr. Parmiter. Robert Parmiter, chief counsel for crime and terrorism, House Judiciary, majority.

Mr. Buddharaju. Deep Buddharaju, House Oversight, Mr. Gowdy's staff.

Ms. Green. Meghan Green, House Oversight, majority.

Mr. Koren. Michael Koren, House Oversight, staff member for

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Mr. Jordan.

Ms. Greene. Emily Greene, legal assistant to Mr. Jordan.

Ms. Hariharan. Arya Hariharan, House Judiciary, minority counsel.

Ms. Kim. Janet Kim, House Oversight, minority.

Ms. Anderson. Tori Anderson, House Oversight, minority.

Ms. McElvein. Elizabeth McElvein, Judiciary staff, minority.

Mr. Somers. The Federal Rules of Civil Procedure do not apply in this setting, but there are some guidelines that we will follow that I will go over.

Our questioning will proceed in rounds. The majority will ask questions for the first hour, and then the minority will have an opportunity to ask questions for an equal period of time if they so choose. We will go back and forth in this manner until there are no more questions and the interview is over.

Typically, we take a short break at the end of each hour of questioning, but if you need an additional break apart from that, please let us know. We will also take a break for lunch at the appropriate point in time.

As I noted earlier, you are appearing today voluntarily. Accordingly, we anticipate that our questions will receive complete responses. To the extent that you decline to answer any of our questions, or if counsel instructs you not to answer, we will consider whether a subpoena is necessary.

As you can see, there is an official reporter taking down

everything we say to make a written record. So we ask that you give verbal responses to all questions. Do you understand that?

Mr. Toscas. I do.

Mr. Somers. So that the reporter can take down a clear record, it is important that we don't talk over one another or interrupt each other if we can help it.

Both committees encourage witnesses who appear for transcribed interviews to freely consult with counsel if they choose, and you are appearing with counsel today.

Will counsel please state your name and position at the Department for the record?

Mr. Weimsheimer. Good morning. My name is Brad Weimsheimer, and I'm an associate deputy attorney general.

Mr. Somers. We want you to answer our questions in the most complete and truthful manner possible, so we will take our time. If you have any questions or if you do not understand one of our questions, please let us know. If you honestly don't know the answer to a question or do not remember it, it is best not to guess. Please just give us your best recollection, and it is okay to tell us if you learned the information from someone else.

If there are things you don't know or can't remember, just say so, and please inform us who to, the best of your knowledge, might be able to provide a more complete answer to the question.

Mr. Toscas, you should also understand that although this interview is not under oath, you are required by law to answer questions

from Congress truthfully.

Do you understand that?

Mr. Toscas. Yes.

Mr. Somers. This also applies to questions posed by congressional staff in an interview.

Do you understand this.

Mr. Toscas. Yes.

Mr. Somers. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements.

Do you understand this?

Mr. Toscas. Yes.

Mr. Somers. Is there any reason that you are unable to provide truthful answers to today's questions?

Mr. Toscas. No.

Mr. Somers. Finally, I would like to note that as Chairman Goodlatte stated at the outset of our first transcribed interview in this investigation, the content of what we discuss here is confidential. Chairman Goodlatte and Chairman Gowdy ask that you not speak about what we discuss in this interview to anyone who is not present here today to preserve the integrity of our investigation.

This confidentiality rule applies to everyone present in the room today.

That is the end of my preamble. Do you have any questions before we begin?

Mr. Toscas. I don't.

Mr. Somers. So the time is now 10:08, and we will begin our first hour of questioning.

EXAMINATION

BY MR. BAKER:

Q Good morning, Mr. Toscas.

A Good morning.

Q For today's appearance, did you review any documents to prepare for your testimony today?

A I looked through the IG report, which obviously has a thorough accounting of not only the investigation, but the review done by the IG.

Q Okay. Did you speak with anyone to prepare for today's interview?

A With the gentlemen here with me today.

Q Okay. You have indicated your title during Mr. Somers' opening. Could you just briefly go through your career at the Department, how long you have worked there, different positions that you have had, the career track that ultimately took you to where you are now?

A Sure, happy to. I grew up in Chicago, Illinois, and went to -- I grew up in the suburbs of Chicago, went to college and law school in Chicago, and was fortunate enough to serve in an internship or an externship in the United States Attorney's Office in the Northern District of Illinois.

I pretty much knew I wanted to be a prosecutor early on in my life. So that was sort of the track I was on through college and law school. I got done with law school and was very, very fortunate to obtain a position with the Department of Justice through the Attorney General's Honors Program, which is a way that the Department hires new attorneys and judicial clerks. So, basically, people without legal experience yet.

And so I started in 1993, almost 25 years ago, with the Department of Justice Criminal Division. I was a trial attorney for a number of years in the General Litigation Section and in the Terrorism and Violent Crimes Section, and eventually the Counterterrorism Section, sort of morphed from one to the other over time.

And I eventually moved from my trial attorney position. I became a counsel to then Assistant Attorney General for the Criminal Division, Alice Fisher. I think that was in 2005 or 2006.

And then at the end of 2006, when the National Security Division was stood up, and all of the national security and counterterrorism functions that were in the Criminal Division moved to the National Security Division, I moved along with that portfolio and was a senior counsel again in the front office of the National Security Division.

I was also considered to be a counselor to the assistant attorney general for some period of time before I eventually became the acting deputy assistant attorney general, and then the deputy assistant attorney general for counterterrorism and counterespionage.

And my duties within my position are to supervise and manage the

nationwide portfolios for counterterrorism cases and counterespionage cases. And within the counterespionage realm, it is essentially true espionage, old-school espionage, as we know it -- I know you have been with the Bureau for a long time -- as well as mishandling classified information and things of that nature.

Q Okay. So you are what is referred to as a career prosecutor, as opposed to a political appointee?

A Yes, I'm a career prosecutor.

Q Could you just very briefly describe the distinction between the two categories of employee?

A I don't know if I'm well-suited to fully describe it. Obviously, folks who devote the majority or a large portion of their career to public service in a variety of settings can be considered career public servants.

If you are at the Department of Justice and you are a prosecutor, you are a career prosecutor. That means that you have -- your tenure spans the various political changes through the government at the national level, as well as within the Department of Justice.

Obviously, the Department of Justice has many, many thousands of career employees, and with every change in DOJ administration and political administration we have the benefit of working with political appointees throughout the process.

My direct boss is a political appointee, the assistant attorney general, and as a career employee your tenure spans, as I said, many different political changes, as opposed to a political appointee, who

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obviously serves at the pleasure of the person who appoints them, in this instance the assistant attorney general, for example, appointed by the President and confirmed by the Senate.

And then below that level, I'm not really sure how the political appointments work, but, obviously, there's -- I believe they are called Schedule C political appointees within the government who don't go through a confirmation process, but are nonetheless serving at the pleasure of the political leaders at that time.

So like I said, I have worked with members of both major political parties who have been in charge of the Department and the country, and that is the life of a career employee.

Q In the position you occupy now, what is your daily responsibility? What are you responsible for?

A Yeah. So all of the counterterrorism work that is done in the Department, obviously, is done on a local level by the United States Attorneys' Offices around the country. We have the Counterterrorism Section within the National Security Division, and it's the Counterterrorism Section's job to manage and coordinate all counterterrorism cases in the country. And so I am the deputy assistant attorney general over the Counterterrorism Section in all aspects of the Counterterrorism Section's work.

I'm also the deputy within the Office of the Assistant Attorney General that supervises the Office of Justice for Victims of Overseas Terrorism. This is a small office, but an important office that helps victims, U.S. citizen victims of terrorist attacks overseas. So they

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are cases that are not prosecuted by the U.S., but may be prosecuted or handled by foreign justice systems. And this office helps victims, United States citizen victims, navigate their way through those foreign processes.

And my role used to be, I would manage -- I managed the -- or supervised what used to be the Counterespionage Section, which is now the Counterintelligence and Export Control Section. I am no longer the DAAG over that section. We have another DAAG. We restructured a few years ago and we have another deputy who manages the section.

I have maintained, however, through that transition, supervision of one portion of the counterintelligence portfolio, and that is espionage, true espionage, and mishandling in leaks cases. So leaks of classified information.

Q In your current position at DOJ and in other positions that you have had, would it be fair to say in addition to interacting with other entities within Main Justice, you also have had occasion to interact with the law enforcement components of the Department of Justice?

A Yeah, I'm sorry. I should have mentioned, obviously, a significant portion of my job has to do with interacting with the FBI, as the main investigative agency in the country and the agency responsible for all counterterrorism investigations involving U.S. victims, obviously. So there is constant interaction with the FBI, as well as other members of the intelligence community.

Q Okay. You are familiar -- or are you familiar with a case,

I believe the FBI named it Midyear Exam?

A Yes.

Q And what was your role in Midyear Exam? When did you become aware of Midyear Exam?

A After the intelligence community inspector general referred, made a referral to the FBI, I believe under Section 811, so an 811 referral to the FBI relating to former Secretary Clinton's use of a private email server and the potential that classified information was contained or transmitted through that server, the FBI opened an investigation into that referral. And I was the senior career person supervising the team of prosecutors that investigated that case.

Q Who at the Bureau would you have interacted with? Did you have a main person that you interacted with? How did that work communicating back and forth?

A Over time, the Bureau personnel changed. You know, people retiring and being promoted and moving on. So the personnel changed over time. But do you want me to list some of the people that I interacted with?

Q Sure.

A Randy Coleman, who I believe at the time that I became aware of the investigation and became involved in it was the assistant director of the Counterintelligence Division. He eventually moved on and Bill Priestap took over that position. I believe Bill took over toward the end of the Clinton investigation.

John Giacalone was the executive assistant director for the

National Security Branch, so NSB over at the Bureau. He was the EAD, executive assistant director, at the front end of it, and I believe at the end of it Mike Steinbach was the EAD.

Andy McCabe was the deputy director. At some point, he transitioned into or became the deputy director at some point during the course of the investigation.

So I would have interacted with all of them.

I also interacted with Pete Strzok, who I'm not sure what his title was at the start of the investigation, but he was one of the deputy assistant directors within the Counterintelligence Division. Jon Moffa, who sort of led the analytic side of the investigation, I believe.

So there were there were FBI attorneys also that were involved.

(b)(6), (b)(7)(C) per FBI was an individual that our team interacted with frequently. At some point along the way, Lisa Page, who was I think an assistant or a counsel to Andy McCabe, she became involved.

And when I say became involved and had interactions, if we had a meeting, for example, there was an attempt to have sort of a regular meeting, I'm not so sure that it ended up being on a weekly basis, but we would gather at FBI headquarters and sort of -- with our team and the FBI team -- and discuss next steps, you know, what has occurred up until that point, sort of snapshot of where we have been and what are the next steps and what next needs to be done.

So over time, those, I believe, are generally the people that we interacted with.

BY MR. SOMERS:

Q Could I ask you a clarifying question? So you were the top career DOJ official from the beginning of the Midyear Exam investigation?

A From?

Q From the beginning?

A From the beginning of NSD's involvement in it, yes.

Q Was any component of the Department, besides the FBI, involved in the Midyear Exam investigation before NSD got involved?

A Other than the deputy attorney general's office, if that --

Q Was the U.S. Attorneys' Office involved? Was the --

A Oh, no. No U.S. Attorneys' Office was involved until we --

Q Criminal Division?

A I don't believe so. It's hard for me to say before we were involved. I think at the beginning of the investigation there was some question about who could or should be involved because there may have been some questions flagged about potential need for recusals because there were different people in email chains that were involved in the investigation.

But that, I think, was quickly resolved by the deputy attorney general's office, and once NSD was brought into it, which I don't believe took very long, but I can't say for sure how long that period lasted, but once NSD was brought on board, John Carlin, who was then the assistant attorney general for national security, sat us down and said he wanted me to lead our team's efforts, and essentially directed

me to conduct the investigation; not that this type of direction is needed, but specifically directed that, you know, follow the evidence wherever this goes.

It is an important case. It is an important investigation. You know, whatever you may need, obviously, we are here to make sure that the resources that you need and other assistance that is needed in the investigation are there. But follow the facts wherever they go. And the way he designed it was that I would be the lead career person on it.

Q Okay. And then you mentioned people you worked with, and you mentioned Deputy Director McCabe. But I thought you also -- were you indicating that he was involved in the Midyear Exam investigation before he became the deputy director?

A No. At some point during the course of the investigation, he became the deputy director, and then he became more -- he became directly involved. Before that, I don't think he -- if I remember correctly, he was the number three at the Bureau, so I think it is called the associate deputy, or -- I don't know the exact title. But I think it is the official at the Bureau that sort of runs the administration or the admin part the Bureau.

So he was in that position. He became the deputy director and only then was, as far as I know, did he become involved in this.

BY MR. BAKER:

Q You mentioned some of the FBI attorneys that you were dealing with. Did you interact at all with James Baker, the general counsel?

A Yes. Sorry. I should have. Thank you for reminding me. Obviously, Jim Baker as well as, and Trish Anderson. Jim Baker was the General Counsel, and Trish Anderson was -- I don't know if she was then the deputy general counsel, but that's ultimately the title that she obtained. So occasionally we would interact with them as well.

Q Was there any one person at the Bureau that was sort of at your rank that you would reach out to when you needed something done inside the Bureau? I mean, certainly you dealt with the attorneys when it was illegal. Was there anybody that was your liaison contact, for lack of a better word?

A You know, with the transition at the Bureau, it is hard to say at any particular time who it was. I think that it was a close enough group of people that, depending on what it was, I would interact at times with Moffa and Strzok, and at other times I would interact with Randy, although for whatever reason in my own mind, I think Randy's transition happened pretty quickly, or maybe we just didn't have a lot of interaction at that level.

And then he eventually moved on. I think he became the EAD for crim cyber, or ultimately, when Andy became the deputy director, I would talk to him directly as well.

I didn't see it as a, you know, opposite number type of investigation. It was sort of, because it was being handled specially at the Bureau, it was sort of a tight small group, and we had a small group, and I don't know if there was ever a time where there was a specific opposite number for any of us.

Also, obviously, because of the way the thing was being managed by me, sometimes were issues that were more at the deputy assistant director level, in which case I or David Laufman, our chief of CES, or our prosecutorial team could handle that interact or we would do it together. And other times we needed to elevate it or just, frankly, have discussions with leadership.

I also have interactions with Bureau leadership, obviously, for a lot of other matters and other regular meetings, and if there were interactions on the heels of those things it wouldn't have been out of the ordinary either.

Q You just mentioned that it was being handled specially, or at the Bureau. What does that mean?

A Yeah, just that it was being -- it was an investigation being run out of headquarters, which I think that is a deviation from, you know, the normal type of case that would be assigned to a field office or would be generated from a field and investigated from there.

And I think even in the IG report they referred to it, and maybe that is where I got the word "special" from, I think in recounting sort of the way it was opened, they referred to it in that way, I believe.

So I apologize if I'm using a term that I shouldn't have, but I think that's where I got that.

Q Sure. In your tenure at DOJ in any capacity, are you aware of any other cases that were investigated from headquarters as opposed to a field office like this one was?

A Well, ultimately, this -- I think this was handled by a field

office as well, because WFO, the Washington Field Office, was the one, I believe, where they assigned, or brought people from WFO to actually work the matter, although I have to defer to the Bureau on the admin and management aspect of that.

But in the counterintelligence area, I would say it would not necessarily be uncommon for headquarters to play a lead role in investigations. Because in a counterintelligence investigation, sometimes it's not obvious where the thing is going to settle. If there is activity going on that the Counterintelligence Division becomes aware of, it is not necessarily clear up front, for example, that an activity occurred in a particular district or a particular field office.

And as a result, investigations in the counterintelligence area, I believe, and I would have to defer to my partners in the Bureau, but I believe it's more common for investigations to reside in headquarters, at least for some period of time, and sometimes for a lengthy period of time based on the counterintelligence activity that they are looking at.

Q So in summary, it's not -- from your experience, it's not unusual that you would see that kind of investigation headquarters-centric, maybe not exclusively. You indicated Washington Field became involved at some point. But it wouldn't be unusual to see headquarters being more involved in that type of matter, you indicated, because you are not really sure where it is going to settle, what field office would ultimately be the office of origin?

A Yeah. It didn't seem usual to me at the time, and now, as I sit here, it doesn't seem unusual to me. But I have a hard time answering your other question of do I have a particular example of another case that was run this way. I don't think I do.

As I sit here, I can think more about it, but there was nothing about it that stood out to me as unusual or something that would be harmful or not beneficial to the investigation.

Q You gave a pretty extensive list of some of the Bureau people that were involved and you indicated that Mr. Carlin selected you to sort of be the point manager for DOJ's team. Who else was on the DOJ team?

A Within the Department of Justice, below me you had David Laufman, who was the chief of CES, and then we had two attorneys within CES. I'm assuming we can get into names here because this is not public. But otherwise I would not like to disclose names.

(b)(6), (b)(7)(C) per FBI was our deputy, one of our deputy chiefs in CES. An (b)(6), (b)(7)(C) per FBI was a line attorney in CES. She is now currently the deput . (b)(6), (b)(7)(C) per FBI has left and she has become the deputy. But at that time, she was a line attorney.

And then we had two EDVA AUSA (b)(6), (b)(7)(C) per FBI, who was the chief of the national security unit, a (b)(6), (b)(7)(C) per FBI who was, I believe, their deputy criminal chief, but a longtime veteran -- bo (b)(6), (b)(7)(C) per FBI an (b)(6), (b)(7)(C) per FBI were longtime veteran prosecutors. We had a team of four attorneys, and that include (b)(6), (b)(7)(C) per FBI as a deputy within CES.

Q The people that were assigned to the U.S. Attorney's Office,

did they come up to Main Justice for the duration of Midyear or did they work from their regular office?

A They came from the Eastern District of Virginia. So I think the goal was to go with the local office was so that we could work together --

Q Sure.

A -- without travel and things of that nature. Again, it was unclear where an investigation like this might settle venue-wise, but a decision was made to ask EDVA to help us out with this case, and those were the two individuals on the team.

It is my understanding, and as well, filled in the blanks a bit reading the IG report that -- and I would defer to the IG report on this -- but they also consulted with their criminal chief and Dana Boente as the U.S. attorney during the course of this investigation for certain investigative steps or just to bounce ideas off of, I guess, or get guidance. And in some instances, you know, Dana Boente as the U.S. attorney for some of the actions actually signed off on some of the things under the USAM. I think there were some requirements for a U.S. attorneys' approval, and AUSA has got Dana's approval for certain of those steps.

BY MR. SOMERS:

Q Why the Eastern District of Virginia?

A Again, just because it was local. And it could have been D.C. or Virginia. I don't think there was anything in particular about -- we have a good relationship with both offices, and at the end

of the day, we just decided EDVA would be good.

Q The IG's report discusses that Dana Boente may have had some issues with it being assigned to the Eastern District of Virginia. Were you aware of those?

A Yeah. I talked to Dana about that at the time, and I think it is reflected, the same type of statement is reflected in the IG report. I think, essentially, as the IG report lays out, Dana's question was: Well, I'm not really sure we have venue in EDVA for this.

From our standpoint, we didn't know where venue would eventually settle, which sometimes in investigations, and I think I mentioned this just generally, in some of the IG -- and it's reflected in the IG report -- in cases like this, the counterintelligence cases, as I said, it is not uncommon for the Bureau to hold it for a while at headquarters or to investigate it out of headquarters initially. The same may go for us, because we don't know what the venue may be.

So in this instance, I understood what Dana was saying, but we didn't think that venue necessarily was going to end up in EDVA, but we understood that, if you can help us, if your attorneys can help us, in addition, not only help us with the actual case, the day-to-day review of the case and review of the evidence, but also to have a place from which we can serve process, obviously, we want a district involved to be able to do that.

It made sense to have someone close by, but with the understanding that if a case is developed, a prosecutable case is developed against anyone, the venue may be someplace else. And you will either come with

us and help us with the case, or if you don't want to, that's fine, too.

But it was basically understood up front, this isn't a venue selection. It's a selection of one of the local offices that we could work with.

BY MR. BAKER:

Q At a very high level, and I'm sure we are going to drill down into this a little bit deeper later, very high level, your team at DOJ, the Bureau's team, did they get along?

A Yes. I believe we got along. I'm always more optimistic about our relationships with investigative teams because my entire career I have loved working investigations. And it has not always been the friendliest of things through my career. But at the end of the day, you're sort of working toward a common goal, working together, you're the only people in the world working on some particular matters, and it creates a bond.

So I would say that, professionally and personally, you definitely develop bonds. But as is common with relationships between prosecutors and agents, there's always some tensions as well. And we had our share of those in this case, but, to me, it didn't seem like they were any more serious or numerous than other sort of head-butting that you might have in other investigations.

So my view was there were definitely some bumps in the road, but like family members, you know, at the end of the day, we are all in

it together and fighting for the same thing and going for the same goal.

Q The tension between investigators and prosecutors is not unusual. Is that correct?

A I don't think it is unusual. It is pretty common, and I have seen, obviously, great relationships survive those spats during the course of investigations. Sometimes you are friends with the people you investigate cases with and sometimes you're just professionally friendly. It can depend.

But, you know, here I thought that we definitely -- there were definitely some bumps in the road, but I still believed, you know, professionally we have maintained great relationships throughout.

Q And that tension or bumps in the road between prosecutors and investigators, that is not necessarily detrimental to the outcome of a case. It is often healthy?

A Sometimes it can be very healthy. If you might disagree on something, it causes you to chew on it a little more and consider the other person's position, and sort of the debate in and of itself can be helpful.

And there is other types of tension that just is unhelpful. But here, I saw this as a very typical and normal type of back and forth between agents and prosecutors.

Q Was there any one person at the Bureau that was kind of the lead investigator on it? I mean, I know there is a whole team, but is there anybody from an investigative standpoint that sort had the point, that was the person that would ultimately speak collectively

for the investigators?

A You know, I did not have very much interaction with the line agents, the people who are actually doing the line work, so I can't speak to that. And I don't want to suggest that they were not, you know, in charge of it.

In my interactions, I was usually interacting with other people like me, who were sort of not involved in the day-to-day decisionmaking, but were, you know, at a level or levels above that.

So depending on the setting, it was a different person. If we were meeting with John Giacalone, the EAD spoke for the Bureau. If he wasn't at a meeting and Pete was the senior-most person, then Pete Strzok would be the person speaking for the Bureau.

As the DAD, probably, within the Bureau, he was the guy sort of herding the information, coming up from the team and taking it up to his management. So oftentimes he would appear to be the voice in the room speaking for the Bureau. But it really depends. It would depend on the issue and it depended on, you know, the setting and who was present.

Q When you become involved in Midyear, were you comfortable with, or maybe you had involvement in, the actual classification, how it ended up in the Bureau's Counterintelligence Division, as opposed to maybe some entity on the criminal side of the house? Were you comfortable with the facts that were being looked -- or the allegations that were being looked at? Where the violation being looked at and ultimately the division it ended up in, was that appropriate in your

view issue?

A I think so. And a referral like this, any referral that has to do with classified information, I think it has to at least, at minimum, be worked by the Counterintelligence Division at the FBI. There might be some aspects of some investigations where you jointly work it with others or other divisions or bureaus within the FBI, or branches within the FBI are needed, and that happens, as necessary, but here it seemed perfectly appropriate to me.

Q Okay. You had mentioned earlier various meetings and whatnot that you attended. You just mentioned that, you know, whoever was at these meetings was really the spokesperson for the Bureau at that particular meeting.

How often were there -- were there standing meetings that you attended, meetings you are aware of that you didn't attend? What was the frequency and the interaction between Main Justice and the FBI?

A Yeah. So the team members I think met and -- or communicated all the time. I think that our attorneys spent time physically within the FBI building a lot dealing with issues.

For me, I think I said earlier, I want to call it a standing meeting in my own mind. I think the goal was to sort of huddle once a week. That may have fallen off over time, and we didn't technically meet every week, but there may have been periods where we did meet on a weekly basis.

But there was a general understanding that we would come together over at the FBI in their Counterintelligence Division conference room,

sort of huddle up, talk about where we have been, where we are going.

And like I said, I want to say we were shooting to do it once a week. I don't know if we actually did it every week. And some people could make it to some meetings and other people couldn't. So there was always some mechanism to quickly get people together if needed.

And, look, let's face it, it was the type of case that if we needed a meeting, we had a meeting. If we needed to get together, we just pulled everyone together. And that's just the way it went.

Q You indicated earlier when you were appointed, selected by Mr. Carlin, you were basically told, or your understanding was, follow the evidence wherever it goes. Is that consistent from start to finish in this case, it was always follow the evidence wherever it goes?

A Consistent from the beginning. John Carlin, as the AAG, and above, the people we dealt with, Matt Axelrod, who was the ADAAG and the principal associate deputy attorney general in the Office of the Deputy Attorney General, Deputy Attorney General Yates, and Attorney General Lynch, all gave the same directive at the different points that I would interact with them, which is: We have confidence in the team. Follow it wherever it goes. If you need anything from us, obviously, if things need to be elevated that we need to decide, bring them. If you have any resource issues, there should be no resource issues. You know, all appropriate resources will be provided to this. Follow it wherever it goes.

And so I said earlier that when John told me that, that's what we do in every case. But it was articulated to us very directly. And,

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obviously, I'm not naive. I have been around the Department. I was a line attorney. I have been a manager. It means something, right, to say, okay, they have a sense that this is a sensitive matter, and follow the evidence where it goes.

And so that's what I passed to our team and wanted to instill in our team: Wherever this ends up, that's where it will end up, and we will follow the evidence, and follow the law wherever it leads us.

Q And you're confident that was done?

A Absolutely, 100 percent confident.

Q At some point in the investigation, once things are sorted out and there is a better idea where this is heading and evidence is collected and people are interviewed, at some point there is some discussion about what possible charges, if any. What would your role have been in deciding charges, discussing charges? How did you relate to that?

A You know, I don't know if I would -- I would say that my role was not to decide things like that. Obviously, we have very, very experienced attorneys and agents working on this, and within our section and within CES and within EDVA the people who were working on this case know the whole suite of potential violations that are relevant.

And the ones that were raised and that were reviewed were very straightforward and applicable here. I don't know if there was ever a concern or tension over that.

But I think it happens organically. When agents and prosecutors

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are working on a case, they generally have a sense of what the conduct may -- what statutes the conduct may implicate.

And then during the course of the investigation, it sort of shapes up in the form of the types of process that you're going to get. Like, if you're going -- or the evidence you're trying to collect.

What's the purpose for getting the evidence? Well, the evidence may lead to, you know, proving elements of this particular offense.

And so, over time, it generally happens organically, but in classified information cases there's, you know, a handful of statutes that routinely are looked at and reviewed and considered, and that was done here.

BY MR. SOMERS:

Q Does the Department provide the FBI a legal analysis as to what a particular statute may require to be proved?

A You know, sometimes that happens informally during the course of an investigation, but the FBI has its own lawyers as well who potentially opine on such things internally without our involvement. Of course, from my perspective, I would say it's probably best if we all do that together, but I can't say that that's always the case.

Q So, I mean, if you have a statute that's got certain elements that need to be proved in order to, let's just say, even just to bring a prosecution, because then the prosecution of those elements would have to be proved, does DOJ, I mean, do they make that assessment? Does the FBI make their own assessment of what they are looking for?

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A Yeah. I'm trying to think back to my days as a line prosecutor. Probably because, as I said, that would ordinarily happen organically. You are working as an agent and a prosecutor together on a case, and as you're accumulating evidence, you're talking to each other about, okay, well, this potentially implicates this statute. In order to prove this statute, this is what you need. You need -- we need to see if there's X, there's Y, there's Z.

So that, again, I think happens on a pretty routine basis. I don't think there's a formal mechanism to do that. Obviously, if the Bureau came to us and said, "What are the elements of this offense?" we would probably pull up a jury instruction to make sure we had it exactly correct and say, "Here's what it is." But it usually doesn't happen with that level of formality.

Q Do you recall which statutes were at issue, were in play for possible prosecution in this investigation?

A Yeah, the team was looking at 793(d), (e), and (f), which are, you know, under the Espionage Act. That's sort of core -- actually (d) and (e) are the sort of the core mishandling statutes that we look at, and retention, for example, illegal retention, 1924 is a misdemeanor offense, but used frequently for mishandling of classified information.

So those were the ones. 793(f), I have to admit, I had little familiarity with myself, but, obviously, got to know it through this process. And I believe they also were considering -- and obviously, if I'm wrong about the number correct me -- but I think it's 2071, which

was a destruction of Federal records, which was something that ordinarily would not be within my, you know, area, not the type of statute that I'm used to dealing with or reviewing. But, obviously, it's a pretty straightforward one. If I have the number wrong, I apologize. I could flip through this and get it.

Q And then you mentioned four attorneys. Two of these from District of Virginia, two with NSD, that were kind of the attorneys that were involved in this. How familiar were they with these, with (d), (e), and (f), and 1924?

A Oh, yeah. I mean, we do a lot of mishandling and leak cases with EDVA. So all four of them were very well aware of it.

Again, I can't speak for them as to their familiarity with (f), but they definitely, you know, did a lot of research into it and educated me on it. And, obviously, their determinations depended on an analysis of that statute and they did a thorough analysis.

Q And for the record, what is 793(f)?

A Let me, if you don't mind. I don't want to get it wrong. I want to make sure I have it exactly right.

Mr. Parmiter. I believe we have a code book if you would rather look at that.

Mr. Toscas. That's all right. I have got it marked here.

Obviously, in the course of this inquiry, it becomes best known by the gross negligence term, but, obviously, someone entrusted with lawful possession of NDI, national defense information, or that relating to national defense, removing it from their proper place of

custody or delivery to anyone through gross negligence. And that was -- that's the first half of the statute and the one most applicable here that was looked at.

BY MR. SOMERS:

Q And you don't believe the other four attorneys were very familiar with, or hadn't used? Or how would you characterize their familiarity with 793?

A I don't want to characterize it other than to say it's a statute that, obviously, doesn't have a lot of usage over time, if you look back through the use of it. So the level of familiarity by anybody, I think, would be pretty low. But knowledge of it is probably pretty high on the part of that group. That, you know, CES, that's a core part of what that section does.

Q And does the Department have a position on whether 793(f) can be used to prosecute someone?

A Certainly. I don't know if the Department has reached any sort of formal declaration or proclamation on it. But, yes, under appropriate circumstances, it can be used.

Q What would the appropriate circumstances be?

A Where the facts meet the elements of the offense. So you have to, you know, really walk through the statute, as with any statute, analyze what you think is needed to establish it, and if those circumstances are present, then, certainly, it could be used.

Q Is intent an element of 793(f)?

A In looking at the legislative history of the statute as well

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as the way the statute has been used -- and forgive me, but I assume we are just talking about the gross negligence provision (f)(1).

Q Yes.

A So let's stick with that. Make sure we are on the same page.

According to the legislative history review of some of the past interpretations of the statute, as well as the few times the statute was used historically, it appeared to the team and they concluded that gross negligence, because it's not a term defined in the statute, so you have to look through all of these things to try to figure out what it means, the conclusion was, the determination was that it would require something close to intent, but it would certainly require the person to have knowledge of the classified information.

And so if you had a situation where a person did not have knowledge of the classified information when they mishandled it, whether transmitted it, retained it, passed it, whatever, and never learned later that it was classified while they were in the process of that conduct, the conclusion was that you would need some sort of knowledge of the classified nature of it to survive a vagueness challenge and to be able to prove that that's -- that the person actually violated the statute.

Q But the knowledge element would be on the classified -- the knowledge of the information being classified?

A Yes. I think the way -- and forgive me, although I said I reviewed the IG report before I came in just to sort of remind myself, I think the IG report does a good job of laying out what our team

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concluded and why they concluded it.

But, in essence, I think what it boiled down to, at least for me, is that you would, in all of the cases where you're looking at where that statute was used or analyzed, you would need a person to know that the information was classified to rise to the level of gross negligence and to violate the statute. You have to know that the information was classified.

Q Okay. So that's on the information side. So there's the information side, the information needs to be classified. Was there intent requirement applied to the removal from its proper place of custody, or delivered? So on the retention or dissemination, was there an intent requirement?

A Yeah. I mean, the legislative history of the statute, it's somewhat helpful. But like all legislative history, it's not definitive. You know, you have to look at the common usage of the term. And in both the legislative history and other common usages of the term, it appeared to be something just shy of actual intent.

So almost right up to it. And I really don't know what that looks like, something that gets that close to intent that it's almost intent.

But even stepping back from that, the baseline would be knowledge that the information is classified. And then that allows you to determine the actions that the person took with the knowledge that it was classified, whether they knew it when the conduct took place or whether they later learned of it, which the statute also covers.

Q So did the Department ever tell the FBI that 793(f) was not

chargeable?

A I would say during the course of the investigation -- and, again, this would happen at the line level between agents and prosecutors, I would think that those discussions took place at that level, and in talking it through and trying to determine whether there was agreement on that point.

I can't say sitting here, yes, it actually happened on this particular day and this person said it to that person, but I would think that that's the type of thing that happens, you know, among the team.

Q I'll show you a chart here and see if you have ever seen this document before. We'll mark it as exhibit 1.

[Toscas Exhibit No. 1

Was marked for identification.]

BY MR. SOMERS:

Q I'm looking at the 793(f) block of the table, and the last bullet point in that block.

A Can I look at the other side of this?

Q Yeah, you can look at the whole document.

A I don't know if I have ever seen this. Can you tell me with what this is?

Q This is, I think, an analysis done by -- this one I have is so redacted. But who sent it? But it is --

A It looks like someone from OGC to Pete.

Q Yeah, FBI documents going through the three, I think, main possible statutes that could be charged. All I'm asking about you is

the note there. It says: "NOTE: DOJ not willing to charge this; only known cases are military, cases when accused lost the information."

I just want to know if, in your mind, is that an accurate statement, that DOJ was not willing to charge 793(f)?

A Is this a chart discussing this case --

Q Yes.

A Okay. So I don't know if I have ever seen this. I don't know if I would characterize it this way.

Q Yes, that's my question.

A I don't know if I would characterize it this way. Having been -- being a veteran of the relationships between the DOJ and FBI for years and years and years now, I know that sometimes words conveyed in one way are recounted in another way.

I would think that what this was was an attempt to capture, from someone who was not capturing it fully and accurately, some discussion where there was a -- someone talked through the potential vagueness claims that a defendant might raise when using 793(f)(1), and the need for solid information showing knowledge of the classified information.

So whether that's someone's sort of own -- someone's own characterization of it, I can't -- I don't know. But, to me, it doesn't seem like it accurately captures the nuance that you would have to be described and explained if you are going to talk through potential 793(f)(1) analysis in this particular case.

Mr. Parmiter. We have got a few minutes left. We are going to let Mr. Jordan take it from here.

COMMITTEE SENSITIVE

Mr. Jordan. Thank you, guys.

Mr. Toscas, I'm going to switch here a little bit.

Did you ever communicate with Christopher Steele?

Mr. Toscas. No.

Mr. Jordan. Do you know Christopher Steele?

Mr. Toscas. No.

Mr. Jordan. Did you ever communicate with Glenn Simpson?

Mr. Toscas. Who?

Mr. Jordan. Glenn Simpson?

Mr. Toscas. No.

Mr. Jordan. Do you know him?

Mr. Toscas. No.

Mr. Jordan. No communication?

When did you learn -- or did you know that Christopher Steele was working with the FBI on the -- well, just leave it there. Did you know that Christopher Steele was working with the FBI?

Mr. Toscas. Sir, no. And most of what I've heard, if not all that I've heard, I've just seen in public reporting. I have no knowledge of any of that information.

Mr. Jordan. Okay. Did you -- when did you or when did the Department learn that -- if you didn't know, when did the Department learn Christopher Steele was working for the FBI?

Mr. Toscas. I don't know, sir.

Mr. Jordan. When did you know? Was that only through public, through press accounts, media accounts that you knew that Chris Steele

COMMITTEE SENSITIVE

was working with the FBI?

Mr. Toscas. Sir, I -- I'm struggling here, because I don't have -- I did not -- how do I say this? I've seen things in public reporting. It's hard --

Mr. Jordan. Go ahead, finish up.

Mr. Toscas. Yeah. So I don't believe that that name was a name that I discussed as part of any of my duties at any point.

Mr. Jordan. Tell me your involvement then in the Russian investigation. Tell me what your role was.

Mr. Toscas. Yeah. That it was pretty limited prior to the appointment of the special counsel. I recall that at some point our boss, the assistant attorney general, mentioned that there was -- or talked to me and others in our front office and said that the FBI was conducting an investigation.

Mr. Jordan. Before the Mueller team was named, before the special counsel was named?

Mr. Toscas. Yes.

Mr. Jordan. What date was that?

Mr. Toscas. I would say this is in late -- is it '16? Late 2016.

Mr. Jordan. Before the election or after the election?

Mr. Toscas. I think before the election.

Mr. Jordan. So before the election, you knew the FBI was -- had launched this Trump-Russia investigation?

Mr. Toscas. I'm trying to piece together historically, sir, for you. There was an investigation into Russian attempts to influence

the election and whether there was any connection to -- any connection to the campaign. So --

Mr. Jordan. The Trump campaign?

Mr. Toscas. Yes.

Mr. Jordan. And you learned that about that, you're saying, late 2016, right before the election? Is that accurate?

Mr. Weimsheimer. Can I have a second?

Mr. Jordan. Uh-huh.

[Discussion off the record.]

Mr. Toscas. What I recall is at some point in -- I said late 2016, it's in the August timeframe -- our AAG sat us down and said that there is a sensitive matter or investigation being conducted, and he wanted the career folks to be on it and to manage it from our standpoint. It was unclear what direction it would go in, so it's unclear --

Mr. Jordan. I just want to be clear. So it wasn't late 2016. It was August of 2016, the summer of 2016, you were told by your AAG -- and for the record, that is who? Your assistant attorney general.

Mr. Toscas. John Carlin.

Mr. Jordan. John Carlin told you there is an investigation the FBI has started on Russia and potential relationship to the Trump campaign. You learned that in August of 2016.

Mr. Toscas. Yeah. And, sir, I don't know what words he used to describe what the FBI was doing.

Mr. Jordan. Yeah.

Mr. Toscas. What he flagged for us was that there was a sensitive matter that the Bureau was working on and he wanted the career folks to be on it. And we didn't know what direction it was going to go. So I and others in our National Security Division front office were to reach out to the FBI and have them tell us what this was --

Mr. Jordan. Tell me about that.

Mr. Toscas. -- and what they needed from us.

Mr. Jordan. And then you subsequently reached out to them.

Mr. Toscas. One of us probably -- one of us called the Bureau to set up a meeting and shortly thereafter --

Mr. Jordan. When you say "us," who is the "us"?

Mr. Toscas. I can't say with certainty as I sit here, but I think the "us" would have been myself and two other deputy assistant attorneys general in our front office, Stu Evans, who ran our Office of Intelligence, and Adam Hickey, who was the --

Mr. Jordan. Stu Evans and Adam Hickey. Who did the reaching out?

Mr. Toscas. I can't recall. It may have been me.

Mr. Jordan. Okay. That was my next question.

Did you reach out to the FBI about the matter that Mr. Carlin told you about in August of 2016? And if you did, who did you reach out to?

Mr. Toscas. I don't recall who I reached out to.

Mr. Jordan. Well, someone reached out to someone, right?

Mr. Toscas. Yeah.

COMMITTEE SENSITIVE

Mr. Jordan. So who did you start working with and who did you start talking with?

Mr. Toscas. Honestly, I don't recall who we reached out to. We ended up meeting, you know, a few days after that, maybe even the next day.

Mr. Jordan. What did they tell you this investigation was about?

Mr. Toscas. Honestly, I don't even know how it was characterized to me in the first instance. It was just, there was a sensitive matter that --

Mr. Jordan. Tell me the substance. Tell me the next meet where they talked about this, where Mr. Carlin or someone talked about this and what reaching out, and what work you did with the FBI on the Trump-Russia investigation.

Mr. Toscas. Yeah. So to the best of my recollection, what we got from sitting down with the FBI was --

Mr. Jordan. Okay. You sat down with the FBI. Who did you sit down with?

Mr. Toscas. Numerous people. I don't recall who they were.

Mr. Jordan. Did you sit down with Andy McCabe?

Mr. Toscas. I don't believe Andy was there.

Mr. Jordan. Did you sit down with Peter Strzok?

Mr. Toscas. I think Pete, for sure, was --

Mr. Jordan. Pete Strzok was there.

Mr. Toscas. I'm almost positive of it. I can't say with certainty.

COMMITTEE SENSITIVE

Mr. Jordan. Was this in August of 2016?

Mr. Toscas. I believe it would have been in August.

Mr. Jordan. August of 2016, was Lisa Page there?

Mr. Toscas. I'm not sure.

Mr. Jordan. Peter Strzok was there. Was James Comey there?

Mr. Toscas. No.

Mr. Jordan. Who else was there? We know Strzok was, maybe McCabe, maybe Page, we don't know. Comey, you said no. Who else?

Mr. Toscas. I don't recall by name other people who were there. There were numerous FBI people present, I believe, at this meeting, at this first meeting, and I say --

Mr. Jordan. What did you learn at that first meeting?

Mr. Toscas. I can't say with certainty what was covered at that first meeting, but what I generally learned from this meeting -- and when I -- let me just say, the meeting was followed by other similar meetings at the FBI, so it's hard for me to remember precisely what happened on the first occasion.

But what I got from the meetings with the FBI was that they were conducting a counterintelligence investigation. I don't know if it was an investigation at the time or an inquiry, or whether they had officially opened it, but what I understood, eventually, what became an counterintelligence investigation to determine -- looking at potential Russian influence on the election, and then the possibility of any contact between Russian actors and members of the campaign.

Mr. Jordan. So did the name Christopher Steele come up in any

of these numerous meetings you and your team had with folks at the FBI, including Peter Strzok?

Mr. Toscas. I don't recall.

Mr. Jordan. How involved were you in the FISA process for the Russia investigation?

Mr. Toscas. Not involved. I may have been -- I may have received or heard information about it, but it's outside of my area of responsibility.

Mr. Jordan. You don't review FISA applications? You don't weigh in on those? You don't read them before they go forward, before the affiant signs them? You don't do any of that stuff?

Mr. Toscas. No, I may have access or heard about information, but I have no role in that.

Mr. Jordan. Did you read any of the FISA applications before they were taken to the FISA Court?

Mr. Toscas. I don't believe I read any of the applications before they went. And I say that only because I may have had access to them, but I did not -- I don't recall ever looking at any of those materials.

Mr. Jordan. Tell me about the dossier. When did you first start talking about the dossier? Did that come up in this first August meeting?

Mr. Toscas. I don't believe so. And I don't -- I don't recall having discussions. From my seat, where I sat, and what's within my area of responsibility, I don't recall having conversations about a dossier.

Mr. Jordan. Did the dossier come up in any of these meetings?

Mr. Toscas. It's possible, but I do not recall.

Mr. Jordan. Did you know who was paying for the dossier? Did you or the Department of Justice -- when did you first learn who was financing the dossier?

Mr. Toscas. I don't know anything about that, sir.

Mr. Jordan. Okay. How about Bruce Ohr? What kind of relationship do you with have Bruce Ohr? Do you know Bruce?

Mr. Toscas. I know Bruce. Before you came in, sir, I told everybody else I have been with the Department for 25 years. So I have known -- I have known Bruce as a DOJ -- a DOJ colleague for years, but I have no relationship with him, no -- very little work interaction with him. And, frankly, I don't think I have even spoken to Bruce for years.

Mr. Jordan. So Mr. Ohr was not at any of these meetings you had just described?

Mr. Toscas. No.

Mr. Jordan. Okay. When did the Department, to your knowledge, when did the Department learn that Mr. Steele was leaking information to the press? Do you know anything about that?

Mr. Toscas. I don't.

Mr. Jordan. How about Mr. Ohr --

Mr. Toscas. Obviously, again, my head is full of some things that I see in public reporting. But, no, I don't recall any of that as far as, you know, part of my work responsibilities.

Mr. Jordan. Why was Bruce Ohr demoted?

Mr. Toscas. I have no idea.

Mr. Jordan. He no longer has the role he had previously. Is that right?

Mr. Toscas. I don't even know that. I have no idea.

Mr. Jordan. Okay.

Mr. Toscas. I don't know what his role was, is, or -- I recall years ago when I knew him, he was in the Organized Crime Section, and then I knew that he went to ODAG, but I don't know what his roles or responsibilities were or are.

Mr. Jordan. And so you did not participate in any of the interviews of Mr. Ohr related to his interactions with Mr. Steele and Mr. Simpson? Did you participate in any of those interviews?

Mr. Toscas. If any took place, I have no idea, and I did not participate in them.

Mr. Jordan. Let me go back to the FISA process for a second, if I could.

You're saying you weren't involved, directly involved in the FISA process related to the Russia investigation. Is that right?

Mr. Toscas. Correct.

Mr. Jordan. Are you involved in any of the FISA process for any other cases?

Mr. Toscas. No. Our Office of Intelligence is made up of, you know, terrific career public servants who control and work that whole process.

I'm aware of the FISA process, obviously. I do a lot of work in both counterterrorism and some on the counterespionage side. So I'm well aware of how it works and have access to materials. But I don't supervise it. I don't review things. I may have access to them, but I don't -- I don't weigh in on that. They have an entire process.

Mr. Jordan. Have you read the dossier?

Mr. Toscas. I have not.

Mr. Jordan. Okay. The interviews that took place with Mr. Ohr, my understanding is, according to things that the Intelligence Committee chairman has stated, like a dozen interviews of Mr. Ohr with 302s and all, do you know who conducted those?

Mr. Toscas. I have no idea.

Mr. Jordan. You don't know who at the DOJ sat down with Bruce Ohr and did those interviews?

Mr. Toscas. I know nothing about those, sir.

Mr. Jordan. Okay. All right. I know we are out of time. I will have some more later.

Mr. Parmiter. We are out of time for this hour. We will take a break and come back, and it will be the minority's turn to question.

[Recess.]

[11:18 a.m.]

Ms. Hariharan. We're going back on the record. It's 11:18.

EXAMINATION

BY MS. HARIHARAN:

Q So I just want to start with a caveat. Some of these questions, they may seem repetitive, they may seem really obvious. We just want to make it very clear for the record, especially since there aren't Members here, in any event, we do a report or this goes public, like just very clear.

So I want to just quickly go back to what Mr. Jordan was talking about and kind of go from there.

So you made it clear that it was approximately August 2016 when you became aware of the Russia investigation?

A Yes.

Q Okay. Do you know --

A What became the Russia investigation.

Q What became. Excuse me.

A What became the Russia investigation, yes. I don't know how it was characterized and that's why I was taking my time there, because I really don't know the particular words that were used at the time, but yes.

Q A counterintelligence investigation into potential election activities.

A Yes, potential Russian interference with the election.

Q Okay. Approximately how many other DOJ officials were aware

of this before November 2016?

A I'm not the person to say. I don't know how many. Obviously, the people I mentioned within the National Security Division were aware.

It's hard for me to piece together time periods, so I don't want to guess. But it would not surprise me if people above Carlin were aware of it as well. But I can't say with certainty as I sit here.

Q So just to clarify, so Carlin was aware?

A Right.

Q Axelrod was aware?

A I would think Axelrod, ODAG, and OAG. So Office of Deputy Attorney General and Office of Attorney General would have been generally aware.

Q So that would be Ms. Yates' office and Ms. Lynch's office?

A Yes. And, again, as I sit here, I'm sort of going out and saying I assume it, because it seems like that would be the case. But as I sit here, I can't say with a certainty that, you know, I talked to particular people.

Q It's been a couple years. I get it.

A Yeah. I'm sorry about that.

Q Then let's quickly, from what you remember with regards to the FBI then, did Director Comey know, to the best of your knowledge, or Mr. McCabe?

A McCabe had to know, right, because I think Mr. Jordan asked who was at the first meeting. I can't really recall that. But

ultimately, you know, I remember Pete being there. I remember Lisa being there. And if Lisa is there, then Andy is aware, because Lisa works for Andy.

Q Was Mr. Priestap?

A Yes. Yes. As the head of the Counterintelligence Division, yes.

And there were components of this that went beyond counterintelligence. Obviously, cyber was a big part of it, so there were other people involved.

But I don't know who all of the people were. I don't have -- didn't have working relationships with all the other people who were present.

Q Are you aware of any DOJ officials leaking any of this information prior to the election about the investigation, whatever form of it?

A Not aware of any such thing.

Q Did you or anyone at DOJ make any disclosures about this investigation at any point?

A DOJ, no. I think at some point the Director made a statement about it and that was, you know, that was coordinated, I think, with folks in our building.

Q So it was in March 2017 that Director Comey testified into the investigation. Was Department of Justice leadership made aware of his decision to disclose it publicly prior to his testimony?

A I don't know who all in DOJ it was, but I believe that that

was coordinated with people within DOJ. And, in fact, I think his statement actually said: I've been authorized by the Department to say.

So in addition, that's just -- I don't know if that's leading me to believe that or whether at the time I was aware he coordinated it.

Q And to quickly jump back, when I asked about any DOJ officials leaking information, does that include -- are you aware of any FBI officials leaking information prior to the election?

A No. When you say that, I assume you mean am I aware of people who leaked as opposed to am I aware that information was leaked. Because if something was in the public way, at the time I would have said: Oh, well, obviously someone leaked this.

Q Right.

A But was I aware of who may have done it, no, and I'm not aware of who may have done it.

Q If someone at the Department or the Bureau was trying to prevent Donald Trump from being elected President, do you think they would have publicly disclosed that his campaign was under investigation for potential conspiracy with Russian Government actors?

A I can't speak to that.

Q Would you consider that as strong evidence -- I'm sorry. Let me say that again.

Are you aware of a deep state conspiracy at the Department of Justice or the FBI against Donald Trump?

A I don't even know how to define that. But from the little

I understand of it, no.

Q But if either the DOJ or the FBI had leaked that type of information about the investigation prior to the election, would that be considered -- scratch that.

BY MS. KIM:

Q So I just want to recap what you've told my colleague here. To your knowledge, you're not aware of any specific official from the DOJ or the FBI who knew about the investigation that Director Comey publicly announced in March 2017 disclosing any facts about that investigation publicly before the election. Is that correct?

A I'm not aware of any such thing.

Q And if information about that investigation had been disclosed publicly, would that have been detrimental to Donald Trump's electoral prospects?

A I can't speak to that.

Q Thank you.

I'd like to take you back to the Midyear investigation. There was a brief sidebar with my colleague from the majority about how the case was run out of headquarters. Did the fact that the case was run out of headquarters change any of the substantive decisions made in the Clinton investigation?

A No.

Q Did it change the thoroughness of the Clinton investigation?

A Some might argue it made it more thorough because it's getting high-level attention. But I believe that we conduct all our

investigations thoroughly. So regardless of where it's housed or who's running it, I expect all investigations to be thorough and this one was.

Q The FBI also designated this case as a sensitive investigative matter. I understand that's a label used when the individual being investigated is under particular public scrutiny, like a priest or a political figure. Are you aware of that designation?

A I saw it in the IG report, but I don't have -- I'm not an expert in it or I don't deal with it enough to be able to speak knowledgeably about it.

Q So is it accurate to say the SIM designation, the sensitive investigative matter designation, did not, to your knowledge, change any of the substantive investigative decisions in the Clinton investigation?

A I don't think anything affected our substantive decisionmaking throughout the process. Again, having higher-level attention on a case may make people focus on it more within the chain of command at the Bureau.

But, again, like I said, I expect all investigations to be thorough. And my experience here was like it has been in many other cases, that it was a very thorough investigation.

Q I'd like to ask you about the way that this investigation was structured. The inspector general's report is very clear that you were the highest-level career Department employee involved, and that while those above you, like Mr. Carlin, Mr. Axelrod, Ms. Yates, and

Ms. Lynch, received briefings that you were the senior most day-to-day manager. Is that correct?

A Yes.

Q Why did the senior DOJ officials that I just mentioned receive briefings from you but declined to participate in the day-to-day management of the Clinton case?

A I don't know if they declined to participate, but the leadership does not participate in day-to-day management of any cases. That is common for all cases.

But in this instance they would -- you asked why they would receive briefings. I would apprise them of, you know, important steps that were being taken in the case, using my judgment as to making sure that they're generally aware of certain steps so that they're not blindsided by things that may become public or steps that someone may raise with them.

So it's basically, you know, making sure at the wave tops I'm giving them any updates that I think are necessary for them to have at particular times.

Q I've heard it, though, from different witnesses we've had in this case that the structure to have you as the senior most day-to-day manager was related to the fact that you are a career employee at the Department of Justice and that deliberate steps were taken to minimize the amount of political interference that was seen as influencing the case. Is that correct?

A That may be the motivation of the people above us. But the

way investigations are run ordinarily is that career people work on them. And, you know, we -- the Department has a long, long history of being able to conduct thorough, independent investigations even when the political people in the Department are very actively involved in cases.

So in this instance, there may have been a greater desire by folks in leadership positions to sort of make sure it was clear that they were entrusting this to a career team to work it no matter where it went. But, frankly, that's the way all investigations go forward.

Q Thank you.

When he was interviewed by the inspector general, Matt Axelrod told the inspector general's office that he met with you at the outset of the investigation. Is that correct?

A I don't recall a particular meeting, but I saw what he said and it all made sense to me.

Q I'd like to read his quote into the record. So he stated, quote:

"We were going to have sort of a lighter touch from the leadership offices than we might on a sort of high-profile case. In other words, we were there for him for whatever he needed, but we weren't going to be sort of checking in day to day or week to week for updates or briefings.

"And when I say a lighter touch, I don't mean that folks weren't engaged or paying attention. I just mean we wanted to give them the space they needed to do whatever they thought necessary in the

investigation. So that at the end, I just wanted to make sure that any allegation that there was some sort of political interference with this investigation wouldn't hold water."

Does that ring true with your day-to-day experience on the case?

A It does.

Q Is it consistent with your experience on the case that there was, in fact, no improper political interference with the investigation?

A There was not.

Q And it's consistent with your experience that the case was investigated by the book?

A Yes.

Q Was this a thoroughly investigated case?

A It was.

Q Did anyone political appointees at DOJ intervene in our attempt to intervene in the Midyear investigation?

A No.

Q Did any political appointees at DOJ give inappropriate instructions or attempt to give inappropriate instructions about the conduct of the investigation?

A No.

Q Did any political appointees at DOJ or any member of the investigative team ever attempt to interject improper considerations like political bias into the conduct of the investigation?

A No.

Q Are you aware of any conduct by DOJ officials or prosecutors that had the effect of invalidating the outcome of the investigation?

A No.

Q And are you aware of any conduct by FBI officials or investigators that had the effect of invalidating the outcome of the investigation?

A No.

Q In your view, did the Justice Department take all necessary and prudent investigative steps in this investigation?

A I believe we did.

Q And did you ever feel that DOJ had to compromise on its investigative strategy because of time pressure or political pressure in this case?

A I don't.

Q Can you estimate for me the number of mishandling of classified information cases that you've worked on?

A I don't know if I could give a number. Many. I mean, I only started working on the counterintelligence side in my current role, so I think that's almost 10 years. And so I can't say how many, you know, investigations and cases. Numerous.

Q Numerous. If my math is correct, what was -- were you at NSD when David Patraeus' case came before NSD?

A Yes.

Q And what was your role in the investigation of David Patraeus?

A Same role as the deputy assistant attorney general over the what then was probably the Counterespionage Section. I don't think the name had changed then. And so they and our section and a U.S. Attorney's Office was responsible for investigating and prosecuting that case, and my role was the same as a deputy assistant attorney general supervising the matter.

Q And in your assessment, did Secretary Clinton get any special treatment in the application of law to her facts that David Patraeus did not get in his case?

A I don't want to talk about particular people. I'll say that every person that's investigated gets the same treatment from us. We look at everybody the same way. We analyze the facts, the law, and we make our determinations.

And, obviously, the two people you mention are very high-ranking government officials at different points of their careers, and that is part of our job, to look at people equally and uniformly, and we do. And it doesn't matter who they are, what rank they've held, what position they're in. We look at the facts, we look at the law, and we follow it where it goes.

Q Did you have any role in the investigation of former FBI Agent (b)(6), (b)(7)(C) per FBI for mishandling classified information?

A I don't recall that name. Do you know when that was?

Q I believe that the acts in question occurred in 2003, but I don't know when the prosecution was brought.

A I would not have had anything to do with that then.

Q Understood.

So given your -- the length of time in which you've served in this capacity, is it accurate to say you're quite familiar with the statutes governing the mishandling of classified information?

A I'm not an expert the way our team in CES is, but I'm familiar with them, yes.

Q And you would say that the other DOJ prosecutors staffing this case under you were experts in the laws governing the mishandling of classified information?

A Without question. Among a small group of people who have expertise in this area, it's a very specialized thing, and these are great lawyers who are experts in these areas.

Q And do you have any doubts about their ability to apply the law neutrally to the facts before them?

A Absolutely not. These are professionals working very, very important investigations, and they do it extremely and extraordinarily well.

Q You said that earlier that in general when your team is evaluating what statutes should apply to a certain set of facts that process is organic. Is that right?

A I think over time, as part of an investigation, the agents and prosecutors generally know what the conduct is and what statutes it may implicate. And there might be some statutes added along the way or tossed to the side along the way based on the conduct and the knowledge of the statutes, but I think that's a part of any

investigation.

That's what I meant when I said it happens organically. Sometimes it can be very formal, but in most instances my experience has been, you know, when you start with a case that has the potential -- potentially involves mishandling of classified information you sort of know what area of the code book you're going to be looking at.

Q And what's the role that precedent plays in whether prosecutors choose to apply a certain statutory provision or not?

A So different types of precedent, right? You have legal precedent, so -- which constrains us. So it's -- guides us. It says here are the guidelines and the road markers that you have to stay within because courts have told us this is what the cases or the statutes mean.

You also have precedent in the way we conduct our investigations. And you want -- and I believe the American people expect -- consistency in the way we apply statutes.

And so from my perspective, the institutional and legal precedents are very, very important. It doesn't mean that we're constrained. It doesn't mean that in certain instances there might not be a case where you push the boundary of the precedent. There's always that possibility. And as public servants, we have to remain open to that.

But at the same time, we as prosecutors and the American public deserves to know that we're applying things consistently. So the way we apply statutes historically, and the way we interpret them

historically, is very important to prosecutors.

Q I understand from the inspector general's report that what's become known as the gross negligence provision of 793 has some precedential baggage associated with it, perhaps that's the way I'll say it. The inspector general's report characterized the Department's concerns about unconstitutional vagueness; also expressed a concern that the case -- the provision, excuse me -- had been used by the Department once in 99 years.

Are you familiar with those accessory concerns to the gross negligence provision?

A I am.

Q And what role did those facts play in the prosecutors' deliberations over what law to apply to this case?

A The prosecutors in this case, these are obviously, as I mentioned, professional attorneys. They're very smart. They know what they're doing. They're expert in this area.

And with respect to 793(f), they did what we would expect any good lawyer to do: They went and looked at the statute; they looked at the legislative history; they looked at the case law, although limited; and they looked at how the Department has applied this statute in the past.

It's exactly what we would want any of our prosecutors to do. That's what they did here. And they came to conclusions and made determinations that the IG report goes through, I think, in pretty good detail.

Q Do you remember if there was any significant disagreement among your team of prosecutors about which statute should apply to the alleged misconduct?

A I don't recall any -- any disputes. I could be wrong about that. Maybe there was at the lower level, you know, they may have haggled over it. But I don't recall any concern.

Q And do you remember any significant disagreement between the FBI and the DOJ teams about what law applied to the facts in question?

A No, I don't recall -- again, maybe they -- at a line level, as I said, things happen organically, there may have been, you know, some discussions about it. But certainly, I don't recall anyone ever expressing any concern.

For example, I mean, I think what the question wants to get at is, you know, did someone in the FBI say: Hey, what about this statute? We think this statute was violated and you guys won't consider it. Of course, I don't recall anyone ever -- anything getting even close to that.

So I don't recall any disputes over which statutes were looked at. It seemed like, in the same way the prosecutors are professional attorneys, the agents are professional investigators, and in this area it's a very unique and specialized area. So they come to know the statutes and what's required for the statutes very well just like the prosecutors do. So I don't recall any disputes.

Q Did any political appointee at DOJ direct your team to use or refrain from using a particular statute in this matter?

A No.

Q So I think that brings us then to the way that the investigation was actually conducted.

Is it safe to say that you and the FBI team were looking for evidence of intent early on in the case?

A Yes.

Q So that would mean from the initial document reviews of the emails on the server and in the initial interviews about how the server was set up. Is that correct?

A Yes. Yeah. I mean, the agents and the prosecutors, it became pretty clear pretty quickly that you want to know why people are doing things, what their knowledge is, and what their intent is behind their actions separate from any statutory requirements. You want to know what did people know and what did they mean to do when they were taking these steps. So that was a basic part of this, and certainly it became a key part as the IG report focuses on.

Q And in those early stages, did the FBI uncover any evidence of intent on the part of Secretary Clinton?

A I just don't want to use the term "intent" very generally like that.

What folks were looking at was did people who were on the email chains, including Secretary Clinton, have knowledge that classified information was in those emails, was being transmitted over those systems; and in addition, similarly to did they have knowledge of classified information being on it, did they have any intent to transmit

it or to mishandle it or to convey it or to retain it improperly.

So that's -- those are questions that applied to everybody.

Q Thank you for the precision. I think that's important.

Did the FBI --

A I'm sorry. The one other thing the team was looking at was, separate from individual emails, was: Is there some suggestion that the entire email server was designed for a purpose related to transmission of classified information. So that's why I wanted to clarify that intent and knowledge went into all of those things.

Q I understand that. And across those different prongs of knowledge and intent that the team was looking for, did the team at any point in the investigation find any smoking gun documentary evidence of knowledge or intent to commit a crime?

A No. The most basic first thing that the team looked at, and I think the IG report goes through this in detail, is classification markings. Obviously, when we're doing investigations of mishandling of any type of classified information the first thing you want to know is are the things marked and are they marked properly and things of that nature.

So there were no documents with proper classification markings on them. There were, as it turned out, a small number, I believe three emails or email chains that included a parentheses C, end paren, which would have indicated or would have been a classification marking for confidential information.

However, those documents did not have -- were not properly marked

as you might expect a classified document. If you guys handle classified information, you know you have the headers and the footers that clearly mark that. So the first thing you do when you look at a document is you look at that header and footer.

So, you know, that was important and those three particular emails or email chains with that parenthetical were important to us, too, because those -- that would suggest to a person looking closely that it potentially contained classified information. So we focused in on that.

But as far as a, quote, unquote, smoking gun, as you put it, of knowledge or intent, no, I don't think -- and I think the IG report lays it out pretty clearly. There just wasn't anything that rose to the level of a smoking gun.

Q I think the inspector general's report also concludes that the team did not find any smoking gun testamentary evidence about knowledge or intent, as you laid it out earlier. Is that correct?

A What did --

Q Pardon me.

A Sorry. I didn't hear.

Q I'll ask you one more time.

A Sorry.

Q The inspector general's report, I was just commenting, noted also that in addition to lacking smoking gun documentary evidence, as you just went through, there was no smoking gun testamentary evidence from the different individuals that the team interviewed. Is that

correct?

A Certainly. During the course of interviews, correct, there was no such information obtained.

And to be clear, you don't necessarily need a smoking gun. We can prove a case without a smoking gun if the evidence supports it.

So separate from just a smoking gun, you know, we're looking at the entirety of the evidence and whether it would support -- you know, satisfy -- whether it would support a prosecution by satisfying the elements of the offense. So even separate from that, we just weren't looking for one smoking gun. We were looking at everything.

Q And did you find evidence, direct or circumstantial, that would have supported a charge in this case?

A Obviously, with the conclusion being to decline prosecution, no.

Q And if you had found such evidence, is it your belief that the Justice Department would have brought a charge against Secretary Clinton?

A There's no doubt in my mind that if we found evidence of a crime and proposed charging any individual in this investigation, we would have charged that individual. I say that from my seat where I sit, there's no doubt in my mind.

Q So at any point in the investigation did anyone on the team attempt to ignore or bury relevant probative evidence that would have -- relevant probative evidence period actually?

A No. No. In fact, I think the IG report comments in detail

that the team continued to take investigative steps even when it was pretty clear to the professionals working the case what direction it was headed in. We continued turning over every stone that we possibly can to see what's under it, even where the -- when the likelihood of success going in you may not think that you're going to get very much from it -- from an investigative step. And the team continued to turn those stones over.

So there was no discouragement to pursue any relevant evidence. If there was the belief that there was relevant information out there, this team went after it.

Q Thank you.

Mr. Toscas, we have spoken with many of your colleagues from the FBI team, and they have described the FBI and DOJ as having a subtle cultural difference in the approach to the collection of evidence through compulsory process.

So it has been characterized to us that generally FBI investigators tend to be more aggressive in seeking evidence and want to use compulsory process more often and that Justice Department prosecutors are more conservative in when they ought to use compulsory process.

Is that generally accurate in your experience?

A In general, I think agents would always characterize themselves as more aggressive than prosecutors. Whether that comes to use of compulsory process or otherwise, probably has the same -- they have the same view. But I don't think that's -- I don't think it's

a -- it can be painted that broadly about everybody.

Q DOJ policy advises prosecutors to consider alternatives to subpoenas when practicable. Is that right?

A Yes.

Q And why is that DOJ's policy?

A I don't know if I'm the best person to get into the rationale for it, but it seems the policy, which is -- seems to me to be largely uncontroversial appears to be a good one based on very good, sound institutional long-term practices.

So I don't know what the original rationale for was it -- was for it -- but it's not -- it's usually not a controversial topic.

Q In the Midyear Exam investigation, were there disagreements between the Justice Department and the FBI on when to use compulsory process?

A People -- there may have been disagreements between people. I don't want to say that it was between DOJ and FBI institutionally. But those disagreements, I think a little bit like what we were saying earlier, sometimes they're healthy to sort of walk through. It's good for everyone to understand what the other person wants and what they're looking for and why they think it's important.

And so the fact of the matter is that sometimes taking away the method that's being discussed or argued about and getting toward -- behind the method and finding out what it is -- the reason why the person wants to use it.

And I think when you peel that back the disputes in this case had

to do with timing. It's like let's use process because it's faster. Let's use search warrants because they're faster. And that just isn't true. It turns out to be quite the opposite, that sometimes that route takes much, much longer.

And so it's a bit unfortunate that there's so much discussion still between the entities about this and the disagreements over it, especially -- and the IG report spent a lot of time on it, obviously, because the IG felt that it was a big issue.

But at the end of the day, what I get from the IG report is what you see from the FBI folks, including former Director Comey, is almost an across-the-board acknowledgment that some of the, you know, the particular agents, I wouldn't say the institution, but the agents who wanted to be more aggressive in the use of warrants and the like, all ultimately agreed that that process or that route would have taken so much longer, and that they were very pleased at the end of the day, notwithstanding the sort of disputes along the way, that we got the things the way we got them.

So it's a hard -- it's a little more difficult to talk about, because in actuality the people, I think, who were pushing very hard to be more aggressive in that other way ultimately came back around and told the IG that we ended up with everything they wanted and much more quickly than they probably would have gotten it if they had gone a different route.

So we might have disputes over it, but the fact is, you know, we try to peel away, you know, the method, look at what the purpose is,

and then come to an agreement that, you know, this is the best way forward for the needs in this particular case. And I think that at the end of the day everybody's basically very, very happy with what they were -- what they, as investigators and prosecutors, were able to obtain.

Q So it's your experience that when there were disagreements among different members of the team regarding whether you should pursue compulsory process or seek consent, that those disagreements were based in legitimate strategic differences?

A Yeah. Yeah. You know, sometimes -- and I think AG Lynch -- former AG Lynch said this in the IG report, you know, it's just common that agents sometimes hold themselves out as being more aggressive and want to do things more aggressively. Sometimes it's not a good faith dispute. It's just like: Look, you know, let's get out there and do this. Let's get the warrant and go forward.

But, you know, we had very good discussions, talking through the nuances of a lot of the, you know, the hurdles here.

And at the end of the day, I take satisfaction in the fact that in retrospect almost every one of those people told the IG that they were pleased that we got everything that we got and made comments that would indicate that we got more than we would have gotten had we gone a different route. So I think it turned out pretty well on that front.

Q In your experience on the Midyear case, did political bias ever enter into the discussion of whether compulsory process should be used or not?

A No.

Q And did any senior political leaders at DOJ intervene in the team's decision to seek or not seek compulsory process?

A No.

Q So I just want to make clear, AG Lynch, DAG Yates, Mr. Axelrod, and Mr. Carlin, none of these individuals improperly interfered with the team's discussions on whether compulsory process was warranted?

A Never, and didn't play a role in those decisions at all. If they learned about them at all, they learned about them after we told them this is what we're going to do.

Q Peter Stzrok has been described to us by the IG report and by other witnesses as an aggressive advocate for compulsory process. Was that also your experience on the matter?

A In certain instances, yes.

Q We were also told that Lisa Page -- the inspector general found that Lisa Page was also a fairly aggressive advocate for compulsory process. Was that consistent with your experience?

A Yes. I think the IG report captures that. And in particular instances, right? I mean, we're talking about mainly where the IG report focuses on process it's with respect to attempting to get to laptops in the investigation. And the IG notes that both of them were, you know, strong advocates for process.

Q After reviewing it at great length, the different disputes over compelling evidence or seeking it by consent, the inspector

general concluded, quote: "We found these explanations from the prosecutors about why they were shy about using compulsory process to be supported by Department and FBI policy and practice, and that the disputes between the agents and the prosecutors about how aggressively to pursue certain evidence were good faith disagreements."

Is that conclusion consistent with your experience?

A Yes. I mean, the most important part about this is that we are trying to get evidence. At the end of the day, that's the goal: Get evidence.

And so there might be different ways to do it, and if a search warrant would have gotten us the evidence more quickly, we would have -- and we had the -- we could meet the standards for getting a search warrant, we would have gone and gotten a search warrant.

But you can't just look at the road ahead by using a search warrant and see all these hurdles in front of you and just blindly say: Let's go, let's go get this warrant. You have to step back and be good lawyers and professionals and look at the hurdles and say: Okay, how are we going to clear each one of those hurdles? And is there another route that we could take that will get us the information more quickly?

And so what the professionals in this case did was they pursued both of those tracks simultaneously, piece by piece, getting over the hurdles that we needed to get over if we were going to go down the warrant route while at the same time trying to negotiate the same result.

So we were doing both at the same time. And you just can't put

blinders on and try to pick one. You have to be professional and analyze it. There's significant, significant impediments and nuances to it that maybe some of the agents that raise some of these issues didn't understand.

But we did our best to explain it. And, again, I take satisfaction in the fact that at the end of the day almost every one of those people apparently told the IG they were very happy with the way it played out.

Q Mr. Toscas, in your experience, is it common for prosecutors and investigators to discuss where the outcome of a case is headed even before the last witness has been interviewed and the last piece of evidence has been examined?

A Certainly.

Q And why do prosecutors and investigators discuss where a case could end up before the fact finding is complete?

A I mean, just in the ordinary course, you're human beings. You're working on the matter together and you're seeing the strengths or the weaknesses or both as you move along.

And so it's not uncommon to develop, as you're moving forward, a sense that it's going in one direction or another, and it's good to have those discussions so that you could talk about whether there's steps that could be take on the firm up some of the weaknesses, whether there's things that you could do to bolster some of the strengths, and also to understand what this means.

At the end of the day, depending on where we end up, what is the

result, what does that mean for us, and are we going to be satisfied that we've taken all the steps necessary to complete it.

So those are things that happen in, I would think, in every type of investigation. It's obviously highlighted here where you have a 500-page IG report after the fact sort of going through every detail of it -- very well, I might add.

But I would think in any investigation, at any level of the criminality or any level of government, those discussions are going to happen between agents and prosecutors, and they're going to have a sense of what direction they're headed in.

There may be people who want it. You know, you might be doing a murder investigation and you very, very much want to get to the end and find a person who's accountable. And so you're obviously focused very intently on getting to that because you know this is -- there's a victim in this case and a family that has suffered gravely and greatly. So you're saying: Let's get to that end game.

And it's not uncommon during the course of an investigation like that to have a sense that you're going to get there or you're not going to get there. You've fallen short or you're going to hit the finish line. And that's what agents and prosecutors do all the time.

Q What would be your response to criticisms that discussing the potential outcome of a case before it's concluded constitutes prejudging the outcome of the case?

A I don't believe it's prejudging the outcome. I don't want to comment on what people did in this particular case. Obviously

there's different ways of doing it, and in retrospect I'm sure people could see that there's some better ways and some worse ways to go about -- by going about doing that.

But in a big investigation of any kind I would think that the people who are ultimately responsible for it are going to be thinking about what that end game looks like, depending on which way it may end up.

And I do think that we are professional enough to have a sense of where an investigation is going to end up realistically, but still thoroughly and zealously continue to take the investigative steps that you think are necessary, and fully willing to change course if it turns out that the judgment you thought you were headed towards changes.

Q So --

A It's harder, I think, for outsiders looking at it to understand that, and it is difficult -- more difficult to explain when there's draft documents months in advance of an announcement. I think a common -- a citizen looking at it understandably would be concerned about it.

But within, you know, investigations and prosecutions, you know, people are professional enough to have the flexibility to say: I believe this may end up this way so let me prepare for it, while not concluding that with certainty that that's where it's going to end up.

Q Are you aware of anyone in the core DOJ or FBI Midyear team that disagreed with the ultimate decision not to charge Hillary Clinton with a crime?

A No. From what I could tell, it was unanimous across the board.

Q The inspector general's report has several discussions of how DOJ and FBI officials did exactly what you described. They discussed where the case was headed. An important time point that the inspector general focuses on is the spring of 2016 when his report states that it was the general understanding that the case appeared to be headed towards a declination. Is that consistent with your experience on the case?

A I think the IG report has that right, and he had a much better view than I did because he talked to everybody across the board. But I think that's right.

Q Why was the case -- why did the case appear to be headed towards a declination as of spring of 2016?

A Ultimately, for the same reasons that the case was declined. The IG report goes into the, you know, details about that, and I don't want to rehash them all. But by that point it seemed that on the issues of knowledge and intent the evidence was coming up short on that front.

Q But as you said, the conclusion to the case was not locked in. Is that correct?

A Absolutely not. It was not locked in until the final recommendation was made.

And, again, I get why from an outside perspective that might be difficult to see, accept, and swallow, but from within the ranks of prosecutors and agents, you know, until that final recommendation is

made it's not final.

Q And does that mean that even late in the spring of 2016, right before Director Comey's announcement was made, you personally were open to any evidence that might emerge supporting the prosecution of Secretary Clinton?

A Prosecution of anyone within the scope of this investigation, yes.

I don't know of anybody working on this case that would not have been open to changing course depending on evidence that we gathered. We were gathering as much evidence as we could to figure out how to finally assess and make a final determination here.

And if we gathered evidence that took us in a different direction, we would've turned in that different direction. We literally were committed -- and I'm confident of this across the board -- we are committed to following the evidence wherever it led us.

Q In spring of 2016, it appears that senior DOJ and FBI officials started to have discussions about how to announce the conclusion of the case. Why in this case was there concern about how to announce the conclusion of the case?

A I don't know if I'd say concern, just a discussion of how to do it and the appropriate way to do it and who should be involved in that. So if those rose to a level of concerns -- possibly they did -- but that was, I think, the goal behind it.

Q Well, I'll posit to you that it's not normal operating procedure for the FBI Director to stand up and announce that the

Department should not pursue charges against an individual. So it appears that this was exceptional at least in some ways.

Why did senior leadership at the DOJ and FBI decide that this case warranted maybe different treatment than a standard case where a declination decision would be reached and the next step would just be silence, no charge would be brought and the case would be quietly closed? Why wasn't that the process followed here?

A The process that was followed was one, as the IG report goes into excruciating detail about, was one that was chosen by former Director Comey. It wasn't the product of deliberation or decisionmaking within DOJ. He made it quite clear that he not only decided to do it, but decided to do it without telling us.

And so I'll leave it to the IG's conclusions with respect to the view of that. But it was not -- that was not something that was agreed upon by design. It was not agreed upon.

Q So in spring of 2016 when DOJ and FBI started having preliminary discussions about what a declination might look like, there was no explicit or final joint decision reached by DOJ and FBI?

A There wasn't. And I wasn't a party to most of this, so I'm -- a lot of the information comes from the IG report, which recounts conversations with other people.

But my limited role in it, and I think the IG report captures some of that, was I had a general sense that the leadership of both buildings were talking about what the end game might look like, and always, always with the understanding that things could change, literally the whole

course of this could change depending on the continuing evidence collection, but talking about what that end game might look like.

And I had a sense that they had either discussed or had some preliminary understanding, maybe not an agreement but a preliminary understanding that this would be done jointly.

And the IG report recounts that I thought that was a good thing. I thought that this was something that having the FBI and DOJ together on this, which we obviously were on the actual conclusions, we were together, but I thought it was important for the American people to see us standing jointly together, whether it was physically standing together or jointly making a statement about it. And so I had a general sense that that was the track we were on.

And it's hard to piece it back together now after the fact, but even some of the IG's collection of -- through interviews or emails suggest that both Laufman and I both had some sense that we were headed towards a joint -- some sort of joint statement, whether that was, you know, physically in front of people or in written form with the Bureau.

So I don't know why or how exactly we came to that understanding, but that was generally our understanding at the end, that we would do this together. And I thought that was a good thing. I just thought it was good to have both buildings together on this as we were through the entire investigation.

Q But, in fact, there was no joint announcement, that's right?

A That's correct.

Q Director Comey made his public statement on July 5th

recommending to the Justice Department that no charges be brought.

Did Director Comey or anyone else on the FBI team discuss the content of the public statement with you before Director Comey made his announcement?

A No, by design. He said that, you know, he was going to -- now we know from the IG report and his other statements that he decided that it would be best -- and, again, I'm not going to talk about the propriety of that decisionmaking.

But he's laid out his decisionmaking, that he thought it would be best to do this on his own. And the IG report and his public testimony and other public statements lay that out.

I will say, and the IG report discusses it, apparently, as you saw in the IG report, they actually had a roster of people to call to notify that morning. And my call was coming from the deputy director, Andy McCabe, and he didn't reach me, and he shot me an email.

And then when I called him back, I think I conveyed shortly thereafter to the team that essentially he just said the Director is going to, you know, say something about the conclusion of the Midyear investigation, but they did not go into detail about what he was going to say.

Q That makes sense.

So that chapter concludes with Director Comey's announcement. So the timeframe then brings us to October 2016.

The inspector general's report found that when you found out about the existence of the Clinton emails on the Wiener laptop, you personally

took immediate action to understand what the FBI was doing to investigate the emails. But the report also stated that you strongly disagreed with Director Comey's decision to write a letter to Congress to inform them about the newly discovered emails.

I'll quote you from the report. You said, quote: "I was really upset, and I basically said, you know, this is BS. We don't talk about our stuff publicly. We don't announce things. We do things quietly."

Is that an accurate statement?

A If you're reading it right from the IG report, I think it is. But I can't remember who I was talking to when I said that to. I think it was either Pete Stzrok or Jim Rybicki. I think it was Pete Stzrok, but I can't be sure. Maybe I was clear when the IG interviewed me or his folks interviewed me.

Q And can you explain why you disagreed with the decision to send the letter to Congress?

A Because it's uncommon to prosecutors and agents to tell people investigative steps that we intend to take, just that simply. So I don't know if there's anything more to say than that. We usually do our work quietly, as I said.

Q Is it a departure from DOJ policy to comment on an ongoing investigation so publicly?

A We have a practice, longstanding practice of not commenting on ongoing investigations.

In this instance there's -- I acknowledge that this investigation had been announced as being closed. So it caused -- you can read for

yourself and see for yourself the Director's rationale for the -- the former director's rationale for having -- feeling the need to advise Congress of a change in his prior testimony that the case had been closed.

But my sentiment that it was what it was, that in my discussions with the Bureau, I just thought we should take whatever appropriate steps we think we should take and do it as we otherwise ordinarily would: quietly.

Q In your discussions with the inspector general, you also expressed that --

A Also, let me -- if I could. I'm sorry to interrupt.

Q Yes. No, of course.

A And also, whereas other people may have been factoring in proximity to elections, I can't say that that's what was driving my statement. My statement applied no matter what, no matter what the timing was. We do -- we take investigative steps, and we do them quietly. I know that others may have more specifically been talking about the time period we were at, but to me that -- my statement applies no matter what.

Q Understood. Thank you.

I'll read to you another quote from the inspector general that you gave. It stated, quote: "I do remember like at some point on our side feeling like" -- sorry. Let me give you a little bit more context to it.

This is about your perception of the phrasing of Director Comey's

letter. You were expressing disagreements about some of the phrasing in the letter he ultimately sent to Congress.

So you said, quote: "I do remember like at some point on our side feeling like if you're going to say it, there's a way to just sort of lay it out a little bit more clearly that ticks off some of the natural suspicions that are going to be created by less clear, less specific, and more ambiguous language." Can you explain that comment?

A It's hard to hear someone read my words back to me because I don't -- I recall saying something like that.

But I think what I was talking about what just that, if you're going to explain it, just explain it. And in trying to sort of make it pithy or, you know, do it in summary fashion, in trying to do that it opens doors to people to try to read more into it than actually is there potentially.

So it's a little difficult to talk about it in that context because -- at that stage because -- and I think the IG report captured this too -- it felt like, look, I -- we oppose this. But if you're going to do it -- or if he's going to do it -- why not just lay out more the details and remove what we know will be suspicions or people reading into the ambiguities created by less clarity?

So I just -- I don't know. I guess at that time I just thought: Explain with more detail what it is if you're going to do it. And it's that the people then receiving it don't have to read much more into it. I guess that's what I meant. And as I sit here now, that's what I remember I meant.

Q To the best of your recollection, what were some of the specific details you thought should be surfaced as opposed to being glossed over with imprecise language?

A I don't really remember all of them as I sit here, but, you know, one thing that sort of I have some memory of was, you know, just more of the details of the individual, you know. The fact of this other investigation being conducted resulted in a, you know, a spouse's laptop being recovered, that spouse being -- or I'm sorry, a person's laptop being recovered that may include the spouse's material; the spouse's material, you know, is potentially relevant. That's what stands out to me, just more context to what was actually being put out there.

Q Would the fact that the FBI had not yet reviewed any of the material on the laptop have been a relevant factum to include in that letter?

A I don't know. I guess possibly seeing that they had -- well, I can't say that. I don't know if that would have been accurate because the FBI had reviewed some of the contents of it legitimately for another purpose, for another criminal investigation. So it's possible.

Honestly, I don't know all -- I can't remember exactly all of the things that could have been added. It just, to me, that comment captures and reminds me that essentially what I meant at the time was the less ambiguous it could be made, the less questions it raises and less suspicion it raises and public churn over what is it that you're doing.

And so like I said, ordinarily we have opposed any such statement, but if it's going to be made, a little more context or information may make it less -- may raise less inquiry about it.

Ms. Kim. Okay. I think that concludes our hour. We will now be going off the record. It is 12:19.

[Recess.]

Mr. Parmiter. Let's go back on the record. The time is 12:23 p.m.

EXAMINATION

BY MR. PARMITER:

Q Sir, I want to follow up on a couple of things we discussed in the first hour and then also last hour with our Democratic colleagues.

They asked you about intent, whether there was a smoking gun with respect to the discussions over whether to charge Secretary Clinton with violating 793(f).

Do you know or were you part of any discussions internal to the Department about those -- that statute in particular and what the gross negligence standard means?

A Other than with our team, no.

Q But you were involved in discussions with the team about it?

A Our team discussed it with me, yes.

Q Okay. Did anyone discuss whether or not, you know, sort of, I think, the Black's Law definition of blatant disregard of a legal duty or willful blindness or anything else applied in this situation?

A Possible. I don't recall, but it's possible that those

types of terms were discussed.

Q Okay. But you don't recall whether or not, you know, anyone in particular advocated for or against them or, you know, anything of that nature?

A No. Our team did an analysis of the statute based on the legislative -- you know, the language of the statute, the legislative history of prior usage, and some case law, and, you know, conducted their analysis and shared it with me and it seemed right to me.

Q Okay. And when you say your team, are you referring just to the prosecutors in NSD you were supervising?

A When I say the team, I mean all four individuals, but I don't know -- it's not like I have a specific recollection of who was talking.

Q The ones you mentioned earlier though --

A Yes.

Q -- the two line prosecutors from NSD and the two from EDVA?

A Yes. I'm sorry. Yes, those four.

Q Do you ever recall -- I believe the IG report refers to -- and it was the PADAG, Matt Axelrod, who said that you would -- they relied on you to give -- and by "they," I mean him and Deputy Attorney General Yates -- relied on you during the, quote, unquote, "skinny down" sessions to provide them with information. Did you do that on this subject?

A No, I don't think so.

Q Okay. In those sort of skinny down sessions, was it solely Mr. Axelrod and Ms. Yates that were present -- and you -- or were there

others present?

A It's a term that's come to be used, the skinny down. It's just at the end of a larger meeting, more sensitive matters. So others, both in NSD and in the relevant leadership offices, could leave. And it wasn't -- skinny downs didn't only apply to this case. They applied to a variety of different topics.

Q But in this context, skinny downs were about, you know, the MYE investigation and occurred after, I believe I hear you saying, they occurred after a larger meeting about MYE?

A Yeah. So just to give you some context, I don't know how we initially even started calling them -- we don't refer to them as a noun, a skinny down. But during the course of a larger meeting with leadership offices, with NSD or with the Bureau, it doesn't really matter, at the end of it, if you're moving on from more general topics that everybody in the room can discuss to a more sensitive topic, we'd say: Hey, let's skinny down and just get the people who are -- or, you know, let's keep you, you, and you in here.

And so that's all the skinny down meant. And that was something and is still something that happens when you're in a larger group and then you want to talk about something more sensitive. It just means reducing the number of people in the room.

So we had -- we would do that for a variety of sensitive topics. This was one of those topics. And so in general, the only people that would remain would be the people who were relevant to that particular -- those particular topics or topic.

And in this instance, or with respect to this matter, it would most likely be myself; John Carlin for NSD; occasionally our principal deputy, Mary McCord; and then from the DAG's office, Matt and the DAG, the deputy, Deputy Yates; and then from the AG's office, to the extent it was an AG meeting, the Attorney General and her counsel for national security, which I can't remember if it spanned two different counsels, but whoever the counsel was.

On occasion there might be another person or two from ODAG or OAG present, but not necessarily, you know, directly involved in this.

[12:28 p.m.]

BY MR. PARMITER:

Q Because generally, in your experience, someone from ODAG oversees the various components --

A Yes.

Q -- for the DAG's office?

A Yes.

Q For purposes of this investigation, who was that person for NSD?

A Matt.

Q It was Matt?

A I would say Matt.

Q Was there another associate deputy attorney general who was involved with NSD?

A Yes. Our direct ADAG is Tashina Gauhar, but I remember in the limited instances when we would have discussions, she may have been present for some of them, but Matt was the main ODAG point of contact.

Mr. Parmiter. I believe Mr. Jordan wants to ask you a few questions.

Mr. Toscas. Absolutely.

Mr. Jordan. Thank you.

Thank you, again, Mr. Toscas, for being here.

I want to go back to what we talked about a couple of hours ago. You said Mr. Carlin came to you in August of 2016 and said FBI is opening an investigation in Trump-Russia and you need to go over and talk with

those folks. Is that right?

Mr. Toscas. I don't recall, sir, exactly what he said, and I don't think it would have been phrased the way you did. Obviously now --

Mr. Jordan. Phrase it how you want to.

Mr. Toscas. Say it again?

Mr. Jordan. Phrase it however you want to then.

Mr. Toscas. Yeah, I just don't recall how he would have said it, whether it was there is a sensitive matter that the Bureau -- that I want you to sit down with the Bureau, figure out what it's about, and I want the career folks to be -- to work on this. I'm not sure what direction it will go in, but sit down with them and get as much information as you can.

Mr. Jordan. Got it. Who was that team again? You, Mr. Evans, and who else? You mentioned three names the last time we talked.

Mr. Toscas. I can't remember specifically whether all three of us were involved at the very beginning, but it would have been myself, Stu Evans, and Adam Hickey. All three are deputy assistant attorneys general.

Mr. Jordan. Okay. Adam Hickey.

Mr. Toscas. Adam Hickey does our cyber, mainly our cyber portfolio, but our broader counterintelligence portfolio. So whether he was there right at the beginning or not, he would have definitely been relevant to this once it started out.

Mr. Jordan. Okay. So Mr. Carlin, your boss, gets the three of

you together and says: FBI has started an important investigation, counterintelligence investigation. You guys need to go over there and talk to them and figure out what's going on, and you're going to be our point people on that investigation. Is that right?

Mr. Toscas. Yeah, figure out what it is and where it's going and what they need from us, if anything.

Mr. Jordan. Okay. But then you also said last hour when I asked you questions, you said you weren't involved with the FISA at all.

So the FISA is pretty important in this Russia investigation. You are the point people for DOJ working with FBI. And, yet, you didn't have any involvement whatsoever with the FISA.

Mr. Toscas. I don't, because it is not in my lane.

Mr. Jordan. Did Mr. Hickey or Mr. Evans have any involvement with the FISA?

Mr. Toscas. Yes.

Mr. Jordan. Which one, or both, or how?

Mr. Toscas. So, again, as I said, the FISA matters may be discussed and materials may even have been shared with us, but we --

Mr. Jordan. I got that. Who wrote the FISA? I mean, who put it together?

Mr. Toscas. So the people who are in charge of FISA within NSD and DOJ are in the Office of Intelligence, and Stu Evans is the deputy assistant attorney general for the Office of Intelligence. So I'm not really sure who in --

Mr. Jordan. So if I had to -- is it fair to say Mr. Evans was

the point person for DOJ on the FISA application?

Mr. Toscas. As the manager within NSD, yes.

Mr. Jordan. Okay. And in the hierarchy of things -- refresh my memory -- is Mr. Evans the same level as you?

Mr. Toscas. Exactly.

Mr. Jordan. There's no difference. And you all report to Mr. Carlin?

Mr. Toscas. We all report to Mr. Carlin. He probably wishes he was just a little bit higher than me.

Mr. Jordan. Yeah, I know that feeling. So Mr. Evans put together the FISA?

Mr. Toscas. I'm not really sure who worked on it, but he is the person in our front office who manages that --

Mr. Jordan. Is it fair to say that Mr. Evans would have read the FISA?

Mr. Toscas. Yes.

Mr. Jordan. Okay. And he would have read the renewals as well?

Mr. Toscas. Yes.

Mr. Jordan. So all four of them.

Mr. Toscas. Again, I'm assuming this, but that's -- he is the person who manages that whole program.

Mr. Jordan. Do you know if any exculpatory information that may have come to you all relative to the FISA, was it substantively shared with the FISA Court? Anything that committees in Congress may have picked up on, any information you got? Do you know if that was

subsequently shared with the FISA Court?

Mr. Toscas. Sir, I don't know anything about that type of details -- those types of details. I'm just not the person who deals with that.

Mr. Jordan. Well, how much did they share? This is what I'm trying to figure out. If Mr. Carlin comes to you all and says: You three are the guys. You're going to go work with Mr. Strzok and whoever FBI has working on this. It seemed to me it was Ms. Page, Mr. Strzok, Mr. McCabe, Mr. Baker, Mr. Rybicki, those names that we've all talked about. You're the three that he sent over to work with them.

And a key part of this, a central part of this, a critically important part of this is the FISA. You're the three key people, but, yet, you didn't do anything on the FISA. Only Mr. Evans and Mr. Hickey did. They didn't share that with you or --

Mr. Toscas. Not Mr. Hickey.

Mr. Jordan. Just Mr. Evans.

Mr. Toscas. Right. So to the extent there was anything relating to the FISA, even if Adam Hickey and I and others in NSD heard about it or saw parts of -- or materials relating to it, we have nothing to do with the creation of it, the management of it, the movement of it.

That's all handled, the way the division is designed, it's all designed -- or the division is designed to have the Office of Intelligence handles all of that FISA material. It doesn't mean we're not aware of things, because we are, we have to be in certain instances.

Mr. Jordan. Okay. I get it. We need to talk to Mr. Evans. I

get that.

How often did you, did the three of you meet with the folks -- I guess for lack of a better term -- your counterparts over in the FBI who were working on the Russia investigation? Weekly?

Mr. Toscas. I think that initially there was an attempt to do it weekly, but like with the other meetings we discussed earlier, you were not here on the other matter, I don't know if it actually happened every week.

Mr. Jordan. Is it fair to say often?

Mr. Toscas. In my mind, I have a sense that what they tried to do was do it weekly, just to sort of update where we are at.

Mr. Jordan. Okay. And, yet, when I talked to you previously, in those weekly, or at least oftentimes where you had the meetings, you said you didn't talk about the dossier?

Mr. Toscas. Sir, the dossier may have been mentioned at these meetings. I don't recall ever dealing with that.

Mr. Jordan. Yeah. I don't know how it couldn't have been, frankly. I mean, it's the key document.

Mr. Toscas. I just don't recall.

Mr. Jordan. No discussions, no comments on who was providing the dossier to them, no comments about who wrote the dossier? None of that came up in these weekly meetings you were having?

Mr. Toscas. It may have. I just don't recall it, sir.

Mr. Jordan. Okay. Let me -- I just want you to look at this. I'm just curious. We have all kinds of text messages, but one where

you're specifically mentioned. I don't know how we're doing this, if you already got a list of things you have given Mr. Toscas.

I will read it to you, and then I will let you look at it. It's got all kinds of things on it because some things were redacted and notes have been made.

This is: I remember when it was. Toscas already told Stu Evans everything (b)(6), (b)(7)(C) per FBI alled to set up the meeting. He already knew campaign individuals foreign. And thanks.

I'm just curious. Any idea? This is about the time, I think, when you -- it's August 10th, 2016. Any clue what Toscas already told Stu everything, anything you can get from this context. Again, I understand this is not you. This is Ms. Page texting Mr. Strzok.

Mr. Toscas. Yeah. I remember seeing that, sir, and I think what they are talking about -- and again, that's them, so they would have to answer for it -- I think what they are talking about is actually what I was mentioning. That when Carlin basically said, hey, get with the Bureau and figure out, you know, sit down and figure out what this is about, when Mr. Carlin said that, it was -- I would have immediately either talked to Stu or Stu would have been pulled into that meeting with him, and that's what they are referring to.

And I think very shortly after that, we then had a meeting with the FBI so they could lay out what this was about so that we could hear it.

Mr. Jordan. Any idea what -- it says: Toscas told Stu Evans everything.

Any idea what the "everything" relates to?

Mr. Toscas. I just assume it meant that -- what I assume happened is that either Carlin told me and then I told Stu or Carlin told Stu and I together. There's some sensitive matter the Bureau is working on. Sit down with them and figure out what's going on.

I told Stu that. And then at the same time, the Bureau -- either I told Stu that or Carlin told Stu, it could be either way -- and then the Bureau, simultaneously, or shortly thereafter, reaches out to Stu with the sensitive matter they want to discuss with them. And Stu says: I know, I have already heard about it. We've talked about it and so let's set up the meeting.

I'm gleaning a lot from that, but that's what I assume happened.

Mr. Jordan. Okay. This is August 10th, so obviously you were told by Mr. Carlin about the Russia investigation before August 10th.

Mr. Toscas. It could be that same day, frankly. It's just -- I remember when I first saw that and I think when it came out publicly I saw it. Obviously, where it mentions us, I wanted to look at it, but I think that that's what that -- that's what that meant.

At the same time they were reaching out to Stu to set up a meeting to talk about stuff, I had already, or Carlin had already told us: Get with them and figure out what's going on. And that's sort of the text that is happening at the same time.

Mr. Jordan. Okay, let's go back to --

Mr. Toscas. Again, that's my guess, but that's my best guess.

Mr. Jordan. Just real quick, because I do have to get to the

airport.

Mr. Toscas. Sure.

Mr. Jordan. Let's go back to Bruce Ohr. You said you have known him a long time because you've both worked at Justice for a long time. But you did not have any interaction with him regarding the Russia investigation?

Mr. Toscas. No.

Mr. Jordan. When is the last time you talked to Bruce Ohr?

Mr. Toscas. Years ago.

Mr. Jordan. You haven't talked to him in a couple of years, 3 years, 4 years, 1 year?

Mr. Toscas. I don't recall the last time I talked to him. The last time I talked to him was probably walking by him on the street or in the hallway and saying: Hi, Bruce. I can't even put a number on it. It's probably been years.

Mr. Jordan. Do you know his wife?

Mr. Toscas. I do not.

Mr. Jordan. You never visited with her, never talked to her?

Mr. Toscas. No. I don't know anything about his family.

Mr. Jordan. And I think I asked you before, you've never talked with -- I think you said you have not talked with, or in any way communicated with, email, anything, phone call, text message, any way with Christopher Steele.

Mr. Toscas. Me?

Mr. Jordan. Yeah.

Mr. Toscas. No.

Mr. Jordan. In any of these meetings that you were having, your team of three and the folks at FBI, was there talk there about Christopher Steele and/or Glenn Simpson.

Mr. Toscas. I just don't recall. I don't recall. The names that you're saying I recall from seeing in public reporting. I don't know -- I don't recall.

Mr. Jordan. So just to be clear, the three people from Justice assigned to work with the key people at FBI on the Russia investigation, having weekly meetings starting, it looks like, the second week of August, based on the August 10th communication, weekly meetings, and this investigation goes from August -- well, starts July 31st. You're brought up to speed or informed about it early August. You start meeting weekly with the folks at the FBI.

It goes all the way till May 17th, until at which time it is turned over to the special counsel. And in all that time, you never once were in a meeting where you talked about the dossier and/or Chris Steele, the guy who wrote it, and/or Glenn Simpson, the guy who paid for it?

Mr. Toscas. I don't recall. It's possible that the dossier, as it's referred to, was discussed. I just don't recall it.

And with respect to the people, I don't recall these people's names. There may have been discussions relating to them that didn't use their names, and that meant something to other people, but it would have meant nothing to me.

So I just don't recall any of it. I don't recall those topics.

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And it may be a product, unfortunately, of the fact that I'm no longer -- I no longer have anything to do with that, and there's been public reporting at different times, so it's hard for me to piece together my memory.

So I don't want to sit here and say to you definitively it was never discussed in my presence. It may have been. I just don't recall.

Mr. Jordan. In meetings and work you did on this investigation, this is the last question, in the course of this, whether in meetings where you're meeting with FBI folks or just meetings you're having or work you're doing on this investigation, did you communicate with the State Department?

Mr. Toscas. I did not.

Mr. Jordan. Did anyone on your team communicate with the State Department?

Mr. Toscas. I don't recall hearing anybody.

Mr. Jordan. Did any of your team communicate with an individual Sidney Blumenthal or Cody Shearer? Do you know those names?

Mr. Toscas. Blumenthal, I know the name from the Clinton investigation.

Mr. Jordan. I'm talking Russia investigation.

Mr. Toscas. Yeah, no. I don't recall that at all.

Mr. Jordan. Okay, thank you, Mr. Toscas. I appreciate it.

Mr. Toscas. Thank you.

Mr. Somers. Just staying on the Trump-Russia investigation, how

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did would your describe your role in the Trump-Russia investigation?

Mr. Toscas. I would say to be available to the FBI in case something was needed that was within our lane.

Mr. Jordan. Can I follow up on that?

So who was the point person? Who was the key agent, lead agent at the Department of Justice on the Russia investigation?

Mr. Toscas. I can't say who the point person was.

Mr. Jordan. The three of you?

Mr. Toscas. Say that again?

Mr. Jordan. Was it all three of you? Mr. Evans, yourself --

Mr. Toscas. Oh, I'm sorry. I thought you said the lead agent.

Mr. Jordan. Not agent, the lead lawyer. Excuse me. Who is the lead guy at Justice? Like we know the lead guy at the FBI was Peter Strzok. Mr. Horowitz has told us that. Who was the lead guy at Justice.

Mr. Toscas. I don't think it formed to the level of being in any particular lane where we had a lead.

BY MR. SOMERS:

Q What is your understanding of what Stu Evans' role was on the Trump-Russia investigation?

A Stu's entire portfolio is running the Office of Intelligence. So the entire FISA process, he manages the FISA process. To whatever extent there is anything FISA related, that's his role.

Q You're in charge of CES?

A CTS, one small portion of CES.

Q One small portion of CES.

A Yeah.

Q Not the entire.

A That's right. And so, as I mentioned earlier, but I will remind you because I know we have gone through a lot of stuff, my small little corner of CES that I remain involved in is old school, true core espionage, and leaks and mishandling of information.

Everything else in CES, which is a massive amount of stuff, export control, economic espionage, FARA violations, cyber, all of that is my colleague, Adam Hickey. He is the DAAG for CES.

We work together pretty seamlessly, because, you know, we know how to carve out that one small little portion. But he does all of the other stuff.

Q But then the FISA process is handled through Stu Evans and --

A That's right.

Q So the U.S. Attorneys' Manual says CES must be consulted before a search warrant, for instance, is issued in a national security case. But FISA is not sort of lumped in with search warrant in the U.S. Attorneys' Manual sense?

A No. FISA is a totally separate process, and everything goes through the Office of Intelligence.

Q So I think it's clear that Stu Evans' role, just to put it on the record, was much greater than yours on Trump-Russia?

A I wouldn't say that. To the extent that there was FISA-related stuff, that would have been his responsibility.

Q Could you give us some examples of some things that were your responsibility on Trump-Russia? I'm not getting a clear picture exactly what your role is. I'm trying to figure it out. Maybe example is the best way to get at it.

A It's probably fair since it wasn't really a solid, fully formed role.

But as I said, our goal was to, as the FBI ran this counterintelligence investigation, to be available if anything that required DOJ involvement was needed, and whatever that may be, to provide that assistance as may be appropriate.

So as they looked, as they conducted their investigation, which as a counterintelligence investigation didn't really implicate criminal tools at the front end of it, very little, very little role, and then as other aspects of the investigation proceeded and there was potential review of potential criminal violations by anybody, that's when we would have become more involved.

However, I don't think I can go into any details about what those may have been because all of them were then taken over by the special counsel's office.

Q And your involvement ceased when the special counsel --

A It did.

Q -- took over?

A It did.

Q Stu Evans' involvement, did NSD's involvement cease when the special counsel took over?

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A I can't say for sure, because, obviously, if there is anything FISA related -- there's no special counsel for FISA, right? So if there's FISA-related stuff, that remains always, always, always, no matter what, within the Office of Intelligence. So I just can't say for sure whether the entire division was removed from it.

BY MR. PARMITER:

Q So, sir, just to try to draw this distinction a little more clearly, you'd said earlier, I think we talked about it in the first hour, that you were the top person at the DOJ for the Midyear Exam investigation.

But it seems like from what we have been discussing for the last few minutes, that there really wasn't, like, Assistant Attorney General Carlin had assigned you, sat you down and told you you were going to be the top career -- you were going to run the Midyear Exam investigation for DOJ.

It seems like a similar thing did not happen for the Russia investigation.

A Somewhat similar. What he said was: We're going to do it the same way, we're going to have career folks in charge of it. But it wasn't clear to any of us what direction it was going to go in. And so the three of us, Adam, Stu, and I, were involved just to see where it went.

It could, as you might imagine, it could go into a variety of directions that would implicate our portfolios. So you're quite right, there wasn't a single person, but I think that his intent -- I

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know his intent was to do it the same way, to have the career folks sort of calling the shots on it.

Q Does the sort of decentralization have anything to do with criminal versus counterintelligence investigation? I mean, I think the IG report -- in the IG report you say fairly frequently that you considered the MYE investigation to be a criminal investigation, whereas the Russia investigation maybe started as a counterintelligence investigation.

Do you think -- can you attribute some of the decentralization to that? There wasn't a specific criminal target at that point.

A No, I don't know. But let me try it this way. The Midyear came in as a referral, right, and that referral is pretty specific. It's there's a potential compromise of or mishandling of classified information. That seems pretty discrete, and able to say, okay, the person who does this stuff is Toscas.

The Russia inquiry, initially, however the FBI phrased it initially, I don't think that there's -- it's potential interference with our election, electoral process, and it's unclear at that stage which of our areas it may implicate.

So the same model, I think he was -- I know he was trying to use the same model, which was, we're going to have the career folks doing it, but we don't know what direction it's going to go in, so all three of you, you know, get briefed up on it and see what's happening with it.

Q Okay. And who actually, I guess, authorized -- you're

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saying that they told you to get briefed -- all three of you to get briefed up on it. Who was the one who authorized DOJ to begin participating in the Russia investigation?

A I don't know. I mean, we were told to do this by our assistant attorney general.

Q By Mr. Carlin?

A Yeah.

Q Okay. You mentioned another person --

A I say that only because that's the person who told us this. Whether other people above him had interactions with him, I have no idea.

Q All right. So you wouldn't know whether anyone at ODAG talked to the assistant attorney general about this?

A It wouldn't shock me if they did, but I can't sit here and say I know that happened.

BY MR. SOMERS:

Q Did you report up to anybody as the investigation went along, other than Mr. Carlin? Or did you report to Mr. Carlin back with results --

A Yeah, I guess --

Q -- things that came up?

A Again, it's hard to piece together this long ago. But, I guess, yes, we did. We would have updated, sort of like, this is what we are hearing. How far up the chain it went, I can't really recall right now.

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But with certainty I recall when Dana Boente became the acting DAAG, I recall sitting down with him, with folks, I think even the Bureau may have come over, and sort of walking him through the progress of the stage of the various different lines that were being pursued, all of which, obviously, ultimately went to the special counsel.

So I recall specifically that, so there may have been, prior to that, there may have also been briefing up. Just as I sit here, I can't recall it.

Q And I think Mr. Jordan kind of closed the loop on this. Who at the FBI, not just -- I think he was talking more at the beginning, sort of the first meeting, who were the main contacts at any point in time at the FBI?

A I would say -- and I can't come up with names. Earlier when you were asking me, sir, I couldn't come up with names. Some people I just don't know. I know sort of -- we were in meetings together, but I just don't know them well enough to say their names.

But, in general, I would say from the folks that I knew, Priestap, so he's the assistant director; Pete Strzok, who is a DAD; Lisa Page was present for some of them; and there were other Counterintelligence Division people and Cyber Division people there, because there were cyber aspects to this, who I just don't recall all of their names.

But the main people in my mind from the Bureau, and I hope I have this right, would be Priestap, Strzok, Page, and individuals from these other, not only from counterintel, but from cyber crim.

Q You mentioned Jonathan Moffa earlier on the Midyear Exam.

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Was he involved, at least from your awareness, in this?

A You know, I want to say yes. But my memory, I just can't -- I may be crossing over my meetings in that room. He may have been. I'm sorry, I just can't -- I can't recall.

Q And then I just wasn't clear when you said this. So Carlin comes in and says: There's some sensitive matter that the FBI has. And I didn't know whether to take you literally, or -- I mean, did he just say some sensitive matter, or did he tell you what it was about?

A Yeah, I can't remember exactly what he told me. But whether he described it as, hey, this is what the deal is, or there's potential Russian interference with the election and the Bureau is going to look into that, or whether he simply said, there's a sensitive thing related to Russia and the election, I just don't remember what it was.

Q There was some detail. It wasn't as vague as just --

A Yes. Yes. There would have been something more to it which allowed me then to -- either me to go grab Stu and tell him and convey what John wanted me to convey, or to pull Stu in and say: Tell us both whatever this is. I just can't recall what it is. Stu may have a better recollection of it. John may. I just don't know.

BY MR. PARMITER:

Q And so you don't know whether or not, like, during that, I mean, realizing that maybe the details are a little sketchy, whether or not you were told by Mr. Carlin at the time that he had been directed by someone above him to tell you about the sensitive matter, or whether he had gotten it on his own from the Bureau, or, you know, whether it

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was with Mr. Axelrod, Ms. Gauhar from the deputy attorney general's office? Were any of those names mentioned during that interaction?

A No. And, frankly, I just can't recall now that we are going through this, I can't recall whether this is John telling me it, or whether maybe someone from the Bureau told John and I together. I just don't recall how it initially started.

What I do recall is John saying: We are going to do this the same way. I want the career folks running whatever train we have here to be involved and to be running this for NSD, so figure out what this is, go get briefed by the Bureau, and get the details.

And I apologize that I don't know exactly how that information first came to me, but I leave open even the possibility that the Bureau may have told me and John. I just can't recall.

Q So along those lines, you are going to do this the same way. You did report up either through Assistant Attorney General Carlin or directly to Department leadership, like, the political leadership, to the PADAG, to Tashina Gauhar?

A Yeah, I don't recall as I sit here specifically doing that, but it would not have surprised me at all if it would have been done that way.

Q Okay. And I think you mentioned that she was the ADAG, speaking again about Ms. Gauhar, who oversaw NSD directly?

A She was the ADAG within the Office of the Deputy Attorney General with the national security portfolio. So all aspects of NSD would go through Tash.

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Q And as far as you are aware, did she have sort of the same role in Midyear as she did in the Russia investigation?

A I don't know if you were here earlier when I said this. I don't really recall her having any particular role in Midyear. There was a very limited need for any role above me. I recall -- I leave open the possibility that in some of the skinny down she was present for some of the discussions, but on the Midyear stuff I basically dealt with -- or John and I basically dealt with Matt directly in ODAG.

So she may have been present for some of that. Exactly how the -- at the beginning stages of the Russia investigation, Russia-related investigation, what role she played, I can't say as I sit here. But it would not have been unusual for her to have been the ODAG go-between between NSD and the leadership offices.

Q Okay. So, for example, if you had to have -- if there was a major decision, whether it's -- and I'm not even talking about the declination, but whether to seek a subpoena, search warrant, you know, whether to give someone immunity, would you have consulted with, you know, with Mr. Axelrod, with Ms. Gauhar on those questions or did you generally do that through, you know, your channels?

A I would -- we would make those decisions, and to the extent it was relevant or important enough to tell folks up the chain, we would tell Axelrod. Or if we were in with the ADAG or the AG, and we had a high level, hey, this is what's going on, you know, we are going to do -- we are going to start interviews. We are pursuing laptops. We may have just been very-high level wave top updates, but it could be

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either to Matt or them directly in a skinny down.

BY MR. BAKER:

Q I have just a couple of random things to start with.

It seems to me years ago -- you've mentioned the Office of Intelligence a couple of times and their exclusive role in the FISA process -- there used to be an office, I think, Office of Intelligence Policy Review.

A That's right.

Q Is that no longer there, and what became of that? Where did their jobs go?

A So I will give you the thumbnail version and hopefully this will do the trick. And if I've got it wrong, I apologize.

OIPR was, what you're referring to, was a standalone, sort of almost a standalone component within the Department that, I think, that reported directly to the DAG's office.

When NSD was created, the WMD report recommended that a National Security Division be created at the Department of Justice and bring within its umbrella all aspects of national security work within the Department.

And so the Counterterrorism Section came in, the Counterespionage Section came in, OIPR came in. It eventually was renamed the Office of Intelligence and restructured, I believe, under Matt Olsen when he was the DAAG, under Ken Wainstein. So OIPR became an office, the Office of Intelligence, within NSD.

Q It's my understanding that the general counsel at the FBI

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during both of these cases, prior to him becoming the general counsel at the FBI -- and there may have been some steps in between -- but he at one time worked in the Office of Intelligence Policy Review.

A I think he was the head of OIPR, if I'm not mistaken, Jim Baker.

Q Right. So as the general counsel, he, I'm assuming, was pretty conversant in national security law based on where he has come from and experiences brought to the Bureau?

A I think so, and certainly conversant in OIPR, Office of Intelligence topics for sure.

Q And that would include FISA?

A Yes.

Q He would be very versed in that?

A He would. Certainly. That was his job.

Q You mentioned at least twice, and I just want to clarify what it is, old-school, true core espionage?

A Sorry.

Q To the extent that we can in an unclassified setting, what exactly is that that you are responsible for?

A Sorry. When I say old school espionage, I say it only because, obviously, the espionage has morphed over the years. But actual human beings committing espionage, whether foreign or our own citizens.

Q Okay. So Mr. Baker as the general counsel would be conversant in that sort of thing, too, as far as the laws go, in

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prosecuting people that violate that sort of thing?

A Jim was never a prosecutor, I don't believe. So I would not say that his experience, his prior experience would lend itself to an expertise in statutes. But as the general counsel, I'm sure he tried to -- he, as needed, familiarized himself with any statutes as, you know, to the extent the issues were before him. But I would not necessarily think that he would be -- have any particular expertise of criminal statutes.

Q Okay. You mentioned a little while ago when this sensitive matter came to your attention Mr. Carlin telling you or what exactly was told you. When you were clear on what was going on either in subsequent briefings with the Bureau or as you got more information from the original notification to touch base with the Bureau, find out what is going on or whatever, based on your background in old school, true core espionage, was what you heard, what the allegations were, in your training, knowledge, expertise, was it pretty serious stuff?

A The counterintelligence investigation that the Bureau was looking at dealt with potential Russian influence in our electoral process and the question of whether anybody affiliated -- there was any connection between anyone affiliated with a U.S. campaign and the Russians.

So, yeah, it's very serious. Both aspects of it are incredibly serious.

Q Was this the first time -- if you can say in this setting -- would this have been the first time that a case involving

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that sort of activity was brought forth, or was this a practice and pattern that had already been known to the intelligence community?

Mr. Weimsheimer. I don't think that's something he can talk about.

Mr. Baker. Okay. Fair enough.

BY MR. BAKER:

Q I want to switch back to Midyear for a second. I know we jump around.

You had mentioned early on that -- we talked a little bit about the dynamic of tension between the prosecutor and investigators. Sometimes it is, sometimes it isn't, but oftentimes it's healthy, it's a healthy dynamic.

You mentioned that there were certainly some bumps in the road, I think, in this investigation. It's my understanding that one of the bumps in the road -- and I will let you correct me if this is not true -- there was a disagreement, I believe, between the Bureau and the Department as to who should be in some of the interviews; that maybe as some interviews had gone along, a certain number of people or certain types of people were in the interviews, and then in some interviews -- and I believe in particular the interview of Secretary Clinton -- there was a change-up in who would be in the interviews, or who should be.

I don't think anybody was taken out of interviews that had previously been in. But I think maybe people were put in. Could you comment on that?

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A Yeah, again, I don't want to say that there was a dispute between the Bureau and DOJ like the institutions were sort of in different places.

So I just want to make clear, the people involved may have had some disagreement over this, but at the end of the day, I understood all sides of it. There's some people who think, people in interview, there should be few people, just a few people in an interview. There's other settings where you could have a number of people.

And it's just a matter of whatever is needed for that particular case and the particular issues that are going to be discussed and what you're pursuing.

In this instance, I was very much deferential to our chief in CES to determine who should be there, and I left it up to them and the agents to work that out. So there definitely was, apparently, and, obviously, the IG report reveals stuff to us that we otherwise may not have even been aware of, that there was some churn on the FBI side about the number of people there.

And you have David Laufman, who is the head of our section, and, ultimately, is going to be, you know, a significant voice in the recommendation to be made in this case no matter what it is, and he had decided that he was going to participate in some of the bigger interviews, basically the higher-level aides and of former Secretary Clinton.

And I was fine with that. I don't even think it needed to be something that I decided or weighed in on. But I supported him in doing

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that. And what we now see from the IG report is that you essentially had on the other side, Pete Strzok, saying: Well, if Laufman is there, then I guess I need to be there. And any time you have that sort of dialogue happening, then the numbers are going to immediately multiply.

From what I understood, at least with the big -- what would be considered the bigger interviews, the senior aides and former Secretary Clinton, it sounded to me like it was the same group. It was some assortment of or all of the four prosecutors, Laufman, Strzok, and the interviewing agents.

And so I get now after the fact in reading this that there may have been some churn and heartburn over this, but any time I was asked about it I said: Look, let's leave this up to the team to figure out.

You know, I'm not one to totally buy into this dynamic that there is a magic number and that people are more open if you have two or one or three. Sometimes it doesn't matter. Sometimes you're at a table like this and a person has 12 people with them. It's like what difference does it make?

What was important to me was that the interviews be conducted in a, you know, competent, professional manner. And resoundingly, people reported back that that certainly was the case, that everyone felt that the interviewing agents were -- did a really, really good job on their interviews, and that to the extent the lawyers ever weighed in or piped up with any questions, that they were good questions, and the investigators and prosecutors did well together.

So at the end of the day, again, there may have been some churn

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over it, but it was much ado, at the end of the day, about nothing, I think.

Q And it was nothing that had been objected to or raised to you? You have learned about it, it sounds like, from the IG report?

A There was -- I remember having some conversations about it. But I can't remember whether I talked to Priestap or McCabe about it at some point, and my thinking was, really, let's just let the team figure out what they want to do. There's a lot of people who, obviously, have put in a lot of work on this, and we can let the team decide who should be there.

And to the extent the Bureau wants to do a, if him then me, or if him then her, fine. You know, deal with it. But let's let the team figure that out, and that's the way I left it.

Q While we are on the topic of the interviews, what was your role in deciding that Mills and Samuelson as potential fact witnesses could sit in on the interview?

A Yeah. There were definitely views expressed about this from a variety of folks. I made my views known that it's not ideal to have fact witnesses in an interview of another witness.

However, I gave significant deference to our team. This was the final interview. They had already raised the issue with her counsel. He pushed back on that and said that she had the lawyer she wanted in the room with her.

And so my concern was to ensure that if that's the way this was going to go, that the team be prepared to put an end to any type of

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attempted or actual inference by these people in a way that would affect -- adversely affect the interview.

And the team told me, or I think the team -- I can't remember who I talked to, but for certain, Laufman, at minimum, I spoke to -- had said that they had a plan in place to ensure that if at any stage it appeared that there was any sort of consultation or interference, that they would stop the interview and address it with counsel at that time.

And at the end of the day, I deferred to that judgment. And when we heard back afterward, as the IG report points out, everyone was comfortable that there was literally no impact at all and no attempt to interfere or to interject.

So the team, you know, we flagged it. We discussed it. The team had a plan in place to deal with it. They were ready to implement it. It was not needed. And people were satisfied.

BY MR. PARMITER:

Q Just to briefly jump in, sir, you referred to her counsel. Who are you referring to?

A I'm sorry, the former Secretary's counsel?

Q Yes.

A David Kendall was, who I think we all interpreted, or saw as her main counsel. But Mills and Samuelson she considered to be her attorneys as well.

Q Right. Did you speak directly to Mr. Kendall about the request to have Ms. Mills and Ms. Samuelson present in the room?

A I did not.

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Q Do you know who did? Was it Mr. Laufman or someone else on the team?

A I would think it would have been

(b)(6), (b)(7)(C) per FBI

Q Okay. And do you know what was said during that conversation?

A I don't. I just know I heard back that they raised the concern that these two individuals are separate fact witnesses. And from what we heard back -- and maybe I'm getting shaded a bit by what the IG report says -- but I think the word they used and they quoted as saying: Kendall pushed back hard on that point.

And I recall talking to Laufman about it and saying, you know, look, the fact is, and this is just at bare minimum, this is just, there's no dispute about this, if there's any adverse inference, if there's anything that happens in this interview, the inference, an adverse inference is going to be drawn against not only Secretary Clinton, but them, right?

It's going to be like, look, if there's some suggestion and some issue that is seriously in dispute, you are creating a situation where the inference is definitely going to be made against you for some sort of interference with the interview.

But the team was prepared to address it immediately if they -- if any steps were taken to interfere or interject. And as it turned out, from what I understand, and as recounted in here, they never -- there was no such interference or even interjection by them.

BY MR. BAKER:

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Q So it sounds to me you really walked through the potential for things going off the rails with this and had a plan to get it back on track?

A I think the team said they were prepared that if there was any sort of -- anything out of the ordinary that occurred, they would pull a sidebar with Kendall and others and say, you know, we've got to change this up.

Q You indicated last hour to our minority colleagues that some of the decisions, many of the decisions were strategy-based. And these are my words, but it seemed to me what you were saying was, looking back on them, sort of Monday morning quarterbacking, maybe some of them didn't make sense. But everything was done for a strategic reason.

Would this be one of those strategic reasons, you thought there was more to gain from letting them be in the room? It sounds like you certainly had a plan to get it back on track, but was this a tactical decision made based on who the interviewee was, where you were on the timeline?

A I think, yeah, you got to look at it with all of the facts and circumstances at the time. And sometimes when you look at it in retrospect and you are Monday morning quarterbacking, all of those are obvious, and other times, it's hard to piece them all back together.

I think the IG report does a good job of, sort of, collecting all those circumstances back into the present, to sort of relook at it.

But, you know, it's at the end of a long investigation. The agents -- first of all, the first thing that you would want to know,

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if the agents are absolutely opposed to something like that, that's going to drive a lot of it, right? You're going to say, okay, there's discomfort here, let's actually take that all the way through.

The agents didn't seem to be bothered by it, from their standpoint, and I think former Director Comey said something like, look, we have already checked then off. So it is not like there is some concern of actual interference here.

And at the end of the day the plan -- or the team saying they had a plan that if anything came up they would deal with it, I think that, you know, they talked it through. They had a plan amongst all the entire team, FBI and DOJ. And as it turned out, there was no interference.

Could people have done it differently? You know, could decisions have been made differently? Sure. Almost every decision we make on a daily basis we could go back and say it could have been done differently.

Here you had a couple of paths to take. They took one that was reasonable. The team felt comfortable with it.

At the final stage, I think time was of the essence. People wanted to say, okay, we have -- we finally get this schedule. She's at that stage not the easiest person to schedule events with, obviously, so I'm sure all the agents are thinking, you know, let's just move forward. We have a plan in place to deal with it. And under different circumstances, maybe people would have made different decisions.

But I think they had a good plan. It was a unique circumstance.

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There was really no guidebook for this with counsel, with a witness who is a counsel. So I think they walked it through, talked it through, had a good plan in place, and as it turned out, no impact.

Mr. Weimsheimer. Can I have a minute?

Mr. Baker. Yes.

[Discussion off the record.]

Mr. Toscas. Yeah, so I think they said this in the IG report, but it is good -- important to flag.

I think the IG report talks through like, well, there was a potential option of just subpoenaing her. Just say, look, we're pulling the plug, we're not doing it with them in the room.

First of all, I think that you really had to assess, is their presence really that significant that you would take that extraordinary step?

And, again, you would want -- you would expect the agents and line prosecutors to be the ones that would be telling you that it is that significant, and they weren't saying that.

But the other thing is, and some of this may be a bit of, you know, Monday morning analysis as well, but that other alternative would have then put her in a grand jury where the FBI does not have the ability to ask the questions that they want to ask. That's a big thing. The FBI being able to directly question a person is always significant.

And number two, to the extent we were doing that, and we would have done that to avoid interference by these two individuals with her, the interview allowed the agents and prosecutors to sit in a room with

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them and actually see if these other people interfered with her, or guided her, or coached her in any way.

A grand jury appearance would have given the witness, it would have given her the opportunity to take a break and talk to her counsel, whoever she wants as counsel, outside in private, and we would have no idea whatsoever whether there was any sort of coaching or passage of information or helping.

So even though that was a potential option, and the IG flags it as a potential option, even in retrospect, I don't think that that was an ideal one under the circumstances. I think that the path that was taken was a good one for the reasons I stated.

Mr. Baker. So, again, the reason for the choice was looking through a strategy lens?

Mr. Toscas. If they had even got that far. What I said just now, I don't know if anyone actually even thought it through.

The fact that the FBI would not be present, that's known to everybody. We don't even need to think about that. The agents know, we put someone in the grand jury, they're out.

But as to the other piece, I just think, in retrospect, looking back at it, to the extent we are going to do a sort of a Monday morning analysis of it, even that other option this downsides. And I think that the path we took was -- that the team took was a good one.

BY MR. SOMERS:

Q Was there a general strategy to avoid a compulsory process? I mean, the IG report discusses that there was some compulsory process

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used. There were some search warrants issues. There were some grand jury subpoenas issued. But I think they also document that prosecutors, meaning DOJ, was not as interested in using compulsory process and preferred cooperation. Was that a strategic decision?

A I think over time, and especially, obviously, when I have the benefit of reading what people have said to the IG, certainly, there's not only -- not only was some strategic choices there, but the guidance that prosecutors have from experience and from the USAM is to obtain evidence without the use of processes as frequently as you can.

And so in this instance, I think, you know, obviously, the IG wanted -- or the IG responded to a concern that was being publicly -- that was publicly stated out there that, oh, we didn't use a grand jury, and there was no process at all. And, obviously, that turned out not to be the case.

But where you could obtain things without process, where there was a -- there were hurdles in the way of using process, then, you know, to be able to obtain things through consent, not only does that give the FBI more access to the material directly, but it also frees up what the FBI can do with it and what they can then -- for example, the IG points out, the IG would not be able to say much of what the report says if the grand jury and some of this stuff came in through the grand jury.

Q But that did cause -- I mean, the IG also reports that -- does report that at least it caused frustration on the FBI, the prosecutors:

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"Witnesses told us that this caused frustration within the FBI, which preferred obtaining evidence with search warrants and subpoenas."

So was this one of the areas of friction? I think you indicated that?

A Yeah. In the last hour, I talked about that at length.

Q One comment I find interesting, a sentence in the IG's report. It says: "The prosecutors stated that, in their view, consent is more efficient than process when witnesses are cooperative, and, as Prosecutor 4 noted, when there is no concern that evidence will be destroyed to obstruct an investigation."

I'm curious as to how that second clause could possibly apply to this case, "when there is no concern that evidence will be destroyed to obstruct an investigation." Wasn't there specific evidence that was destroyed in this investigation using BleachBit technology?

A Certainly, there were items in this case that were -- that, you know, one of the computer IT people used BleachBit to remove things, but maybe not in the way that the question suggested, that, you know, it was done to destroy evidence.

Q But so you still think it is fair to view this as an area where -- I mean, let's back up.

So a factor in going with cooperation route instead of the compulsion route is destruction of evidence. Is that correct?

A It's one of the factors, yeah.

Q And in this case, do you think it was fair to characterize the destruction of evidence was not a concern?

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A Yes, because what he's talking about there, I think in the context, is obtaining the two laptops, the Mills and Samuelson laptops. And they are in the possession of a lawyer. And with respect to, for example, the servers and things like that and other materials that David Kendall had, they are in the possession of David Kendall and Williams & Connolly, and the other stuff was in the possession of Beth Wilkinson.

And further on in the report Prosecutor 4 says, you know, these are smart lawyers, and you may not trust all of the lawyers, but these are smart attorneys who are not going to screw around with destruction of things that they are telling us they are maintaining.

So in that sense, I think that is the most appropriate context for that comment, which was, FBI wants -- the IG report goes through much about the FBI wanting to use search warrants to go get the two laptops. And there the concern over destruction of evidence is nonexistent. It is very low when you are analyzing that.

Q What about the use of search warrants to get evidence that would -- that could replace the destroyed evidence? So if there's alternative methods, there's a sentence in here: For example, as described in Section II of this chapter, the Midyear team was never able to locate the Archive Laptop and the Archive Thumb Drive, both of which, according to Hanley and others, contained a complete copy of Clinton's archived emails."

Before that, it indicates there was some frustration on the FBI's part about not using search warrants to go after the archive laptop and the archive thumb drive.

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A And the report goes on to say that the FBI ultimately acknowledged that we don't -- you can't just issue a search warrant for the world. We don't know where it is, that people are saying they don't know where these items are at, where the items are located.

So at the very basic level, you have to establish probable cause that the item is going to be in a particular place. And no agents -- the agents and prosecutors were never able to develop that.

Certainly, you know, you are keying in on something that for certain, of course there was interest on everybody's part in identifying and finding those things. But we were told that, you know, from the people who would know, that they didn't know where they were.

Q Was there any hesitancy because of who the -- the location of the possible backups could be the home of a former President of the United States, former Secretary of State? Was there any concern there that that is why we wouldn't use a search warrant?

A Absolutely not. If we thought items of evidentiary interest were in a particular location and the best way to get it was using a search warrant, we would have gotten a warrant. If we had a PC to get it, we would have gotten a warrant and gone and gotten it.

BY MR. PARMITER:

Q Sir, I think we're just about out of time. But very quickly, you mentioned that, when my colleague Mr. Baker was asking about you the interview, that it was a fairly unique circumstance. You are a career prosecutor. I believe our colleagues on the other side, you know, you said to them you've handled numerous mishandling cases.

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Do you recall a case in the past where fact witnesses acted as counsel for, you know, during an interview for the subject of an investigation?

A I don't. I don't think any -- you know, the IG may have gone through this with everybody. I think it was a unique circumstance for everybody involved.

Q One other thing that the IG did say, you had said earlier that, you know, you were confident that the team had a plan for the interview; that if there were interference, if there were coaching of the witness, they would be able to deal with it right then.

The IG report notes that the fact that there were "two fact witnesses at the interview could have negatively impacted" -- and I'm quoting here -- "subsequent FBI investigative efforts or a subsequent trial."

What's your perspective on that?

A It's possible. You have a fact witness present during another fact witness' statement, to the extent you have a subsequent prosecution and trial there is a potential negative impact of it. There's no question about it.

And it's one of the factors that I think the team took into account, the likelihood of that happening. And they assessed that the likelihood was low that it would have an impact, but if they saw anything during the course of it, they would have put an end to it.

So I appreciate the IG's, you know, very professional work on all this, I appreciate that comment, and I share the concern. But at the

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time, we are dealing with a unique situation, and alternatives were not as attractive as they might seem now.

Mr. Parmiter. I think we're out of time. Let's go off the record.

[Recess.]

[2:04 p.m.]

Ms. Hariharan. All right. We are back on the record. It is 2:04.

BY MS. HARIHARAN:

Q So I just want to go over some general DOJ practices and policies so we get an understanding of how this investigation impacts the independence of the Department and just the general work that you all are trying to do.

So the U.S. Attorneys' Manual instructs Department personnel not to, quote, "respond to questions about the existence of an ongoing investigation or comment on its nature or progress," end quote.

Can you explain why that policy exists?

A Again, I don't know if I'm the best person to talk about the rationale for the policy, but I would think that it's undergirded by the notion that our work should be done privately and quietly and should only be made public when in the form of court documents.

And so if a matter or an investigation results in a criminal case, that's how the public becomes aware of it. So that citizens can know that they can live freely, and even if they become under scrutiny of the government, that the mere scrutiny doesn't harm them in some way if the public becomes aware of it.

So that at its foundation, I think, is the basis for it, but I'm sure there's, you know, a couple hundred years of institutional knowledge that goes behind it as well.

Q Has the Department asked that you adhere to that practice

today?

A I would, without anyone asking me, I would adhere to it. But in this instance, when you have a 500-page report talking about the investigation, I think that that opens the door a little bit to it in this instance.

Q I'm glad you flagged the report. I just wanted to put a quote from yours in the record. It's a long one, so I'm not going to read the whole thing, but it's on page 355 when discussing the decision to write a letter to Congress in October 2016 by Director Comey.

You said, quote: "The institution has principles, and there's always an urge when something important or different pops up to say we should do it differently or those principles or those protocols, you know, we should -- we might want to deviate because this is so different.

"And once you deviate, even in a minor way, and you're always going to want to deviate, it's always going to be something important and some big deal that makes you think, 'Oh, let's do this a little differently.'

"But once you do that, you have removed yourself from the comfort of saying this institution has a way of doing things, and then every decision is another ad hoc decision that may be informed by our policy and our protocol and principles, but it is never going to be squarely within them."

Do you still stand by that?

A I do. I would, if I knew it was going to be quoted at length

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like this, I would have said it a little bit more articulately. But, yeah, I stand by it.

Q In your view, is it still important for the Justice Department to adhere to its norms and protocols when it comes to disclosing information about ongoing criminal investigations?

A Yes. And this applies to that principle and many others within DOJ.

Q And so for context, you know, in the various interviews we've had, there has been a lot of questions directed at witnesses about ongoing investigations beyond what is discussed in the IG report, so that's why we're doing this.

In your view, what roles do these -- well, actually, you may have already kind of answered this -- but what roles do these norms and protocols play in preserving the independence and integrity of the Department?

A Yeah. It protects the public, but I think it also protects the institution. The people within the institution know that they can do their work professionally, that they can be candid with each other in the course of an investigation in sharing views and ideas, and that every single step of the way is not going to be scrutinized in an unreasonable way.

And frankly, when there's a political angle mixed into it, obviously, that could chill people from sharing full, honest, and frank information and giving candid advice. And we never want our employees at any level to feel as though there's any influence whatsoever,

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politically or otherwise, perceived or actual.

So, you know, a lot of these things protect the public, but they also, you know, assist our workforce in understanding the principles that they will -- that will also protect their work.

Q Has there been any impact on the work, to the best of your knowledge, on the work of the National Security Division by this break in protocol that occurred in the Midyear investigation or that has since, with the disclosures by Congress, on the Russia issue? Like has there been any adverse impacts on your division's work that you can speak to in this context?

A With respect to Midyear, actually with -- I don't know if I can answer that. I think that impact is something that is -- something that's going to have to be judged in the future, you know, looking back as to how it all actually played out.

With respect to Midyear, you know, the breaks in protocol have resulted in intense scrutiny, obviously. You end up with a document like this and the need for, you know, a review that was very professionally done by the IG.

And there may have been other aspects of it that required, you know, the IG to look at it. But, you know, those significant deviations, obviously, got a lot of attention and I think were the basis for the initial referral to the IG.

So there is an impact. Long term, I don't know what it will be. We'll have to, you know -- we're a large institution and we're just going to have to see how things play out.

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Obviously, as a leader within the Department of Justice, and I think it's incumbent upon all of us who are leaders within -- who have the great honor and privilege to be leaders within the Department, we continue to, you know, talk to our workforce and make sure they understand that our principles mean everything to us and we need to adhere to them.

And I think that, you know, where there's human beings involved there's always -- you know, we're, by nature, going to be flawed in many different ways, so we're going to have missteps on things here and there. But, you know, our workforce has to understand that we have to make it through those times and continue doing our work professionally.

And I have every confidence in the men and women of the Department of Justice, including the FBI, that, you know, they will continue to do great work professionally and free from interference.

Q I'm going to jump over to the discussion of human sources that Mr. Jordan had raised. And I'm not going to go into the details of the Steele dossier, but just broadly speaking.

In previous testimony to Congress, Director Wray explained the importance of protecting confidential human sources. And he said, quote: "The day we can't protect human sources is the day the American people start becoming less safe," end quote.

Understanding, again, that you're on the DOJ side not necessarily the investigative side, you know, do you agree with Director Wray?

A Yes. In general, those statements, I agree with them.

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Q During Mr. Stzrok's and Ms. Page's lengthy transcribed interviews, Republican Members repeatedly asked about confidential human sources involving the Russia investigation. For one example, a Member asked, quote: "In the month of July, was there any information from confidential human sources given to you as it relates to the Russia investigation?" end quote.

What is the Department of Justice policy against revealing information from confidential human sources during an ongoing criminal investigation, to the best of your knowledge?

A I don't think I'm the person to answer that. I would say that, from my seat and my limited view, the principle of not talking about ongoing investigations is one that sort of covers that whole landscape. So if it's part of an ongoing investigation, I think that, you know, our normal protocol is that we don't discuss it.

But I don't want to get into the specifics of that particular question or that particular issue. I do agree with what you -- what Director Wray said earlier. I think that's indisputable. So I feel comfortable saying I agree with it.

Q Okay. We're going to jump to another subject.

As I'm sure you have heard in the media, there has been a litany of attacks accusing the Department of Justice and the FBI of conducting investigations driven by a political bias. I mean, that's part of the reason there is a 500-page report. So just these are, again, very clearly for the record.

Have you been part of any Justice Department investigation

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motivated by political bias?

A No.

Q Have you witnessed any FBI investigation motivated by political bias? Have you personally?

A No.

Q On February 2nd, 2018, President Trump tweeted -- I'm sorry.

A You're asking me personally in my experience. Obviously, history has stories of investigations --

Q Correct.

A -- and cases where that may have been the case. But with my eyes and ears, no, not while I've been working.

Q Thank you.

On February 2nd, 2018, President Trump tweeted, quote: "The top leadership and investigators of the FBI and the Justice Department have politicized the sacred investigative process in favor of Democrats and against Republicans, something which would have been unthinkable just a short time ago. Rank and file are great people," end quote.

Do you agree that top leadership at the Department of Justice have politicized the investigative process in favor of a particular political party?

A My ordinary instincts would be to say I don't want to comment on such a thing, but as a 25-year veteran of the Department I feel compelled to say, no, I don't agree with that.

Q On May 22nd, 2018, the Republican caucus introduced House -- or Members of the Republican caucus introduced House

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Resolution 907, which requested the Attorney General appoint a second special counsel to investigate misconduct at the DOJ and FBI. And generally speaking, it's accusing -- it's saying that there is inherent bias at the FBI and DOJ which relates to FISA, which relates to the Midyear investigation, as well as the Russia investigation.

Do you think there was any inherent bias at the highest, quote, "highest levels" of the Department of Justice and the FBI regarding FISA abuse and the FISA process? I understand that you don't cover that issue, but --

A I don't.

Q Are you aware of any evidence of inherent bias displayed at the highest levels of DOJ and FBI regarding how and why the Hillary Clinton email probe ended?

A Your question is am I aware?

Q Yes.

A I'm not aware of any such thing.

Q Have you ever witnessed or are you aware of any evidence of inherent bias displayed at the highest levels of the Department or the Bureau against Donald Trump as part of the Trump-Russia probe, the Russia investigation in general?

A I have not. I have not seen signs of such things with respect to any investigation.

Q Have you ever witnessed any actions taken to personally target President Trump at the highest levels of the Department or the Bureau?

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A I have not. I will say, I have not with respect to any -- any -- anybody.

Q I want to bring up a couple of the main characters that have been not only the focus of the IG report, but a lot -- just general chatter in the media about -- with regards to the Department of Justice and the FBI.

To follow up on the previous question, have you witnessed James Comey take any actions biased in favor of Clinton or biased against President Trump?

A Let me just say this. I have not seen anybody that works on any matter that I've been involved with behave with an improper political or other improper motive for any -- on any investigative step or action. That is something that in any context would stand out to us as prosecutors and agents. And with respect to all of my work, I have not seen any signs of that.

Q Thank you.

And just to be very clear, that would include then Peter Stzrok, in your general statement?

A During the course of the Midyear investigation, if we're going to go specifically to that, there was -- I did not see any signs that any improper motive, political or otherwise, influenced or impacted any decisionmaking in the -- during the course of the investigation or the conclusions that we reached.

I understand we're all humans. We have views on things. Becoming a prosecutor or becoming an agent doesn't change the fact that

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we have opinions about certain things.

However, it would stand out significantly to people working on an investigation if someone attempted to steer something in a particular direction or away from a particular direction based on an improper motive. If evidence was going one direction and a person was flowing the other direction, they would stand out.

And so these are things that, you know, we're not constantly on guard for them as if they occur all the time, but if they occurred, they would stand out, they would be noticed, and they would be addressed.

So I saw no such interference or involvement of those types of motives that affected any decision or determination in the case.

Ms. Kim. Mr. Toscas, you said that if anyone were to try to steer a case according to personal bias or anyone were to try to inject investigative decisions with political bias, that would stand out to you. Is that also faith you have in the Department of Justice colleagues you have worked with, that it would stand out to them?

A Yes. I don't mean just me. Agents and prosecutors that work -- that do the great -- that have the honor and privilege of doing the great work that we do, it would stand out immediately to people. And, obviously, we would expect and openly say to people that, number one, it can't play a role; and, number two, if you see it playing a role, you have obligations to report it.

And so a single person's view on one particular matter or decision likely would not carry the day anyway, because we do things with

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multiple people and multiple layers and a lot of folks involved. But I meant it across the board. I think folks at DOJ, at FBI are honest, hardworking professionals, and they understand that that's -- there's no place for that in the decisionmaking processes.

BY MS. HARIHARAN:

Q That actually dovetails well into the next question, which is, you know, as you said, DOJ, FBI, we're all human. They have opinions.

When the Department staffs a politically sensitive case, for example a public corruption case, does the Department consider the personal political persuasions of the attorneys or the agents when it makes those staffing decisions?

A I'm not -- I don't work on public corruption cases, so I can't speak to that. But --

Q Or within your own.

A Yeah, within ours, but even within my knowledge of just the way DOJ works, such things don't play a role. If someone is wearing their political beliefs on their sleeve as a career employee, they will stand out.

So you're not -- people have no idea what each other's political views and leanings are because in the proper context you don't discuss those things. They don't come into play with respect to your work.

And even if people share their views on such things outside of the context of work, it does not make its way and should never make its way into the decisionmaking. And if it were to do that, I think

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many people would take note of it and it would be addressed.

BY MS. KIM:

Q Mr. Toscas, in the last round Mr. Jordan and my colleagues from the majority asked you about an individual in the Office of the Deputy Attorney General, Tashina Gauhar. Are you familiar with this individual?

A Tashina Gauhar, yes.

Q Is she a career employee of the Department of Justice?

A She certainly is, yes.

Q And what is her job responsibility in the Office of the Deputy Attorney General?

A She handles the national security portfolio for the Office of the Deputy Attorney General. So for the deputy she handles that portfolio, so anything national security related she would be the liaison for. She may have other responsibilities too. I'm not sure. But I know that she's our main liaison within ODAG.

And she formerly worked at NSD. She formerly was the deputy assistant attorney general for the Office of Intelligence. So I mentioned Stu Evans earlier. Tashina Gauhar was the DAAG in our front office before Stu.

Q And Ms. Gauhar served in ODAG in that portfolio under Deputy Attorney General Sally Yates as well as current Deputy Attorney General Rod Rosenstein. Is that correct?

A I think under -- even prior to that, Deputy Attorney General Cole possibly, so for all three of them, I believe. I know she was

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in the office. I don't know if she was an ADAG at the time, but she served -- has served in ODAG under all three of those deputies, I believe.

Q Have you witnessed any evidence of political bias or other improper considerations affecting Ms. Gauhar's work?

A No, absolutely not.

Q Would you consider her an impartial expert on national security affairs who serves her country faithfully?

A Yes. The confused look on my face is that I didn't -- I wasn't aware that there was any question about that. But absolutely I do.

Q Thank you. I think that is significant, and I wanted to make sure that we had the chance to ask you those questions.

Ms. Kim. I think we are ready for us to wrap up our portion of this hour-long questioning. Let's go off the record. It is 2:28.

[Recess.]

Mr. Baker. We're back on the record at 2:32.

BY MR. BAKER:

Q You've mentioned this a couple of times. And without regard to any specific case or investigation, could you just briefly explain what the FISA process is? It's more than just one person initiating a FISA or some authority under FISA, is my understanding.

Could you just explain what the FISA process is, how something starts, where it travels, and who it ends up with, to the best that you can?

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A Yeah, I'll do it the best I can. I am not that person who could give it to you with every step A to Z, but I could just tell you generally --

Q Sure.

A -- my understanding of it, because I definitely have a working knowledge of it, and it plays a role in many of the investigations that I work on.

But, obviously, the purpose of FISA collection is to collect intelligence. And the way the process would ordinarily start is with the Bureau or some component of the intelligence community identifying a person or facility, whether email, phone number, of interest, and working within the Bureau and with the Office of Intelligence to determine whether the statutory factors are met to be able to get a warrant for surveillance of the particular person and/or facility or facilities.

And it goes through a, my understanding of it is, a rigorous process within both the Bureau and on the DOJ side, resulting in an application to the FISC, to the FISA Court, for the surveillance, and then a ruling from the FISA Court as to whether to grant the application or not.

In the ordinary course, I think that very generally, wave tops, at the wave tops, is the way the process works.

Q As between Main Justice and the FBI, and actually splitting the FBI between headquarters and a field office where a case may have its genesis, it's my understanding there's a lot of back and forth

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before any package is ultimately presented to the FISA Court. There's a lot of back and forth between the Department and FBI headquarters and maybe between FBI headquarters and the field. Is that your understanding?

A That's my understanding, yes. Generally, I agree with that.

Q So a lot of corrections, enhancements, improvements to a FISA package as it's coming along through the process is likely made before anything ever goes to the FISA Court?

A Yes. And additions of information if, you know, time is passing and other information is coming to light, possibly, so yes.

Q And I assume, it's my understanding there's a lot of approval levels along the way. As it's coming out of a field office, there's several level of approval; as it's going through FBI headquarters, there's several levels of approval; and I imagine the same is true at Main Justice. Is that --

A I agree with that. Again, I don't know all of the specifics of it, but that's my understanding as well.

Q So you had indicated in the last hour with our minority colleagues something to the effect that it would be impossible or it would stand out if any actor, whether it was a prosecutor, an investigator, if anybody tried to steer something to a direction that wasn't dictated by the evidence, it would stand out.

A In general, I believe that, that if evidence is going -- flowing in one direction, then someone not adhering to what the evidence is showing but adhering to some other motive or desire

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suggests a different direction, it would stand out.

It doesn't mean it's necessarily improper. Maybe they're just off base. Maybe they actually have -- they're onto something and there's a reason to deviate.

But it would stand out if you think the evidence is going in one direction. So, yes, that was my intent.

Q And it would stand out because no one person is really calling the shots on any investigative technique, whether something is going to be employed, on opening an investigation, whether something is even going to be looked at, at prosecuting something. There's no one person doing that.

A I agree. I think it's -- especially in the type of complex work that I usually do, the idea that one person would be able to like turn the whole ship in a different direction, I just can't imagine that happening. There are so many people involved in some of these investigations that I just don't see how one person would be able to do it.

Q And an individual person that might do it or be accused of doing it, I assume that there's people above them that would notice some impropriety. And there's probably, in most cases, people below them as far as somebody that's approving or not approving something that they should approve or not approve, there's people below them that have sent whatever it is up through a chain. So there's people above and below somebody that are certainly going to be aware if there's some impropriety.

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A I would think so. Whether it's improper or whether it's just off base, I think it would attract the attention of people all around that person.

Mr. Somers. Besides the FBI, is the Department of Justice involved in defensive briefings that are given to candidates or current office holders to warn them about national security concerns?

Mr. Toscas. I don't think so. I guess it's possible that in certain instances historically maybe DOJ participated in some of them. But in the ordinary course, I would say, no, it would be the Bureau and maybe relevant IC partners.

BY MR. PARMITER:

Q So on page -- I guess it's page 166, but it's in the IG report, it refers to a meeting between presumably DOJ prosecutors and NS -- well, the line prosecutors and the supervisors to discuss the sort of lack of evidence supporting prosecution. I'll let you find that.

A Okay.

Q Did you attend that meeting?

A I would think so. When I saw this, I believe I was at the meeting.

Q Okay. The inspector general, I believe, in the report published notes from the meeting, and one of them says, this is a quote: "Want to insulate DOJ from criticism about how we did this work." Do you remember who wrote that?

A I don't. It usually would note who wrote the notes. But,

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no, I don't know who wrote that.

BY MR. SOMERS:

Q Do you know who discussed it at the -- these are notes of a meeting, I take it. Do you recall that topic coming up at the meeting?

A Let me look at this.

I believe the general discussion would have been -- so don't see a prosecutable case at this point. That would have been the team telling me or us that. The next thing appears to be the same thing, sort of reporting up.

"Want to insulate DOJ from criticism about how we did this work." No daylight between FBI management and investigative team agents regarding view of criminal liability.

I don't really know the specifics of that, but to me, and just in context and knowing the type of interaction we might have, it may have been a discussion of are we on the same page with the Bureau, do the agents -- are the agents seeing it the same way the team -- the DOJ folks are seeing it.

And in that context that may be how you get that third line of, "Want to insulate DOJ from criticism about how we did this work," I don't know if that's someone's thoughts that they're writing or whether that was specifically stated.

But the general sense I get from this was a conversation about you're reporting this, is the Bureau in the same place, you know, we want to make sure, you know, if people are all rowing in the same direction, that's fine; but if not, if there's some other view, that

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we're aware of that as well.

And more along the lines of what I was saying earlier, that at the end of the day I firmly believe that this was -- we were in the best position possible if DOJ and FBI were in agreement and we were satisfied with not only the steps that we had taken, the decisions we made, and the final determination.

Q So was that a general concern, though? I mean, this was a high-profile case. Maybe it's a concern in all high-profile cases. But that you could get criticism? I mean, was that throughout this investigation, was there a backdrop of, are we going to get criticized?

A Look, realistically in this line of work, especially with high-level people, I think people will generally always at least have some concern or thought about, you know, the, quote, unquote, blowback you might get depending on what direction you go in. And there's some that you just know, no matter what, there's going to be people who are unhappy on one side of the equation or the other.

So I think there's a general understanding of that and a healthy one, not one that sort of affects or impacts how -- the actual decisions that you make, but understanding that, you know, there's obviously going to be a consequence to whatever decision is made at the end.

BY MR. PARMITER:

Q So this meeting took place in January of 2016. In previous interviews with previous witnesses we've talked a lot about how Director Comey circulated a draft statement essentially exonerating Secretary Clinton as early as May. This appears to show that at least

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as early as January prosecutors were talking about a lack of evidence.

Were they talking about it prior to that as well? Or is that the first time you remember talking about that?

A Well, you would start out -- depending on where you start out in an investigation, you're starting from a position ordinarily where you don't have evidence one way or the other. So you're starting from a situation where you don't necessarily have a prosecutable case right off the bat, because you don't know whether the evidence exists or who the potential subjects are.

As that goes on, that meter starts to move, potentially starts to shift. And where the needle is not shifting, it's sort of you're not getting to the point where you're developing enough to where you see an obvious case coming together for a particular charge or against particular people.

So I don't know if this was necessarily a conclusion that was reached. It was just based on what they were seeing so far it just wasn't developing into something that looked like, obviously, at that stage what they were seeing as a prosecutable case yet.

But certainly at this stage it was still, you know, continue collecting as much evidence as we can. We understood that that's the snapshot of where we're at, but it's only one snapshot of many, so continue gathering.

Q Knowing that you were looking at a number of statutes, including 793(f), which you've talked about, you know, there was a view that intent was required, at that point, January of 2016, were

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you -- well, let me ask this a different way.

Do you know how many witnesses had not been interviewed by the FBI as of January 2016?

A I don't know.

Q Do you think it was more than 20?

A I honestly don't know. I don't know. The second line suggests to me that this is based on a review of material, but possibly also interviews of those people who are in the chains, literal email chains and in chains of command, but I don't know.

Q If you're, as a prosecutor, if you are looking for evidence of intent, how valuable is actually interviewing witnesses to determine that, whether it's the subject or just, you know, fact witnesses?

A It depends on the case. Sometimes you can find good evidence of intent based on other evidence, documentary or otherwise, and sometimes it's based on statements, and sometimes it's a combination of it.

But as you might imagine, with respect to some interviews, if a person -- if what you're banking on is the person to say that they intended to commit a crime, most agents and prosecutors are not going into interviews thinking that that's the type of admission people are going to make, just in the run-of-the-mill case.

Q Fast forwarding to the Hillary Clinton interview, at that point this sort of general consensus hadn't really changed.

Do you think that basically the only thing that could have changed their minds was if Secretary Clinton had essentially admitted to

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passing classified information through an unsecure server or something along those lines? Would that be the only -- would that have been, you know, something that changed the mind -- their minds of whether or not to bring charges?

A With respect to the mishandling --

Q Yes.

A -- offenses, those suite of offenses that were considered, I think former Director Comey has said and it's recounted in here that, you know, you get to that point and absent a confession at that table it's probably not going to move the needle on this.

But it doesn't mean that there may not be some other avenue. For example, if there's a false statement made or something significantly inconsistent that a false statement or a lie is made, that that's a different avenue, and, of course, that's always available in every interview.

Q Okay. Can I follow up a little bit on the -- we talked a little bit about criticism.

[Toscas Exhibit No. 2

Was marked for identification.]

BY MR. PARMITER:

Q I'm going to show you an email. Do you recognize this?

A I think I do, yeah.

Q What is that document?

A I think this is some of the legislative history.

Q Okay. What's the first page of the document?

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A It's an email from me to Rybicki, Jim Rybicki.

Q Yes.

A July 6th, 10:34 p.m.

Q What's significant about that date, the July 6th date? Is that the day after the Director delivered his statement?

A It's the day after he made his statement. And it's after our meeting with the Attorney General where the unanimous recommendation was accepted. And possibly prior to congressional activity that the Director -- then Director Comey was involved in.

Q Okay. So, I mean, why did you send that email?

A I can't remember if it was Jim or somebody else. I'm assuming in discussions with Jim Rybicki in followup to the discussion with the -- the briefing -- meeting with the Attorney General on the 6th. The prosecutors had referenced some of the legislative history and he had asked for it. So I'd asked the prosecutors for it and I forwarded it to him.

Q And in your mind was it to prayer talking points for the Director? Was it to prepare testimony? Was it to respond to public, you know, critiques of the FBI's activity?

A No. I thought that -- I shouldn't say no. I'll just tell you what I thought. I thought that this was in response to the Director hearing the DOJ team talk about the statute and the legislative history. I thought this was a request coming from him because he's, you know, a smart guy and probably just wanted to put his eyes on the actual legislative history after hearing more about it.

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And whether that was going to then be used by him as some sort of talking points or as part of his testimony or public statements, maybe. But the way I saw it, it was a good lawyer having their interest piqued by some of the discussion and saying: Hey, can I see some of that with my own eyes?

Q Okay.

A I mean, obviously, legislative history isn't the most exciting thing in the world to read, but he wanted to see it and we passed it along. Sometimes it's not the most interesting.

Q Sometimes.

So to your knowledge -- you just mentioned maybe it was the Director -- did anyone specific at the FBI contact DOJ after the statement related to gross negligence and ask about, you know, for background information on that?

A Again, to the best of my recollection, this is after we -- after the meeting with the AG, with the Attorney General, and after hearing what the team had to say about the history, legislative history and other aspects of 793(f), Jim Rybicki saying: Hey, does the team have any of that material that the Director can look at?

Whether the Director asked him for that or whether as his chief of staff -- as the Director's chief of staff he thought this might be good for me to look at or for the Director to see, I'm not really sure. Sometimes you don't know whether the principal is asking for it or not. But either way, I thought it's just a followup to what they had heard at the meeting.

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Q Okay. We talked a little earlier about your role as the deputy assistant attorney general overseeing CTS and a section of CES. Would it be fair to say that in that section of CES, the mishandling cases, the decision whether to charge or not charge ultimately is with you or with someone else?

A I would definitely play a role in the decision. In most instances our chief and deputy chief in CES are terrific, you know, professionals and experts at this. So they would develop a case with the U.S. Attorney's Office, and if it reached the point of charging and they thought it should be charged, yes, they would make the recommendation.

It would come either to me or through me, depending on, you know, the particular AAG involved and the approval level that they may or may not want. But I would play a role in it, whether it's simply to accept -- defer to them and accept their recommendation or to, you know, decide some aspect of it myself, maybe we should charge it this way as opposed to that way or charge these counts and not that count.

And in other instances it would go to the AAG for discussion. And in some cases, I would say that, depending on who's in charge, potentially we would not make a charging decision until we fully briefed Department leadership, depending on the type of case.

Q Is that what happened in the Midyear Exam case?

A Midyear Exam, it's a little different than a prosecution. And I think sometimes it gets lost in the review, with all the review of this.

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A declination decision is different from a prosecution decision, in my mind. If prosecutors and agents working on a case think that a case should not be brought, I think it's highly, highly unlikely that anybody in any supervisory position above them is going to say: No, no, no, no, you experts who know the facts best, you're wrong, charge the case.

So a declination decision is not so much to me a decision. It's a concurrence or an acceptance of the career folks' determination. As opposed to a prosecution decision, which is, hey, this one might be a close call or this one should be charged, and, you know, we're talking about charging it this way or that way, that may require the folks up the chain to say, yes, you should do it, you're approved to move forward, let's do it this way, let's not charge that count, maybe we don't charge that count now, things like that. There's more of an actual decisionmaking role for people above.

But with a declination -- I hope my explanation was clear -- I think it would be very, very strange for people above to sort of reverse the decision or the recommendation if it's a straight -- a recommendation for a straight declination.

BY MR. BAKER:

Q Was that the case in Midyear, it was an across-the-board unanimous decision --

A Yes.

Q -- for declination?

A It was.

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Q Do you know if that was an easy vote for the folks that had input into it, or was there back and forth bringing people that thought it should go forward to the side of declination, or it was pretty easily a declination for everybody involved?

A My understanding is that it was reached without any sort of contentiousness. There was no, from what I understood, no alternative or contrary view among the team, team meaning both FBI and DOJ folks working on it.

So as indicated in the report and in the statement that the AG ultimately released, you know, she accepted the unanimous recommendation, and that's the way I saw it from everything that I experienced with the team.

Q Okay. This is a random question -- not even a question. I want your opinion on a statement.

The notion that there is a deep state conspiracy about anything is laughable. And I'll just add -- this is my adding -- this is in reference to a deep state conspiracy at DOJ and/or FBI.

The statement is: The notion that there's a deep state conspiracy about anything -- and I'm adding at FBI or DOJ, that was the context -- is laughable.

What's your thought or opinion on that?

A Without knowing who made the statement, not that that would matter, honestly, I don't even know what deep state means. It may mean different things to different people.

But oftentimes when I hear the phrase, in my general understanding

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of it, what I've come to understand is that it's long-term public servants who have been around for a long time who hold certain, you know, private, silent views and shape the inner workings of the institution based on them. I mean, that's my general understanding of what this means.

Obviously, I can't help but think that folks may look at someone like me, who's been there for 25 years, devoted my entire life to what I believe is one of the greatest institutions on the planet, and it may not be seen as honorable public service, but it may be seen in this light.

So to the extent that, you know, that's what it means and there's that suggestion, I just can't agree with it. I don't agree with it. And to the extent that it would necessarily include someone like me and my long-term colleagues, I find that laughable because, obviously, I know myself and I know my colleagues.

But I've been around long enough, through changes in administrations, changes in the political leadership of our country and our Department, I get that over time the career workforce is sometimes seen by the incoming political workforce, who are our partners, our brothers and sisters, in what we do, for however long they're in office, in DOJ, there's always been a suspicion or a reticence to sort of embrace the career folks right off the bat.

Because incoming political appointees arrive with their political counterparts. And the existing people there, for whatever reason, I think even mentally, may seem like, oh, my gosh, they must

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be holdovers from the last team.

And I think it's a very dangerous way of looking at career public servants, because if that's the case, then I'm a holdover of multiple political leaders. And it just can't be that I'm a Clinton holdover, a Bush holdover, an Obama holdover. You know, I will hopefully at some point, if my tenure continues years down the road, someone may think that I'm a Trump holdover then at the next stage.

So I think it's dangerous to look at us that way, but it's something that on a lower level we, the career folks, deal with whenever there's a change in administration.

But it really has, obviously -- it's something that has gained much more prominence. And to the extent that that's what people mean when they refer to us long-term employees that way, I just don't see it.

I mean, if any administration incoming had said we were, you know, holdover, deep state from the prior administration, each administration would necessarily be wrong, they would have to be, because we can't be holdovers of everybody.

So I don't know. Long-winded answer, but I'm actually baffled by the concept. I've always been baffled by it. But my rambling has some indication of like my struggles with trying to come to grips with it.

Q Okay. Going back, we talked a little while ago about it would be very obvious if someone were trying to steer something in the direction that was completely contra to the evidence or the

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investigation to date.

At DOJ and including the DOJ components, is there an obligation of employees to report misconduct that they're aware of on the part of other employees?

A Yes.

Q And if you are aware of misconduct and you don't report misconduct, are you then also committing misconduct by not reporting that?

A I don't want to speak definitively on behalf of the Department on that point. My view is that it must be that you, yourself, are opening yourself up to disciplinary action if you are aware of or witness to misconduct, especially if you're witness to it and don't report it.

But I would please ask to defer to the relevant ethics professionals and disciplinary officials at the Department for that. It's my own sense, because obviously that's the way I would conduct myself, and I would expect those around me to conduct themselves like that, but whether it's technically accurate, I just don't know.

Q Okay. More specifically to Midyear, were you ever in a meeting or aware of a meeting or a discussion or any kind of communication where former Attorney General Lynch told Director Comey to refer to the Clinton investigation as a matter?

A As the IG report points out, I was one of a very few people in a meeting where that topic was discussed. Your question is phrased in a manner that says -- that would suggest -- and I didn't want to

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just say yes because it suggests that she directed him to say it a certain way.

It's very publicly known that that's the way he interpreted it. And my view of that meeting is very well laid out in the IG report. And I saw it less as a direction to do it that way and more of a discussion of that's the way she would do it.

In the context of discussing the ongoing investigation or making reference to the investigation, what I recall is that she thought that consistent with our obligation to not discuss ongoing investigations. That the way she would ordinarily be able to comply with that but still give -- provide an answer if asked is, you know, by referring to certain things as a matter.

And then it does not involve the use of the word "investigation." And even though people may take from it that there's an investigation, it's not the Attorney General or the FBI Director who, whatever government official is speaking, confirming that it is, in fact, an investigation.

So there's a lot of it in the IG report, and I know a lot of attention was put on it by them, and I would defer and direct you to that. But I'm happy to address any questions based on it, and if I might refer to it just to refresh my recollection.

Q That's a good answer.

We've previously heard and you've sort of indicated today that the FBI and the Department were -- your words were not lockstep. I've heard the words "lockstep" before. But there were constantly back and

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forth on decisions and updates.

It doesn't sound like, with the exception of the July 5th press announcement of the FBI, it sounds like the FBI and the Department were pretty much always on the same page, other than disagreements that were ultimately worked out.

You had indicated earlier that -- I think you said that it was your expectation, anticipation that when a press announcement would be made that it would be a joint press announcement.

You, the Department, were totally taken off guard with what the FBI did regarding the press announcement?

A Yes.

Q Was there anybody at the Department that, in your opinion, might have been relieved at what the FBI did because it took some of the heat off of the Department?

A I don't recall anyone expressing relief. I don't recall anyone expressing relief. I just can't imagine that anyone would have reacted that way.

I said before, I referenced the IG report, I said it earlier today, I thought it was critically important for the FBI to be a part of the conclusion and final determination in whatever statement was made. But I would not characterize it as relief to have then realized that there was a unilateral decision made to go a different direction.

Q So you're not aware of personally even any unofficial discussions about the FBI doing -- are you aware of anybody just casually saying at the Department, "You know, I'm actually glad Comey

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did that," or something to that effect?

A No, I don't recall anyone expressing anything like that.

Q Okay.

A I could see why you would ask that, because there might be a tendency to be like, whew, you know, he basically took it all -- took the heat all on his own or took the brunt of whatever criticism is coming on his own. So I appreciate the question. But I don't recall anyone reacting that way.

Q Okay. On the topic of Mr. Wiener's laptop, what was your involvement in -- or what do you know about it? But specifically, did you have any role in getting the Bureau to move quicker on it than they were or finding out what the status of it was or --

A You know, there has been some public reporting about, you know, that I played some role in like bringing it back -- or raising it to someone and getting the thing moving forward. And I understand the thread that someone is trying to weave with it, and it somewhat overlays with the facts.

But the bottom line is that, what we now know in looking -- from looking at the IG report, which obviously we didn't have the benefit of it at the time, was when I first learned of the actual laptop it was from a call that I got from a U.S. Attorney's Office that was handling the underlying separate investigation involving Mr. Wiener.

And when I was made aware of that, I then had our team call the FBI headquarters to discuss it, had a conference call with them in New York to discuss it. It's all laid out in this IG report, but I'm

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just trying to summarize it. Had a discussion with them about it, what's on it, and what legitimately -- what they were able to see on it based on the scope of the search warrant that they had already obtained for it for separate purposes.

And it's my understanding now after reading the IG report that the following -- a few days later in one of the -- after one of our morning briefings, I asked Andy McCabe: Hey, what's the status of that? And unbeknownst to me, but the IG lays it out, that question to him then caused him to go back to his people and say: What's the status of this?

And what the IG report reveals is that the FBI -- some people in the FBI had been aware of the laptop and the importance of the laptop for about a month. And so my asking Andy about it based on, you know, the then-recent discussions we had with the FBI and New York folks, is seen -- or was seen or was sort of characterized in public reporting as, oh, you know, Toscas, you know, sort of prodded them and got them to move on it. It may have had the effect of sort of him asking his team what's the status, but not quite the way it was publicly characterized, not quite accurate.

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[3:09 p.m.]

BY MR. BAKER:

Q Did you get a reporting back through channels as to what the status was when you made the inquiry of Deputy Director McCabe?

A At that point we were engaged with the agents on the case at a lower level, and agents -- and prosecutors and agents in New York, so I don't think I needed an update from him. But definitely we were working together to sort of examine what it was and the steps that we needed to take with respect to it, if any. And, ultimately, we moved forward and got a search warrant for it.

Q Did the people at those levels give you any explanation or reason for why it hadn't been acted on prior to your inquiry?

A No. I don't believe so. And just, again, one of the things that sort of now, after the fact, looking at it, even myself looking at it after the fact, you sort of lose sight of what you are thinking right at that moment.

But sometimes when something comes up and you think it might be significant, and even though you might want to know, like, why didn't we know about this earlier, that type of question has to wait until later because you are literally trying to actually do whatever needs to be done at that point.

So, for sure, I'm sure when I first learned about this and we started going through the details of it, I'm absolutely positive in my mind I was, like, you know, why wasn't that flagged earlier? Why wasn't it raised earlier?

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But, you know, it's sometimes unproductive to try to do a triage on what happened a month before when you actually have now work to do going forward.

So now, looking at the IG report, it lays it all out, like, all of the information as to who knew what and when. And it's a big part of, you know, what the IG -- some of the IG's, you know, review and conclusion. So I'll let that speak for itself.

Q Were you ever told at the time that the reason it hadn't been more quickly acted on, the laptop, it was due to some prioritization of other work matters?

A No. No. And like I said, I really didn't want to push on it, and I didn't push on it, because our focus was, let's actually figure out what -- if there's some importance to it and what we need to do with respect to it, and actually do the things that we need to do.

So, no, I don't recall hearing any rationale.

Q The FBI attorneys that were on Midyear, you had indicated, certainly Jim Bake (b)(6), (b)(7)(C) per FBI Trish Anderson, were they the same attorneys for the Russia investigation or were there others?

A I assume Baker, Jim Baker and Trisha as the general counsel and deputy general counsel, are involved in everything. So I would assume so (b)(6), (b)(7)(C) per FBI I can't be sure. I would think so, but I can't -- I don't have a memory of that for sure that she was.

Q These two investigations aside, based on your 25-year history at the Department, specifically your national security experience, were these the right Bureau people, lawyers and

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investigators, to have on these particular cases?

A I believe so. Like, at that time, I mean, these are the people that we were in the trenches with working numerous cases like this. So, yes, I would think that they were the right folks.

Q There's nobody in your experience that you didn't see on the team that caused you to ask even just yourself, "I wonder why so and so is not on the investigative team, or why somebody isn't on the lawyer team"?

A No. And, honestly, I don't know who the line -- I don't know all of the line agents. Obviously, I know of them and have seen them in passing, but I didn't have a whole heck of a lot of interaction with them.

But even from our team, I think that they had a sense that the people who were on it were the people who should be on it. I never heard anyone say like: Hey, isn't this a great case that so and so should be on? Why don't we pull him or her in? I don't recall anyone ever flagging anything like that. So it doesn't stand out to me.

Q Would the same be true at DOJ, as far as their assembled team? Is there anybody that you felt should have been on it, somebody that wanted to be on it that had the credentials, but for whatever reason wasn't allowed on it?

A No. Look, I'm very, very comfortable and happy with the people who were on it. I think they were -- they did an outstanding job. They are professionals of the highest degree, superbly competent, very smart professional people. I'm very pleased with the

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team that we had.

And, obviously, you have two assistant U.S. attorneys, you have two for folks from Main Justice. You have people with expertise in the type of statutes and conduct you're looking at. You have years and years of seasoned prosecutorial experience on that team.

I thought it was -- I think it was a good team. Obviously, there were bumps along the way and folks butted heads on things here and there, but, collectively, I think it was a great team.

Q Thank you.

BY MR. PARMITER:

Q Sorry about that.

A No problem.

Q Do you know how many interviews the FBI conducted

(b)(6), (b)(7)(C) per FBI

(b)(6), (b)(7)(C) per FBI

A I thi (b)(6), (b)(7)(C) per FBI was three. The IG report goes through it in detail. I think it was three.

Q The IG report also says that: "The highest-level Department official" -- this is a quote, I believe -- "involved in substantive decisionmaking regarding the culling testimony and laptops, including the decision to grant immunity, was Toscas."

Did you actually make the final decision on whether or not to grant him immunity?

A I only hesitate -- I would expect that I would have. It may not come in the form of a, you know, hey, give me a recommendation, Let me make a decision. It may have come in the form of we are laying

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this out for you. We think this is the road we are going to go down. We are going to give him immunity. This is why we are going to do it. And, obviously, always important that our agents are on board with that.

I'm not really sure if we went through that whole process of laying it all out for me, but with certainty, our team would, you know, make the judgment whether or not that should be done. And I had no reason whatsoever, in any of the calls that they made in that regard, to second-guess it or to overrule it.

Q After it had been granted, to your knowledge, was Mr.

(b)(6), (b)(7)(C) per FBI
[REDACTED] forthright in his interviews?

A From my understanding -- from my understanding, when they got done with that final interview -- and I think the IG report even quotes someone as saying: It all makes sense now. Like the first times they talked to him, I think there were issues with his attorney.

Q Right.

A There were some questions about his representation and whether that attorney was -- I don't want to disparage whoever the attorney may have been -- but whether, you know, they were putting him in the best position in talking to us.

But, obviously, once he got immunity or got the immunity letter and talked through the entire thing, the sense from the team was: Okay, we got the story from him now. It makes sense. It's consistent with the other information we have obtained and with the forensics. And so they were comfortable with it.

That's not to say that, you know, there was at least some concern

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and consideration over the first two times you are talking. You don't want to be talking to someone three times, right?

Q Right.

A When we talk to someone we want the truth the first time. We want the full scope of what they have to say the first time. But it doesn't always happen that way. You know, there were some unique circumstances with him, so I think that it caused people to pause and hesitate and consider it. Our team definitely did. I mean, they certainly wanted to fully scrub the decision to give him the immunity letter.

I think with (b)(6), (b)(7)(C) per FBI what they ended up doing was a proffer letter first, and then immunity for the third. And the proffer letter obviously is just a queen-for-a-day letter used very frequently by agents and prosecutors around the country just to get a person in the door and to open up.

And so by the end, you know, notwithstanding the concerns folks had along the way, I think that the information he provided was helpful to the team.

Q Okay. Shifting slightly, Lisa Page told us in another transcribed interview that the FBI wanted to get the Mills and Samuelson laptops, not because there would be different evidence there, but because of credibility. It was about our creditability to be able to say we ran down every investigative lead.

It sort of goes back to what we were talking about before about, you know, is it more about being able to credibly say you did that,

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or obtaining evidence?

And another thing she said was that the line prosecutors didn't think it was going to change the outcome of the investigation, which the FBI agreed with.

Did you have discussions with anybody on your team about whether or not those laptops might contain evidence that would change the outcome of the investigation?

A Yeah. I mean, from my perspective, I -- thanks for sharing that, that she said that about the credibility thing. I'm sure that looking back on it now, had we not gotten them, it would be an enormous credibility thing, right, to say: Was it credibly completed?

But at the time, what you are looking at is, is this an investigative step that is reasonable at this time and could have produced potentially evidence?

I can't tell you the number of times as a prosecutor working with agents we take investigative steps that we may think are not going to bear any fruit, and every now and then they do. And other steps that we think we're going to hit a gold mine, we get nothing. So we don't know what we are going to get and see until we actually get it and see it.

And so in this respect, while there may have been some separate concern about credibility, in looking at these items, determining whether they were relevant, and whether looking, seeing the contents of them for our purposes was a reasonable investigative step, it certainly was.

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The assessments of the likelihood of things being on it of investigative interest, obviously, also affected the road that, as the report points out, some of the FBI wanted to go down and using process and warrants and things of that nature, because, obviously, when you go down that road, then you have to be able to establish the probable cause that exists and the fact that we expect to get evidence from it.

So those two things are a little bit intention, if people at the Bureau want to use warrants but then only want to do it for credibility purposes. From my standpoint, we are taking investigative steps to try to find evidence. And here I believed, as everyone did, there's potentially relevant evidence on here and we are looking at the path that will get us those things in the quickest manner.

And so at the end of the day, we are able to do it. Did we have some internal bruises along the way, butting heads? Sure did. But there was a lot of nuance involved in that discussion, because I think, as former Director Comey said at one of his speeches, you know, doing a search warrant to obtain a lawyer's laptop that has lawyer's attorney-client privileged materials that has nothing to do with our investigation that is in the position of another lawyer at their law office, is not an easy thing to just go get a search warrant for. So I think he said we could have been mired in litigation for 5 years.

But we were able to get the things and we were able to -- the agents and technical forensic folks were able to analyze it.

So at the end of the day, did it change things? It didn't. But I'd much rather have it done and know that it had no effect than not

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have it done.

Q So did any of those folks that we have just mentioned, Mills, Samuelson, Beth Wilkinson, or (b)(6), (b)(7)(C) per FBI they were all interviewed as part of this process, correct?

A Wilkinson, no. She is an attorney for --

Q Wilkinson was an attorney, correct. Okay. But the other three were?

A Yes.

Q Did they tell you anything, you or the Bureau, about any of the emails that were deleted by a BleachBit?

A Just generally, I think that what we learned from -- you know, we call them -- they are referred to as the culling laptops. Because the laptops, all of the emails were uploaded to them, and then these two individuals, Mills and Samuelson, were, I believe, as laid out in the IG report, their directive was to take all work-related emails from them and to turn them over to State.

And so our understanding was that that's what they did, that they removed what they considered to be work-related emails, and then all of the emails, both work related and non-work related, remained on their laptops. And they told (b)(6), (b)(7)(C) per FBI Okay, we're done. They had asked him to put them on their laptops, then told him: We're done. Please remove them.

And I don't think that -- I'm not sure, but I would ask you to please refer to the IG report. I don't know if they had any idea what BleachBit was, but he used it to remove them from the laptops.

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Q Right. I'm not asking if they knew anything about BleachBit, just did they know anything about the emails that were removed, and if they conveyed that to either your line prosecutors or anyone else at DOJ or anyone at FBI, to your knowledge?

A I can't say it with specificity whether they were able to articulate examples of the emails that they considered to be not work related. Because no one had access to them to sort of point to them and say: Was this work related or was it not? I don't know. I don't know if they went into any further characterization in their interviews as I sit here. I don't know whether they said anything further than, you know, we only turned over work-related emails.

Q Well, so let me ask you about that, because I'm sort of struggling to understand this part of it. There was a determination made by attorneys for Secretary Clinton about what was work related and what was not. And they turned over what they had determined to be work related to the FBI and DOJ and the rest of it --

A No, I'm sorry to the State Department.

Q To the State Department, I'm sorry. The rest of it went, you know, was removed from the laptops.

Did anyone during the course of this investigation on your team, you know, express a concern that they were the ones turning over potential evidence in a criminal case and they were deciding what was relevant and what was not?

What was your feeling about that? It just seems sort of -- I mean, and granted, you're the professional, but it just seemed sort

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of odd that they would decide what was potentially relevant.

A Yeah. So it is a significant thing that it's not what they were determining what was relevant, because it wasn't -- there was no investigation at that point. What they were doing was in response to a FOIA request, is my understanding, it was in response a FOIA request that the State Department received. The State Department asked them to turn over her emails, Secretary Clinton's emails, since she used a private email server or address.

And from what I understand, the State Department said: It's up to you to determine what's work related and what's not work related. So it's up to you, Secretary Clinton, to determine that.

So Secretary Clinton tasked her attorneys to go through her emails and to turn over the work-related emails.

And so that's what they did. That's what they claimed to do. And they turned over 30-plus thousand emails to the State Department.

So it's not that they were determining, is this relevant to some criminal investigation. It's, is it work related? Those were the facts that we have and so that's what we worked with.

Q Right. Fair enough. Okay. So let me -- more generally then, would you ever in a criminal investigation allow someone to decide what material the FBI and DOJ can have as evidence, you know, when that is in their possession? Would that ever been an acceptable state of affairs? In a criminal investigation. I'm not asking about FOIA.

Forget the, you know, question of relevance. But just if it were a criminal investigation and you were asking them to turn that over,

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would you ever allow the potential defendant to determine what was work related and what was not?

A The work related versus non-work related isn't necessarily relevant to our inquiry. It was relevant to the FOIA process, and that's why that distinction was used.

But if -- okay, let's remove ourselves from the reality of what happened. If the laptops existed at the time we were doing our investigation and we believed that 60,000-plus emails were on -- that had transited through the email server existed on that laptop, we would have taken that laptop and searched it ourselves, within the scope of a properly scoped warrant, for any evidence of the offenses that we were reviewing.

So, again, that's not the facts that we had in front of us. But, you know, we would not say: Give us work related versus non-work related.

Q Right.

A We would say: We are going --

Q Give us everything and we will make the determination?

A We'll look at it. Again, not the facts that we had before us, but certainly what I would have expected we would have done.

Mr. Baker. I guess I would just ask a final question. Is there anything you want to tell us? Keep it clean.

Mr. Toscas. No. I'm glad I could answer your questions. I hope they are helpful to your inquiry. And I don't have anything else to add. Thank you.

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Mr. Parmiter. I believe our Democratic colleagues are -- you guys are good? Okay.

Let's go off the record.

[Whereupon, at 3:29 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
JOINT WITH THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: WILLIAM SWEENEY

Friday, September 28, 2018

Washington, D.C.

The interview in the above matter was held in Room 2237, Rayburn House Office Building, commencing at 10:30 a.m.

COMMITTEE SENSITIVE

Mr. Somers. Good morning.

Mr. Sweeney. Morning.

Mr. Somers. This is a transcribed interview of William Sweeney. Chairman Goodlatte and Chairman Gowdy requested this interview as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform into decisions made and not made by the Department of Justice and the Federal Bureau of Investigation regarding the 2016 Presidential election.

Would the witness please state his name and position at the FBI for the record?

Mr. Sweeney. My name is William F. Sweeney Jr. Position is Assistant Director in Charge, FBI New York field office.

Mr. Somers. Thank you.

On behalf of the chairman, I want to thank you for appearing today, and we appreciate your willingness to appear voluntarily. My name is Zachary Somers, and I am the majority general counsel for the Judiciary Committee. I will now ask everyone else who is here in the room to introduce themselves for the record, starting to my right with Art Baker.

Mr. Baker. Arthur Baker, investigative counsel, House Judiciary Committee, majority staff.

Mr. Breitenbach. Ryan Breitenbach, senior counsel, House majority, judiciary.

Mr. Castor. Steve Castor with the House Committee on Oversight and Government Reform, majority.

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Ms. Lofgren. Zoe Lofgren, Democrat from California.

M [REDACTED] Special counsel, Office on Congressional Affairs,
FBI --

M (b)(6), (b)(7)(C) per FBI attorney with the Office of General
Counsel, FBI.

Ms. Bessee. Cecilia Bessee, OGC, FBI.

Mr. Hiller. Aaron Hiller, counsel for House Judiciary.

Ms. Kim. Janet Kim, Oversight, minority.

Ms. Hariharan. Aria Hariharan, counsel, Judiciary, minority.

Mr. Dalton. Jason Dalton, FBI, Congressional Affairs.

Mr. Buddharaju. Anudeep Buddharaju, House Oversight,

Mr. Gowdy's staff.

Mr. Brebbia. Sean Brebbia, OGR, majority.

Mr. Ventura. Christopher Ventura, law clerk, House Judiciary,
majority.

Mr. Hyman. Graham Hyman, House Oversight, minority.

Ms. Shen. Valerie Shen, House Oversight Committee, minority
staff.

Ms. Sachsman Grooms. Susanne Sachsman Grooms, House Oversight,
Democrat.

Mr. Somers. Thanks.

The Federal Rules of Civil Procedure do not apply in this setting,
but there are some guidelines that we follow that I would like to go
over. Our questioning will proceed in rounds. The majority will ask
questions for an hour, and then the minority will have the opportunity

to ask questions for an equal period of time. We will go back and forth in this manner until there are no more questions and the interview is over.

Typically, we take a short break at the end of each hour of questioning, but if you would like to take a break apart from that, please let us know. We will also take a break for lunch at the appropriate point.

As I noted earlier, you are appearing today voluntarily. Accordingly, we anticipate that our questions will receive complete responses. To the extent that you decline to answer our questions or if counsel instructs you not to answer our questions, we will consider whether a subpoena is necessary.

As you can see, there is an official reporter taking down everything that is said to make a written record. We ask that you give verbal responses to all questions. Do you understand this?

Mr. Sweeney. Yes.

Mr. Somers. So that the reporter can take down a clear record, it is important that we don't talk over one another or interrupt each other if we can help it. Both committees encourage witnesses who appear for transcribed interviews to freely consult with counsel if they choose, and you are appearing with counsel today.

Could counsel please state her name and position at the FBI for the record?

Ms. Bessee. Cecilia Bessie, acting deputy general counsel for the Office of General Counsel, FBI.

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Mr. Somers. We want you to answer our questions in the most complete and truthful manner possible so we will take our time. If you have any questions, or if you do not understand one of our questions, please let us know. If you honestly don't know the answer to a question or do not remember it, it is best not to guess. Please give us your best recollection, and it is okay to tell us if you learned the information from someone else.

If there are things you don't know or can't remember, just say so, and please inform us who, to the best of your knowledge, might be able to provide a more complete answer to our question.

Mr. Sweeney, you should also understand that although this interview is not under oath, you are required by law to answer questions from Congress truthfully.

Do you understand that?

Mr. Sweeney. Yes.

Mr. Somers. This also applies to questions posed by congressional staff in an interview. Do you understand that?

Mr. Sweeney. Yes.

Mr. Somers. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Do you understand this?

Mr. Sweeney. Yes.

Mr. Somers. Is there any reason you are unable to provide truthful answers to today's questions?

Mr. Sweeney. No.

COMMITTEE SENSITIVE

Mr. Somers. Finally, I would like to note that, as Chairman Goodlatte stated at the outset of our first transcribed interview in this investigation, the content of what we discuss here today is confidential. Chairmen Goodlatte and Gowdy ask that you not speak about what we discuss in this interview to anyone not present here today to preserve the integrity of our investigation.

This confidentiality rule applies to everyone present in the room today. That is the end of my preamble.

Do you have any questions before we begin?

Mr. Sweeney. No.

Mr. Somers. All right. I will turn it over to Art to start our first round of questioning.

EXAMINATION

BY MR. BAKER:

Q Good morning, Mr. Sweeney, I know you indicated in your introduction, you're from the New York field office. I know that to be one of the busiest, if not the busiest, office in the FBI. So we do appreciate you taking time out from your responsibilities there and coming down and participating in this interview.

As we have interviewed witnesses in our investigation and had the occasion to review various documentation that we've received, we've had various folks from the FBI, with different titles, including Executive Assistant Director and just plain Assistant Director. You come with the title Assistant Director in Charge. Could you elaborate a little bit about what that is and what that implies?

A Sure. I think. So Assistant Director -- there are three Assistant Director in Charges -- Los Angeles, Washington field office, and New York. The Assistant Directors at headquarters have the title of just Assistant Director. My presumption is the "in charge" part of that title came from the fact that they were in charge of a field office. So, around the country, obviously we have special agents in charge of field offices, and the three largest field offices have an Assistant Director, with multiple special agents in charge underneath them.

Q So, not only are you from one of the busiest field offices, you are in charge of one of the busiest field offices?

A Correct.

Q And with that title, the responsibility falls on you for everything that happens in that field office?

A Correct.

Q Every violation of criminal law, every violation of national security law, every personnel matter, everything that happens in the field office, ultimately falls to you with guidance and concurrence from headquarters?

A Correct.

Q Okay. How long have you been the Assistant Director in Charge of the New York field office?

A Since September -- officially since September of 2016. I don't know the exact date. I was named to the office, I believe, in July. So I was appointed to the position, I think it was July; it might

have been August, but started in September.

Q Were you promoted in place already in the field office --

A No.

Q -- or you came from another --

A I came from Philadelphia. So I've been in New York once before as the special agent in charge of the Counterterrorism Division, and then went to Philadelphia as the special agent in charge of the Philadelphia division, and then back to New York as the Assistant Director in Charge or what we call the ADIC.

Q And you are a special agent; you have 1811 investigative powers to enforce criminal law, effect arrests, conduct search warrants, that sort of thing?

A Correct.

Q And you've been in the FBI for how long, sir?

A Since April of 1998.

Q During your tenure in the New York field office, as the Assistant Director in Charge, did you have occasion to be investigating or have in possession of the New York field office a laptop that was somehow associated to an Anthony Weiner?

A Yes.

Q And what was the nature of your investigation of the laptop initially?

A The nature of the investigation initially was crimes against children investigation, run off the violent crime branch, that involved Anthony Weiner.

Q And did the review of that laptop by your agents, your investigators, your forensics folks, did that review discover something on the laptop that was not necessarily germane to your initial investigation?

A Yes.

Q And what was that?

A Those were emails -- well, what appeared to be emails initially related to Hillary Clinton, a variety of domain names, if you will. Initially.

Q Were -- and who made this initial discovery?

A I believe the case agent made the initial discovery.

Q And a case agent is what, in general terms?

A So a case agent is a special agent who is assigned to work an investigation or has an investigation under their purview. They may work it alone. They might work it with a team, with another agent, analyst, different positions in the Bureau that assist with the case. So the case agent in this case was a special agent.

Q So, when this special agent discovered these emails, electronic communications that were not related to what they were initially looking for, did they know about this case that headquarters had Midyear Exam?

A I don't -- I don't know what he knew at the time. At the time, I don't know if he knew. I'm trying to remember if later he realized from the news. He wasn't involved in the investigation, but if he had learned from the news it was this investigation, but I can't

recall exactly how he would have known that.

Q But contemporaneous with his discoveries of these other emails, he knew based on what he or she saw, that there was some significance to what they might be, regardless of whether he or she knew about a case being worked?

A I believe that's correct.

Q And when he or she discovered these emails, what did they do?

A So I believe they reported it up -- he reported it up his chain of command, which would have been a squad supervisor, ultimately, to the special -- at the time, an acting special agent in charge of the criminal division who then reported it to me.

Q So what would your estimate be when the information traveled up the chain of command from the time of discovery by the case agent until it actually reached the top of the New York field office, you?

A Can you repeat the first part? What was the actual time?

Q From the time that the case agent discovered it, what would you estimate your awareness being? What was the lag time?

A So now I know the lag time to be about -- well, I think it was found on the 26th. And I was told on the 28th. At the time, I believe I thought it was found on the 28th.

Q Okay.

Mr. Somers. Can we just clarify that? Of September?

Mr. Sweeney. Correct. September 2016.

BY MR. BAKER:

Q But between the time of discovery by the case agent and communication to you, you've indicated, I think, there were intermediate levels of supervisors that he had reported it to, that --

A He definitely reported it. So, obviously, he did not report it to me directly. So it came to me from the acting special agent in charge, so presumably he followed through the chain of command. That's how it got to him.

Q So he probably reported it to his immediate supervisory special agent. Maybe it went to the assistant special agent in charge, then to the SA -- acting SAC and ultimately to you?

A Correct.

Q And what did you do when you became aware of it? What was your reaction when you became aware of this?

A Surprise. I reported it within minutes.

Q And you reported it to?

A To FBI headquarters. Partially by coincidence, I was already on a SVTC, a secure video teleconference. But the acting special agent in charge advised me he needed to tell me something before the end of the day. Okay. I have a SVTC, but there was a pause in the SVTC. What do you have? What is it? Gave me a quick, very quick synopsis of what he had. I jotted a couple notes down on an index card, which I don't know where that is, and then reported that in the SVTC.

Q So the index card never has been found?

A No.

Q Okay. So this SVTC is a weekly, monthly?

A It's a weekly -- so it was -- excuse me. It was at the time a weekly SVTC that occurred every Wednesday at 3 o'clock, and it was a two-part process. So there was a weekly SVTC usually -- it's called the Director's weekly SVTC.

Mr. Breitenbach. I'm sorry, SVTC stands for? Just for the record.

Mr. Sweeney. Secure video teleconference.

Weekly SVTC with the Director starts at 3 o'clock. All field offices, all SACs, all special agent in charges, are on the SVTC. That first part of the SVTC then ends, and the second part is with Assistant Directors and the three ADICs, or Assistant Director in Charges who stay behind to do -- after SVTC. And that's -- generally the purpose is described as major issues. Finance Division would have to report. Something for the Assistant Directors to know about.

That SVTC was also pretty -- both SVTCs combined is usually done by 3:30-sh. But that was every week.

BY MR. BAKER:

Q Would -- and maybe you said this -- would the Deputy Director or the Director be --

A So normally -- normally, the Director -- it's called the Director's SVTC -- weekly SVTC. Normally they are all there. So, normally, the Deputy, the Director, the EADs, all the Assistant Directors from headquarters sit in the conference room down here in the Hoover Building, and anybody else videos in. If the Director's not present for the SVTC, which happens, the Deputy Director runs the

SVTC, or the Associate Deputy Director, depending on who's on travel, who's not in. It can vary. The SVTC still occurs; it's just a different format now.

Q But on this particular one, the Deputy Director was there?

A Correct.

Q And the Director was not?

A Correct. He was not.

Q So you indicated who's on the SVTC initially and then it sort of peels away and that there's this smaller group. And that's the group you referenced what New York had found too?

A Correct.

Q How many people -- you mentioned who they would be. I think I saw the number somewhere; maybe 39 people would have been on it. Is that the first one or the peel-away?

A Well, both. So, in the room at headquarters -- so the two-part SVTC, the 3 o'clock SVTC starts. In that room, all the Assistant Directors and a gaggle of other folks, plus all the 56 SACs and probably ASACs, supervisory, intel analysts. It depends on the field office who they bring to the SVTC. When that SVTC ends, all the special agent in charges log off. All the outstations log off. And the folks that are still in the room are the folks that were originally there for the first part.

Q Okay. And those people would potentially also have staff with them that are there taking notes, or it would just be the principals?

A So, usually the only staffers would be the Chief of Staff for the Director if the Director was present, Special Assistants to the Director, the Deputy Director, maybe a couple others, but generally, I don't think the Assistant Directors brought staff into the room. It's -- I don't remember how many seats there are, but --

Q If the Director in a normal SVTC, where he might be there, who would he bring? Who would his Chief of Staff be?

A He would bring his Chief of Staff, and likely his Special Assistant would sit in. Not always. There were times where -- there will be times where somebody would be absent. They were on travel, or they were out. But usually you could see them sitting in the back.

Q Who would they specifically be for Director Comey?

A The persons?

Q Yes.

A At the time, it would have been Jim Rybicki and -- 2016 -- I think Eric Smith by that point. September -- I'm not positive about that. But September 2016, I think it was Eric Smith.

Q Who would Mr. McCabe typically have if he were present?

A So McCabe, present would be his Special Assistant, which was at the time Troy Sour -- Sours, I believe. Not positive. Have to check the -- and then I don't know if his counsel or any other staffers from his office would sit in.

Q If he were to bring --

A You can't see the whole group.

Q Sure. If he were to bring a counsel, who would that likely

have been?

A Probably Lisa Page.

Q Okay. So you're on this SVTC, and you are ready to update whatever you would normally update and -- from New York, and part of that is this discovery of something on Mr. Weiner's laptop not germane to the original investigation. What do you say? To the best of your recollection?

A So what I had was, I had, I believe I had three topics -- well, it became three topics once the laptop information was reported to me, that I was going to talk about. I believe it was an update on the Chelsea bombing, a heads-up on a -- we were hearing about a New York Times story about the lack of women executives in the Bureau, and then the third thing was the Clinton domain names that were found on the laptop of the Weiner investigation. And the number of emails. So I say emails, but the number of items that had -- that looked like they were possible emails, which was 141,000 roughly, and growing.

Q So, as you're on this SVTC going around the room, or the country by camera, however, was somebody there that also brought an update on the Midyear Exam investigation?

A No, not that I recall.

Q Would you, as the Assistant Director in Charge, know anything about it, even though you're not at headquarters working on it?

A No. I don't -- I don't know if I knew about it. I must have known. I must have known it existed. I don't know if I knew at the time it was called Midyear.

Q So you're still really bringing this to the SVTC based on just the importance of the domain --

A I'm sorry.

Q -- just on the importance of the domains, the domain names, the name of people that your investigators initially saw? That's the important part to you, why you decided to bring it to this SVTC meeting?

A Correct. I mean it's pretty obvious -- wow, that's different -- it was pretty obvious to me that this is a big deal. I'm trying to remember how much everybody knew about the email server case, and I would have to look at the old IG report, but clearly it was -- clearly it was a big deal in my mind.

Q And when you announced this at the SVTC meeting, what was the response from anyone?

A So the visual response, I don't really recall. The verbal response from the Deputy was, he was going to call me after. I believe he told me he was -- he was going to be en route to some other location, which I don't recall exactly, but I think it was Quantico, and that he would call me after.

Q Okay. The IG report, I believe, does indicate it was Quantico. Did he call you after the meeting?

A I called him. He didn't call me.

Q How --

Mr. Breitenbach. I am sorry. Going back real quick, So we see from the IG report that the case agent who initially found these communications had his infamous "oh shit" moment, is that -- is that

how he -- how did -- how did he eventually describe that moment to you, and was that one of the reasons why you initially brought that up on the call --

Mr. Sweeney. No. I didn't talk --

Mr. Breitenbach. -- based on his perception?

Mr. Sweeney. I didn't talk to the case agent before my call at headquarters. The only person I had heard it from was the acting special agent in charge. I don't even think I knew the case agent beforehand. Later I talked to the case agent, probably a day or two later. I'm approximating. But I don't -- I don't believe I even knew who the case agent was at the time.

BY MR. BAKER:

Q So, after the SVTC meeting, when Mr. McCabe indicated he would call you afterwards, how much time elapsed from that meeting to when you made the call to him?

A Guessing, but 2 hours or under 2 hours, hour and a half. Guessing.

Q And you called him why?

A To -- the number had changed. The number of emails, or items, had grown to 347,000.

Q Did you expect that he would have called you prior to you initiating the call, or that was inconsequential?

A I had no reason to think he wouldn't call me. But I knew this was -- the material was, one, it had changed from what I had briefed. So I wanted to make sure it was briefed additionally and

accurately. And, two, it's a big deal.

Q And what, if anything, at the time did Mr. McCabe indicate? I mean, he is receiving the updated numbers from you. What did he indicate he would do or -- anything, if anything?

A I don't recall exactly, but I think he was going to get with the team at headquarters and have them call up to us in New York.

Q Did anybody call up to New York?

A Call, I don't remember. Email, yes, the AD, Bill Priestap. Because at some point later I'm asked to provide a point of contact for his team, which was the Midyear team, for them to talk to. And that was, I think, the next day. Not positive, but I think it was the next day.

Q Did you do anything when you hung up from the call relating to this matter?

A So, at some point, I believe either before the call with McCabe or after, or both, I called numerous other -- I called Randy Coleman, who is an EAD, an Executive Assistant Director, and Mike Steinbach, who was an Executive Assistant Director on the national security side, to give them the same -- to make sure they had the same info. I knew Mike was out of town. Normally you can see Mike on the SVTC. But I have a recollection that I think I knew Mike was out of town, or not in the SVTC. But I did not want them to get blindsided by the -- I gave the info to Deputy, and I just wanted to make sure everybody's on the same page.

BY MR. SOMERS:

Q Back up 1 second to your previous response. You said -- I was just confused. You said "provide a contact." Was that you were going to provide your team with a contact, or you were providing headquarters with a contact on your team? I'm confused as to --

A Correct. So I think -- so headquarters -- I think Priestap asks me for a New York contact that his team can engage with on the laptop.

Q Did he tell you who on his team was going to engage with your team?

A I don't remember. At some point, Pete Strzok's involved. I don't think I talked to Pete Strzok verbally, but there's -- I think there was an email where Pete is given, hey, here's the -- here's the POC, but I'd have to look at old emails.

Q Was -- was Pete Strzok on that video conference?

A I don't know. I don't know. You can only see -- usually you can only see the part where the Director sits, which is a table that's not quite as wide as this. You can see like five or -- maybe four or five people across the front and maybe a couple people around the corner, but unless they move the camera, you can't see who's there.

BY MR. BAKER:

Q If I understand your testimony, when you learn of this, coming up the chain from the New York office, it sounds to me like you pretty much hit all the bases. You alert headquarters via this SVTC, where you're alerting a lot of people through that. You're not even sure who all because you can't see everybody, but a lot of people are

there, a lot of staff potentially there. So the alarm goes out there. You have a subsequent telephone call with Deputy Director McCabe, and then you alert Mr. Coleman, who I think would have been in charge of the criminal side of the house, and you alert Mr. Steinbach, who would have been in charge of the national security side of the house. Anybody else you alerted?

A Not that I recall sitting here. I may have, but I -- I'm trying to remember who was in what position, and I don't think so. I don't remember if I called Priestap, but I think I could -- I think I knew Priestap was in the room. I don't know how I would have known that, though, unless I just assumed he was an AD, and he was in there. I don't know. I don't think so.

Q So it sounds to me, in your mind, and correct me if I'm wrong, you've notified headquarters of this discovery?

A Absolutely.

Q Would your expectation have been, based on the people you talked to, that Director Comey would have been made aware of this?

A Yes.

Q And how much of a sense of urgency do you think you projected, and how much of a sense of urgency did they receive to make a determination, on the headquarter end, who they should brief up to, namely Director Comey?

A I don't -- my assumption is they would know from the way I reported it that this is a big deal. And certainly the fact -- the volume of -- the number volume, I would assume that they would take

the same sense of this is a big deal.

Q As the days go by, did you sense yourself, or did you sense from your subordinates in the New York field office, that maybe headquarters did not think it was a big deal?

A Not initially.

Q After longer than a few days, did anything register with you or your subordinates that maybe headquarters was not taking it as the big deal that you felt it should have been?

A So at the -- with subordinates at the time, no. I learned that to be different later. The only recollection I have at some point is, again, the acting special agent in charge comes and tells me that Southern District in New York is calling down to DOJ about the laptop, and he is giving me a heads-up about it. Okay. I forget exactly how that conversation went, but it was something that I, you know, definitely registered and later I talked about. I don't know if I would have necessarily called to report that, like, hey, Southern District's calling down to ODAG to give you a heads-up. I don't know if I normally would have called somebody on that, but I ended up talking to people about it.

Q What was your understanding for the reason of the call from Southern District?

A They wanted to make sure something was getting done with it.

Q Did they have reason to think something wasn't being done with it?

A So later I learned, yes. At the time, no. So I'm mixing

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what I know now versus what I knew then. But I don't think I was given any impression of why -- that they thought something was wrong.

Q What did you subsequently learn?

A Subsequently learned the case agent talking to an assistant U.S. attorney thought there wasn't enough activity, and the case agent wanted to blow the whistle on that, and I -- and I believe, if I recall the report correctly, the assistant U.S. attorney then went up her chain of command, saying, hey, there's an issue here, and that's what caused the Southern District to call the DAG's office, or the ODAG, whoever they called.

Q What is your understanding of -- maybe this is going back a little bit, maybe not -- what were some of the reasons that your investigators that actually had the laptop, that were doing this examination that ultimately showed them of these Clinton emails, what was the reason they couldn't dive in a little bit further and have more of an idea of what the content of them actually were?

A That was outside the scope of the search warrant.

Q And that search warrant would have been a search warrant that New York obtained for matters related to the Weiner investigation?

A Correct.

Q Okay. So is headquarters involved in trying to get another search warrant, in trying to interface with the Southern District to figure out what the scope of that original warrant is to see if it might cover other things? I mean, what is going on to actually get authority to go in?

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A So my understanding of what was going on, was headquarters was coordinating with Southern District, which included our team, to get -- to see what authorities they needed to get into the laptop for their purposes. And we had -- the Southern District had given them -- given us, which we shared with headquarters, what the parameters were to exploit the laptop, like, here's the limits of the warrant.

Q And was there any headquarter legal entity that was providing or was going to provide additional facts or probable cause boosters for what they knew in the Midyear Examination?

A I don't know. Or I don't recall how that worked. I don't -- I don't know. I presume there would be a legal component to it. They would need their own authorities, or their own probable cause. But that wasn't -- that's -- I don't know how the mechanics of that would have worked, but --

Mr. Breitenbach. Did you have a chief division counsel weighing in on the scope?

Mr. Sweeney. I don't think I talked to her. I think she was included in some of the emails and may have been involved in discussions with the criminal branch in our office, but I don't know if she was involved back and forth with headquarters. I think mostly it was Southern District.

Mr. Breitenbach. And what is her name?

Mr. Sweeney. So she's a non-SESer. She is a GS-15 in our office.

Mr. Somers. Your office did not have probable cause to swear out

a search warrant for the Clinton emails?

Mr. Sweeney. No. And I -- I mean, I knew that it wasn't our right to -- there's another case that exists. This is their purview.

Mr. Breitenbach. Real quick, going back to that initial SVTC, where you reported, did you report the actual number that you stated here in this interview, 141,000 communications?

Mr. Sweeney. Correct.

Mr. Breitenbach. Did you also report that that was growing?

Mr. Sweeney. I believe -- no. I don't think I reported it was growing in the first SVTC -- or the SVTC. I -- when it hit 347, I think I told them it was growing. Because obviously the number grew even higher. I think I told them it was still going when I told them the 347, but I don't recall exactly if I said that. I don't think when it was at 141 I knew it was still going up.

BY MR. BAKER:

Q When you had custody of this laptop, where did it physically sit when your case -- generally? I mean, not exactly work station, but it was in the New York field office, or was it at some offsite where cart -- your computer folks --

A No, I believe it was in the New York -- I'm guessing, but I believe it was -- well, I know it was in the New York field office. I don't know which building. I think it was with the case squad. I don't know the mechanics of how they -- where cart sits.

Q Sure. It's my understanding that maybe cart, maybe your case agent, something's being processed on this laptop.

A Correct.

Q And something they are looking at is not moving fast, or it's stuck or something, and that triggers them to look, and they see this big trove of other emails or communications? Is that correct?

A So I -- I believe it is (b)(6), (b)(7)(C) per FBI I think I learned this when I talked to him a couple days later, but I believe he thinks it's taking too long to do its processing, whatever the technical term is. And he goes into it -- into the data, however you do it, and clicks on an item. And when he clicks on the item, he sees an item that he thinks, this is not my case -- this is not my material. And then might click on a couple others realizing something's not right here. And that's what causes him to report it.

Q Is that (b)(6), (b)(7)(C) per FBI?

A (b)(6), (b)(7)(C) per FBI

Q And that's what triggers the reporting up the chain of command?

A Uh-huh.

Q I think he calls another agent over to look at it to maybe verify that what he thinks he sees, he sees?

A I think you're right, but I don't know if I knew that at the time.

Q Okay. So where is that laptop now?

A I think we still have it. I don't know off the top of my head, but I think we still have it.

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Q So, to the best of your knowledge, it hasn't been returned to anyone or --

A I don't think so.

Q -- hasn't been destroyed?

A No. And there's -- right when we -- when we take a -- there's a mirror. It's mirrored. You don't operate off the actual device. I believe we still have it.

Mr. Breitenbach. Is that something you can get back to us, to let us know if you do have that in your possession still?

Mr. Sweeney. I presume, yeah.

Ms. Bessee. Sure, we can find out.

BY MR. BREITENBACH:

Q But you are aware there was an image that was made of the original laptop?

A Yeah, any -- any time -- my understanding of how the process works, any time you seize an electronic device, you are making an image of it, and you're working off the image. You're not working off the actual device.

Q So, even if the original laptop had been returned to the owner, which is actually stated in the search warrant in this particular case, you would still have possession of an image, or would that image also be destroyed or --

A So I would have to check. I know -- I don't know how long they maintain the evidence. I don't know for certain. We can check.

Q Okay.

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BY MR. BAKER:

Q Was there a time when images on an individual work station were told to be eliminated during the course of processing or during the pendency of the case? Are you aware of any --

A Not that I recall.

Q Not eliminated totally, but from a particular work station?

A Oh. Yes, I think so. I'm trying to remember the name of the thing. I can't -- I can't recall the name of the technical thing, but, yes. So, if there's classified information on a unclassified device -- so the system we had, I believe, to process digital evidence is an unclassified thing. I'll come up with the name later. So, if it's discovered that there's something on there, you would have to clear that off, however the process is. I think that is -- I think that occurred at some point.

Q Okay, in your initial discussion with Mr. McCabe, did you have any followup discussions with him in close proximity to the discovery of these? I know there would have been, way down the road, probably more communications?

A I don't know what your definition of "close proximity" is, but --

Q A couple of week --

A A week, no, I don't think so.

Q Did you have any expectation from any conversation with Mr. McCabe, or any of the folks at headquarters you talked to that a team from headquarters would be coming up, or an individual from

headquarters, that somebody physically from headquarters would travel to the New York field office to look at what you found?

A I don't -- I don't remember if I -- if a team was physically coming. There certainly was going to be a team engaged to figure it out. I don't know if I was told that a team would physically come up. I think later I heard that, going, like, fast forward a month.

Q Okay.

A I don't remember exactly when I heard that folks were coming. If they were coming.

Q Would you have expected that someone from headquarters would have come earlier, or did anybody come at all?

A I don't remember if anybody came at all ever. I thought they did, but I'm not positive about that. If it -- if there were, it was limited. Would I expect that people would have to come up? I don't know if I would expect -- I certainly would have expected a team would be engaged. I don't know if they would have to be physically present to do whatever they needed to do. At some point, there was a discussion about getting a search warrant for the laptop and where that search warrant would have to be filed, either in -- excuse me -- Southern District or down here. And I believe there was discussion around that time that the laptop -- that the image would have to go to -- would move, but I'm not positive about that.

Q Do you know how that legal issue was ultimately resolved, where it was filed, and where it was drafted, the search warrant?

A I believe it was filed and drafted down here.

Q Okay.

A I don't think it was filed in Southern -- I don't know if I've ever even seen it.

Q Okay.

A I think it was filed down here.

BY MR. SOMERS:

Q Just recapping a little bit what you said. Did your team -- you ultimately had search warrants obtained. Was your team involved in the search pursuant to that search warrant?

A The --

Q The second search.

A The second search warrant?

Q The Clinton-related search warrant.

A I don't think in the end we were. I don't think in the end we were.

Mr. Breitenbach. It has been reported that (b)(6), (b)(7)(C) per FBI initially finished the processing, the basic processing of the computer to determine how many Clinton related emails were on it on October 4th. Does that sound about right?

Mr. Sweeney. I think I read the same since. I don't think I knew that at the time. I might have, but I know the number crossed over 650,000, maybe. I don't know exactly how that -- when that ended.

Mr. Breitenbach. Okay, and so the 650 --

Ms. Bessee. So can I -- are we asking him based on what he knew, or are you asking him based on what he's learned? Because I think he

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just distinguished that he read somewhere. So if we can just be clear.

Mr. Breitenbach. Good question.

BY MR. BREITENBACH:

Q I would say what you knew at the time. Was it reported to you that --

A That he finished?

Q -- that the initial processing had been completed on October 4th of 2016?

A I don't remember that -- being told that. I don't know why I wouldn't be told that, but I don't -- I don't have a memory of being told, hey, we're done.

Q Were you -- did you ever inquire as to the final number that had been found in terms of on -- being on the laptop, with regard to Clinton-related communications?

A No, I don't think I ever inquired as to, hey, what's the exact final number. I remember being told it was over -- I want to say 650. It might be 675. Thousand.

Q So you couldn't -- if you didn't know that the initial processing had been completed on October 4th, you couldn't confirm that an email that Peter Strzok sent Lisa Page on November 3rd, indicating that your New York office completes carving on October 19th, 2016, you wouldn't be able to know whether that was accurate or not, or would you?

A I don't think I would know if that was accurate. Is that the timeline that's in the IG report?

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Q Correct.

A I -- I don't think I -- I don't know if I can know that was accurate. I remember seeing a timeline, but I don't remember even what it said.

Q So you wouldn't know whether it's accurate that he is reporting the New York field office had completed its processing on October 19th, despite other indications that the agent had completed it on October 4th?

A Right. I don't -- yeah, I don't know how that -- I don't think I knew at the time he was done October 4th. And I think the first time I saw that was in the IG report.

Q Okay.

Mr. Somers. So we have two dates. We have an October 19th date for completion in an email; we also have an news report, or a news story, that has an October 4th completion date of searching for these -- the number of emails. Do you know whether either of those dates is accurate?

Mr. Sweeney. No.

BY MR. BAKER:

Q With what you knew then, not now, had you heard anything coming up from your chain of command, or anybody at headquarters that you may have just had a social acquaintance with or official relationship with? Was there any talk about the scope of the new search warrant being too narrow?

A What I knew then, no.

Q What about what you know now?

A I don't even think I was involved in those conversations. But what I know now, I think only from -- I think it's from the IG report, people saying it was too narrow. But I don't think that came across my radar back then.

Q Nothing from you (b)(6), (b)(7)(C) per FBI that you recall?

A No. The only -- the only thing I recall about the scope of a search warrant was from the Southern District Assistant U.S. Attorney stating what we could do and what we couldn't do with what we had and what authorities existed. And that was early. So that was sometime obviously after the 28th, but I think within a couple days of that, there's an email record of it.

Q Yeah, it's my understanding that you (b)(6), (b)(7)(C) per FBI the CDC, somebody from New York, was interfacing with Southern District, and I think very early on, it was very clear that they were not supposed to be doing anything with those and that, you know, prompted or facilitated the dialogue back to D.C. to figure out what they were going to do.

When you were -- when you were having these discussions with headquarters, your initial notification, any subsequent calls you had, was it your impression that New York was supposed to do something and get back with Washington, D.C., or that Washington was supposed to take this information and do something, whatever that something might be, with the New York field office?

A My impression was Washington, D.C., was supposed to take it

and run with it, not our -- it's not ours.

Q And did they do -- did they take it and run with it like you thought they would, or should?

A Later I learned, no, from reading this report. At the time, I don't think I knew there was a potential issue until I'm told Southern District is calling down to ODAG -- or I keep saying ODAG, but down to DOJ.

Q But at the time, you thought the information you and your team were -- your subordinates, whatever communications they were having with Washington, or FBI headquarters, you, at the time, thought that everything that was supposed to be done in D.C. was, in fact, being done? You may not have seen the fruits of it yet, but you assumed it was being done?

A Correct. To include the assumption if somebody made a decision nothing could be done. It's not my -- I'm not part of that, privy to it. I have no reason to think nothing would be done inappropriately. If that's the --

Q And do you also believe that Mr. Comey would have been made aware of this?

A I would -- I would assume that would be the case, yes.

Q What you know now, was Mr. Comey advised of your concerns and your field office discovery as quickly as you would have thought he would have been?

A What I know now, no.

Q But at the time, you assumed that what you brought to that

SVTC and the subsequent conversations you had with Coleman and Steinbach, you thought you had rung the bell sufficiently loud that it would have reached the highest levels of the FBI to include the Director?

A Correct.

Q And what -- recapping what you said previously, you now know that did not happen?

A I -- based on the IG report, I know it's reported that he was told briefly, and I know he was certainly told on October 25th. But, so, yeah, if he received the briefing -- if he received the briefing that's discussed in the IG report early on, it was mentioned to him.

Q Okay.

Mr. Breitenbach. Let me go back to the search warrant itself. You had indicated you weren't sure where it was filed. We have the search warrant, and actually, we can introduce it as exhibit 1.

[Sweeney Exhibit No. 1

Was marked for identification.]

BY MR. BREITENBACH:

Q It was, in fact, filed in the Southern District of New York on October 30th of 2016.

A Okay.

Q So we have a period where you first learned about this on September 26th, there or abouts. You have then the actual laptop in your possession in the New York field office for about a month. Is

that correct?

A Yeah, that would be correct.

Q Were you asking questions as to what was happening with that laptop for that intervening period of a month?

A Not that I recall. Early on, obviously, just the assignment of the team or the, hey, here's your point of contact for your team down at headquarters. But, no, I don't think I had any conversations other than the one I referenced earlier where -- well, I obviously talked to t (b)(6), (b)(7)(C) per FBI within a couple days, and then the one from the acting special agent in charge about Southern District calling down to D.C. I don't think I had any other conversations until we get to the 25th.

So I obviously -- I tell the deputy about the ODAG -- or the call from Southern to ODAG, and later I talked to Priestap before the search warrant -- I think before the search warrant. I'd have to look at the IG report dates. Because I think there is a conversation about, they are going to do the warrant that weekend, which is the 30th.

Q Do you find it unusual that, in your position and with regard to the sensitivity of this case, that you would not have been informed that a search warrant was being issued out of your office?

A So it's issued out of the Southern District. It's not -- we're not doing the search warrant. In other words, we're not involved -- to my knowledge, we're not doing this warrant. This is agents from the Midyear team doing process in Southern District.

Q Okay, so once -- okay, I understand. So, once the

processing was done by your agents, it's eventually handed over to the Midyear team, and then they get it issued out of the Southern District?

A Correct. And so I think there was a discussion about -- at some point, there was a discussion about what district they would have to do this out of, and obviously that's based upon the presence of -- it's the jurisdiction, right? So where is the device and who would have to do the warrant. I think there was a conversation about that. I don't remember when that occurred, and I think it was after the Director gets briefed on the 25th and after the call with Southern to DOJ. Essentially, hey, let's go, what are we doing with this thing? I think that's when the discussion occurs about where do we have to do this warrant. "We" meaning -- where -- where does the government have to do this warrant. But I would have to look at the sequencing of the dates.

Q But your office has possession of the laptop, and you had already processed it.

A Yep.

Q (b)(7)(E) per FBI
[Redacted]

A (b)(7)(E) per FBI [Redacted]

Q (b)(7)(E) per FBI

A I don't know. OTD has a lot of capability. I don't -- I don't know what the tech -- if there's an actual technical -- I don't know.

Q Was it eventually transferred to (b)(7)(E) per FBI?

A I think it was. I don't know. We can check. I don't remember. I think -- I think it was. I just don't remember.

Q So, if it were, at that point, do you lose all insight into what is happening with regard to a search of the contents?

A Well, we wouldn't have insight. We're not doing the search. So, in other words, New York agents aren't doing this search at all, to my knowledge. This is Midyear team executing a warrant in this district for their case.

Q Did you ever hear any pushback from your agents as to why they were not engaged in exploiting the laptop rather than headquarters -- a headquarters team?

A No, I don't think so. The only push we had was to -- to include, hey, should somebody from our team be included for other reasons. But it wasn't even a -- it was not -- it wasn't a fight from the lower levels, I don't think. But as far as this Midyear, I don't -- I don't think we would have any reason to think -- or any of our subordinates would have any reason to think they should be involved

in this.

BY MR. SOMERS:

Q Were you aware that they -- I mean, obviously your team knew -- I mean, obviously, but it would appear now that your team was aware the search had not been conducted up until late October?

A Correct.

Q Were you aware of complaints within your office about the fact that a search was not conducted?

A No. The first -- the first time I think I become aware of an issue is when we were doing document production for the IG, and there's an email from (b)(6), (b)(7)(C) per FBI to himself describing a conversation he had with an AUSA, and his concern that things weren't moving quickly enough and people were sitting on it.

Q Can I just interrupt you? Is this a copy of that email?

A Yes. Yeah, I believe it is. So I think I become aware of this during the document production to the IG, and we actually report this to our Inspection Division because I'm concerned that somebody is telling him to keep his mouth -- I'm concerned that somebody from the U.S. attorney's office is telling him not to report this. So I'm essentially now reporting an AUSA for trying to stymie this guy.

Q But you are concerned with that end of it, not with him actually wanting to whistleblow?

A No, I had no idea he wanted to whistleblow at the time.

Q And not asking the individual's name, but the author of this email is (b)(6), (b)(7)(C) per FBI?

A Correct.

Q (b)(6), (b)(7)(C) per FBI that originally discovered the --

A Yep.

Q -- emails?

Ms. Bessee. Can we identify the email?

Mr. Somers. Oh, I'm sorry. We'll mark it as exhibit 2.

[Sweeney Exhibit No. 2

Was marked for identification.]

BY MR. BAKER:

Q Do you know what happened with that inspection investigation of the possible discouraging someone from whistleblowing?

A No. I believe Inspection told the IG. I told the IG as well when I was interviewed. But I don't know what happened with it. I don't think it was -- I don't know what happened with it.

Q So, again, my review of things, I'm left with the impression you touch all the bases. You even reported this to your internal Inspection Division. I would be curious, you, as the head of a large field office, in your capacity -- I think you said SAC of Philadelphia -- if you had a case in your field office, a big, high-profile case, and sort of in the final -- in the last minute of the case, another field office finds evidence, somewhere, on a laptop, anywhere, that is potentially very relevant to the case you have, would you have required your subordinates to get that evidence quicker than was done by headquarters in Midyear?

A I think it depends on the circumstances and the complexities

of whatever the issue is. I think it's case by case. And whether or not you even have the -- if we're talking about a search warrant, whether or not probable cause exists. So I think it's hard to answer. It's a broad -- broad answer. I think it would depend on the case. There's certainly been instance where -- instances where I've wanted things, but I just can't get them, because rules are rules. I don't think it's to what you're asking.

Q If you were not the Assistant Director in Charge of New York and you were an Assistant Director back in headquarters during the time of this, would you have acted quicker in any regard? Knowing what you knew then, knowing what you know now, would you have done things differently? Your opinion.

A Knowing -- I'm pretty aggressive. I would've probably -- it's hard to second-guess somebody because I wasn't there and don't know all the facts they knew, obviously. I would be -- I certainly would have understood the significance of this and moved with speed.

Q Okay.

Mr. Baker. Where are we on time?

Mr. Breitenbach. Five minutes.

BY MR. BAKER:

Q We can get into this a little more later -- or, actually, one more thing on the laptop before I jump to something different.

With what you knew then, and I don't know where the then and the now actually, the dividing line is, because it's all kind of fluid.

Were you ever under the impression that everything on the laptop was eventually examined, whether it was related to the original case or Midyear Exam? Did you have the opinion, impression, belief, that everything, at some point, was examined on the laptop?

A Then, yes -- no, not even then. Everything -- no. So whatever was within scope of whatever warrant, yes. My -- you could have things on that laptop that are not within scope of any legal processes and that still haven't been examined, I guess. If you realized something straight up on its face, if you see a photo, for example, that has -- photo is probably a bad example. If you see a document that has nothing to do with the Weiner case or what Midyear was authorized to look at, I wouldn't expect like a deep dive -- maybe a cursory. Not within scope.

Q Was it your opinion then that everything that would have been within the scope of either warrant would have been examined -- was examined?

A I believe so, yeah.

Q Is it your opinion now that everything that was within the scope of either warrant was, in fact, examined?

A I don't know how the actual -- how the search warrant was actually executed. I think at the time, I thought they -- they went through whatever -- however the process they used, would have hit everything. My -- I know there's news reports now that -- and I don't know if they're valid -- that they did not look at everyone, but I don't know if that's true.

Q So, then, had you heard anything about deduplicating technology?

A I don't know if it was -- if I would have called it that. I think I would have assumed that we had a way to make sure we're not hitting dupes. But I probably would have thought it was either off of common words, whatever, the key words, off a key word search, or maybe if there's a document -- I'm not a cyber guy, but like an MD hash. But I would have -- I think I would have thought that, yeah, that would be a technique that they would use to -- I don't think I would have ever thought that somebody was going to sit there and physically read every email, but maybe I did. Maybe I give ourselves more credit than --

Q So do you believe everything that should have been looked -- that could have been looked at because of warrant scope, was, in fact, looked at?

A I don't -- I don't know if I'm in a position to comment on it, because I don't know how they actually did it. I don't have any reason -- I don't think I have any reason to think that it wasn't done properly, if that's the question. I just don't know the technique they used. I know obviously it was done a lot quicker than people estimated it would be. But I just don't know how they did it.

Mr. Breitenbach. Based on news reports that you mentioned, indicating that not all the emails have been exploited, can you give us any indication whether there's another review to determine whether that, in fact, is the case?

Mr. Sweeney. I don't -- I have no idea. I don't know if there's another review or not. I don't even know if the news report is valid.

Mr. Breitenbach. Based on -- I am sorry.

Based on just your experience, after a case is closed, and you -- you see a news report indicating that there may or may not be additional evidence, what is the process that a (b)(6), (b)(7)(C) per FBI or an Assistant Director in Charge as yourself might take in order to determine whether you do need to re-review evidence?

[11:44 a.m.]

Mr. Sweeney. So I think after I saw the news report, which was recent, I called the -- or I was in conversation with the acting executive assistant director; "Hey, do we know, is this true?" And it's up to him to -- it's not my purview, but it's up to them to figure out -- obviously, he wasn't there at the time, but get back with the Counterintelligence Division and see, was everything done correctly? I don't --

BY MR. BREITENBACH:

Q So you've actually made a call to the current EAD after that story --

A The acting EAD.

Q And are you referring to the RealClearInvestigations article?

A I don't know what article it was. I remember seeing an article. I don't remember where it was.

Q And who is the current EAD?

A Mike McGarrity. Well, he's an acting EAD.

Q Mike?

A Michael McGarrity.

Q Thank you.

A Let me -- I might be mixing up conversations. I might have talked about it with the ADD. I don't remember. I might have talked about it with the ADD. But it wasn't like, "Hey, this is an issue." We talk all the time.

Mr. Baker. That would be associate deputy director?

Mr. Sweeney. Correct.

I would have to think about that. But I definitely talked to somebody about it. "Hey, did you see this article" kind of thing, but not a -- I'm not, obviously, directing anybody. But I'm a news junkie. But I definitely had a conversation with somebody. I think it was Mike. It might have been Paul, but I think it was Mike. I could find out.

Mr. Breitenbach. I understand you wouldn't know, as the person in charge of the field office, exactly everything that was or wasn't looked at. Was the representation made on any SVTC as the year went on that everything had been looked at?

Mr. Sweeney. I don't think so. I don't recall anybody talking about it after -- on a SVTC? No. I don't think so.

Mr. Breitenbach. Okay.

I think we're out of time. Thank you.

[Recess.]

Ms. Kim. We are back on the record. The time is 11:46.

Good morning, Mr. Sweeney. My name is Janet Kim. I am a counsel for Ranking Member Elijah Cummings of the House Oversight Committee. I will be asking you some questions today.

Mr. Sweeney. Okay.

EXAMINATION

BY MS. KIM:

Q I'd like to go back to the chain of individuals who reported the discovery of the emails on the Weiner laptop up to you. So you

stated earlier tha (b)(6), (b)(7)(C) per FBI was the first to discover the emails.
Is that correct?

A I'm sorry, can you - (b)(6), (b)(7)(C) per FBI was the first to discover it? Yeah, I believe that is correct.

Q And who did (b)(6), (b)(7)(C) per FBI report to?

A (b)(6), (b)(7)(C) per FBI reports to a squad supervisor.

Q And who does a squad supervisor report to?

A An assistant special agent in charge.

Q And who does the assistant special agent in charge report to?

A To a special agent in charge.

Q And who does the special agent in charge report to?

A To me. To the assistant director in charge. There's a lot of "in charges."

Q So you've named at least five individuals in the New York field office who would've had knowledge that the Clinton emails were on the laptop by the time that information got to you. Who else in the New York field office, to your knowledge, knew about the existence of the Clinton emails and the Weiner laptop?

A Probably a bunch of people. I don't know exactly who, but probably the squad --

Q So the other members of the squad that the squad supervisor was overseeing?

A Uh-huh. That's a guess, but my assumption would be the squad.

Q Did you discuss this with your management team at all?

A Probably. I don't think anybody was in the room when I reported it, but later, obviously, people were aware of it.

Q Understood.

Peter Strzok has testified to our committees that he immediately instructed FBI agents working on the Midyear Exam matter who reported to him to follow up with the New York field office regarding the Weiner laptop when he learned about the new emails in late September 2016.

The Inspector General's report also states that a conference call between Mr. Strzok's team and the New York field office team occurred on September 29th.

Do you have any reason to question Mr. Strzok's testimony on this matter or the Inspector General's report on these facts?

A No.

Q Were you aware that Mr. Strzok's agents followed up with the New York field office upon receipt of the initial information about the Weiner laptop?

A I think so. On the 29th? I think so.

Q I'd like to ask you about the events that would have occurred after Mr. Strzok's agents followed up with New York about this. So is my understanding correct that the New York field office continued to process the data on the laptop?

A I believe that is correct. It continued -- I don't know if an agent physically does anything, but I think the processes continued.

Q So the New York field office and the Midyear Exam team at

headquarters have a conference call in late September 2016. The New York field office continues to process the data. What's the next step in the chain?

A I don't know. I think the Midyear team is attempting to determine if they can get a warrant, would be my understanding of the next step.

Q So the next step in your understanding is -- is the next step in your understanding the contact between the SDNY prosecutors and the Midyear executive team down in Washington?

A No. So there's an email -- I don't remember the exact date, but there's an email, which I believe is generated by Southern District, which gives the scope of what activity can be done with the laptop and what the parameters of the warrant are. That is shared with the headquarters folks. I know I shared that with the AD, Bill Priestap, and I believe it's shared with a number of other people. You'd have to look at the email.

Q And is the timeframe in which this scope is shared the same timeframe in which you're informing executives at FBI headquarters about the existence of the email, so the September 28th-29th timeframe when you're discussing this with Mr. Priestap, with Mr. Steinbach, and with Mr. Coleman?

A No. So, if you're making a timeframe, it's not discussed that first day. It's within a couple days of that. I want to say within the next day or two. The date will be on the email. But I'm not having other conversations -- I'm not having other verbal

conversations with any of those folks. At this point, that team has that info in an email.

Q So I want to make sure I understand you correctly. In the September 28th timeframe, within a day or two of the first time you informed Mr. McCabe about the existence of the emails --

A Uh-huh.

Q -- you also reach out and discuss this with other members of the executive team such as Mr. Steinbach, Mr. Priestap, and Mr. Coleman?

A Right. So the calls with Steinbach and Coleman are the same day, on the 28th. I believe I said I talked to Priestap either by email or by phone which is the same day. But then the email that we're talking about is, I believe, a day, maybe two days later. But I don't think it's on the same day that I alert headquarters, "Hey, there's this trove of emails."

Q Understood. So, as part of informing them initially over a course of several days about the existence of the emails, you send them an email about the scope of the warrant that SDNY has on the laptop. Is that right?

A No. So the first day, the 28th, I tell the deputy, the EAD -- the two EADs and, I believe, the AD. During the SVTC is the initial report of the 141,000. During a phone call is the 347. And then that stops. I don't have another conversation with -- I don't believe I have another conversation with any of those guys.

The next conversations are separately with EAD asking for a point

of contact for his team to deal with New York.

And then I believe subsequent to that is the email to that level, to AD Priestap and, I believe, below, of what the scope -- our current scope is and what can and cannot be looked at and how. I don't think I share that with anybody about Priestap. And I don't think I have any conversations with anybody above Priestap about the scope limitation.

Q Thank you for the precision. I think you and I are actually agreeing here. We're just differing on what we're defining as the initial period.

A Okay.

Q So all I'm saying is, between the first time that you informed Andy McCabe and maybe 3 or 4 days subsequent to that, you had a series of communications with individuals at FBI headquarters, including about the scope of the SDNY warrant on the laptop. That's correct?

A Correct.

Q And during this period, the FBI New York field office was continuing to process the Weiner laptop. Is that correct?

A Correct.

Q And sometime during this timeframe, also, there was a call between the New York field office and the FBI headquarters Midyear Exam team agents. Is that correct?

A I believe that's correct. I think that occurs on the 29th.

Q Yes.

A The video call? Yeah, I think that's the 29th.

Q What is the next contact between the New York field office and the Washington, D.C., Midyear headquarters team that you're aware of?

A The one I know of is the weekend where the search is occurring. I think there were others, but I don't know what the dates were.

Q So you are not aware of any communications from the New York field office to the Midyear Exam team stating that the processes running on the laptop had been completed?

A I don't think I was, no.

Q Mr. Sweeney, Mr. Priestap came into us and had a transcribed interview much like this. In that interview, he stated the following. I'll read his quote to you.

"All I know is, both in counterintelligence generally and in this case specifically, to obtain the necessary legal approval to search that laptop often takes a while. And so the timeframe, in my opinion, between when the FBI learned about it" -- the Weiner laptop -- "to when we received the search warrant approval was in no way abnormal. I'd actually argue it was pretty quick overall. Especially the more, let's call it, politically sensitive cases are, the legal approvals necessary to take investigative action are often delayed, and they're often delayed for good reason as very smart people take hard looks at the issues involved."

Do you agree with Mr. Priestap's characterization that a month was not an unusual time for the FBI to process the data on the laptop

and decide whether it would seek legal process to review the data on the laptop?

A No.

Q You don't agree with Mr. Priestap. Why is that?

A I don't think it necessarily takes a month to figure that out.

Q So you are disagreeing with his characterization that in politically sensitive cases a month is not an unusually long amount of time?

A I think it depends on the case. It's a case-by-case instance. But, obviously, we've taken action on things quicker than month and longer than a month.

Q How much insight do you have into the running of the Midyear Exam investigation?

A Not much.

Q So did you staff the Midyear Exam investigation, the portion of it that concluded with Director Comey's public announcement on July 5th?

A Did I staff it?

Q Yes. Did you work as an agent on it?

A No, no, no, no, no.

Q Were you involved with any of the investigative decisions?

A No.

Q Are you aware of how much data was reviewed by that team during that portion of the investigation?

A I don't recall if I'm aware of the amount. No, I don't think I was.

Q Are you aware of how many witnesses were interviewed and what the witnesses said?

A Nope.

Q So when you say that you disagree with Mr. Priestap's characterization of the length of time, what are you basing that statement on?

A His statement seems overly broad, that in a politically sensitive investigation it could take that long. My answer is it depends on the investigation.

Q So --

A It's fact-dependent.

Q You say it's fact-dependent. Do you have the facts with the Clinton Midyear Exam case to determine how long it should've taken the FBI to act on the Weiner laptop?

A I have the general facts of we had the laptop when we received it. That's the facts that I have.

Q But you don't have, for example, the facts that someone like Mr. Priestap would have had about how much of the data on the Weiner laptop would have been an overlap from the data that they had already reviewed in the case. Is that correct?

A Nobody would've at that point had -- nobody would've known what the overlap was.

Q But you, in particular, did not have inside knowledge --

A Nope.

Q -- about the amount of data that had been reviewed or the scope of data that had been reviewed already by the Midyear Exam team and the scope of data that existed on the Weiner laptop?

A At the time, very limited knowledge, if any.

Q Did you have knowledge about the types of domain names that the Midyear Exam team was targeting in its search in the Clinton emails?

A I don't recall. I may have from public information, but I don't recall exactly.

Q So is it accurate to say, then, that your disagreeing with Mr. Priestap's general characterization is based, one, on the fact that you think he's being too broad and, secondly, on your general experience as a manager at the FBI but not on any particular knowledge of the Midyear Exam case?

A I think that's fair.

Q Mr. Sweeney, there is a theory that Peter Strzok attempted to bury the existence of the new emails on the Weiner laptops in the September and October 2016 timeframe.

The Inspector General's report is quite clear that you reached out to multiple senior officials at the FBI. It states that on September 28th you reported on a secure video teleconference for FBI assistant directors, which approximately 39 senior FBI executives attended, that there was a significant number of emails discovered on the Weiner laptop. Is that correct?

A Correct.

Q The Inspector General's report also states that you reached out to two executive assistant directors at FBI headquarters that same day. Is that correct?

A Correct.

Q And which executive assistant directors did you call?

A Mike Steinbach and Randy Coleman.

Q And the Inspector General's report also states that you reached out separately to Assistant Director Bill Priestap to inform him about the Weiner laptop emails. Is that correct?

A Yeah, correct. I believe that's correct, yep.

Q And you already stated that you also called Deputy Director Andrew McCabe to personally brief him about the increasing number of emails discovered on the laptop on September 28th. Is that correct?

A Correct.

Q In your estimation, how many senior FBI officials, other than Peter Strzok, knew about the existence of Midyear Exam-related emails on the Weiner laptop as of September 30, 2016?

A Well, at least the -- I would say at least 40-plus.

Q So that would be more than 40, including the other assistant directors on your call with the deputy director, the deputy director, Mr. Priestap, Mr. Steinbach, Mr. Coleman, Mr. Strzok, and whoever Mr. Strzok had instructed to reach out to the New York field office?

A Right. Yep.

Q Are you personally aware of any actions that Peter Strzok took to bury or backburner the Weiner laptop?

A No.

Q Given the number of senior FBI officials who knew about the existence of the Weiner laptop and the emails on it, if Peter Strzok had wanted to bury the Weiner laptop, would that have been possible?

A No, I don't think so.

Q To your knowledge, did the FBI ultimately review the relevant data on Anthony Weiner's laptop that related to the Midyear investigation?

A Ultimately review the relevant -- sorry, I couldn't -- relevant information? I believe so, yes. Other than the report, the news report -- which I don't know if it's valid -- described, yeah.

Q Do you have any reason to believe that the Midyear team's review of the new emails found on the Weiner laptop was anything less than impartial or complete?

A No.

Q Do you have any reason to believe that the FBI or the Justice Department ignored any probative data on the Weiner laptop?

A No.

Q Have you ever seen any evidence that the Justice Department or the FBI buried or minimized relevant probative evidence of Secretary Clinton's guilt?

A No.

Q Have you personally seen any evidence of political appointees at the Justice Department giving inappropriate instructions

about the conduct of the Midyear Exam investigation?

A No.

Q Have you seen any evidence of political appointees at the Justice Department attempting to inject the Clinton email investigation with improper considerations, such as political bias?

A No.

Q In your discussions with my colleagues on the other side, you were asked about a range of dates. You said that you were uncertain about some of the dates. I think that indicates that your memory seems to be a little hazy at times with regard to specific facts or specific dates. Is that right?

A I don't -- I think it's a mix of being interviewed multiple times and learning things as the last 2 years has gone through and trying to stay specific with -- trying to focus on what did I know at that moment versus what do I know occurred at that moment now. As an example, this email in front of me.

Q Understood. Where dates or facts in your recollection conflict with what we have heard from the Inspector General's report, which is more reliable?

A I don't think I know of dates that conflict. That I have that conflict with the IG's report?

Q I think some of the September 2016 dates you mentioned.

A Do you have an example of that? I don't --

Q I'm asking as a general matter. So, when a fact that you've recollected in this round or in the previous round disagrees for some

reason with the Inspector General's report, which would you put more confidence in?

A I'd go with the Inspector General report dates.

Q Thank you.

[Sweeney Exhibit No. 2

Was marked for identification.]

BY MS. KIM:

Q I'd like to discuss exhibit 2, the email that you have in front of you.

So, as far as you can tell, the original email is entitled "Letter to Self." It appears to be from an individual in the New York field office to another individual in the New York field office.

Do you think I'm correct in characterizing this as an email that an individual in the New York field office sent to him- or herself?

A Correct.

Q Okay. And this individual is complaining, I guess, or listing facts about the way that he or she is perceiving that headquarters is processing the Weiner laptop and the new emails on the Weiner laptop. Is that a fair characterization?

A Say that one more time. He's saying what?

Q He's characterizing what he perceives to be headquarters' response or lack of response to the Weiner laptop.

A That's correct.

Q The title of this individual, as we see on the signature block on the second page, is a special agent. The affiliation is "violent

crimes against children." If you had to take your best case, what is the rank of this individual?

A Special agent.

Q Special agent in the New York field office?

A Uh-huh. Correct.

Q You stated that, as the assistant director in charge of the New York field office, you do not have insight into the way that headquarters was running the FBI Clinton investigation.

A That's generally correct. Right.

Q What kind of insight would a special agent in the New York field office working in violent crimes against children have had in the way that the Midyear Exam team was running the investigation?

A My presumption is none. I don't believe this agent was ever assigned to it.

Q So this agent is listing a set of concerns that he or she has personally but is not, in fact, conveying information that he or she has about the actual way that the investigation is being conducted in Washington. Is that correct?

A I believe that's correct. Right.

Q That would be my assumption. Is that your assumption as well?

A I'm just trying to remember when he -- this is October 20th, so I'm assuming he's not referring to -- his only exposure is what he knows after he found the laptop. He knows no connection to Midyear other than what he's working.

Q Okay. Thank you.

[Sweeney Exhibit No. 3
Was marked for identification.]

BY MS. KIM:

Q I'd like to introduce a document I guess I'll label exhibit 3. This is a November 4th, 2016, article from The Guardian. I'll give you a moment to review it.

A Okay.

Q Are you familiar with this article?

A I think I've seen it before. I don't know if it was in The Guardian, but --

Q So I'll characterize for the record that the article is entitled "The FBI Is Trumpland: Anti-Clinton Atmosphere Spurred Leaking, Sources Say." It was published on November 4th, 2016, a couple days before the election -- a few days before the election, excuse me. And it characterizes a deep antipathy to Hillary Clinton within the FBI. Is that a correct characterization of the article?

A Yes.

Q Is that consistent with your personal experience in the FBI?

A No.

Q Have you ever heard of antipathy towards Hillary Clinton within the New York field office?

A No, not as -- no, only as a -- only professionally, I think, as people working a case, as with any other subject.

Q Can you elaborate on that? I don't think I understand what

you mean.

A Yeah. No different than if you have a case on a subject and you're trying to work a case on an individual, not a professional -- or, rather, not an unprofessional disdain for the person, but just trying to get to the facts of a case, not like this.

Q So is it your statement here today that you have never heard anyone at the New York field office express an opinion expressing antipathy towards Hillary Clinton?

A No, I don't think that would be fair either. I don't have specifics, but, clearly, people have political opinions.

Q And some of those political opinions in the New York field office of the FBI were anti-Clinton political sentiments. Is that accurate?

A I don't know if I've ever heard any, myself, directly. I don't know if I -- I know there's an impression, especially from news reports like this, that that is the case. I don't think that's the case.

Q Have you heard it characterized to you by others who have heard directly?

A Not that I can think of, no.

Q In your estimation, how many individuals in the New York field office had contemporaneous knowledge that the FBI had taken custody of Mr. Weiner's laptop in the investigation into Anthony Weiner?

A Initially, probably only that squad. But by the time it

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hit -- by the time the -- end of October, when it was public, obviously everybody.

Q So by the end of October when you mean it was public, you mean when Director Comey sent his letter to Congress?

A Correct.

Q But prior to that, is it your belief that it was just the chain of folks who had reported up to you, the five individuals we had discussed before and the squad that the squad supervisor was overseeing who knew about the Weiner laptop?

A So, generally, that's probably correct. There's probably the CART team or the computer analysis folks, but generally not the audience -- or the group of people would be much smaller than, obviously, when it got public, yeah.

Q If you had to estimate, would it be more or fewer people than 20 people who knew about the Weiner laptop?

A That's probably a close call. I don't know how big the squads are.

Q So around 20, is that accurate?

A That's probably accurate. That's a guess, because I don't know what the agents are saying to each other. But my guess is they held this pretty close.

Q So around 20 individuals in the New York field office had contemporaneous knowledge that the Weiner laptop contained emails that may be relevant to the Midyear Exam investigation?

A At the time it was taken, that's a guess. I'm trying to

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remember the size of the squads, but it certainly wasn't hundreds. I don't think it would have been more than 40. I think it's safe to say a small group. But I just -- I don't know. Obviously, that shifts.

Q On October 25th and 26th, 2016 -- so this would be before Director Comey wrote to Congress to inform them about the new emails -- Rudy Giuliani made a series of television appearances. In those telephone interviews, Mr. Giuliani suggested that the Trump campaign had a couple of things up our sleeves that should turn things around.

He repeated these claims a couple of days later. On October 28, 2016, in a radio interview, Mr. Giuliani said he was in contact with a few active agents who obviously don't want to identify themselves.

On November 4th, in an appearance on "Fox and Friends," Mr. Giuliani was asked if he had known in advance about the FBI's possession of the Weiner laptop before Director Comey wrote his letter to Capitol Hill. He responded, "Did I hear about it? You're darn right I heard about it."

Are you aware of these statements by Mr. Giuliani?

A I am.

Q Were you contemporaneously aware of these claims by Mr. Giuliani?

A I don't know if I was aware of all of them, but I think the first one you mentioned, yes, I believe so. I don't remember if I knew the Fox one you just talked about at that moment, but I certainly later heard all that.

Q Do you know how Mr. Giuliani learned about the FBI's possession of the Weiner laptop before Director Comey wrote his letter to Congress?

A No. And I don't know if he actually did. I thought I read that he corrected it; he actually did not have contact with an active agent. So, no.

Q Did you actively speak with Mr. Giuliani about the FBI's possession of the Weiner laptop?

A No.

Q Do you know anyone who spoke with Mr. Giuliani about the FBI's possession of the Weiner laptop?

A No.

Q Upon hearing about Mr. Giuliani's claims, did you undertake any internal investigation to determine whether any active FBI agents in the New York field office were providing information to Mr. Giuliani?

A This is -- what are the dates? October?

Q October 25th and 26th.

A I undertook actions around those dates. I don't recall if it was specific to Mr. Giuliani.

Q Can you tell us what actions you undertook?

A So, obviously, there was a series of concerns about leaks. We spoke to the one case team by phone. And based on, I think it was a different news report, we had ESOC runs -- I have no idea what the acronym stands for. Security Operations Center -- I forget what the

"E" is -- running phone numbers. But we don't do that investigation. We push it to our Inspection Division.

Q So was the Inspection Division instructed to open a formal investigation into leaks about the Weiner laptop?

A They were instructed to open an investigation. I think it was about the Weiner laptop. Let me correct that. I don't know if it was specific to the Weiner laptop or specific to leaks about one of the other articles. But they were definitely instructed to open an investigation, I believe.

Q What is the status of that internal investigation?

A No idea. Well, everything went to the IG. And ongoing, is my understanding.

Q And to what --

A Ongoing.

Q Is ongoing.

Do you know whether any active agents told retired agents or others outside of the FBI about the existence of the emails on the Weiner laptop?

A I don't know if they did.

Q You said that you spoke with the case team by phone. Did you personally speak with the case team?

A So the Weiner team, no -- and which was just a case agent -- about leaks? I don't think I did. And I don't remember who was on the phone call, but I don't think it was the Weiner case agent.

There were other issues, certainly the ASAC, who had the acting

SAC, a supervisor but not of the violent crime squad of the branch, dealing with other matters about leaks in general.

Q So is it accurate to say you had a call with a case team that was not the Weiner laptop/Clinton email case team about just unauthorized disclosures of information in general but not specifically about the leaks of information to Mr. Giuliani or leaks of information about the Weiner laptop?

A Yeah, I don't remember being specific about Mr. Giuliani.

Q You said that you were contemporaneously aware of Mr. Giuliani's statements. Can you explain to me why you personally didn't undertake an investigation to determine who was providing this information to Mr. Giuliani?

A So the field office doesn't have authority to do an investigation. We did the ESOC polls, or the -- we would contact security to poll phone numbers, but it's within the purview of the Inspection Division.

Q Did the Inspector General interview you as part of the Midyear Exam review?

A Yes. Yeah, that's this. Yes.

Q And did the Inspector General's office ask you about how information about the Weiner laptop leaked to Mr. Giuliani?

A I don't think they did. There was a separate group of Inspector General folks on leaks, but I don't think they brought up Giuliani.

Q I want to make sure I'm understanding you correctly. So

there was an IG investigation that wasn't the Midyear review investigation team that came to talk to you about just leaks in general out of the New York field office?

A Not leaks in general. A particular individual, not related to -- if I recall correctly, not related to this, meaning this topic.

Q But you have not --

A There are other interviews that are ongoing related to leaks about all of this stuff.

Q But you have not yet been interviewed by the Justice Department Inspector General about the leaks about the Clinton emails on the Weiner laptop.

A I don't remember being -- I mean, I had a lot of interviews. I don't remember them asking me that. They might've. I don't remember them asking -- I don't think they asked me that. I don't remember.

Q Have any internal investigators at the FBI asked you about the leaks to Mr. Giuliani or about the Clinton emails on the Weiner laptop?

A No, I don't think so.

Q Have any internal investigators from the Justice Department asked you about it?

A No. The only people that have interviewed us are IG agents. I think they're all agents.

Q Mr. Giuliani has also claimed that Director Comey's decision to send the October 2016 letter to Congress reopening the probe was influenced by pressure from a group of FBI agents. Are you familiar

with that claim?

A Yeah.

Q What's your opinion on that claim?

A I don't believe it, but I think the IG report talks about somebody saying that that was part of the decision matrix. I don't remember. I'd have to reread the report, but I think it's also mentioned in the IG report.

Q Did you personally ever provide comment or information to anyone at headquarters about the possibility that FBI agents in the New York field office might commit unauthorized leaks about the email on the Weiner laptop?

A No, I don't think so.

Q Did you ever express concern to anyone that FBI agents in the New York field office might commit unauthorized leaks about the emails on the Weiner laptop?

A No.

Q Did you ever hear contemporaneously from anyone within the FBI that Director Comey's decision to send the October 20th letter was impacted by concerns about unauthorized leaks regarding the emails on the Weiner laptop?

A Not until later.

Q And who did you hear it from later?

A Hear it, no. Read it. I think it was Jim Baker's comments in the IG report.

Q In the IG report. But you didn't -- no one personally told

you.

A Not that I recall, no.

Q The IG report also described a conversation between Attorney General Loretta Lynch and Director Comey. Attorney General Lynch described Mr. Comey's concerns about leaks when deciding what to do after submitting the October 2016 letter to Congress.

She said -- and I'm quoting from the IG report -- "Comey said it's clear to me that there is a cadre of senior people in New York who have a deep and visceral hatred of Secretary Clinton, and he said it is -- it is deep. It's -- and Comey said -- he said it was surprising to him or stunning to him."

Has Director Comey ever told you there is a cadre of senior people in New York that has a deep and visceral hatred of Secretary Clinton?

A No.

Q Do you know where he would have gotten that belief?

A No.

Q Do you have any knowledge of whether any senior FBI agents in New York have a deep and visceral hatred of Secretary Clinton?

A No.

Q You have not seen any evidence to indicate that anyone in the New York field office who was a senior agent has a deep or visceral hatred of Secretary Clinton?

A No.

Q Have you ever heard a senior FBI official in the New York field office express a derogatory opinion about Secretary Clinton?

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A As a subject, maybe -- no, I don't think so. I'm trying to figure out -- like, as a case agent working a subject, no different than they would characterize their subjects. But not in a political sense, I don't think.

Q You said as a case agent characterizing a subject. For what case would they have been characterizing Secretary Clinton?

A So there were reports, I think -- I don't want to get into other cases, but --

Ms. Bessee. Yeah, if it goes into ongoing investigations, he may not be able to answer.

BY MS. KIM:

Q But you're discussing purely instances in which FBI officials were discussing their work as FBI agents, not in the sense of any kind of personal political beliefs about Secretary Clinton?

A No. Correct.

Q When the Inspector General interviewed you about the Midyear Exam review, did the Inspector General ask you about potential biases against Secretary Clinton within the FBI?

A Yes, but if I recall correctly, more specifically, one of the questions was did I see bias by Mr. Strzok. I think that was the basis of the questions.

Q So --

A I don't remember if it was -- I think they actually used the word "bias." But it was focused on that, did I see anything inappropriate there.

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And there were other questions during the interview about leaks. I think that was the only bias question, I think.

Q So the focal point of the IG's investigation was whether Peter Strzok himself was demonstrating political bias in favor of or against Hillary Clinton, not whether anyone else in the New York field office had political bias for or against Hillary Clinton. Is that correct?

A With my interview, I think that is correct.

Q So the IG did not ask you any questions about potential bias against Hillary Clinton from within the New York field office.

A I don't remember being asked that. They might've, but I don't remember being asked that.

Q Mr. Sweeney, the FBI and the Justice Department are under a litany of attacks from others in government about whether the Justice Department is capable of conducting investigations that are objective or whether the Justice Department is conducting investigations driven by political bias.

During your tenure, have you been a part of any FBI investigation motivated by political bias?

A No.

Q During your time at the FBI, are you aware of any Justice Department investigations motivated by political bias?

A No.

Q Have you ever personally worked on a case where you felt the FBI was not acting as an honest broker or following the facts where

they led?

A No.

Q Have you ever personally worked on a matter where you felt that prosecutors from the Justice Department were not acting as honest brokers or following the facts where they led?

A Can you ask that one more time?

Q Have you ever personally worked on a matter where you felt that the Justice Department was not acting as an honest broker or following the facts where they led?

A No. I wouldn't want to get into prosecutorial decisions, but no. I think the answer is no.

Q I just want to elaborate. So have there been instances where you disagreed with prosecutorial decisions?

A I think I can -- yeah.

Q Have you ever felt that those disagreements were based on anything but kind of legitimate strategic differences?

A Potentially.

Q Can you describe what other aspects those decisions would've been based on?

A Personal -- I think personal differences of opinion with agents working a matter. I think that's about it.

Q So you have witnessed instances where you felt Justice Department lawyers were acting in bad faith out of a disagreement with FBI investigators?

A I don't know if I would describe it as "bad faith." I don't

know the definition of "bad faith." There were other reasons. There's clearly other reasons a prosecutor -- I was concerned -- could be concerned that a personal beef get in the way of a decision.

Q Can I ask you about a specific -- what specifically you're thinking about right now?

A I think it would be an ongoing -- could be an ongoing matter.

Q So there's an ongoing matter where you feel that the Justice Department was not acting as an honest broker or following the facts where they lead?

A I'd have to think about it, but potentially. I think it's been resolved. But I don't know if I want to get into it too much if it's an ongoing matter. I'd probably talk with the folks here first.

Ms. Kim. Do you want to consult with your client?

Ms. Bessee. Yeah.

[Discussion off the record.]

Ms. Bessee. Can you rephrase the question?

To the extent that you're asking a question that may impact prosecutorial decisions in any ongoing investigation, he will not be able to answer, or I will instruct him not to answer. So if you can rephrase, and then maybe he can try to answer you generally, without going into any specifics.

Ms. Kim. Sure. Let me repeat the question.

BY MS. KIM:

Q Have you ever personally worked on a matter where you felt that the Justice Department was allowing improper considerations, such

as political bias, to interject into the case instead of following the facts where they lead?

A No, not political bias.

Q Are you aware of any actions taken to damage the Trump campaign at the highest levels of the Department of Justice or the FBI?

A No.

Q Are you aware of any actions ever taken to personally target Donald Trump at the highest levels of the Department of Justice or the FBI?

A No.

Q Are you aware of any evidence that President Obama ordered any investigative activity that was biased in favor of Clinton or against Trump?

A No.

Q Are you aware of any evidence that President Obama ordered a wiretap of Donald Trump or the Trump campaign?

A No.

Q Are you aware of any deep-state conspiracy against Donald Trump or the Trump campaign involving anyone from the FBI or the Department of Justice or President Obama?

A No.

Q On December 3rd, 2017, the President tweeted, "After years of Comey, with the phony and dishonest Clinton investigation (and more), running the FBI, its reputation is in Tatters -- worst in History! But fear not, we will bring it back to greatness."

As of December 3rd, 2017, do you agree with the President's statement that the FBI's reputation was in tatters and was the worst in history?

A No.

Q Do you have any reason to believe the President's characterization that the Clinton investigation was, quote, "phony and dishonest"?

A No.

Q What kind of impact do statements like these have on the morale of rank-and-file FBI agents?

A I generally think it's ignored. People obviously hear it, but most everybody I know does their work. And you're asking a guy with a Philly-New York attitude, so whatever.

Q True.

In your experience, is that also the same for the public? Do statements from the President calling the Department of Justice and the FBI dishonest and in tatters affect the public's confidence in the FBI and the FBI's ability to protect our national security?

A I think it's a broad -- I guess everybody has their own opinion, and depends on the circumstance that you were to encounter the FBI with, I guess.

Q Do you remember when you found out that Director Comey was fired?

A Yes.

Q What was your personal reaction to that news?

A I was not sure that I heard it accurately. I was in my car, and I heard Wolf Blitzer advise that they had breaking news coming from the White House following some commercial. So I waited for the commercial and heard that he -- I think it was reported first that he resigned, but he might have said fired, whatever it was, and then my phone blew up. And then I had to turn around and go back to the office instead of my kid's birthday.

Q I'm very sorry to hear that.

A It might've been better for me to go back to the office.

Q What was your personal reaction?

A "Wow. Okay." Surprised. Maybe I wasn't surprised. I don't know. I'm -- okay. Like, we'd push on.

Q At the White House press briefing the day after Director Comey was fired, the White House press secretary, Sarah Huckabee Sanders, stated that the termination had occurred because, and I quote, "most importantly, the rank and file of the FBI had lost confidence in their director."

Looking back on the lead-up to his firing, do you agree with Ms. Sanders that the rank and file of the FBI had lost confidence in Director Comey?

A No. I think if you looked at the rank and file, I don't think the -- I think that statement is broad.

Q So you haven't seen personal evidence that the rank and file of FBI agents had lost confidence in Director Comey at the time of his firing.

A There is obviously certain ones that weren't happy with his decisions, but as a broad rank and file, I don't know if I could characterize it that way.

Q On the same day President Trump tweeted, "James Comey will be replaced with someone who will do a far better job, bringing back the spirit and prestige of the FBI."

Do you agree with the President's assertion that there was some problem with the spirit and prestige of the FBI under Director Comey's leadership?

A I think if you were to ask most of our partners, our law enforcement partners and our global partners, the prestige is pretty well established worldwide.

Q Following the release of the Inspector General's report, President Trump stated, "I think Comey was the ringleader of this whole, you know, den of thieves. They were plotting against my election."

Do you have any reason to believe that the FBI is a den of thieves?

A No.

Q Did you personally witness anyone at the FBI attempting to plot against Donald Trump's election?

A No.

Q Do you have any reason to believe that the vast majority of FBI agents are Democrats or biased in favor of Democrats?

A I wouldn't know what their affiliation is.

Q Are FBI agents allowed to have personal political affiliations?

A Yes.

Q And when the FBI staffs a politically sensitive investigation, does the FBI consider the personal political persuasion of its agents in making staffing decisions?

A No.

Q In fact, that's explicitly illegal, is it not?

A I believe that is correct.

Q How do FBI agents know not to let political bias interfere with their work?

A How do they not know?

Q How do they know?

A Could you say that one more time?

Q How do FBI agents know not to let political bias interfere with their work?

A Well, I mean, there's ethics guidelines that people have been trained on, and I would assume that people, agents, know it naturally. But there's obviously policies. I couldn't give you the name and title of the policies. But there's the Hatch Act training we go through and the ethics training. I don't know how to better describe it.

Q Thank you.

In your time at the FBI, have you seen evidence of anybody applying political bias in their investigation --

A No.

Q -- of any subject matter?

A No.

Q I will represent to you that James Comey, Rod Rosenstein, and Robert Mueller are all Republicans. Do you have any reason to believe that Jim Comey's political affiliation affected the way that he investigated Secretary Clinton's email server?

A No.

Q Do you have any reason to believe that Rod Rosenstein's political affiliation will prevent a thorough and fair investigation of the Trump campaign's potential ties with Russia?

A No.

Q Do you have any reason to believe that Robert Mueller's political affiliation will prevent a thorough and fair investigation of the Trump campaign's potential ties with Russia?

A No.

Q President Trump has called James Comey a leaker and a liar. Has Director Comey ever lied to you?

A Not that I know of.

Q Are you aware of any instances of Director Comey lying?

A No.

Q Have you worked with confidential human sources?

A Worked with confidential human -- yeah. Yes.

Q Department of Justice, I understand, has a strong policy against revealing information from confidential human sources or against information that could reveal the identity -- they have a policy against revealing information that could identify a confidential human source. Is that also your understanding?

A Yes, broadly. Obviously, there's instances where we would have to, but, yeah, I think that's correct.

Q There is a vigorous offensive underway attempting to reveal several confidential human sources connected to the Trump-Russia collusion investigation.

What effect could revealing confidential human sources for political reasons or under political pressure have on the Justice Department's ability to retain or recruit confidential human sources in the future?

A I think, generally, revealing the identity of a human source, that's not following a protocol, right? In other words, if you have -- I mean, obviously, sometimes you have to out a source in a trial, et cetera. But if a source doesn't feel confident that their identity will be held, it may potentially make it more difficult to recruit others in the future or maintain their cooperation on an ongoing matter, if there was one that existed.

Ms. Kim. Thank you. I think that ends our round of questioning. The time is 12:45.

[Recess.]

[12:50 p.m.]

Mr. Baker. Okay. The time is 12:50, and we are back on the record.

Our process here lends itself to a lot of duplicity. We sort of tag out, and our colleagues come in, and they tag out, we come in. So I apologize if we cover some ground that's been covered, but we try as best we can to listen to what's going on while we're not actually at the table.

BY MR. BAKER:

Q You had indicated, I think towards the end of the last round, that you've been interviewed a lot about these matters. So that, in and of itself, I think, is good preparation for today. I'm just curious, what else did you do to prepare for today, specifically?

A Met yesterday briefly. Read or skimmed some of the emails, one of which you guys gave me. Actually, I don't know if this was in what I saw previously, was it?

And then briefly looked at the GI report yesterday afternoon, chapter 9 in particular, and not for very long. Literally scrolled real quick.

And then had a conversation a couple days ago with one of my press people about one of the emails I saw in the material. It's, like, a one-sentence email. I just wanted to try to remember why I was asked about that.

That was it, I think.

Q Had you previously read the IG report?

A So there were two. I read the first one completely. And the current one, I have read chapter 9, skimmed through a bunch of others, and looked at the appendices.

Q Did you have occasion to talk to any colleagues either at headquarters or New York that we have talked to as part of our investigation?

A I don't know everybody you've talked to, but I imagine I've talked to just about anybody you've -- I mean, I've talked to everybody. So I don't know everybody you guys have talked to, but probably a good chance that I've --

Q Did you talk to anyone that specifically mentioned that they had been before Congress to talk about these matters?

A No. Well, I know Priestap has been here. I have not talked to him about testimony. I know Giacalone has been here. I haven't talk to him about his testimony, other than he said it was fine. I knew Steinbach was coming. I never talked to him about it. I'm sure there's a variety of other names.

Q How did you know that those individuals you just listed had either been or were possibly coming in?

A Press reports --

Q Okay.

A -- I think is first where we would hear about it. I think almost always press reports is where you hear about it first.

Q Did you have occasion to review either directly or anything derived from what you believed were transcripts from previous

interviews that we've done?

A No.

Q Okay.

I want to go back -- it sounds like you're very well prepared.
I want to go back --

A It's funny, I don't feel that way.

Q I think it's from -- you indicated the number of interviews you've been through. I mean, I know a lot of the topics are different -- the topics are the same, but maybe the interest is maybe more or less depending on what body you're before, and maybe the emphasis is on something a little more or less depending on what the forum is.

You had mentioned earlier when -- and I think it's called the self-to-self email, note, or whatever from the case agent --

A Yep.

Q -- from himself to himself, I believe you had indicated when you became aware of that, you referred that to the FBI's office of inspections based on, I believe, the AUSA's tone about him not coming forward. And I believe you did that as a belief that possibly it was chilling or prohibiting legitimate whistleblowing activity. Is that correct?

A Correct.

Q When did you report that -- when did you become aware of the email?

A The exact date? I don't know. It was during the -- so the

IG requested documents. My OPR supervisor, which is a supervisor I have whose sole purpose is to deal with internal inspections -- Office of Professional Responsibility. We call her the OPR supervisor, but she's not from OPR. She was handling document production for one or the other inspection or the IG and made me aware of, "Hey, there's an email here," and I read the email and called down to headquarters.

Q So your referral was fairly contemporaneous with you becoming aware of it?

A Oh, yeah. I think I was getting coffee and standing in the room when she gave it to me. I think I went -- I think I brought it up right after that.

Q So she was involved in document production. That's one of the documents that's coming through her flow. But she had a knowledge or background in OPR matters, so she was, I mean, coincidentally but uniquely, a person to spot a potential OPR issue in there.

A Yeah, I guess that's fair to say. Yeah.

Q And then is it correct that an FBI employee, an FBI official, an FBI executive -- do you have an obligation to report what you believe to be potential wrongdoing?

A Oh, yeah.

Q And by other department employees, which would include the U.S. attorney's office?

A That's a good -- I probably do. I don't know what the exact rule is, but I just assume I do.

Q And let's assume there is a rule, which I believe there is --

A I'll go with you.

Q -- a failure to do that would, in and of itself, be wrongdoing on your part or the part of whoever became aware of the potential wrongdoing and didn't do anything with it.

A Yeah.

Q I think we talked briefly in our last round that you were not aware of what the outcome was of the internal OPR inquiry. Are you aware of any facts or circumstances that you didn't know then that would maybe shed light on why the AUSA took that stance with the agent? Like, possibly they were friends, and she thought maybe he was talking about going to the media rather than going to an entity that would entertain a whistleblower allegation.

A Is there a media reference in here? That sounds familiar, but I don't know why that -- I don't recall exactly why that sounds familiar.

Q It's my understanding that they had a relationship, a social relationship. In his talking to her about his angst and belief that maybe he would become a whistleblower, that somehow she thought he meant that he would be disclosing 6E information possibly to the media, and that's what her pulling him back was about. I'm wondering if you've heard anything like that.

A I think I -- I think this is the first time I'm hearing they had a relationship.

Q No, I don't mean --

A Not that. Okay.

Q I mean a friendly relationship.

A Okay. You're gonna make me do another report.

Q No, no, no, no, no. To be very clear, no. But my next question, it will go in that direction. But this question, it's a friendly relationship, a confidant relationship, not just an investigator, a prosecutor. They have a relationship where they sit down, they talk about life things and those things, and running it off of her because she's got a legal mind. She's listening to him because they're friends, and he's got an issue of something that's frustrating him. And she has information that it's maybe the press he's going to, and concerned that it might involve 6E information. Because I think there's a reference in there that you will be prosecuted --

A Yeah, there is a reference for prosecution.

The media thing sounds familiar, and I don't know why. I don't know if I read that in one of the reports or -- I don't know if that came up in one of the IG interviews. I don't remember. But it sounds familiar. But I don't remember why it sounds familiar.

Q Okay. Fair enough.

So you've opened the door to transition to a different type of friendly relationship. You're the head of a huge FBI field office. You deal with investigative decisions, and you deal with personnel decisions. You have a lot of people driving around in government vehicles under your supervision. You have a lot of people running around with guns under your supervision. And you have a lot of people just interacting with each other and maybe making decisions that aren't

the best decisions to make. You have a lot of responsibility and a lot of people under you that can do a lot of things that cause you a lot of problems.

That's the setup to the question.

You mentioned earlier your New York field office is big enough where you have SACs, special agent in charge, the rank that manages other field offices, your office is so big, that is a lower rank, and you have more than one SAC. You have an SAC that's in charge of national security matters.

A Two -- used to be separated. So one is -- there's an SAC for CT, counterterrorism, and there's an SAC for counterintelligence.

Q Okay. If one of your employees comes and reports to you with a sense of urgency and there is something bothering them and it prompts the need to report this to you, that one of your executives in a national security capacity is having an affair with another employee, what would you do? Or, as the field office director in charge of the field office, is that a problem for you? Is it something you take action on? Do you not get involved?

I'm just curious what you -- I mean, you've indicated you're an aggressive individual. You've promptly reported what you believe to be an OPR matter. Something has been reported to you about two employees having an affair, one of which is an executive in a national security capacity.

A I think we would have reported it to Inspection, unless, like, it was already authorized somehow, which is rare.

Q An affair could be authorized?

A Oh, I'm sorry. I thought relationship. Affair, yeah, no. If it was a subordinate, we would've reported it.

Q What if it's not a subordinate, not in the same performance appraisal, kind of, chain of command, but it's two employees, one in the national security capacity, fairly high executive? Is it a special concern because it's involving someone in a national security matter that's being polygraphed on things and has special access? Is that not any special concern?

A So I don't recall something like that in our office, but I think I would've reported it. And my guess is, over the course of time, that the concern about blackmail that would be there isn't -- I think it would be reported.

Q Okay. Now, to be clear, this is not based on any scenario in your field office. This is a hypothetical.

A Okay. I thought you were surprising me.

Q No. No. I mean, the Bureau is a very regimented, very -- there's a manual for everything, my understanding, there's a rule for everything, there's a regulation for everything. And the difference, the little bit of nuance that's added, are personalities that are put in charge of different things. And, I mean, you indicated earlier you might do something a little more aggressively than somebody else might do.

So, I mean, I'm just curious what you would do. And it sounds like you would report or evaluate or do something. It doesn't sound

like you would just let it be.

A If it was in the chain of command, I think I -- I'm assuming I would certainly report it. Outside chain of command, I don't know if we have a standard for that. I don't know.

Q Okay.

A I don't know.

Q Towards the end of the last round, my colleague spent a good amount of time talking about leaks in the FBI. I don't know if she touched on this, I apologize if she did, but I want to drill down again.

Did Mr. McCabe call you about leaks coming out of the New York office at any time?

A Yes.

Q And what was the nature of that conversation?

A There were at least two conversations, maybe more than that. The first -- I'm trying to think of the timing, but the first conversation was related to the Garner civil rights investigation, which is what spurred the phone call with the AG. And then the second one was -- I think it was a Sunday, and I believe it was a Wall Street Journal article. And then the third time was driving in in the morning, where I'm tasked to call him -- asked to call him in an email. And that is also one of the articles related to the, I think, Clinton Foundation.

Q What was the nature of his calls? What was he telling you to do?

A So, in the Sunday call -- I believe it was a Sunday, but in

the call on one of the evenings, basically to make it stop. There's going to be a consequence for this. Did he get into it after the election. Basically, make it stop.

And then the conversation driving in in the morning was, there was another leak, and we had a back-and-forth about that as well. But the leaks must stop. And I might be mixing up which call he said we'll get into this afterwards, meaning after the election.

I'd have to look at the IG report, but I think those were the three times we talked about leaks individually. There were conversations, certainly, with all SACs at an SAC conference, and I don't remember when. It was here in D.C. I think it would have been in the spring of 2017, so I think it's after all this.

Q Okay.

Mr. Somers. What was the second leak or second phone call, what was that regarding?

Mr. Sweeney. It's a news article. There's an email exchange --

Mr. Somers. Yeah, but do you know the content of the --

Mr. Sweeney. The article?

Mr. Somers. Yeah, the article.

Mr. Sweeney. If I saw the banner, I might remember. I think it's the one with the quotes, the attribution about the call with the PADAG. If I could see the link, I'd remember -- maybe remember.

BY MR. BAKER:

Q Did you ever get a call from then-Attorney General Lynch about leaks, directly from her?

A I was told to be on a call with her. It was me from New York, Deputy McCabe, EAD Coleman, and then Eastern District of New York, I believe the U.S. attorney and some of his team -- I don't remember who -- DOJ, I believe Civil Rights personnel -- I'm not positive -- but some folks from DOJ.

So it was a conference call. And it was a conference call about leaks on the Garner matter, which was the -- if you're familiar with the police incident in Staten Island, the alleged chokehold, and leaks on the decision about who was prosecuting that matter, Eastern District of New York or DOJ. And disagreements over whether or not it should be prosecuted had all come out in the paper, and it was not good.

Q We've talked a little bit about categorizing your answers to what you knew then and what you know now. In the "what you know now" category, with some of the IG reporting and still investigating, I believe, media leaks at the FBI, were any of the call -- are you familiar that the IG found impropriety with media leaking?

A Yes. From that first report?

Q Yes.

A Yes. I think, right, both they believe there was a culture of -- problem, and you have the appendices with the --

Q Correct.

A -- map. I don't know if -- map, whatever, chart. I think that chart was blanked out. I think they're all redacted names. From what I understand, I don't know if the chart is -- the chart I had seen, some of those names were authorized contact. Doesn't mean they're

authorized to leak, but they're authorized to have contact with the media.

But as far as the ongoing stuff, I don't know what the status is.

Q So my understanding is that, in addition to a lot of people at a variety of ranks that were having unauthorized contact, not media representatives of, you know, official contact, that in addition to there being this wide number of contacts by a wide range of people at all different ranks, there was also gift giving and acceptance by FBI employees, reporters giving gifts of golfing outings, social events that would not be open to the public, that sort of thing. I think that's the basis of the ongoing.

Were you familiar with that part of the IG's finding?

A I don't think so. I think I've heard -- I've heard that described. I don't remember if I watched that when he testified or it's in the report. I don't know -- that's still ongoing.

Q Correct.

A I think that's the part that's still ongoing. And I don't think I realized that he attributed all of those, in that appendices, as unauthorized contact or discussions. I didn't know they made a determination on what the discussions were, and maybe they have. Maybe they have text messages or something.

Q I'm just going by an overall -- I've seen the chart, but the overall finding was that there were a lot of unauthorized, people that shouldn't be involved in media contacts, involved in media contacts at all different levels, and then the gift gifting.

You, again, as an assistant director in charge, you have a media component in the field office.

A Correct.

Q You, I'm assuming -- correct me if I'm wrong -- would be shocked, appalled, and, again, probably referring to OPR if your media people were taking gifts from reporters.

A Correct.

Q So, assuming that the IG has found this, I mean, you'd be shocked by that, I assume? That there are employees taking gifts from media people?

A Now I would not -- I mean, obviously he's determined that something has occurred. So now am I shocked -- I would be -- I'm surprised that there were people that would be acting that way.

Q Were you aware or did you become aware as the IG report was released in media coverage, however you found out, were any of the media leaks that some of the FBI executives were reported to be involved in, were any of these the ones that the New York office was admonished for?

I think one of the ones you said was the Wall Street Journal article that your office was told to, you know, stop the media leaking or whatever. Did you subsequently find out that any of the accusations leveled at your office were, in fact, leaks from coming from FBI headquarters?

A Yeah, it's a tricky -- there are things in the article that, in my opinion, clearly came from headquarters, which, now knowing from the IG report, are attributed to headquarters. I don't think that

necessarily means other things in that article didn't come from somewhere else.

I think that's probably the fair way to answer. So, yes, there are articles where we were told to cease the leaks that included leaks that are from headquarters.

Q Okay. How does that make you feel?

A Not good.

Q Okay. Backing up to our last hour, but to be clear, back on the laptop, you don't know specifically, as we sit here now, where that laptop is.

A No. And my concern is I'm going to get out of here and somebody says, oh, you know, we still have the laptop. I don't know. I'll find out. I don't know. But I very well could have it sitting in my office and not realize it.

Q Random question, if you know. Our colleagues talked a little bit about confidential human sources in the last hour. As far as you know, did the New York office ever handle Christopher Steele as a source?

A I think --

Ms. Bessee. Do you know?

Mr. Sweeney. Yeah, I think I know. So I'm good to answer it?

Ms. Bessee. Can we confer?

Mr. Baker. Yes.

[Discussion off the record.]

Mr. Sweeney. I can just answer?

Yeah, I think he was.

Mr. Baker. Okay. Do you know for what time period?

Mr. Sweeney. No. I don't.

Ms. Bessee. So a question like -- he's answered the question, but, okay, let's -- let's -- questions like that, to the extent that they go into or impact anything that may be ongoing, I will instruct him not to answer.

BY MR. BAKER:

Q Kind of an opinion question here. I've heard -- I have had occasion to talk to current and former FBI agents, mostly all field people. They believe the reputation of the FBI -- and I think the IG either explicitly or alludes to it, that the reputation of the FBI has really been done some damage by these texts.

Whether they show bias, whether they imply bias, whether they can be read to look like bias, the fact that so much was put into texts that is subject to so many different interpretations. I hear from former and current agents that the texts alone has created an environment for them where they just wonder and are concerned when the reputation of the FBI gets back to its high-water mark.

Do you sense in the New York office there's any morale deficit because of this investigation, specifically the texts, or any part of it, that kind of hinders the esprit de corps and that fidelity, bravery, integrity that keeps the Bureau going?

A I think it's a nuanced answer maybe. So I think sometimes it depends on who you individually talk to. Broadly, in the New York

office, broadly, I think no. It's a high-pace, busy place.

I think, individually, people find that it is annoying. It puts bad light on the texts, and what has come out puts bad light. But I think it's also been described by many people as, this was a handful of individuals, this is not representative of the organization.

And then when you see -- and I obviously can't, nor am I allowed to speak for the whole Bureau, but when you see the type of work that's occurring in New York and what the agents and the analysts and the task force officers accomplish, there's no change in attitude, speed, professionalism, dedication. If you were to ask partners, they're still calling for us. I mean, it sounds opinionated, I guess, but, you know, you call the FBI to get stuff done. I think we even saw that this week.

I think it's -- certainly, people would say they get grief about it from family members, but I don't think that changes the mission or the attitude.

So I don't know if that's answering your question or not.

Q If it's not classified, how big is the FBI field office in New York?

A (b)(7)(E) per FBI

Q And is it the largest field office?

A Oh, yeah.

BY MR. BREITENBACH:

Q I have some one-off questions.

So the IG mentions the Clinton Foundation investigation. Are you aware on the Weiner laptop whether there were any emails mentioning or referring to the Clinton Foundation at all?

A I'm not aware if there are or were.

Q Is that something you would want to know?

A At the time, yeah.

Q Would you want to know that currently?

A I don't think I can answer for currently.

Q Well, let's just say if -- let's, in a hypothetical, presume that an investigation is still ongoing with regard to the Clinton Foundation. What would it take in order for the New York field office to be able to review that laptop for whatever possible indication of Clinton Foundation material?

A So, like any matter, if you were seeking information, you would need probable cause or the proper legal process, at a minimum, to look for that information.

Q And how would you develop probable cause currently with regard to the Weiner laptop?

Ms. Bessee. Are we still on your hypothetical?

Mr. Breitenbach. I am.

Ms. Bessee. Okay.

Mr. Sweeney. If you were, in this hypothetical, to develop probable cause, you would have to show that there was some indication that that laptop was used, that the material would be there, relevant,

potentially, depending on the particular hypothetical, recency. I think there would be a variety of issues to work through.

BY MR. BREITENBACH:

Q So, going back to real life, if, in fact, there is indication -- well, let's say that currently there is indication that there are, and were, plenty of emails with Clinton email dot-com domain information on the laptop. Does that, in and of itself, indicate that there may be Clinton Foundation information?

A I don't know if those domain names would indicate that, necessarily. I don't know. I don't know enough about the domain names that were found, other than what was initially given to me, which I don't recall exactly how they were worded.

Q Do you think it's important that the laptop is reviewed in current circumstances to determine whether there is Clinton Foundation information on that laptop?

Ms. Bessee. May I confer with the witness?

Mr. Breitenbach. Yes.

[Discussion off the record.]

Mr. Sweeney. Can you ask that one more time so I can remember what you had asked.

BY MR. BREITENBACH:

Q I'm not sure if I can. I think the general question is, if we now know that there is Clinton-related information on that particular Weiner laptop, and that laptop is located somewhere -- we just don't know where -- currently, is it important when you're running

an investigation, or have run an investigation, to ensure that you have obtained all of the necessary information on that particular laptop for your investigation?

A I think it probably depends on what you're doing with the investigation. I think it also probably depends on if you think there's an association between something that leads you to believe that the other something is going to also be there. Like, I think I would have to have something to say, well, this stuff is here, so then that means that this must be here too. I don't know if I would --

Q Well, should the Clinton Foundation investigation remain open, is it important for you to be able to exploit that laptop?

A I think it, again, depends on -- it's trying to follow logical investigative steps. You want to take all logical investigative steps related to investigation. But I don't know if that would necessarily mean that particular step is -- I don't know the facts enough to know if that would be the necessary logical step to take, depending on what you know or not know with your investigation.

I don't know if that makes any sense.

Q Well, as an agent with the FBI, if you have an investigation open on a particular entity, like the Clinton Foundation, and you know that there is indication of communications related to Clinton as a whole, would it not be important to ensure that you obtain all the evidence that is potentially out there?

A This is back to a hypothetical, right?

Q No, I think just in your experience as an FBI agent.

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A I mean, if you're an FBI agent, you want to be as thorough in understanding of the information that's potentially out there relevant to your subject. Sometimes you can do it, and sometimes you go with what you have authority to do. I don't know how else to describe that.

Q Okay. Thank you.

We're aware that Huma Abedin was interviewed in January of 2017. Did that interview occur by agents in your field office?

A I don't think so, but I don't know.

Q Are you aware whether any agents in your field office have interviewed Anthony Weiner?

A I believe yes.

Q Did any of those interviews include questions to Mr. Weiner about whether he ever had access to classified information?

A I don't know the answer to that. I would have to look at a 302 or --

Q Well, based on the IG report, we now know that there was classified information on the Weiner laptop. Do you know why Mr. Weiner would not have been interviewed with regard to whether he had access to classified information?

A I don't know, unless his counsel got involved. I have no idea if -- I don't know. I don't know if they tried to. I don't know.

Q So is that something you would recommend? Now that we know what we know in the IG report, that there was classified information located on Huma Abedin's computer -- I'm sorry -- on Anthony Weiner's

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computer, based on both forwarding of emails from Huma Abedin to that computer and however else, we just don't know -- I think Mr. Weiner indicates that he had backed up her computer, and that's how those communications ended up on his. But now that we know that there was classified information on his computer, is it important for us to learn whether he ever had access to that information?

A Potentially. I don't know all the other facts around it. Potentially.

Q In what cases would it not be worthwhile to determine whether classified information had been obtained or accessed by somebody without the necessary clearances or need to know?

A If they already know how he got it or if they can tell that he had access to it by some other method. Otherwise, I think you're right.

Q Do you know whether Ms. Abedin was ever asked by any agents as to how classified information resulted on his computer?

A I don't know for a fact. I thought there was an explanation for that with automatic backups, but I don't remember why I thought that. So maybe I'm presuming that she was asked by the team, but I don't know that for a fact.

Q Okay.

Switching back to our conversation on leaks --

A Okay.

Q Sorry to jump around. You indicated you had a discussion with the AG and it focused on the Garner matter. Was there any

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discussion by the AG about someone potentially -- or concerns about somebody potentially leaking information regarding the Clinton email investigation?

A No. Not that I recall.

Q Did you ever have any discussions with anyone in FBI headquarters or the Department of Justice regarding leaks concerning the Clinton email investigation?

A Not that I recall. No, I don't think so. Only when the letter was being sent here to the Hill did I have a conversation about potential leak.

Mr. Somers. I'm sorry, which letter?

Mr. Sweeney. The letter announcing that they were reopening the investigation.

BY MR. BREITENBACH:

Q That that letter or the --

A That the letter would leak.

Q -- indication of the letter could be leaked prior? Were there concerns that the letter prior to passage to Congress would be leaked?

A No. Were there concerns about that the letter would be leaked before it got to here?

Q Yes.

A No. The discussion I had was, no offense meant, but, once the letter got to here, who would leak.

Q No offense taken.

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A Sorry, folks. It is what it is.

Mr. Baker. So it wasn't that the fact that the investigation had been reopened would leak from the Bureau prior to a letter getting here, or a decision that there needed to be a letter because there would probably be a leak from headquarters or elsewhere that the case had been reopened, that's not what it was, in your view? It was that once it got here it would leak?

Mr. Sweeney. I don't recall the former, where there was discussion about, "Hey, we have to do this because it's going to leak." I had a discussion with AD Priestap that, you send this letter up here, it's going to leak.

Mr. Breitenbach. Well, sending a letter, though, to Congress, how is it viewed in terms of a leak if --

Mr. Sweeney. The letter will get out and --

Mr. Breitenbach. -- it would become public?

Mr. Sweeney. Just that a letter will get -- the fact that we reopened that letter is going to get out to the public. Obviously, the Bureau hadn't released the letter to the public, so -- I mean, that was my conversation.

Mr. Baker. I was of the belief, maybe incorrectly, that part of the decisionmaking factor on the Director, in notifying Congress via a letter, was that the fact that there was this relook, reinvestigation, would leak out, and that would get in front of him. Hence, a letter being sent to formally notify a certain segment of Congress, before a leak got out, that there was investigative activity that was starting

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anew.

Mr. Sweeney. No, I think you're right. I think your characterization of that was his mental processes is accurate. But the question is, was there conversation with me that we were concerned that it was going to leak before that letter? No, not that I'm aware. I don't recall being involved in any conversation about the Weiner laptop potentially leaking or a reopening up until the time the letter was about to be sent -- was being sent that day. I got notified the letter was being sent the day it was sent.

Mr. Baker. Okay.

BY MR. BREITENBACH:

Q Based on what you know now, do you believe, as the IG indicated, that Peter Strzok placed the Trump investigation or prioritized the Trump investigation over the Clinton investigation?

A I think that's what he says. I would have to read it to make sure that interpretation is accurate. But I --

Q Well, let me go back in time. Based on the time period that you were aware that the laptop itself was in your possession, in the FBI's possession, and that there was indication that there were Clinton-related emails, not just emails related to matters under which Mr. Weiner is in jail for currently, but Clinton-related matters. A month passes. I think you said in the prior testimony that you didn't necessarily agree with Mr. Priestap that a month is a normal amount of time to wait in a case such as this.

Based on your feeling that a month was potentially too long -- and

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I don't want to put words in your mouth, but that's what I took from your testimony -- is it your opinion that it was Mr. Strzok's decision to wait a month before exploiting the laptop?

A What I don't know is if it was an affirmative decision to wait or whether it was not enough energy put behind asking for followup, where are we on this. I just don't know that answer, if that makes sense. I don't even know if I'm making a difference between the two.

But I don't know if I would even know if there was an affirmative decision where, "Hey, we're not going to do anything with this because we're doing this, we have to prioritize this," as opposed to just the natural followup that a manager would have had, "Hey, where are we on this? Where are we on this? Where are we on this? Where are we on this?" Like, I don't know what kind of followup existed or didn't exist.

Q Was there a sense, though, that this information -- I know you mentioned previously that it was important, and you've testified to the IG that the newfound information on the laptop was important -- but that this was at least something that I would say in the history of the FBI was an extremely big case? The Clinton email investigation, that is.

A Correct.

Q And you were aware of that when you first made that call and spoke with Mr. McCabe about the numbers of emails that had been newly found.

A Correct.

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Q So I think it stands to reason, then, that somebody at headquarters who has been involved in a case over the amount of time that Mr. Strzok was, when they first learn about the potential -- and I think it turns out to have been about 694,000 items, at least, found on that laptop, related to Clinton, that that would be something that would be worthwhile exploiting as quickly as possible?

A I would agree with that, yeah.

Q And that is where your potential disagreement with Mr. Priestap lies?

A Yeah, I think my disagreement with the characterization earlier is I just thought it was a broad answer. It is case-dependent. It is right -- depends on the issues of that particular case. But to say generally, hey, it's a normal -- we take this on and make a decision. Maybe it's personality-dependent too. I just think it's a broad answer, especially -- I just think it's a broad answer.

Q Thank you.

Mr. Somers. Do you have any knowledge of the search that was eventually conducted on the laptop pursuant to that second search warrant?

Mr. Sweeney. Yeah, little bit. I know it was done. And I know they were using the -- what did you call it? The de- -- de-whatever.

Mr. Baker. De-duplicity software.

Mr. Sweeney. De-duplication.

Mr. Baker. De-duplication.

Mr. Sweeney. So I knew that was done. I believe they expected

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it was going to take a long time to do the search. And I think -- obviously, it was done quickly, and --

BY MR. SOMERS:

Q That's my question. So when you say you know the search was done, but you don't know really what was done, what was looked at.

A No.

Q Are you surprised at the reported short period of time that they searched through 600,000-plus emails?

A I think I could say "yes" and "no" at the same time. So it's a lot of things to get through, but I also know that when we put resources behind an issue to get through material quickly, we can sometimes do pretty wild stuff as an organization. I just don't know the mechanics of how they did it.

Q And do you happen to know the resources that were put behind this search?

A I don't know what -- so that's what I don't know. I didn't know at the time how it was done. I don't know how to describe it better.

Q Do you have any idea how many emails related to the Weiner investigation your agents looked at on that laptop?

A No. Somebody probably told me at some point, but I don't know.

Q Do you know how long they -- for what period of time they searched the laptop?

A No, I would have to check. Like, how many months or weeks?

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No. But I know it was -- and we were looking -- and I know they focus on images and videos and the exchanges that occurred with the victim. And I don't know what kind of automated processes they may be using to, you know, run through the imagery. I don't know. I could find out, but --

Q Do you think it was longer than a single weekend?

A Oh, yeah. Yeah, I think that's fair.

Q One more question. Sorry. It's completely different subject.

So, on November 1st, Deputy Director McCabe recused himself from the Clinton Foundation and the Clinton email investigations. It says in the IG report that he sent emails to FBI executives and officials overseeing those investigations. Did you receive such an email?

A No.

Q So were you aware that Deputy Director McCabe had recused himself?

A So, as far as that email goes, I became aware. But I was aware when he told me in a phone call following the AG's phone call that he was thinking about recusing himself. And in the course of that conversation, my impression was he did recuse himself, because he tells me to go through EAD Coleman, and I confirmed that. And so I just assumed that he did recuse himself, as far as my purposes.

Q When was that?

A That was the date of the AG phone call, which was the week of the 20th, 24th, 25th, or 26th. It's in the report.

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Q Of October?

A Yep.

Q But were you aware on November 3rd that he had recused himself, when he made that phone call about the leaks, in the Clinton Foundation?

A Yes. So -- yes. I'm just trying to get the sequence in my head. It's November 3rd, the nighttime -- November 3rd is the call with the --

Q I'm sorry. The article is November 3rd. The conversation is November 4th.

A Fourth. Yeah, so I had -- there was a first phone call, which was at night, about leaks. And I call EAD Coleman and Steinbach after I get the call from McCabe. One of my conversations with one of them, you know, I'm not sure I should be having these conversations, because I was under the impression he was already recused. And so that call occurs after that conversation I had on whatever that night was. Yeah, so I was under the impression that he had recused himself.

Q But that's your impression; you were never told that he recused --

A No. He told me to go through Randy Coleman in a phone call that occurred right after the AG's phone call.

Q So, in the IG report, it says you had a 10-minute-long phone conversation with him on November 4th regarding leaks in the Clinton Foundation investigation. In 10 minutes, no content of the investigation came up?

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A No. And that call probably included other things. I don't think the whole 10 minutes was about the leak -- or it could've been. It could've been a debate. But I might have given him updates on other stuff, sort of parry the phone call a little bit, "All right, done, let's talk about something else."

But, no, there wasn't any conversation about investigative activity in the Clinton stuff. In other words, I didn't get any direction from him on the Clinton case or what to do or not to do, other than have the leaks stop.

Q And he received no updates from you on the --

A No. Not that I recall. The -- no. Post that? No.

Q And prior to the recusal, is he someone you would talk to about the Clinton Foundation case?

A So, go back to -- so --

Q Prior to -- I'm sorry.

A No, on the question we were just talking about. On the Weiner laptop, I don't think I was given instruction that he was recused from that initially. I'd have to go back and read that again. So I'm trying to remember if he got an update on the Weiner laptop post-November 4th.

Q Yeah, I'm just asking about the two investigations it says he was recused from, the Clinton Foundation investigation and the Clinton email investigation. So my --

A Yeah.

Q -- first question -- well, my question is, prior to the

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recusal, is he someone you would talk to about either of those investigations? "He" being Andy McCabe.

A He could be. The email investigation is referring to the Midyear investigation, so I wouldn't be talking to him about that. The other reference --

Q Clinton Foundation.

A Yeah.

Q All I'm getting at is, I'm surprised that you were not formally told that he was recused. But we'll leave it at that then.

BY MR. BAKER:

Q We talked just a second ago about one of the reasons given for the delay in taking action on the laptop from headquarters was that it was a priority issue; a Russian matter was taking priority over it.

One of the other reasons that the IG heard and examined was that the Midyear team was waiting for additional information about the contents of the laptop from the New York office, which was not provided until late October. That was an excuse that headquarters had given.

What are your thoughts on that? The IG did not find it a credible excuse based on their finding that everything that needed to be known was known in early October and there was no reason for the delay. But headquarters seems to say they're waiting for New York office to do something in late October.

A News to me. I agree with that assessment.

Q The assessment of the IG.

A Correct.

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Q You indicated earlier you had read chapter 9 in preparation for today and maybe some other stuff at another time. Of your knowledge --

A Skimmed chapter 9.

Q Okay, skimmed chapter 9. Of your knowledge of what's in the IG report and even what you've heard from other people that may have read it cover to cover, is there anything that you take issue with in the report that you don't believe is correct or is factually inaccurate?

A Potentially the description of the October 25th SVTC.

Q And what do you --

A I know from reading -- or skimming chapter 9 that the Director doesn't recall having a meeting with me about the laptop.

Q Okay. Separate and apart -- anything else?

A I don't think so.

Q Okay.

Separate and apart from anything relating to the laptop, are you aware of New York division being cut any investigative lead from headquarters or another field office on Midyear Exam?

A Not that I recall. Not that I recall.

Q Okay.

Is there anything you want to tell us before -- because we're not going to have another round here -- anything you want to tell us that we haven't asked that you feel is important?

A No.

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[1:49 p.m.]

Mr. Baker. Just a point of clarification from one of my colleagues. You indicated, to my last question about issues or potential concerns about inaccuracies, you referenced the 10/25 SVTC. Is it 10/25 or 9/25?

Mr. Sweeney. October.

Mr. Baker. October. Thank you.

Mr. Sweeney. I don't think the report is wrong. Just that the director doesn't have a recollection of it.

Mr. Baker. Okay. Thank you very much.

Ms. Kim. We're done.

Ms. Hariharan. We don't have another round. We're good.

[Whereupon, at 1:50 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
JOINT WITH THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JAMES A. BAKER

Wednesday, October 3, 2018

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:02 a.m.

Present: Representatives Meadows, Jordan, and Raskin.

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Mr. Somers. Good morning. This is a transcribed interview of Jim Baker. Chairman Goodlatte and Chairman Gowdy requested this interview as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform into decisions made and not made by the Department of Justice and the Federal Bureau of Investigation regarding the 2016 Presidential election.

Would the witness please state his name and last position held at the Federal Bureau of Investigation for the record?

Mr. Baker. My name is James A. Baker. The last position I held at the Bureau was senior strategic adviser.

Mr. Somers. On behalf of the chairman, I want to thank you for appearing today, and we appreciate your willingness to appear voluntarily.

My name Zachary Somers, and I am the majority general counsel for the Judiciary Committee. I will now ask everyone else in the room to introduce themselves for the record, starting to my right with Art Baker.

Mr. Arthur Baker. Arthur Baker, investigative counsel, House Judiciary Committee, majority staff.

Mr. Breitenbach. Ryan Breitenbach, senior counsel, House Judiciary, majority staff.

Mr. Castor. Steve Castor with the Committee on Government Reform, majority staff.

Mr. Meadows. And Congressman Mark Meadows.

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Ms. Hariharan. Arya Hariharan, counsel, Judiciary, minority.

Ms. Kim. Janet Kim, Oversight, the minority.

Ms. Shen. Valerie Shen, Oversight, minority.

Mr. Hiller. Aaron Hiller, counsel for House Judiciary, minority.

Ms. Sachsman Grooms. Susanne Sachsman Grooms, Oversight, Minority Chief Counsel.

Mr. (b)(6), (b)(7)(C) per FBI FBI, Congressional Affairs.

Mr. Buddharaju. Anudeep Buddharaju, House Oversight, Mr. Gowdy's staff.

Mr. Ventura. Christopher Ventura, law clerk, House Judiciary, majority.

M (b)(6), (b)(7)(C) per FBI legislative counsel, Mr. Meadows' office.

Ms. Ridi. Marisa Ridi, Office of General Counsel, Federal Bureau of Investigation.

Mr. Sinton. Robert Sinton, Office of General Counsel, FBI.

Ms. Bessee. Cecelia Bessee, FBI OGC.

Mr. Levin. Dan Levin, counsel for Mr. Baker.

Mr. Somers. The Federal Rules of Civil Procedure do not apply in this setting, but there are some guidelines that we follow that I'd like to follow go over.

Our questioning will proceed in rounds. The majority will ask questions for an hour, and then the minority will have the opportunity to ask questions for an equal period of time. We will go back and forth

in this manner until there are no more questions and the interview is over.

Typically, we take a short break at the end of each hour of questioning. But if you would like to take a break apart from that, please let us know. We also may take a break for lunch at the appropriate point in time.

As I noted earlier, you are appearing today voluntarily. Accordingly, we anticipate that our questions will receive complete responses. To the extent that you decline to answer our questions or if counsel instructs you not to answer, we will consider whether a subpoena is necessary.

As you can see, there is an official reporter taking down everything that is said to make a written record, so we request that you give verbal responses to all questions. Do you understand that?

Mr. Baker. Yes.

Mr. Somers. So that the report can take down a clear record, it is important that we don't talk over one another or interrupt each other if we can help it.

Both committees encourage witnesses who appear for transcribed interviews to freely consult with counsel if they so choose, and you are appearing today with counsel.

Would counsel you please state your name and current position for the record?

Mr. Levin. Dan Levin at White & Case.

Mr. Somers. We want you to answer our questions in the most

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complete and truthful manner possible, so we will take our time. If you have any questions or if do not understand one of our questions, please let us know.

If you honestly don't know the answer to a question or do not remember it, it is best not to guess. Please give us your best recollection, and it is okay to tell us if you learned the information from someone else.

If there are things you don't know or can't remember, just say so and please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

Mr. Baker, you should also understand that although this interview not under oath, you are required by law to answer the questions from Congress truthfully. Do you understand that?

Mr. Baker. Yes.

Mr. Somers. This also applies to questions posed by congressional staff in an interview. Do you understand this?

Mr. Baker. Yes.

Mr. Somers. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statement. Do you understand this?

Mr. Baker. Yes.

Mr. Somers. Is there any reason you are unable to provide truthful answers to today's questions?

Mr. Baker. No.

Mr. Somers. Finally, I'd like to note that, as Chairman

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Goodlatte stated at the outset of our first transcribed interview in this investigation, the content of what we discuss here today is confidential. Chairman Goodlatte and Chairman Gowdy ask that you not speak about what we discuss in this interview to anyone not present here today to preserve the integrity of our investigation. This confidentiality rule applies to everyone present in the room today.

That is the end of my preamble. Do you have any questions before we begin?

Mr. Baker. No.

Mr. Levin. I just have one comment.

Jim is here voluntarily. I apologize that my schedule has a hard stop at about 2 o'clock. And I understand you may not be done by then. And he will come back another day if that is necessary. But I just apologize that my schedule would not allow it.

Mr. Somers. We'll see where we are at 2 o'clock and decide then.

I will now turn it over to Art Baker to begin our first round of questioning. It is about 10:08.

EXAMINATION

BY MR. ARTHUR BAKER:

Q Again, thank both of you for coming in today.

Mr. Baker, when we went around and did our opening introductions you mentioned your last position at the FBI was senior strategic adviser. How long did you occupy that position?

A From early January 2018 until, I think, the first week of May 2018?

Q And the first week of May 2018, is that contemporaneous or around the time that you resigned from the FBI?

A Yes.

Q Prior to you assuming the duties of senior strategic adviser, what was your position at the FBI?

A General counsel.

Q And how long did you occupy that position?

A From January 2014 until January 2018.

Q What exactly does the general counsel at the FBI do? It's my understanding that you in that capacity would be the chief legal officer for the FBI. Is that correct?

A That's a fair way to say it, yes. And also the head of the Office of General Counsel?

Q And as head of Office of General Counsel, you supervise a cadre of lawyers and support staff?

A About 300 people altogether. About 200 lawyers and 100 other professionals.

Q And the general counsel's office is responsible for providing legal advice to the rest of the FBI?

A To the entire FBI on all of the matters that the FBI works on, in coordination with the chief division counsel who are FBI lawyers deployed in the various field offices around the country. There's around 130 of those deployed in all field offices.

Q Okay. So those chief division counsels that are deployed to the field offices, they would be the general counsel's office

representatives for that particular field office?

A Sort of. I mean, they didn't report directly to me, they reported to the head of the field office, the SAC, for example, but there was sort of a dotted line to the Office of General Counsel?

Q So there's coordination and consultation between these chief division counsels in the field office and FBI headquarters?

A Yes.

Q Okay. For the headquarters entity, it's my understanding that the Office of the General Counsel has lawyers, representatives embedded in the various divisions at headquarters. Is that correct?

A For many of them, yeah. I don't think it's every one, but, yes, for many of them.

Q So would it be fair to say that the general counsel's office has a fairly active role in most of the FBI activities? They seem to be you've indicated they're out in the field offices, many of the divisions have them embedded. It sounds like the general counsel's office has a pretty broad representation of representatives, pretty wide and far in the Bureau. Is that true?

A I think that's right, yeah. I mean, we can't be everywhere all the time, and we would like to have more resources than we have. But we try to make sure that we are providing legal services to the entire Bureau as needed, in coordination with each other and then in coordination with the Justice Department as well.

Q And these lawyers that are embedded in the various divisions, they are the lawyer for that division and the division are the clients

for that lawyer?

A Sort of. I mean, at the end of the day the Bureau, the FBI, is the client, the United States Government is the client. But those are the agency or those are the subcomponents of the FBI that they are trying to help achieve their mission.

Q So under this structure, you indicated, in the field the chief division counsels are answering to the SAC, but there is coordination and consultation with general counsel's office at headquarters. These embedded attorneys at headquarters and the units and divisions or sections that are in the general counsel's office, they all ultimately answer to you as the general counsel?

A The OGC people do, yes, not the chief division counsel, but

Q They are answering to the field office entity?

A Correct.

Q But the basis of their legal decisions, I'm assuming, are bounced off of the attorneys that are back at headquarters and AUSAs that are in the field?

A Not always, but it's best it doesn't always happen, but it's best if they are coordinated with the appropriate folks at OGC and, when necessary, at the U.S. Attorney's Office or Main Justice.

Q Very briefly, could you describe how the general counsel's office is broken down? I assume there's broad divisions. Could you just elaborate on how it's very generally divided up?

A Sure. There's basically three branches, each headed by a deputy general counsel. One handles national security and cyber

matters, one handles litigation, and then one handles basically everything else, forensic science, privacy and civil liberties, training, a whole range of different things. So three main branches in OGC.

Q And then these deputy general counsels, I'm assuming, are people you would interact with probably more frequently than, say, a line attorney or a unit chief or something of that nature?

A That's true.

Q Okay. Somewhere in your org chart I'm guessing you have some sort maybe not the org chart, but I'm guessing, as a component of the Department of Justice, the FBI's general counsel is somehow interfacing with the Department of Justice lawyers on matters, too?

A Yes, sure. Yes, absolutely.

Q So you indicated the National Security Law Branch, I think you called it, in cyber. Are you familiar with an investigation that the FBI called Midyear Exam?

A Yes?

Q Would that be the division where Midyear Exam was assigned?

A It was assigned to the National Security and Cyber Law Branch?

Q Okay. Who would the deputy general counsel for that branch have been?

A I think for the whole time it was Trisha Anderson?

Q So you and Ms. Anderson would have had fairly frequent contact in discussions about the case?

A Yes, I would say fairly frequent.

Q I guess to back up a little bit, what would the general counsel's role be? I mean, we can specifically say for Midyear Exam. What does the general counsel bring to the table and at what part of an investigation is the general counsel brought in, and specifically for Midyear Exam?

A So I don't specifically remember how it started in terms of the OGC's involvement in it, but I think we were involved pretty much from the start, providing advice and counsel to the FBI agents, managers working the case.

So they are doing the investigation and we are working with them to provide them advice to make sure that they are following FBI policies and procedures, DOJ policies and procedures, that they are helping with any interactions that need to happen with the Department of Justice.

If there's a legal question and DOJ is asking that and our agents aren't lawyers and need help analyzing the legal framework, the legal questions in connection with DOJ, we will help them with that.

Q Who at DOJ would you have interfaced with in a national security matter, specifically Midyear Exam, a case that's opened under a classification that puts it into that Law Branch?

A So there were a number of different people. I'm not sure I can remember all of them off the top of my head. But it was essentially assigned to the National Security Division at Main Justice and then a couple folks from the U.S. Attorney's Office eventually in Eastern District of Virginia.

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Q Who were the names of the folks at Main Justice?

A I think John Carlin was the head of the National Security Division at the time. I think George Toscas worked on it. David Laufman, who was the head of the espionage section.

And I'm drawing a blank right now on the line attorneys, but there were line attorneys also within the espionage section who were working on it.

And then there were from time to time folks in the deputy attorney general's office that worked on it. Matt Axelrod worked on it a bit.

So that's what I'm remembering off the top of my head.

Q Sure. Prior to

Mr. Breitenbach. Sorry.

BY MR. BREITENBACH:

Q Did Tashina Gauhar ever work on it, to your knowledge?

A Given her position in the DAG's office, she may have, but I don't remember specific

Q You don't remember interacting with her?

A Not very much. I know Tosh very well, but I don't remember interacting with her very much on Midyear?

Q But some you had interacted with her or

A Just sitting here right now, I can't remember.

BY MR. ARTHUR BAKER:

Q I understand prior to your appointment as general counsel you were in the private sector as counsel. Prior to that, you have worked at Main Justice before, correct?

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A Yes.

Q And what was your role there?

A Immediately prior to that, from 2009 to 2011, I was in the deputy attorney general's office. I was an associate deputy attorney general.

And then, from 1990 until 2007, I worked at Main Justice, first in the Criminal Division, and then in something called the Office of Intelligence Policy and Review, and then eventually in the National Security Division.

Q And what did you do in this OIPR office? What was your function there? And what did that office do?

A I started out as a line attorney and I moved up and eventually became the head of the office. And among things the well, the office provides advice to the Attorney General and other executive branch officials on national security law, intelligence law.

But a lot of what the work is and was is representing the United States in front of the Foreign Intelligence Surveillance Court. So I was responsible for that from, well, I guess you would say, probably from 1998 until 2007.

Q And that Foreign Intelligence Surveillance Court is what commonly is referred to as FISA?

A Yes.

Q And then this OIPR office morphed into or became the National Security Division?

A It was merged into the National Security Division.

Q So would it be fair to say, prior to your appointment as general counsel of the FBI, you have significant experience and background in national security law?

A Yes.

Q And you are well versed in FISA?

A Yes.

Q Competent in the espionage statutes?

A To some degree, less so than the folks in the espionage section, but I have dealt with the espionage statutes in a variety of different ways over the years.

Q Would that be your main area of expertise coming to the FBI? I mean, it sounds like you are pretty well experienced in national security law?

A National security law, I would say generally, yeah. Probably more FISA than the espionage statutes for sure, if you are going to break it down that way. But national security in general, yes.

Q Going back to Midyear Exam, did you have any input as to the classification of that case when it was opened? For example, rather than having it open under a classification that would put it in the national security lane, was there any discussion, debate, dissent about why it should possibly be classified as a criminal matter and maybe end up in a different part of the FBI for investigating?

A I don't remember a significant debate or discussion about that. I don't think I played any role that I can recall sitting here

today in terms of the classification of it.

And I guess the only other thing I would say was the fact that it was in the national security lane didn't mean that the FBI couldn't use all of its national security and law enforcement authorities to address it.

Q So based on the facts of the case as you initially understood them, you were comfortable with the espionage statutes, whatever related to handling classified information, you were comfortable that it was opened appropriately and that the national security apparatus of the FBI were where the resources should be to investigate it?

A Yes, I would say. The resources and the looking back on it now, I would say that's the case.

And it's not only the resources, it's the expertise in dealing with classified information, how to handle it, how to think about it, how to understand how other people should handle it and be able to ask good questions about that, that kind of thing.

Q And you've indicated that OGC would be providing legal guidance to the folks that would maybe be investigators, analysts, computer experts, whatever. Your national security branch would be providing legal guidance to them as they did whatever, decided what to interview, what to take out of the computer, what to look at, OGC would be the one giving legal advice on that?

A Yes, in coordination, as needed, with the U.S. Attorney's Office or other folks within the Bureau. If there was a particular question some other lawyer needed to answer, we could get help from

them.

But, yes, it was mainly the national security branch. And there it was mainly the counterespionage unit, the counterespionage law unit.

Q And then some interaction with DOJ, I assume?

A Much a lot of interaction with DOJ.

Q Backing up just a minute, when you were appointed to the general counsel's office, you were appointed by then Director Comey?

A Yes.

Q You had known Mr. Comey previously?

A Yes.

Q And how did you know Mr. Comey?

A He had been my boss twice before. When I was the head of the Office of Intelligence Policy and Review, that was a component head. So therefore it reported directly to the deputy attorney general.

So when Director Comey came in to take that position he was my boss for how I can't remember how long he was there, but for a year or 2 years, whatever it was. So he was my boss there.

And then when I was at Bridgewater Associates in Connecticut, a hedge fund in Connecticut, he was my boss there. He was the general counsel and I worked for him.

Q You have a professional relationship with him, obviously. Do you have a social relationship with him as well?

A He's my former boss, he's my colleague, he's my friend, I would say, yeah.

Q So what would your relationship have been as when he's

the Director, again your boss, and you're really his chief lawyer, how willing was he to accept candid legal advice from you?

A He demanded it.

Q Demanded it.

What was your thought about giving him legal advice? Would he be a client that would take your legal advice and act on it? Would he be a client that would listen but do something completely different? I'm just curious what your perspective on the relationship was as the attorney?

A Well, the relationship was based on complete candor with each other and telling each other the truth. And if I disagreed with him or thought he was doing something wrong or bad or stupid, it was my obligation to tell him that. And that's the kind of relationship that we had. And if he disagreed with me and thought I was doing a bad job, he would tell me that, too. And that was across all the range of our interactions, not just the law or arguing about legal matters.

And, you know, he's an excellent lawyer, so it's kind of challenging sometimes to have an excellent lawyer as your client.

But it was across the range of everything having to do with Bureau, the leadership, strategic initiatives of the Bureau. So we had that type of relationship across the full range of the Bureau's activities. And I felt free to speak my mind about any topic that I thought I had to say something about.

Q So it sounds like, would it be fair to say, that you had a good attorney client relationship with Mr. Comey?

A Absolutely.

Q When he appointed you, in addition to the obvious requests or charges that you run a good general counsel's office, that you provide good, candid advice for all the FBI, were you given any charge to do anything specifically with the general counsel's office to improve morale or anything like that?

A Yes. There was an issue when I arrived with respect to morale and he told me absolutely to focus on that.

Q Could you elaborate on what the issue with morale was?

A There was an issue of morale with respect to some people had concerns about the prior general counsel as to how he ran the office and that had an impact on morale. And so I was asked to try to understand exactly what the problem was and address it.

Q Who was the previous general counsel?

A Andrew Weissman.

Q So was there any empirical data shown to you that reflected however you could map poor morale?

A There were. Yes, the FBI does an annual climate survey, and so I had that, and I think I may have had some other surveys that were provided to me as well. So I had some quantitative basis to try to understand what the issue was and discuss that with folks in the office at the time.

Q And what steps did you embark on to improve that morale?

A I tried to understand what the issues were. I tried to there was some concern about me coming to OGC because I had been

at DOJ, And so I tried to address concerns that folks in that regard.

But then really just tried to understand what the problems were, understand the organizational structure, understand what the work was, not to rush into decisions with respect to the organization, but really get to know it as well as possible.

And then after that, we I can't remember exactly when it was, maybe like a year later we did a complete reorganization of the office that I think made sense at the time.

And then it was just day to day trying to make sure that I treated my folks it's an amazing group of people at OGC and I'm very proud of them and very proud to have been associated with them to try to treat them well and make sure I include I'm an inclusive leader who showed that I valued them.

Q How successful do you think you were?

A You've got to ask them. I don't know about that one. You can look at my climate survey and see what the result was?

Q Do you know what your climate survey was?

A It got better over the years. It was never perfect, but it got better over the years. And I don't know what it was after I left.

Q Better compared to when it came in?

A I think so, yeah.

BY MR. BREITENBACH:

Q Can you elaborate on some of the concerns that you had heard when first arriving at the Bureau as general counsel that had been experienced under the prior general counsel, Mr. Weissman?

A Let's see. I think the concerns were that I mean, the assessment was Andrew is an excellent lawyer, but he had not had a lot of management experience running an organization of that size. And 300 people, it's a big organization. And so I tried to having the management experience that I had, I tried to focus on that side of things.

I think people had concerns about Andrew's interpersonal skills, I guess you would say. Some people objected to how he treated people. And so they expressed concerns to me about that.

Q Was any of that treatment ever involving any level of political politically tinged in any way?

A Not that I recall. I don't specifically recall anything like that.

Q So in terms of treatment, can you elaborate?

A Just dealing with people on an interpersonal basis. If Andrew thought, as I understood it and I was not present for the conversations that Andrew had with folks, so just put that as a caveat in what I'm saying but just in terms of he could be abrupt, I guess you would say, he could be brash, and sometimes people thought that he was dismissive of them, things like that.

Q And in terms of conversations that you had with Director Comey concerning the environment that you were coming into, was this something that was a directive from the Director in order to instill some more confidence in the general counsel's office with regard to the morale following General Counsel Weissman's tenure?

A Well, yeah. I mean, Director Comey cares deeply about the people at the FBI, did and still does, and he wanted me to address this. This was a significant issue. It had come up in the climate surveys. He heard a lot about it when got there and specifically told me, yes, deal with that, focus on that, spend a lot of time on that. Make sure that you're being a leader for these folks. Focus on the leadership part of your job vis a vis OGC. So, yes.

And I think he spoke about it before I got there with the whole staff. I think he had like a townhall or something before I got to OGC and people responded to that, or at least we had some meetings with folks. And I heard it from other people on his staff as well, that you, Jim, should focus on morale when you get here.

Q Did you ever hear from Director Comey as to a lack of confidence that he might have had in the legal acumen of Mr. Weissman?

A I never heard about that. I don't recall that. I don't recall that.

Q Okay.

A It was on the management side.

BY MR. ARTHUR BAKER:

Q Going back to Midyear, how often would there be meetings about Midyear Exam? Obviously a very big case, a very sensitive case. How often would you be called into meetings?

A So I don't know the full scope of all the meetings that the team had on the case, so just be careful about that. But in terms of meetings that I attended, there were a series early on there were

a series of regular briefings, I think, that the deputy director asked for. He would get updates. There would be oral briefings and then a short write up, and I want to say it's every week or every 2 weeks. Something like that, I don't remember specifically. And so the case went on for a while.

And then as the case progressed and we got closer to an eventual decision, there were more briefings for the Director himself and the deputy director and the senior leaders by the case the leaders of the team. So Pete Strzok, Jon Moffa, Bill Priestap, those folks.

So the frequency increased over time and the participants changed over time as we got closer to a resolution of the case.

Q I know from previous interviews we have done and documents we have reviewed certain people that occupied certain positions, I think you've alluded to this, they sort of changed as the case went on. Some retired, some maybe promoted out.

A Yes.

Q You were the general counsel for the whole duration of Midyear?

A Yes.

Q Okay. And your deputy for national security law, Trisha Anderson was she the deputy for the whole time?

A She probably wasn't the deputy for the whole time. So when it started to be honest, I can't remember exactly when it started. But it might have been (b)(6), (b)(7)(C) per FBI was the acting deputy, I think, at the start of it.

Q And they would also be involved in these meetings?

A Not as it progressed, yes. Early on it would be early on they would not be, at least the ones that I attended for the senior leaders. But as time progressed, Trisha came to most of those meetings along with the unit chief for the counterintelligence law unit.

Q Were there, for lack of a better term, sub

Mr. Meadows. Excuse me.

Who was the counterintelligence lawyer that you're referring to?

Mr. Baker. It's a GS 15 name and the FBI has told me not to say that. So I can answer that question, but I'd defer to the FBI on that one.

Mr. Meadows. Well, we need to know the name. I mean, obviously, if we're looking at witnesses, I understand from a privacy standpoint, but we need to know the name.

I mean, if we are going to go back through this, we have done this over and over again, if we are going to have witnesses come in, whether they're of a certain level or not, if they were important enough to be in this meeting, then they're important enough for us to know the name.

Ms. Bessee. We can take that back to our management.

Mr. Meadows. Here's what I would recommend that you do. Get one of you on the phone, get permission right now, so that while we have him here we get that. That's a reasonable request. You've got three attorneys. One of you can get on the phone and get permission.

Ms. Bessee. Sure, we can do that, Congressman.

Mr. Arthur Baker. My next question involves a 15 name, but I think it's one we've been able to discuss before, Lisa Page? Is that okay?

Mr. Baker. That one's okay?

Ms. Bessee. Yes.

BY MR. ARTHUR BAKER:

Q Lisa Page was an attorney in OGC at some point?

A I think all along her official position was that her slot, if you will, was as an attorney in OGC, that is correct.

Q And then at some point she was assigned where?

A So at various points she was assigned to work for Andy McCabe when he was the executive assistant director for national security. She was in that position when I got to OGC. I'm not sure when she started, maybe 2013 until he left, and I can't remember when he left that job.

And then when Andy came back as the deputy director, Lisa then held a special adviser kind of position for him as well. So she was technically still in OGC, but she was on assignment to work for Andy McCabe.

Q Was there are you aware of any tension with Ms. Page and maybe you or someone in general counsel's office about what her title would or should be in Mr. McCabe's office?

A I had discussions with Lisa about that at various points in time. We came to an agreement about what she would be doing without regard to what the title was, and I felt comfortable that she understood

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the scope of her job and how she was supposed to interact with OGC. And so to me it mattered less what the title was than that she understood what her job was supposed to be?

Q So would she be allowed to give Mr. McCabe legal advice in whatever her title was while assigned to his office? Was she still an OGC person for purposes of being a lawyer and allowed to give advice? Or was she something different but carried on the OGC org chart?

A There's not a crisp answer to that question, I'm sorry. Of course I knew she would be talking to Andy about legal matters throughout that time. But the point was she was supposed to include OGC she wasn't supposed to be the definitive giver of legal advice for the FBI to the deputy director, that she was supposed to coordinate back with me, or other folks on my staff, Trisha Anderson, or if she knew that the question involved some other part of OGC she was supposed to coordinate back with them, steer folks back to that part of OGC. That was the understanding that we had, at least that I understood.

Q Are you aware of

BY MR. SOMERS:

Q And did she? I mean, you say she was supposed to.

A I'm not going to swear that she did it every single time.

Q But as a general

A As a general matter that was our that was my understanding, that was what I told her, that's what she agreed with, and that's what she was supposed to do.

Of course I knew that in the moment if a decision had to be made

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quickly that she and Andy might have a conversation, but I expected them to report back to me about important things. And I had leave it to both of their discretion to figure out that what important was, I know it's kind of vague. But that was how we were supposed to try to work it out.

Q Who did she report to, to Deputy Director I mean, what

A Yeah, I mean, she essentially reported to the deputy director?

Mr. Arthur Baker. Who did her performance appraisal?

Mr. Baker. Hmm, good question. I don't know the answer to that.

Mr. Arthur Baker. You don't have

Mr. Baker. I may have. I may have. I may have had input to it, but I don't remember, like, who signed the various performance evaluations. I'm sure the OGC can figure that out.

BY MR. BREITENBACH:

Q Were you aware whether there was ever an attorney that had been assigned directly to a deputy director in prior history?

A Prior history, I don't know. (b)(6), (b)(7)(C) per FBI was a DOJ person who worked for Mark Giuliano. So she was a lawyer, not really serving in a so a DOJ lawyer over at the FBI, not really serving in a lawyer capacity. Again, she wasn't really supposed to be giving legal advice, she was I think she was actually chief of staff. So she was supposed to help him run the office as opposed to dispense legal advice.

Q Is there a rule or a written rule as to providing legal

guidance inside the FBI?

A There are legal rules. I will be frank, I think they're a bit messy. They're not as clean as I would have hoped to have cleaned them up before I left, but I didn't. It's not as clean, I think, the regs are not as clean as you would hope, if you want to be technical about it.

Q But we know that there are lawyers outside of the general counsel's office, correct?

A Yes.

Q And many of those lawyers are agents as well?

A There's agents who are lawyers, there's agents who are in legal roles, there's agents who are not in legal roles but who are nevertheless lawyers. And then agents from the Bureau talk to assistant U.S. attorneys across the country all the time. This is a standard practice.

Q But in terms of lawyers within the general counsel's office, if you're in the general counsel's office you are authorized within the FBI to provide legal guidance, but if you are a lawyer outside of the general counsel's office and outside of the chief division counsel offices in the field, are you authorized to provide definitive legal guidance for your client, so to speak, inside the FBI?

A Generally no, but there are a few exceptions, like folks that deal with employment law, discrimination, that kind of thing. There's a few little pockets of offices around the Bureau, it's confusing, but there are pockets within the Bureau who are allowed to give legal advice

that don't remember to general counsel.

It's not perfect. I admit that that is not the best way to manage everything. But that's how it grew up over time.

Q What pockets are those?

A I think it's the EEO folks that have the authority to give some legal advice in certain circumstances. And I'm trying to think. There are a few other pockets of offices and I just I'm drawing a blank right now off the top of my head. That's what I remember. That was just kind of an issue throughout my tenure as general counsel and one that I was unable to fix.

BY MR. ARTHUR BAKER:

Q My colleague reminded me of an issue, going back to the climate in OGC. Was there an issue with EEO complaints filed in OGC? Specifically, were there a high number?

A There were EEO complaints that I was aware of when I arrived. There were ones that were filed while I was there. We have a whole group of people that work for Ms. Bessee that are responsible for representing the FBI in that.

I don't remember hearing any I don't remember information about a quantitative blip up or something like that.

Q What about a theme? Was there any particular issue that came up in these complaints?

A Like a recurring theme? I don't remember that. I think there were there were several that I was aware of. I'm not sure they were all of the same type. I think there were a variety of

different types that I can recall.

Q Have they been resolved or any of them resolved prior to your resignation?

A I think most of them were resolved, yeah.

Q How were they adjudicated?

A I think a lot of them there's a mediation process within the FBI and I think a lot of them are settled through that process. Some, I think, went to the EEOC, but I think I would guess the majority of them were settled.

Q Okay. Was there any indication from the Department of Justice, whoever their EEO folks would be, that there were a very high number of EEO matters in the FBI's general counsel's office and that there needed to be some resolution of some of them at the Bureau level? And maybe it's the mediation level that you talk about. Are familiar with any concerns at DOJ about a high number?

A I don't recall that.

Q Going back to Midyear, one of the themes, one of the big themes that we've looked, other entities have looked at, certainly the inspector general looked at, as to whether there was bias in the FBI involving the decisionmaking process in two of their big cases, Midyear and another one that we'll talk about a little later, I want to jump ahead a little bit because it's my understanding you played a very unique role early on with requesting that an inspection be done of the Midyear case once these texts became known.

A Uh huh.

Q And that there, on the face of it, appeared that there was some language that could be interpreted very pro one candidate, very anti another candidate, and that would be bias. That you took the initiative, it's my understanding, to request that the FBI's internal inspection mechanism take a look at the Midyear case to see what might be right with it, what might be wrong with it.

Could you elaborate on that? That's something we haven't heard a whole lot about?

A Yes. And I'm looking across the table at the inspector general report and I think there's some discussion of that in there.

So, yes, when I heard about these texts, I only read a few of them. They were described to me. And I immediately became quite alarmed. And so my thinking was, well, from a from the okay. I don't know what I know that I knew that the inspector general was looking at them. I knew that they would address them. And so I knew that there was a process in place.

So what I was concerned about is whether whether any decisions had been taken or not taken in the Midyear case that were driven by political bias of any sort. I was quite worried about that. And I wanted to make sure that we as an institution, the Bureau as an institution, got on top that extremely quickly.

And so I suggested to the leadership that we put together some type of team I didn't exactly know how to do that, but I consulted with other folks to basically do a review of the case and have an independent group of people come in and look at and assess whether any

decisions were made that looked unusual, that looked like they were driven by bias, decisions made, actions taken, or things not done. That's what I was also worried about, the omissions, right?

So we talked about that, and there was an agreement to do that, and eventually it was set up and it was done.

At the outset I was also quite worried, knowing full well that the inspector general's office was doing an investigation, that I didn't want to mess up anything that they were doing.

And so we worked in coordination with the inspector general. I actually spoke to him and made sure that he knew what we were doing and his staff knew what we were doing, why we wanted to do it, to make sure that it was okay with him. And he approved it, his office approved it.

So we went forward with this review, sort of done quietly off to the side. But from my perspective it was incumbent upon us as good managers to actually be good managers and to do this.

Q And you became concerned when you became aware of the texts?

A Yes.

Q Do you remember specifically what texts? You indicated you didn't read all of them. Do you remember what specifically alarmed you?

A I only saw a few, and I think there was a derogatory reference to the President. I guess he was not the President at the time.

And then, I can't remember who exactly it was that described them to me, but they were described in their general character.

So I only read like a couple, literally a couple. But that was enough for me to hear, that it freaked me out. And I was worried and I thought we need to get on top of this quickly.

Mr. Breitenbach. Do you recall when you actually learned about the texts?

Mr. Baker. It was around the time when so there was some event when Andy McCabe was called across the street to meet with the inspector general to be told about the texts, and it was like right in that time period. It was either that day or the next day. And I was told by

Mr. Breitenbach. Can you approximate when that might have been?

Mr. Baker. I don't remember, I'm sorry, just off the top of my head. It's when I believe it was more or less contemporaneous when the Bureau found out about them. So when the Bureau management found out about them, that's when I found out about them. I'm drawing a complete blank.

Mr. Jordan. Was that in summer, last summer?

Mr. Levin. Is it in the IG report?

Mr. Baker. It might be in the IG report. I'm sorry, I just can't remember like the exact date sitting here today, or even the months. But it was whenever Andy McCabe was called across the street, it was like that day or the next day that I found out about them.

Mr. Jordan. Can I go guys? Do you mind?

Mr. Baker, I'm Jim Jordan, Fourth District of Ohio. Thanks for being here this morning.

So let me go back to be when you you were general counsel up

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until late December of last year.

Mr. Baker. Actually, it was the first week of January.

Mr. Jordan. The first week of January. Okay. And then your title became what?

Mr. Baker. Senior strategic adviser.

Mr. Jordan. And was that the position you remained in until you left the FBI in, I think, this past spring of this year?

Mr. Baker. Until May, first week of May, I think it was.

Mr. Jordan. So like May 4th, I think it was. Okay. And why did your position change?

Mr. Baker. The position changed I had a conversation with the Director in December and he said that he was interested in making a change. And I said, okay. And we had a conversation about what I would like to do in the Bureau, and we talked about that. And I also said that at some point in time I would likely leave the Bureau, and so he talked about putting me

Mr. Jordan. Do you remember the date of that conversation?

Mr. Baker. It was early December, I think, of 2017.

Mr. Jordan. Okay. Early December.

So one of things that we were curious about is my understanding you accompanied Mr. McCabe when he was first deposed by House Intel in mid to late December. A couple days later, he, Mr. McCabe, was in this very same room going through the same exercise you're going through today and you did not accompany him to that particular transcribed interview.

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Is there a reason you were at the first one and not at the second one?

Mr. Baker. The first one, which I think was in a different room than we are in today

Mr. Jordan. It was. It was with the House Intel Committee. And then a couple of days later, maybe even the next day, I can't remember, but I believe it might have been the next day, you were not with Mr. McCabe at that particular one that we were at.

Mr. Baker. Yeah, the first one the deputy director of the FBI was going up to the Hill to testify. And I was the general counsel to the FBI, and I thought, given his rank, I should be the one that goes with him.

By the time the second one was either scheduled or whatever, I can't remember, Congressman, somebody objected. There were some complaints about me being there. And so

Mr. Jordan. It was the very next day, I believe.

Mr. Baker. Was it the next day? So there was some it was maybe that evening or in the morning, I remember having a meeting with Andy and some others in his office and there was some level of complaints, I don't remember specifically by who, and we just decided: No, Jim, just don't go. You skip this one. I can't remember. We may have sent Trisha Anderson, I don't remember, but

Mr. Jordan. Who made that decision for you not to come?

Mr. Baker. I'm sorry?

Mr. Jordan. Who made that decision for you not to come?

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Mr. Baker. I would say it was Andy.

Mr. Jordan. Andy

Mr. Baker. Andy McCabe, yeah.

Mr. Jordan. Yeah. So the guy you were sort of representing and helping in that was the guy who told you not to come?

Mr. Baker. Yes.

Mr. Jordan. Okay. I'm going to move to another subject here. Tell me about your relationship with David Corn.

Mr. Baker. David Corn?

Mr. Jordan. Yeah.

Mr. Baker. David is a friend of mine.

Mr. Jordan. Tell me about that. A close friend? Long time friend?

Mr. Baker. Long time friend.

Mr. Jordan. Long time friend. When did you first meet Mr. Corn?

Mr. Baker. I don't specifically remember. A long time ago, though.

Mr. Jordan. Years ago?

Mr. Baker. Years and years and years ago, yeah. Our kids carpooled together. We carpooled with them when our kids were little.

Mr. Jordan. You live in the same neighborhood?

Mr. Baker. Live in the same city, yeah.

Mr. Jordan. Okay. All right. How often do you talk with Mr. Corn?

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Mr. Baker. Every few months or so.

Mr. Jordan. How about in I think you probably know where I'm headed how about leading up to just prior to the election of Presidential election of 2016, how many times did you talk with David Corn in the weeks and months prior to election day?

Mr. Baker. I don't remember.

Mr. Jordan. Is it fair to say you did?

Mr. Baker. Yes, I did, but I just don't remember how many.

Mr. Jordan. And did so did you talk to Mr. Corn about anything that the FBI was working on, specifically the now infamous Steele dossier?

Mr. Levin. One second.

[Discussion off the record.]

Mr. Levin. I'm sorry, I'm going to cut not let him answer these questions right now. You may or may not know, he's been the subject of a leak investigation which is still a criminal leak investigation that's still active at the Justice Department. So I am cutting off

Mr. Jordan. Can you speak more in the mike there?

Mr. Levin. I'm sorry. I'm cutting off any discussion about conversations with reporters.

Mr. Jordan. Based on

Mr. Meadows. You're saying he's under criminal investigation? That's why you're not letting him answer?

Mr. Levin. Yes.

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Mr. Meadows. And so you're saying that you're going to take the Fifth.

Mr. Levin. No, I'm saying I'm not letting him answer the questions. This is a voluntary

Mr. Meadows. That's not the prerogative.

Mr. Levin. Well, it's a voluntary interview now, so it is.

Mr. Meadows. So what you're saying is in order to answer Mr. Jordan's questions he's going to have to be subpoenaed?

Mr. Levin. I'm saying I'm not going to let him answer the question now. If you choose to subpoena him, that's obviously your right.

Mr. Jordan. Just to clarify for us, you're, counsel, advising Mr. Baker not to answer that question because of not because of it's classified, not because of any classification concerns, but because there is an ongoing investigation by whom?

Mr. Levin. The Justice Department.

Mr. Jordan. I mean, is the inspector general looking at this or is this

Mr. Levin. No, it's Mr. John Durham, a prosecutor.

Mr. Jordan. Mr. Huber.

Mr. Levin. Durham, Durham.

Mr. Jordan. Oh. Say it again.

Mr. Levin. John Durham.

Mr. Jordan. All right.

Did you talk to Mr. Corn prior to the election about anything,

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anything related to FBI matters? Not so we're not going to ask about the Steele dossier. Anything about FBI business, FBI matters?

Mr. Baker. Yes.

Mr. Jordan. Yes. And do you know can you give me some dates or the number of times that you talked to Mr. Corn about FBI matters leading up to the 2016 Presidential election?

Mr. Baker. I don't remember, Congressman.

Mr. Jordan. Several times a week, several times a day?

Mr. Baker. Can I just consult with him for 1 second?

[Discussion off the record.]

Mr. Baker. If I could just focus. So what I remember most clearly is that at some point in time David had part of what is now referred to as the Steele dossier and he talked to me about that and wanted to provide that to the FBI.

And so, even though he was my friend, I was also an FBI official. He knew that. And so he wanted to somehow get that into the hands of the FBI because

Mr. Jordan. David Corn wanted to give the FBI parts of the dossier?

Mr. Baker. That's correct. That's what he told me.

Mr. Jordan. Do you know where Mr. Corn got the dossier? Did he tell you that?

Mr. Baker. Sitting here today, I don't remember that. I know that I was interviewed by the FBI about this and there was a 302. I've never read the 302, but I understand there was a 302.

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And to the best of my recollection I told the whatever I knew at the time, which was closer in time to the event, I told the FBI at that point in time.

So in terms of how David got it, I don't specifically remember

Mr. Jordan. But you think it's recorded in the 302? You think you told them then, but you don't remember now?

Mr. Baker. I don't remember now. I just don't remember now how he told me that he'd got it. Because there were various copies of the dossier floating around Washington, I guess you would say, and the FBI was getting it, you know

Mr. Jordan. There were at least three different copies, in my understanding, and they were getting it from all kinds of sources, including the author of the dossier himself; and also including Bruce Ohr.

So you definitely had conversations with David Corn prior to the elections about the dossier?

Mr. Baker. I believe that's correct. I don't remember specifically the date of these conversations, but I know that David was anxious to get this into the hands of FBI. And being the person at the FBI that he knew the best, he wanted to give it to me.

Mr. Jordan. Okay. And go back again, tell me exactly what the investigation the reason you can't answer more specific questions about the dossier is because there's an investigation, an ongoing investigation, as we speak, looking into exactly what?

Mr. Levin. And I'm sorry. I didn't say he couldn't answer any

questions about the dossier, and he just has answered some. I didn't want him talking about interactions with reporters because there is an ongoing leak investigation that the Department is having

Mr. Jordan. He just talked to me about his interactions with a reporter.

Mr. Levin. Well, he's talked a little bit about it, but I don't want him talking about conversations he's had with reporters because I don't know what the questions are and I don't know what the answers are right now.

Given that there is an ongoing investigation of him for leaks which the Department has not closed, I'm not comfortable letting him answer questions.

So in terms of getting stuff from Mr. Corn, he told you what he remembers about it.

Mr. Jordan. So he talk to me only about what Mr. Corn may have gave him via information or actual documents or recordings or anything else, but he's not allowed to talk to me about information he may have given to Mr. Corn himself?

Mr. Levin. That's right. As a general matter, that's right. I mean, if you want to ask specific questions we can figure it out.

But as a general matter I'm not comfortable having him talk about things he has said to reporters while the Department still has an ongoing investigation.

Mr. Jordan. Mr. Baker, did you know about the dossier prior to Mr. Corn telling you he wanted to give the dossier to the FBI?

Mr. Baker. Yes.

Mr. Jordan. You knew about it?

Mr. Baker. Yes.

Mr. Jordan. Had you read it, the installments or sections or all of it that you had that the FBI had in their possession?

Mr. Baker. I know that I read some version of it. I can't recall if I read every single piece that we got from all the difference sources.

Mr. Jordan. Uh huh.

Mr. Baker. But I know that at some point in time I read a significant portion of the dossier.

Mr. Jordan. Some point in time prior to the election?

Mr. Baker. I would think so, yes.

Mr. Jordan. So you knew about the dossier prior to the election and you had reviewed it prior to the election. And also prior to the election Mr. Corn had a copy of the dossier and was talking to you about giving that to you so the FBI would have it. Is that all right? I mean all accurate.

Mr. Baker. My recollection is that he had part of the dossier, that we had other parts already, and that we got still other parts from other people, and that and nevertheless some of the parts that David Corn gave us were parts that we did not have from another source?

Mr. Jordan. Yeah. And you understand that Mr. Corn was the first guy to actually write in a public way about the dossier?

Mr. Baker. I have heard about that, yes?

Mr. Jordan. Okay.

Mark, do you have any more questions on this section?

Mr. Meadows. So let me be clear. He wanted the FBI to have the dossier, David Corn did?

Mr. Baker. Yes, he told me that he had a piece of

Mr. Meadows. So did he give you the dossier? Because obviously you got parts of the dossier from David Corn. So did he give that to you? Were you the intermediary?

Mr. Baker. He gave it to me, and then I immediately gave it to I think it was Bill Priestap, who was the head of our Counterintelligence Division?

Mr. Meadows. And when he gave it to you did you read it?

Mr. Baker. I don't think so. Not his part, no.

Mr. Meadows. So you lacked the curiosity to read something that significant? That seems strange. I mean, I would probably have read it.

Mr. Baker. I was very uncomfortable handling evidence, and I really wanted to

Mr. Meadows. Well, and I guess that gets to theoretically, so we don't get into an issue here, theoretically, is it appropriate for SES level employees, specifically those in the general counsel's office or the like, to have ongoing conversations with members of the media, whether it's David Corn or anyone else? Is that

Mr. Levin. I'm not

Mr. Meadows. And that's a theoretical question. I didn't say he was doing it. I'm just saying, theoretically, is that something

that's approved by the FBI on a regular basis where you have ongoing conversation with the media?

Mr. Levin. And I'm not going to allow him to answer that question, sir.

Mr. Breitenbach. Actually, let's just not say even theoretically. Is it approved practice for attorneys within the general counsel's office to speak with the press?

Mr. Levin. I'm not going to let him answer that question.

Mr. Meadows. Well, let me go a different direction then in following up on Mr. Jordan.

Is it normal practice for the general counsel to talk to confidential human sources?

Mr. Baker. Is it normal practice? No, it's not normal practice.

Mr. Meadows. Did you talk to confidential human sources?

Mr. Baker. There is another occasion that I can think of where somebody brought material to me, based on a preexisting relationship. They gave the material to me. Same situation. I was quite concerned about it. I gave it to the investigator

Mr. Meadows. And who was that?

Mr. Baker. Who was that?

Mr. Meadows. Yeah.

Mr. Baker. Michael Sussman.

Mr. Meadows. And why did they seek Jim Baker, the general counsel, out for the intermediary? When they had multiple contacts other than you, why would did you have a personal relationship with

him, like you did with David Corn?

Mr. Baker. I had a personal relationship with Michael, and you'd have to ask him why he decided to pick me.

Mr. Jordan. Is Michael a member of the media?

Mr. Baker. I'm sorry. Say that again.

Mr. Jordan. Who is Michael Sussman?

Mr. Baker. He's an attorney in D.C.

Mr. Meadows. And who does he work for?

Mr. Baker. He works for Perkins Coie, a law firm.

Mr. Meadows. And so what you're saying is you were the intermediary between Perkins Coie and the FBI because of your personal relationship with that attorney?

Mr. Baker. I believe so. You'd have to ask Michael why he came to me.

Mr. Meadows. I get that. And so why would an attorney have this evidence at Perkins Coie?

Mr. Baker. He told he said that there had been I'm not sure exactly how they originally learned about that information, but what he told me was that there were cyber

Mr. Meadows. I mean, is he a normal intel operative? How would he have come by this?

Mr. Baker. He told me that he had cyber experts that had obtained some information that they thought they should get into the hands of the FBI.

Mr. Meadows. So he go ahead.

Mr. Jordan. What was the information? Was it the dossier as well or something different?

Mr. Baker. No, no, it was not the dossier. It was another it was another matter. I mean, I don't know if I can talk about it. But I don't know what the Bureau wants to do. But it's another matter.

Ms. Bessee. Can we

Mr. Baker. I'll just stop.

Ms. Bessee. Can we confer, just to be clear?

[Discussion off the record.]

Mr. Jordan. Mr. Baker?

Mr. Baker. Yes, sir.

Mr. Jordan. You were telling us that Mr. Sussman handed you some information or gave you some information that you then took to the FBI. What was that information?

Mr. Baker. It's unrelated to the dossier, it's another investigative matter.

Mr. Jordan. Unrelated to the dossier, but is it related to the Trump Russia matter?

Mr. Baker. I'm going to defer to the FBI on that one.

Ms. Bessee. Congressman, any questions that relate to any information or evidence that impacts the Russia investigation will be an area that we will not allow the witness to answer because

Mr. Jordan. I'm just asking if it deals with that. I'm not asking you to tell me specifically it is. Obviously, you're not going to do that. He's told me it doesn't deal directly with the dossier.

Does it deal with something else related to the Russia investigation?

Ms. Bessee. I will let him answer that question, but not go into anything related to what that information may be.

Mr. Baker. Yes.

Mr. Jordan. So the Perkins Coie directly a lawyer with Perkins Coie directly hands you information dealing with the Russia investigation, not with the dossier but with the Russia investigation, and this is Michael Sussman, who is the lawyer for the Democrat National Committee and Secretary Clinton's Presidential campaign, he's giving you information.

When did this take place again?

Mr. Baker. I can't remember specifically. Again, I believe there's a I referred this to the investigators, and I believe they made a record of it and put the there's evidence you know, they took information. There is an evidence record of what it is. I can't specifically remember when it was.

Mr. Jordan. Before the election or after the election?

Mr. Baker. I think it was before.

Mr. Jordan. You think it was before?

Mr. Baker. Yes, sir.

Mr. Jordan. So about the same timeframe. Are we talking October 2016? September 2016?

Mr. Baker. No, it was sometime earlier than that. I don't specifically remember. It was earlier than the David Corn conversation.

Mr. Jordan. Was it between July 31st, 2016, and election day 2016?

Mr. Baker. I don't specifically remember. It could have been.

Mr. Meadows. You don't specifically remember. But obviously July 31st is a date that you know very well in terms of what happened on that particular date.

So was it before that date or after? Not specific. I mean, had you opened up the investigation or not when you got that information?

Mr. Baker. So I apologize, I, sitting here today, I don't specifically remember the

Mr. Meadows. So do you have a calendar that would indicate this?

Mr. Baker. When Sussman came in? Probably.

Mr. Meadows. Can you get that to us? We need the time.

And, counselor, if you're going to go there, I would encourage you to get Dana Boente. Because, listen, we've gone through this before. We need timeframes. We need to understand it.

And this is a reasonable request of when this particular attorney obtained information from a contact that was actually the attorney for the Democrat National Committee. It is a critical timeframe. Was it a predicate or not to the investigation?

Ms. Bessee. Congressman Meadows, what I was going to say was we will look to see if there is a calendar. But if it is involved in any way as evidence with the special counsel investigation, you're right, Dana or the DAG will have to make that decision. But we will look to see if we have that.

Mr. Meadows. And so we will get one of two things. We will either get a calendar, if it exists, of this day.

Ms. Bessee. Yes.

Mr. Meadows. Or we will get some kind of written response from the DAG on why we can't have this. Is this correct?

Mr. Bessee. That's correct.

Mr. Jordan. Mr. Baker, is it fair to say that any materials passed by the FBI general counsel automatically have a reliability and a level of credibility attached to them? You're the FBI's general counsel, if you're getting information from an outside source and passing it, on that means something.

Mr. Baker. I suppose so, Congressman.

Mr. Jordan. And people are going to take seriously when the FBI general counsel has some source giving them information related to a pretty darn important investigation, they're going to take that pretty seriously and follow up on it.

Mr. Baker. Within the organization, the Bureau?

Mr. Jordan. Yes.

Mr. Baker. Yes, I would say so.

Mr. Jordan. Okay. Is anyone else giving you information? So we know about Mr. Corn giving you some of the dossier. We know about Mr. Sussman giving you material not directly related to the dossier, but related to the Russia investigation. Anyone else give you information in the course of the Russia investigation?

Mr. Baker. I don't specifically recall sitting here today.

Mr. Jordan. No one else?

Mr. Baker. Not that I can recall.

Mr. Jordan. Okay.

You have anything more on this, Mark?

BY MR. BREITENBACH:

Q Sir, you had mentioned that there was a 302 that you know to exist with regard to an interview that the FBI conducted with you?

A With respect to David Corn. That I'm fairly confident about. I can't remember if they did a 302 on the Sussman thing because they may have just recorded it, put the material into evidence, and have records with respect to that. He gave me material and that was put into evidence.

Q Do you recall the reason why the FBI was asking you any questions at all in the first place? Did they articulate what their investigation was about?

A I knew what the investigation was about, sure.

Q And what was the investigation?

A What did I just say, Russia, I think? Yeah.

Q With regard to the 302 that they are interviewing you, are they interviewing you based off of the general Russia case or is this a separate case?

A A person gave me what I believed to be evidence. I provided that to the FBI. So the FBI wanted to have a record of the chain of custody of how that material came to the FBI so that it would be clear down the road where the evidence came from.

Mr. Jordan. Mr. Baker, was this the first time you had ever had this arrangement? Was this the first time Mr. Sussman ever gave you information that you passed on to proper people at the FBI?

Mr. Baker. Well, he had litigated against the FBI, so I had had conversations with him about that.

Mr. Jordan. I'm talking this kind of he's not in litigation with the FBI on this situation.

Mr. Baker. No.

Mr. Jordan. He's just giving you information because he's doing it out of the goodness of his heart as a great American citizen, it sounds like. So he's giving you that information and you're passing it on. Is this the first and only time that's ever happened?

Mr. Baker. In that context, yes. I mean, again, I think he told me things in the course of litigation, so he's informing me about things.

Mr. Jordan. Of course, that's normal.

Mr. Baker. So he's providing me with quote, unquote, information. But where he provided me something that I would regard as evidence this was the only time.

Mr. Jordan. Okay. Has anyone else ever done that, any other lawyer just call you up out of the goodness of their heart and tell you they're going to give you information that's going to help you with some ongoing investigation?

Mr. Baker. Not that I can recall. But I guess I would say lawyers would call me from time to time for the same kind of reason

you were talking about, if they could get to the general counsel and you could get the general counsel engaged on an issue

Mr. Jordan. I get that.

Mr. Baker. then it's more likely to have something happened.

Mr. Jordan. Yeah, we get that. But this is the first time and to your recollection the only time an outside counsel had information and was wanting to make sure it got to the general counsel of the FBI, and it happened to deal with the Russia investigation.

Mr. Baker. I think that's correct. Sitting here today, that's the only one I can remember.

Mr. Jordan. Okay.

How much time?

Thank you, Mr. Baker.

[Recess.]

[11:22 a.m.]

EXAMINATION

BY MS. SHEN:

Q Good morning, Mr. Baker.

A Good morning.

Q My name is Valerie Shen. I am the chief national security counsel. Thank you very much for coming. National security counsel for the House Oversight and Government Reform Committee, and I will be helping lead some of the democratic staff questioning today.

And I have with me Congressman Raskin, who will do some lines of questioning. But first I just wanted to revisit something that was discussed in the last round. And I forgot to mention it, but I believe the time was 11:21 when we began.

So in the last round, the majority discussed evidence that Michael Sussen from Perkins Coie.

A Sussman.

Q Sussman.

A S u s s m a n .

Q And Mr. Sussman was an or still is, I think an attorney at Perkins Coie, is that correct?

A That is correct.

Q And how do you know Mr. Sussman?

A I can't remember when I first met Michael, but he and I both worked in the criminal division together at the Department of Justice, and we knew each other there and then had mutual friends. And so we

have just, our paths have crossed repeatedly over the years.

Q And what kinds of issues did he work on at the Department of Justice?

A I think he worked in the computer crime area.

Q Okay. And I believe last round it was mentioned that Perkins Coie, his firm, had represented the DNC and the Hillary Clinton campaign, is that your understanding as well?

A That is what they said. I have never confirmed that. I think I read that in the press.

Q Okay. So when Mr. Sussman came to you to provide some evidence, you were not specifically aware that he was representing the DNC or the Hillary Clinton campaign at the time?

A I don't recall, I don't recall him specifically saying that at that time.

Q Okay. When Mr. Sussman did provide you this evidence, did you react in any in any way with concern. Were you alarmed? Were you did you believe that it was inappropriate for him to come to you with this information?

A No, I did not believe it was inappropriate. It was a citizen providing information to the FBI about a matter that they thought had either to do with a crime or some national security threat. And so it did not seem inappropriate to me.

Q Okay. So I guess it is just my interpretation, but I believe last round it was somewhat implied that if he did have an association to the Democratic National Committee and the Hillary Clinton campaign

that that might lead someone to believe that something improper was done. And I wonder if you could just explain to me, you know, why your view is that it was not improper because, just the mere notion that someone who is a Democrat or Republican, you know, comes to you with information, should that information somehow be discounted or considered less credible because of, you know, partisan affiliation?

A Well, the FBI is responsible for protecting everybody in this country. Period, full stop. And we do that, without regard to who they are or what their political background is or anything else. If they believe they have evidence of a crime or believe they have been a victim of a crime, we will do what we can within our lawful authorities to protect them.

And so when a citizen comes with evidence, we accept it. That is my, just general understanding over many, many years. We, the Bureau, we, the Department of Justice. And so that is how I construed what Michael was doing. It was, he believed he had evidence, again, either of a crime or of a national security threat, and he believed it was appropriate to provide it to us. When he did, I didn't think there was anything improper about it whatsoever.

As I said, I recognized that I was obtaining evidence and I wanted to get it out of my hands into the hands of agents as quickly as possible. And that is what I did.

Q Okay. Thank you.

Mr. Raskin. Thank you, Mr. Baker.

In March of 2017, Director Comey disclosed in public testimony

that "the FBI had launched an investigation into the Russian Government's efforts to interfere into the 2016 presidential election, including the nature of any links between individuals associated with the Trump campaign and the Russian Government and whether there was any coordination between the campaign and Russia's efforts," unquote.

Did you work on that investigation?

Mr. Baker. Yes.

Mr. Raskin. What was your role?

Mr. Baker. I was the general counsel, so I was responsible for advising the Director and other leaders of the FBI with respect to that investigation, interacting with the Department of Justice and then interacting with other levels of the FBI and importantly making sure that the other folks in the FBI were getting the legal services they needed from my office to support them in the investigation.

Mr. Raskin. And when did you stop working on it?

Mr. Baker. I would say when I left, when I left the position of general counsel, the first week of January of 2018, so I was still I was significantly less involved in it once the special counsel was appointed, but I still played a role in it from time to time after that.

Mr. Raskin. I would like to ask you some questions about the FBI's investigative techniques generally.

On May 18, 2018, the President tweeted "apparently, the DOJ put a spy in the Trump campaign. This has never been done before. And by any means necessary, they are out to frame Donald Trump for crimes he did not commit."

Are you aware of any information that would substantiate the President's claim that the Department of Justice, quote, "put a spy in the Trump campaign?"

Mr. Baker. So I just want to look at the FBI for a second here in terms of responding about these types of questions, recognizing that this is an unclassified and how do you want me to respond to that.

Mr. Sinton. Can you repeat the question?

Mr. Raskin. Are you aware of any information that would substantiate the President's claim that DOJ, quote, "put a spy in the Trump campaign."

Mr. Sinton. It is a yes or no question, and then when we get past that part, we can have a conversation, if necessary.

Mr. Baker. The answer is no, I am not aware of an effort to put a spy in the campaign.

Mr. Raskin. Does the FBI place spies in U.S. political campaigns?

Mr. Baker. Not to my knowledge.

Mr. Raskin. Are you aware of any information that would corroborate or substantiate the President's claim that DOJ is, quote, "out to frame Donald Trump?"

Mr. Baker. No.

Mr. Raskin. Have you ever been involved in any investigations where the FBI did not follow its established protocols on the use of human informants?

Mr. Baker. Not that I can specifically recall off the top of my

head. The FBI makes mistakes but we have mechanisms to correct to unearth and correct those mistakes. I am not saying the FBI never makes a mistake, I am just saying I don't, off the top of my head, I can't think of anything specifically in response to that.

Mr. Raskin. Have you ever been involved in the DOJ or FBI investigation that was conducted or initiated for a political purpose?

Mr. Baker. No.

Mr. Raskin. Have you ever been involved in the DOJ or FBI investigation that tried to frame U.S. citizens for crimes they did not commit?

Mr. Baker. No.

Mr. Raskin. In your time at FBI, are you ever aware of the FBI conducting an investigation to frame a U.S. citizen for a crime he or she did not commit?

Mr. Baker. No.

Mr. Raskin. Okay. On May 20, 2018, President Trump tweeted, and I quote, "I hereby demand, and will do so officially tomorrow, that the Department of Justice look into whether or not the FBI, DOJ infiltrated or surveilled the Trump campaign for political purposes and if any such demands or requests were made by people within the Obama Administration!" exclamation point, unquote.

At a political rally on May 29th, 2018, the President again stated quote, "so how do you like the fact that they had people infiltrating our campaign?"

To your knowledge, did the FBI or DOJ ever investigate the Trump

campaign, quote, "for political purposes?"

Mr. Baker. No.

Mr. Raskin. To your knowledge, did President Obama or anyone in his White House ever, quote, "demand or request" that the DOJ or FBI, quote, "infiltrate or surveil" the Trump campaign for, quote, "political purposes?"

Mr. Baker. No.

Mr. Raskin. And how would you or the FBI leadership have handled any requests of this nature to launch an inquiry for political purposes or to infiltrate for political purposes?

Mr. Baker. We would have rejected it out of hand and would have resigned, if compelled to do it.

Mr. Raskin. Okay. Good. I just have a few more questions here.

In March of 2017, Director Comey disclosed in public testimony that the FBI had begun an investigation into, quote, "the Russian Government's efforts to interfere in the 2016 presidential election," including, quote, "the nature of any links between individuals associated with the Trump campaign and the Russian Government and whether there was any coordination between the campaign and Russia's efforts," unquote.

When you first learned about a tip that the Russian Government could be coordinating with the Trump campaign, what was your reaction to that? Were you concerned or alarmed by it?

Mr. Baker. I was alarmed by that, yes.

Mr. Raskin. As the evidence developed to the point where the FBI

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began an official investigation, did your thinking change in any way?

Mr. Baker. I am sorry, say that again.

Mr. Raskin. As the evidence developed to the point where the FBI actually launched an official investigation, did your thinking change? Had you grown more alarmed and concerned or less so?

Mr. Baker. I guess I grew more alarmed over time.

Mr. Raskin. How often does the FBI investigate the potential coordination between a presidential campaign in our country and a foreign adversary? Is that a common thing?

Mr. Baker. I think this is the first instance that I am aware of.

Mr. Raskin. And what was your estimate of the national security risk involved in such potential coordination? How important was the case?

Mr. Baker. I viewed the case as very important.

Mr. Raskin. Was it important to keep the investigation secret before the election?

Mr. Baker. Yes.

Mr. Raskin. And what steps did the FBI undertake to maintain the secrecy of the investigation?

Mr. Baker. So it maintained the classification on a lot of the material. We limited the number of people that we talked about with it talked about the investigation internally at the Department of Justice.

So we classified information and we restricted access to

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information, and we treated it as a very sensitive matter.

Mr. Raskin. Did the investigation ever leak?

Mr. Baker. I don't think so.

Mr. Raskin. How would you articulate the importance of maintaining secrecy about that investigation?

Mr. Baker. It was critically important to give us enough time to be able to investigate without the Russians or anybody else understanding what it is that we were investigating understanding what we knew and what we were trying to do to collect information to ascertain whether these initial allegations that we received had any truth to them.

Mr. Raskin. Today, we know that the investigation began before the election in July of 2016, but no news of it leaked out to the press. You were aware of the investigation before the election?

Mr. Baker. Yes.

Mr. Raskin. And do you know whether Peter Strzok was aware of it?

Mr. Baker. Yes, he was.

Mr. Raskin. Lisa Page?

Mr. Baker. Yes.

Mr. Raskin. Andrew McCabe?

Mr. Baker. Yes.

Mr. Raskin. James Comey?

Mr. Baker. Yes.

Mr. Raskin. What about DOJ officials? Loretta Lynch?

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Mr. Baker. I think she was aware. I don't recall myself having a conversation with her about it, but I think she was aware.

Mr. Raskin. Do you know whether Sally Yates was aware of it?

Mr. Baker. Same thing. My assumption was that she was aware of it.

Mr. Raskin. And John Carlin?

Mr. Baker. Same. I didn't speak to him about it, but I think he was aware.

Mr. Raskin. How many officials would you estimate were aware of the investigation before the election?

Mr. Baker. That is a hard one to answer. I would say a small number. Again, because we were trying to keep it quiet.

Mr. Raskin. Okay. And did you make any disclosures about this investigation to the press or the public before election day?

Mr. Levin. Just to be consistent, I am not going to let him answer any question about leaks.

Mr. Raskin. Got you. Okay. And I don't know if you can answer this one, but are you aware of any evidence of a so called deep state conspiracy at the FBI to stop Donald Trump from being elected?

Mr. Baker. No.

Mr. Raskin. And are you aware of any evidence of Peter Strzok and Lisa Page, James Comey, or Andrew McCabe working to stop Donald Trump from being elected?

Mr. Baker. No.

Mr. Raskin. Okay. I have got no further questions.

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Mr. Baker. Thank you.

BY MS. SHEN:

Q Just to circle back on the topic I left off of before, there were some discussion last round, again, that in Mr. Sussman providing you information in your capacity as general counsel that that was not the typical route for evidence. Is that about what you recall?

A Yes.

Q So regardless of not being the most typical route for evidence besides the FBI, when the evidence is provided to you, does the FBI have a process to evaluate the credibility of the evidence, to vet it as it would any other piece of evidence coming to the FBI?

A Yes.

Q Okay. So whatever evidence was provided to you would have been evaluated by the same individuals the FBI as through whatever typical challenges the FBI gets its evidence?

A Yes. Yes.

Q Okay. All right. So I would like to now just ask you a few more questions about your professional background, some detail. So I believe you mentioned that at the Department of Justice you worked in the Office of Intelligence Policy and Review from 1990 to 2007, does that sound right?

A 1996 to 2007, yep.

Q 1996 to 2007. Okay. And you mentioned this briefly before, but can you generally describe what the duties of the Office of Intelligence and Policy Review was?

A It was to provide legal and policy advice to the attorney general and other high ranking Department of Justice officials as well as the intelligence community on U.S. intelligence law and national security matters, counterintelligence, a whole range of national security related issues.

Among other things, we were responsible for representing the United States before the Foreign Intelligence Surveillance court, which meant we prepared all the FISA applications and brought them to court, working with the various intelligence agencies.

So that was a substantial part of our responsibility.

Q Okay. And so you have personal experience drafting, preparing and managing FISA warrant applications before the FISA court?

A Yes.

Q Okay. If you had to estimate, how many FISA warrant applications have you worked on?

A So I did figure this out once. If you include preparing, reviewing, or supervising, it is over 10,000.

Q And do you also have personal experience working directly with the FISA court judges?

A Yes.

Q Okay. And if you have to estimate, again, how many interactions did you have in person or otherwise?

A Well, when I was doing this full time, there were countless. I can't remember. I don't know how many. Every day.

Q And so if math serves me right, you served in the Office of

Intelligence Policy and Review for about 11 years?

A Yes.

Q Okay. And overall, how many years of FISA experience do you have?

A So I worked on well, working on FISA one way or the other, because I have also taught about FISA at law school as well, so if you include all that, it is, you know, roughly 20 years of experience.

Q Okay. And so FISA is one of your subject matter specialties?

A Yes.

Q And would it be fair to call you a FISA expert?

A Yes.

Q The name Office of Intelligence Policy and Review changed at some point. Or you mentioned it being merged into NSD, so is it the same functions but just merged in NSD?

A It is essentially the same functions. They reorganized it. But, for example, there is an Office of Intelligence within the National Security Division that handles all of the FISA matters today, which is a successor to OIPR. Other parts of OIPR have been broken up and put into different parts of NSD.

Q Okay. But the FISA component remains in

A Remains. There is a core FISA component still at the National Security Division.

Q Okay. You served in OIPR which the Nation was attacked on September 11, 2001?

A That is correct.

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Q And what was your role in that office leading our Nation's counterterrorism and counterintelligence activities in the aftermath of those attacks?

A I was the head of the office.

Q Okay. And generally, were there significant changes in how the U.S. approached counterterrorism or intelligence activities in response to the 9/11 attacks?

A Substantial changes.

Q Can you describe a few examples?

A Well, there were legal changes, there were organizational changes, there were, you know, new agencies were created, likes DHS, for example. There were new ways of doing business with the FISA court, there were new ways of doing business in terms of how the agencies interacted with each other, there were new ways of sharing information, sharing intelligence information, there were substantially more resources devoted to counterterrorism after 9/11, obviously.

So it was, I think it is fair to say, it was revolutionary in terms of the volume and scope of the changes that occurred.

Q And what kind of changes involved the FISA court that you just mentioned. How was that done differently?

A The volume of FISA applications went up substantially, the number of emergency FISA authorizations went up astronomically.

We had to then build a whole infrastructure to deal with all of that. The types of targets changed, the techniques, the surveillance techniques changed, the technology changed, the Internet became much

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more prevalent, Internet based communications became much more prevalent.

The demand for quick, rapid, information sharing increased substantially. Then you had a whole other stream of things that was going on having to do with the Stellar Wind program that President Bush had authorized. And that changed a lot of the FISA practice in various ways.

It was the velocity and volume and variety of things was substantially different after 9/11.

Q So the FISA function significantly scaled up and became more aggressive after 9/11?

A Yes. Still within the law, but aggressive.

Q In December 2016, you received the George H.W. Bush Award For Excellence in Counterterrorism, the CA's highest award for counterterrorism achievements. Is that accurate?

A Yes.

Q Okay. And in January 2007, you received the NSA's Intelligence Under Law Award, the NSA Director's Distinguished Service Medal and the Department of Justice's highest award from attorney general Alberto Gonzalez. Is that accurate?

A Yes.

Q Where are you currently employed?

A I am currently employed at the Brookings Institution, I am a visiting fellow there. I am a visiting fellow at the Lawfare Institute. I am a lecturer on law at Harvard law School, and I also

have my own consulting firm.

Q What subjects do you teach at Harvard Law School?

A National security law.

Q So Mr. Baker, there have been a number of serious repeatedly made allegations that the FBI and Department of Justice abused its FISA authority in pursuing a surveillance warrant for former Trump campaign official Carter Page in October 2016.

As a long term expert on FISA, I think it would be helpful if you would help us review and understand how that process actually works. So first, just stepping way, way back. What is the purpose? What is the typical purpose of a FISA surveillance warrant?

A A FISA authorization is an investigative tool. It is just a tool to provide the FBI or the intelligence community, more broadly, with foreign intelligence information related to a valid foreign intelligence objective. And it is a highly intrusive, potentially, tool that is used by the FBI, by the other parts of the intelligence community, and it is overseen closely by various elements of the government to make sure that it is being done for the right purposes.

And, I mean, that is the basic idea. It is a surveillance tool to provide the FBI with foreign intelligence information.

Q Okay. And so the purpose of a FISA surveillance warrant isn't directly for a criminal investigation or criminal purpose?

A Well, this is complicated to go through all of that, but the FBI the FISA the statute requires that there be a certification from a high ranking national security official like the FBI Director

that a significant purpose of the FISA application is to obtain foreign intelligence.

The line between what is criminal and what is intelligence sometimes becomes blurred and that was a big issue before 9/11 and even after 9/11, that has been sorted out basically now. But a significant purpose of the surveillance has to be for foreign intelligence purposes. And somebody high ranking has to sign their name to that purpose.

Q And so, generally, when does the FBI decide it should apply for a FISA warrant?

A It is one of the techniques that agents know about as part of their investigations. And they have to have probable cause in order to justify having a or seeking and obtaining a FISA authorization.

And so it is not typically the first things that is done in an investigation. You build up to that point. You collect other information, other evidence, if you will, and gather that and develop your probable cause. And then at some point in time, you seek the FISA when it makes sense in the investigation. There are a significant commitment of resources. FISA authorizations are significant commitment of resources by the Bureau, and so the managers, for no other reason, other than efficiency and appropriate use of resources need to think about the deployment of those resources in that way.

So they need to be serious about the investigation and do it at the right time when it makes sense for the investigation.

Q So if an FBI investigator thought they had, you know, clear,

strong case for probable cause, it would be pretty typical to want to pursue a FISA application as an investigative tool if the resources, equation made sense?

A Yeah, I think so. It is a normal tool that they worked toward. They don't always get it in every case. In fact, they don't get it in most cases.

Q Okay. Can you walk us through the process from when for when the FBI wants to apply for FISA warrant to surveil a U.S. person. So, you know, who makes that initial decision, who approves it, who is involved in that process?

A So it is a complicated process, I am probably going to miss some of the steps exactly. But the basic idea is that if an FBI field office, for example, is investigating a particular subject, and they determine that they want to obtain a FISA, that will be reviewed within the field office. It will go through the management chain in the field office through a variety of different supervisors.

It will also get a legal scrub in the field office. And then there will be most likely, interactions with the Office of General Counsel, FBI headquarters, depending on what type of case it is, counterterrorism or counterintelligence. And then it will once the FBI has decided that it wants to pursue this, then a request will go across the street to the Department of Justice to the Office of Intelligence.

It is possible that there has been some interaction with an assistant United States attorney along the way, but then it will get

a complete review at various levels within the Department of Justice.

Once everyone agrees that this is that we want to go forward, then there is a signature process that the agencies go through, and there are certain signatures that need to be obtained through the field office, through headquarters, up to and including the director or the deputy director of the FBI. They have to sign it. Then it goes across the street to the Department of Justice, and then has to go up to, either the assistant attorney general for national security, the deputy attorney general or the attorney general.

So there are a range of there are a lot of reviews with respect to this. And then once you are done with that, it goes to the FISA court, where the FISA court legal advisers typically look at all the applications, they scrub them. And then once they are satisfied, then it goes to a Federal judge, one of the judges on the FISA court who is a sitting Federal judge in a normal District Court in the United States.

And then that, the judge reviews it as well. So it goes through many reviews in the executive branch and in the judiciary.

Q How

A Excuse me and all of this is subject to oversight by Congress.

Q How is the evidence usually collected to assemble and put into a FISA warrant application. Is there a specific investigation? Is it, you know, whatever you have from your previous investigation, is there a separate process for obtaining additional evidence?

A Well, you have to have a full investigation opened in order to obtain a FISA. So full investigation just means you have to have sufficient probable cause sufficient factual predication within, or pursuant to the attorney general guidelines in order to use that technique, because it is such an intrusive technique.

So and the FBI can gain the information from any lawful source to establish probable cause. But typically, there will be witness interviews, there will be a collection of, I don't know, phone records, physical surveillance, you might have, confidential source information. You might have information from a foreign partner. You could have intercepts from some other intelligence agency that may have been provided to the FBI. You have a whole range of different information, different types of information that could go into a FISA application.

Q Okay. And you mentioned, you know, quite a number of people and different components at different levels, so I understand you can only give me a rough ballpark, but, you know, how many people overall will be involved in, you know, putting together a FISA application that the FBI or the Department of Justice?

A I would be worried about giving you a number, but I don't know, just a rough estimate, at least 20 people, something like that, maybe. Sometimes more.

Q And typically, how long might a process like this take to assemble the information, you know, check all the, boxes, go through the signature process. How long will it take to assemble a complete

application?

A It depends. The cases are prioritized. And so the ones that are the most urgent so in a counterterrorism case where there is an imminent threat, the process can move extremely quickly, and it can be done all orally.

But typically, it takes much longer than that. It is hard to say. I don't know what the average number is right now. It can take days, weeks, sometimes months to move a FISA through, depending it depends on the nature of the threat and the strength of the probable cause. The bigger the threat, the stronger the probable cause, the faster it goes through the system.

Q And I believe you already listed, quite a few names off, but at the FBI who approves or signs off on a FISA application? I believe you mentioned the director, deputy director. Does it go all the way down to the field office?

A It would go through the Office of General Counsel. I, as general counsel, I didn't approve them all. There were a range of people in the national security law branch who could approve them, but there had to be some level of approval. There had to be approval at the headquarters level, in the field, in terms of the substantive agents. Yeah, I think that is it.

Q At what point, and is it based on evidence collection does the FISA warrant application go from the FBI to the Department of Justice for their review?

A Formally, there is a request that is sent across to the

Department of Justice I am sorry yes, to the Department of Justice, but there could be informal interactions from a very early stage where the Department of Justice is aware of a particular case.

We could go over and brief them on it and say, you know, here is this case, we are worried about it. We are working on the FISA. You should expect that soon. And they might work with us directly. So it is hard to give a crisp answer to that. There is a formal way to do it, but most times there are informal interactions with people because, again, it is important to think of a FISA as part of a case that everybody is working on. This is only one tool that is used.

But if it is an important enough case, a lot of people know about it.

Q Does the Department of Justice review to ensure that the FISA application is supported by credible evidence?

A They review it to make sure it is supported by credible evidence, that the techniques are techniques that can be approved, and that the purpose is a lawful purpose.

Q And how does the Department of Justice conduct these reviews?

A They examine the written materials that we send over. They question our folks, they ask for additional documents, send emails back and forth. They have robust interactions with the FBI over time with respect to what is going on with the investigations to satisfy themselves that they understand what is happening and why.

Q Would you say the Department of Justice treats this process pretty seriously?

A Very seriously, yes. Very seriously.

Q How rigorous would you describe their

A Extremely rigorous, yeah.

Q How often would the Justice Department send an application back to the FBI for, you know, some additional review, asking for additional documentation, information?

A I think it is constantly, yeah.

Q Okay. And so, would the Department send a FISA application back to the FBI if they believed a factual assertion was not sufficiently substantiated?

A Yes, but they would have, they would ask questions about it. It is not a formalistic. I mean, it can be formalistic in terms of documents going back and forth, but more often, I would think they would have emails and conversations if the Department had a concern about a factual allegation, whether it was true or not, they would ask to see the underlying material. The FBI would provide that to them. They would either be satisfied or not. And we would have ongoing discussions. And sometimes, there would be an agreement to go collect more information. And the FBI would do that before the FISA would move forward.

Q So would it be more like a routine back and forth over a number of different issues between Department of Justice and the FBI?

A There is a routinely, there is extensive interaction between the Department of Justice and the FBI with respect to what goes into a FISA application.

Q If the Department of Justice, informally or not, had flagged something they believed required additional substantiation, what might that look like? What would the FBI do to say, well, you know, here is another corroborating source, here is another like what kind of information would that require to address their concern?

A Whatever we might have. I mean, we would try to provide the Department with whatever they needed. Sometimes we would say, do you really need this, this might be really hard to get. We don't have it, or might not be able to get it in any circumstance. How important is it to the probable cause. You would have those kinds of discussions going back and forth. And maybe the sometimes, the Department would say, no, okay, we agree, we don't need that. It is too hard to get. Other times, they would push for it and we would get it. Sometimes we would be successful, sometimes not.

Q So I am trying to understand, just generally speaking, how the Department of Justice would and the FBI would evaluate the credibility of a factual assertion that came from a source or another right, because you have intelligence information coming from, I imagine, a spectrum of sources, different reliability, different motivations.

And so what is the process for looking at whatever factual assertion that source provided and then also evaluate the credibility of that underlying source to make a, you know, final determination?

A So, again, that is part of the standard review of FISA applications, to make sure that the FBI and the Department understand

the credibility of any information that is going into, whether it is documentary evidence, information or information from a source.

So there is a, I guess you would say a scrubbing process of the sources to make sure that in this case, the Department, is satisfied that the source is reliable and that if there are any indications of or anything that might call the source's reliability into question, that that information is put forward in the application or is somehow otherwise made known to the court.

Q And can you provide me an example of what might call a source's credibility into question?

A Well, if the source had lied in the past, if the source had received substantial payments from the FBI or some other government agency. If the FBI investigation had revealed the source was involved in some type of illegal activity on the side, or things like that. The source was not complying with direction from the FBI, the handlers, that might be an issue that you would put into the application.

Q Does the FBI or

A It might not even make it into the application because at the end of the day, the Department might assess that the source is not credible, and so you just don't even go forward.

Q Does the FBI or the Department of Justice provide an accounting or analysis of what the motivation was for the source to come forward with their information. And are there certain motivations that are, you know, deemed less credible, reliable?

A I mean, I guess it would be, if the motivation, if the

motivation impacted the assessment of the credibility, then you might put that in there. So, for example, an estranged spouse. If that was the source, then you would have to have a conversation about how important that was. You might discuss whether that was too revealing about who the source was to put that in there. But I have been involved in those kinds of conversations in the past. But something that indicated some animus against the subject that therefore might call into question the credibility of the source.

You would have a conversation about that, assess whether the source was reliable or not and then endeavor to put the FISA court on notice about that.

Q So if in the Bureau's judgment, a source had a personal motive against the target of the surveillance or related, that would be something that you believed should be noted for the FISA

A You should certainly have a conversation about that and figure out whether that, you should proceed with the application or not and whether you should how you are going to tell the FISA court about this. And there is a variety of ways to do that to protect the identity of the source, but, yeah, if there is animus against the subject, then that is something that you have to think about seriously.

Q Are there cases where a source is judged to have animus against a subject, and is nonetheless deemed credible as well?

A Is to what?

Q I will just rephrase.

Are there cases where a source is judged to have animus against

the target of a surveillance but is nonetheless judged to be credible and reliable?

A I mean, I don't recall specifically a case from the past about that, but I would say in that kind of a circumstance, my recollection is we would put forward the reason that the source has the animus against the subject and explain that to the court. And then explain nevertheless, we believe the source is reliable for the following reasons.

So you are going to have to then focus on establishing why those establishing those reasons why you still believe the person to be credible even notwithstanding the animus.

Q So the animus is relevant to analysis but it is not a disqualifying in a vacuum?

A It is not disqualifying just automatically, I would say no.

Q How frequently would you say the FBI receives information from sources that are judged to have some personal motive in coming to the FBI?

A That is a hard question to answer. I am not sure I can answer that one. It is not infrequent.

Q So in the context of FISA warrant applications, can you explain what it means to verify information? I have heard that term used a lot, I guess more in the terms of, you know, unverified information, but I believe it is I believe it is a term of art, to some extent, in terms of there is a requirement to verify information. I was wondering if you can explain that to us?

A I am not sure exactly what that means in this context. I mean, we have developed processes over time to make sure that any allegation that is put into a FISA application is backed up by some type of underlying document.

So for example, we were talking about 302s before, so that which is a report of an interview so if you put an application if you put a sentence in an application saying this happened on this date, then we have a process to make sure, okay, where does that come from? Oh, it comes from this 302 where this witness said this. Or if you have information from a national security letter, a telephone record, you want to make sure you have that.

So in terms of verifying the information, what I am thinking about is we make sure when we have procedures to make sure that all of the factual assertions in the application are backed up by some underlying document to support them.

Q So if you are verifying something, you are able to match it to the underlying source or documentation, but that is not the same thing as saying that factual assertion is already proven to be true?

A Correct.

Q Okay?

A It is just this is where it came from.

An important thing to remember is FISAs take place in the middle of an investigation. And so you are still learning about what is happening.

You put forward the information that you have at the particular

time that you have it, but you could be wrong. It could be that you are completely wrong about what you have concluded with respect to this person.

But that is what you are trying to find out. And if you are wrong, then you will conclude the investigation and no further action follow. If you are right, you will keep going and then you will deal with whatever happens.

But that things turn out not to be the case that you put forward in the application so long as you believe them to be truthful at the time and had support for that, that happens.

Q So in a FISA application, the Bureau or the Department is often put together their best intelligence assessment at the time, but as you are saying some things might prove

A To be wrong.

Q to be wrong later?

A Yes.

Q And if that were the case, it wouldn't really be fair to say the Bureau or the Department is trying to trick the FISA court?

A No.

Q So my current understanding is that under the FISA statute, a warrant can be obtained to conduct electronic surveillance on a U.S. person if they can show probable cause that the target is an agent of a foreign power. Does that sound

A That is correct.

Q Okay. So how does the FBI determine whether there is

probable cause that someone is an agent of a foreign power? What kinds of things would they look at?

A So you look at the statutory definitions of agent of a foreign power. And one of the important things there is it requires that when it pertains to U.S. persons that their activities are engaged in knowingly in support of that.

So you are going to look at everything we can collect short of a FISA about that person lawfully and assess whether the person fits within that definition, and then focus on whether or not there is evidence/information that the person knows that he or she is involved in these types of activities.

So you try to marshal all of the physical surveillance, documents, interview witnesses, sources, intelligence from other agencies, intelligence from foreign partners, everything you can possibly get to bring to bear on the question of whether this person is a legitimate target under FISA.

Q Could referring to one self as an informal adviser to a foreign government be considered evidence of someone knowing to be an agent of a foreign power?

A That would be relevant.

Q Can you explain briefly what minimization procedures are in the context of a FISA warrant application for a U.S. person?

A Minimization procedures are a critical protection that exists in the statute and have to be employed in each application in order to protect the privacy of Americans, which is the one of the most

important points of FISA. And they are part of what make FISA applications reasonable under the FISA authorizations reasonable under the Fourth Amendment.

So they require the government to basically reduce the amount of information that it acquires, retains, and disseminates about a U.S. person consistent with the foreign intelligence needs of the United States.

Q So would that prohibit, you know, their names, you know, any kind of personal identifying information, what would the restrictions be in terms of describing a U.S. person in vague terms? How does that work in practice?

A It depends. So there are standard minimization procedures that exist that the government has to follow. There could be additional minimization procedures that the court employs in any particular case, but you have to it is contextual.

So it depends upon who you are disseminating information to, why they need that information, and that the information is foreign intelligence essentially, foreign intelligence or evidence of a crime.

So you are giving it to an authorized recipient, and the disclosure of the identity, let's say, makes sense in this context because it is part of what the foreign intelligence information is or the evidence of a crime, and you are giving it to somebody that you assess needs to know that information to execute their duties.

Q So it is on a need to know basis?

A Well, any classified information is on a need to know basis but yeah, the minimization the dissemination is contextual so you don't willy nilly give out U.S. person information. You try to restrict it whenever possible.

And agencies have adopted a variety of different policies and procedures in order to do that but, again, the key thing is whether the information is foreign intelligence, evidence of a crime or necessary to understand the foreign intelligence or its importance.

And if it fits within that and it is under U.S. person identity, then you could disclose it to somebody who needs to know that and who has the appropriate clearances.

Q Under what circumstances would it be appropriate to use the name of a U.S. person in a FISA application?

A If it was foreign intelligence, you needed to know that, you know, the spy for the foreign country we think is this person and, you know, two people are talking on the phone and they are plotting, I don't know a terrorist attack or they are plotting some espionage thing, and so you need to identify to somebody else in the government like these two guys and here is their names, they are U.S. persons, they just plotted to blow up something, some building somewhere right?

Q So U.S. persons, for example, that were, you know, part of a plot or the target of the surveillance, those would be the types of U.S. persons that

A They certainly could be, yeah. And if they are plotting to blow something up in the United States, absolutely.

Q Would it be appropriate to use the name of a U.S. person merely because they are running for political office in the United States?

A Well, again, you would not disclose that unless you assess that that person's identity was, itself, foreign intelligence information, evidence of a crime, or necessary to understand the foreign intelligence or its importance. It has to fit within one of those categories or you should not be disclosing that person's identity.

Q Okay. Can you describe what can you describe your understanding of what the term unmasking is and how that relates to minimization procedures. I obviously heard it used a lot and want to understand it more precisely.

A Yeah. It is a bit confusing, but the basic idea is as a standard practice certain governmental agencies have adopted this process with that when they produce a report that is widely distributed that goes to a lot of different people, that they will, instead of putting the U.S. person's name in the report, they will use a euphemism, like U.S. person number 1 said blah blah blah to U.S. person number 2.

And those two identities will be something else about the information is important, something else about the information constitutes foreign intelligence, but the agency that is disseminating it has assessed that the identity of the U.S. person itself is not foreign intelligence information or evidence of a crime as I have

described.

So that gets disseminated. So that is quote unquote "masked." Agencies that receive that, if they say, whoa, this is really important to us. We need to know what actually person's name is. They would go back to the originating agency, put in a request for that, ask them for that, and then the agency would follow its procedures.

If they assess yes, you know, the FBI needs to know that, so they will provide the FBI actually with the U.S. person identity. They will therefore, unmask it.

Q Okay. So unmasking is more in the context of disseminating information?

A Disseminating information and, in particular, from certain agencies that I will refrain from identifying here, but it is not the FBI. It is other intelligence agencies have a practice of, quote unquote, "masking" U.S. persons' identities.

Q Circling back to minimization procedures, if the FBI and the Department of Justice were putting together a FISA application and they used the names of U.S. persons that, you know, contextually was not originally discussed, like evidence of a crime, or, you know, you really needed to know to understand the surveillance, would the I guess, the Department or the FISA court, would they request that that name not be used? Are there protections?

A Yes, I mean, you put the names in the FISA application if you think you need to because, again, it fits within the dissemination

rules and you think the court needs to know that information.

But other times, you assess, when you are writing the application, that no, we don't need to put that in. It is just gratuitous. And so we will use the same kind of the thing, U.S. person number 1, or some other type of identifier.

Q Does the FISA court also make an analysis as to whether certain U.S. names are in accordance with the minimization procedures?

A It could with respect to the it could with respect to anything having to do with FISA. They can ask for anything. They can demand anything from any of the agencies.

Typically, though, what happens is that the under the procedures and under the protocol that the courts are well aware of the Department of Justice goes out to the FBI field offices and headquarters and conducts, quote unquote, "minimization reviews" to make sure that we are following the procedures, generally speaking.

So they pull cases, they look at what we have disseminated, and so on, and go through that. And they make a report back to the attorney general, to the FBI and importantly, to the court.

Q I think you mentioned that as general counsel you did not personally sign off on FISA applications?

A That is correct.

Q Is that correct? Okay. Have you ever personally signed off on a FISA application before?

A As general counsel of the FBI? I don't know if I actually signed the memos. I think the answer is I don't recall ever actually

signing the memos.

Q Did you sign off on any FISA applications in your capacity at the Department of Justice?

A Again, as a lawyer, I sign some of them and I approved other ones going to court. And when I was there, they were all of prepared under my supervision.

Q Okay. Just over the years with the different FISA applications you have worked on, are you aware of the Justice Department ever signing off on a FISA application that was not sufficiently substantiated by evidence?

A That was not supported by probable cause?

Well, there are some when so the obligation, I would think, of the Department of Justice is to believe that there is probable cause to support the application when the attorney general signs it, because the attorney general is signing that he or she has assessed that it meets all the requirements of the statute.

So therefore, the answer should be yes. There are cases where the probable cause is stronger and where it is weaker. And so my practice was if I thought that I was bringing a case that I thought was weak to the court, I would tell the court about that. And I would say, look, I think this meets the requirements of the statute, but I understand that it is weak and here is the reasons why. And I would inform the court fully about the application and explain it all to them.

So, but I would not I would not have allowed a FISA application

to go to court that I did not think met the requirements of the statute, meaning that I thought there was probable cause.

Q And I believe you said earlier that most FISA applications do not get approved by the court, is that

A No, most do get approved.

Q Most do get approved?

A Yeah, most do get approved by the court.

Q So we have already tread this ground a little bit, but why is it important that the Justice Department apply a rigorous level of scrutiny to the FISA application before it is sent to the FISA court? Why not just, you know, try anything?

A Because the officials of the Department of Justice have taken an oath to the Constitution and that includes their responsibilities as part of the executive branch to take care that the laws are faithfully executed. Congress has enacted this statute to regulate the government's use of a highly intrusive surveillance, a set of highly intrusive surveillance techniques. And so the government has an obligation to do its utmost to make sure that it complies with the statute.

Congress has constructed a statute that establishes an ex parte relationship between the government and the court and under the standard rules of ethics with respect to attorneys, for example, attorneys have the highest ethical responsibilities in that kind of context, so they have an extremely high responsibility to make sure that the court is informed of all material matters with respect to the

matter that you are presented to the FISA court.

It is important to maintain for the intelligence community to maintain the trust and confidence of the American people over the long term, and so they all have a very, very important responsibility for their agencies to make sure that the public and Congress have confidence in what they are doing.

Q Have you ever been part of an investigation where the Department of Justice or FBI used politically biased unverified sources in order to obtain a FISA warrant?

A Politically biased un

Q Verified sources.

A Not that I recall.

Q Are you aware of any instances where the Department of Justice or FBI manufactured evidence in order to obtain a FISA warrant?

A No, I don't believe that I have ever heard of such a thing. There are times in the past when inaccurate statements were made to the FISA court for a variety of reasons. And when the government found out about that, we took steps to correct the record and do what needed to be done.

Q But you are not aware of any attempts by the Department of Justice or the FBI to intentionally mislead the FISA court judges in an application by omitting or manufacturing evidence?

A The cases that I am talking about where inaccurate information was provided, off the top of my head, I can't recall any instances where it was later determined that it was intentional. It

was maybe sloppy or somebody, for whatever reason, confused something or made a mistake or whatever, but I don't recall instances where somebody intentionally made a misrepresentation to the FISA court.

Q Okay. So I think earlier we already talked about how the Department has a, you know, pretty difficult and rigorous internal process for FISA warrant applications.

Are there a separate set of additional protections when the target is a U.S. person?

A U.S. persons get substantially more protection under the statute. Under the minimization procedures, the minimization procedures only apply to U.S. persons. You don't have to minimize information of non U.S. persons. So there is some policy variance to that, but in any event, the statute doesn't require it. And so therefore all the way through the system, in attorney general guidelines, in internal FBI procedures, there are enhanced protections for U.S. persons.

Q Okay. And so the foreign intelligence surveillance court would apply a very strict level of scrutiny before approving a FISA warrant on a U.S. person?

A They apply yes is the answer.

Q Okay. And would it be difficult for the FBI or Department of Justice to intentionally try to trick the court into approving a FISA warrant that did not have sufficient evidence?

A Such a thing wouldn't make its way through the system because somebody would ferret that out in the process. And I seriously doubt

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that it would make its way to the FISA court. Because the FBI doesn't want to would not want to do that with respect to the director who is going to sign these things, nor to the Attorney General. And the Department of Justice would be very protective of the Attorney General and try to ferret out anything like that. And I think it would be kept away from the FISA court in the first instance.

Q So just by the nature of the process, number of people involved, the standards, it would be extremely unlikely for an intentionally misleading application to make it all the way through the process?

A That would be my assessment.

Q Okay. All right. I think we are close to the end of our session, so we will just stop there. The time is 12:18.

[Recess.]

Mr. Meadows. I want to follow up just briefly on some of the FISA questions that the minority were just asking, just for clarification.

So are there two parameters on how and if a FISA warrant gets issued or just one?

I mean, what are those two criteria that may exist in terms of actually issuing a FISA warrant?

One, obviously, is foreign intelligence. Is the second one criminal activity? I mean, is that part of it?

You are the expert, is what I understand. And

Mr. Baker. So that line is difficult to ascertain, especially if you think about a terrorism case. I will take it out of the context

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we have been talking about.

A terrorism case. Well, somebody engaged in terrorist activity, us wanting to know about it so we can prevent the terrorist attack from taking place, that is clearly foreign intelligence information, but they are also engaged in crime at the same time.

And so what the court decided back in 2002, I guess it was, was that these lines are too fuzzy. And so under the Constitution, so long as a significant, a significant purpose not the only purpose, not the sole purpose, or not even a primary purpose so long as a significant purpose is to obtain foreign intelligence information, and that is something different than evidence of a crime, then the government, under the Fourth Amendment, can seek these authorizations pursuant to the FISA statute and therefore FISA is constitutional.

Mr. Meadows. And you would say that there is not a quantifiable number to say this is significant? I mean, how would a lay person like me say this is significant?

Mr. Baker. Yeah, I think it is the plain meaning of that term. I think you just

Mr. Meadows. Well, that is the whole point. It doesn't have a plain meaning.

I mean, what is significant to you and significant to me may be two different things.

I think it is significant that you are here today.

Do you think it is significant that you are here today?

Mr. Baker. Yes, sir.

Mr. Meadows. So we both can agree on that one. But there are different times when that term is ambiguous. Would you agree?

Mr. Baker. Yes.

Mr. Meadows. All right. So if we are looking at the FISA, and I guess, you know, the minority was asking, you know, in terms of political bias and if there is ever any time that you could recall, and you said no, is that correct?

Mr. Baker. Whatever their questions were, I think I responded no, yes.

Mr. Meadows. Well, I guess.

Mr. Baker. Or no to the most

Mr. Meadows. I am looking at, I guess, the unclassified part of the FISA application, and on Page 17, it goes to great gyrations, in my words, to say source one owns a foreign business in financial intelligence. And it goes back and forth about, that candidate one might have, you know, source one might have been doing research into candidate one, and they were likely looking for information to discredit candidate one.

Why would you use those types of ambiguous terms in a FISA application?

Mr. Baker. You mean, like the reference to candidate one and that kind of thing?

Mr. Meadows. Yeah. And not be specific. Because obviously here today, we have talked about specifics. We talked about your getting information from Perkins Coie. We talked about you getting

information from David Corn. But none of that seems to show up.

Would that not be relevant information that a FISA judge would want to see?

Mr. Baker. So if the application you are referring to, just for the record, is the Carter Page one, I assume.

Mr. Meadows. Right, yeah.

Mr. Baker. And so

Mr. Meadows. And did you read the whole Carter Page FISA application?

Mr. Baker. In my recollection is that I read the factual part of the initiation of the Carter Page FISA. I am not going to say I read

Mr. Meadows. So for a layman that doesn't understand, what is the factual part?

Mr. Baker. So the statute requires there be all kind of legal assertions, description of techniques, minimization procedures. There is orders that go along with that, and so on. That is pretty standard, quite frankly, and there is a mechanism to deal with that.

The thing that I was focused on is there is also, by statute, has to be a set of factual assertions under oath by, in this case, the FBI.

So it is basically what are the facts, what is the probable cause. And so the section that I was focused on is what is the probable cause with respect to

Mr. Meadows. So you only read the probable cause part?

Mr. Baker. That is my recollection.

Mr. Meadows. That is your recollection.

Mr. Baker. And only the initial

Mr. Meadows. So how would you know that is the only relevant point in the FISA application that would need to be questioned? Because I understand, it has to go before you before it went to anybody else. So you are the one that every FISA application no?

Mr. Baker. No. I did not at that point in time when I was at the FBI, most of the FISA almost all the FISA applications did not go through me. They were

Mr. Meadows. So why did this one go through you?

Mr. Baker. Because I was aware of it. I was aware of the investigation

Mr. Meadows. How did you become aware of it?

Mr. Baker. I learned of so I was aware when the FBI first started to focus on Carter Page, I was aware of that because it was part of the broader investigation that we were conducting. So I was aware that we were investigating him. And then at some point in time

Mr. Meadows. But that was many years ago. That was in 2014. Or are you talking about 2016?

Mr. Baker. I am talking about 2016 in the summer.

Mr. Meadows. Okay.

Mr. Baker. Yeah. And so I was aware of the investigation, and then at some point in time, as part of the regular briefings on the case, the briefers mentioned that they were going to pursue a FISA, and so as that progressed and as I was briefed on that as time went

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by, at some point in time, I asked I think it was my deputy, Trish Anderson when this thing is ready or when it is moving through the system, I don't want to see it at the end, like when it is about to go to the director of certification because then it is hard to make changes then.

So I wanted to see it when it was gelled enough but before it went through the process and before it went to the director, I wanted to see it and I wanted to read it, because I knew it was sensitive.

Mr. Meadows. So is that why you took the abnormal or unusual step in this particular situation, was because it was sensitive?

Mr. Baker. Yes.

Mr. Meadows. So you actually got involved because you wanted to make sure that, what?

Mr. Baker. I wanted to make sure that we were filing something that would adhere to the law and stand up over time.

Mr. Meadows. So you wanted to make sure that everything was the normal protocol and done properly?

Mr. Baker. The two things that I was focused on in this case were the probable cause and the description of the source. And I guess the third thing would be the foreign intelligence purpose. I wanted

Mr. Meadows. So the probable cause and you said you were working on that in the summer of 2016 and that was part of a much broader investigation. So it had nothing to do with the Trump campaign at that point?

Mr. Baker. I am not sure I know what you mean. I am sorry.

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Mr. Meadows. Well you said a broader investigation. I mean if you are asking for a FISA warrant and you are talking about probably cause, you said it was a part of a broader investigation, obviously, that broader investigation could not may be mutually exclusive of the Trump campaign if it is dealing with Carter Page?

I mean, what broader those were your words not mine. So what broader investigation were you talking about?

Mr. Baker. So I thought about this as, to me, this was always about Russia. Everything we did had to do with Russia, and what were the Russians up to, what were the Russians doing, how were the Russians engaging with Americans, if at all, and what might some Americans be doing in support of knowingly, in support of Russian efforts, or being fooled and duped into dealing with the Russians in some way.

And so we were trying to figure out exactly what happened. So I was thinking about that. And then, so we had a very broad investigation of Russia and trying to identify and thwart their activities. And then certain Americans came to our attention for a variety of reasons I am happy to talk if you want to. Among them was Carter Page, and then among the various investigative techniques that were being used with respect to him was this FISA.

And so I wanted to review the FISA because I knew it was part of that larger

Mr. Meadows. Yeah, but Jim, don't you see how that this unique situation where you actually took, according to your words, you took possession of evidence. Do you normally take possession of evidence?

Mr. Baker. No.

Mr. Meadows. Why would you take possession of evidence here? Why would you not have said, You know what, Peter Strzok is lead investigator. Let me have him reach out to you?

Why would you take possession of that evidence?

Mr. Baker. Well, on the one so, on the one hand, I wasn't I don't remember I don't remember knowing why Michael Sussman, for example, was coming into the office. He came into

Mr. Meadows. I am not asking about his motivations. I am asking why, why you know, this is not your first rodeo.

Mr. Baker. Yeah.

Mr. Meadows. You are an experienced in fact, when I read the stuff, I try to figure out whether you are a good guy or a bad guy, because there are times when I can make the case for both.

I mean, just bluntly, reading through this stuff, it sounds like at times you are telling him to be cautious and other times, you are telling him to go for it. And I am just trying to get to the truth there. And that is just being blunt, and I find that that is the best way to be in these situations.

But I am troubled by abnormal activity that a seasoned general counsel for the FBI takes possession of evidence from what is obviously a political has political connections.

Why would you take possession of that in this unique situation?

Mr. Baker. Sussman showed up and I didn't know what he was showing up with. He handed me materials. And so

Mr. Meadows. So he showed up unannounced without

Mr. Baker. No, no. He did not show up he made an appointment.

Mr. Meadows. And he made an appointment. Did he tell you what he was coming over with?

Mr. Baker. I can't remember that. I don't think he did, because when he showed up with materials

Mr. Meadows. Because I got something you need to see?

Mr. Baker. Yeah. I want to come in and talk to you about something. And I knew Michael, and it sounded serious. And so I am like, okay, I am not going to turn away somebody that wants to come and talk to me.

Mr. Meadows. But, again, the FBI headquarters is not a big place. Why didn't you just say, great, Michael, I will tell you what, let me call the lead investigator up and bring him in.

I mean, do you not see why it would be troubling to a guy like me to say this is abnormal, why would you do this uniquely?

Mr. Baker. All I can tell you, Congressman, is that he gave the material to me, and as soon as he left, I called the investigator I don't know if it was Pete Strzok or Bill Priestap I called one of those guys, to the best of my recollection, and said this just happened. What do you want to do this about? Please come and get this

Mr. Meadows. And you described what was in the document?

Mr. Baker. Describe what happened. And I wanted I got rid of the material as quickly as I could and put it into their hands.

Mr. Meadows. Did you describe the document to them?

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Mr. Baker. I described what he had told me about the document, because I don't think I read through it. I just, based on what he told me, I knew that I had to alert other people promptly to what this was.

Mr. Meadows. And so within hours, not days.

Mr. Baker. Within minutes.

Mr. Meadows. Within minutes. And

Mr. Baker. I at least reached out for him. I don't know if I literally

Mr. Meadows. So you don't, so you don't recall whether it was Bill Priestap or Peter Strzok or whom else?

How many other people did you give it to?

Mr. Baker. No, no, it was I only had one set of the materials we will talk about the Sussman materials I only had one set of those materials. And I put them in the hands of somebody in the counterintelligence division.

Now, I think I talked to Priestap. He may have told me to get to it Agent X, or somebody. I mean, I may have walked it down there. I don't remember. Or he may have sent somebody to get it, but I quickly got it out of my hands and into the counterintelligence division.

Mr. Meadows. So was there a followup interview with the person that gave that you gave it to with the person that gave you the information with the attorney?

Mr. Baker. Did they interview the attorney?

Mr. Meadows. Yeah.

Mr. Baker. I don't recall that.

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Mr. Meadows. Do you not find that curious? I mean, here is the thing, is you are getting information that is coming from someone who is being paid, probably, by a political operative, and the veracity of that information should be, at least, acknowledged or tried to be verified, wouldn't you think?

Mr. Baker. Oh, absolutely. And we were

Mr. Meadows. So why would they not have had an interview with that individual? Were you the go between so that they didn't have to have that?

Mr. Baker. No, no. After the

Mr. Meadows. How do you know that?

Mr. Baker. Well, they maybe I misunderstood your question. I don't recall myself participating in an interview with Michael with the FBI present. I don't recall facilitating that.

Mr. Meadows. Yeah. Are you aware of any interview that they had with, you know

Mr. Baker. I am not aware of that.

Mr. Meadows. I am not either. I mean, we have gone through it. Wouldn't you find that finding the source of this evidence and the veracity of it and where it came from and how legitimate it is, would you not think that that would be a question that the FBI would normally want to ask and have answered?

Mr. Baker. My understanding was that the counterintelligence division did extensive investigation of that material with a

Mr. Meadows. But not of the individual?

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So what if that individual actually engaged in an illegal act in order to get that information?

Mr. Baker. It is logical to me that we would go back and interview them

Mr. Meadows. It is logical to me, too.

Mr. Baker. That it wasn't done

Mr. Meadows. And it is troubling to me that it didn't happen.

Mr. Baker. I am not sure that I knew that it didn't happen until now.

Mr. Meadows. Okay.

Mr. Baker. Once I passed it off, it was

Mr. Meadows. So let me ask you this. This unusual way that a couple of pieces of evidence from David Corn and from the attorney at Perkins Coie got into the FBI was unusual.

Were you aware of the unusual steps that the FBI was using with regards to Bruce Ohr and other information coming in after the November elections?

Were you aware that there was a back channel through Bruce Ohr who would interview with Christopher Steele and Glen Simpson and then communicate that information to Joe Pientka who would get it to Peter Strzok and Lisa Page.

Were you aware of that?

Mr. Baker. I don't remember the details as you just described them.

I was aware I heard in briefings, conversations, about the

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FBI's interactions with Bruce Ohr. But they weren't something that I focused on

Mr. Meadows. What were the nature of those briefings?

Mr. Baker. I beg your pardon?

Mr. Meadows. What were the nature of those briefings.

Mr. Baker. These were the sort of the regular briefings that we would have for the Director, for the Deputy Director, the other leadership, by the team that would come and update us on what is going on with the case.

Mr. Meadows. So on a regular basis, you were being briefed that indeed Bruce Ohr was having contacts with these sources and bringing it into the FBI. And you thought that that was appropriate?

Mr. Baker. I don't remember the specifics of what you just said being discussed. I remember Bruce's name

Mr. Meadows. I am not talking about specifics. I mean, I am talking about what I am saying is, you were aware of Bruce Ohr being involved in evidence collection. Is that correct?

Mr. Baker. I am not sure that I recall that. I don't recall that. What I

Mr. Meadows. You are the general counsel, you had to sign off on stuff. So you are saying that you did not know that? Because either way is troubling.

But you are saying you are giving your testimony here today is that you did not know that Bruce Ohr was having regular contacts with sources and conveying that information to the FBI?

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Mr. Baker. I was aware that Bruce Ohr had some type of relationship with the source, and that somehow through that mechanism, the details of which I did not know, information was flowing to the FBI. From the source through Bruce to the FBI.

Mr. Meadows. So what you are saying is

Mr. Baker. or directly from the source.

Mr. Meadows. I am sorry. I didn't mean to interrupt. Go ahead.

Mr. Baker. Sorry. At some point in time, it became my understanding was it kind of came in both ways.

Bruce and was providing information from the source and the source eventually was providing it directly to the FBI or something like that. I didn't, myself, understand the specifics of how that was exactly working.

Mr. Meadows. But as general counsel, would that not be under your purview to oversee?

I mean, would you not have a concern with protocol, and all of a sudden, you have got the DOJ doing the investigation? I mean, why would the DOJ be doing the investigation and not the FBI?

Mr. Baker. It was my understanding that some Bruce had some type of pre existing relationship with the source. That is what I understood at the time.

Mr. Meadows. And so because of a personal contact, the FBI made a conscious decision to allow that to happen?

Mr. Baker. I guess you would say, I guess the answer is yes. The FBI leadership was aware of the relationship between

[12:48 p.m.]

Mr. Meadows. So who at DOJ was aware of that?

Mr. Baker. I don't know.

Mr. Meadows. So you are using DOJ officials without the knowledge of the hierarchy at DOJ? That seems strange. Why would you do that? Is that the normal way that you would conduct an investigation?

Mr. Baker. No, it is not normal, but I did not know

Mr. Meadows. Have you ever known it to happen before?

Mr. Baker. Not that I can think of.

Mr. Meadows. And so let me ask you this, Christopher Steele's relationship was closed by the FBI, was it not?

Mr. Baker. That is my understanding.

Mr. Meadows. And why was it closed?

Mr. Baker. I think it was because he was not following direction.

Mr. Meadows. All right. And so so it was closed for cause?

Mr. Baker. Yes, I guess you would say that.

Mr. Meadows. So you are saying that you used an informant, and they were closed for cause, and yet, now you are aware that they were now using another way to use that same informant after they have been closed for cause?

Mr. Baker. I am saying that I don't know exactly what the nature and scope of the interactions between Bruce Ohr, Christopher Steele, and the FBI were. I just don't know all the details of that. I am sorry.

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Mr. Meadows. I understand you don't know the details, but we have got your name on emails where honestly where you were copied on information, so to say that you didn't have any knowledge it is not supported by the facts. So you are saying today that you actually had some knowledge, you just didn't know the details?

Mr. Baker. That is what I am that is what I recall right now.

Mr. Meadows. Okay. So as general counsel you have a source that has been closed for cause, and all the sudden that source gets to be continues to be used not once, not twice, but multiple times after that. Does that not break FBI DOJ protocol for how you handle a confidential human source?

Mr. Baker. I would have to look at the guidelines for

Mr. Meadows. I have looked at the guidelines. So what would it surprise you to know that that would be breaking protocol, your own protocol within the FBI and DOJ? Would it surprise you?

Mr. Baker. It wouldn't surprise me.

Mr. Meadows. Okay. So I said I was going to yield to the gentleman from Ohio. I am going to let him follow up and then I will ask a few others. Thank you for your candor.

Mr. Baker. Okay.

Mr. Jordan. Thank you, Mr. Baker. So just so I understand, Mr. Sussman contacted you, he reached out to you first, that was the direction, Mr. Sussman?

Mr. Baker. Yes.

Mr. Jordan. Okay. And then how then many meetings did you have

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with Mr. Sussman?

Mr. Baker. So there was one meeting when he handed me information, told me what it was about, and then I passed it off as I just described.

There may have been a follow up meeting or a conversation because he told us that some elements of the press had this information as well and were going to publish something about it.

Mr. Jordan. So there were two meetings with Mr. Sussman?

Mr. Baker. At least a meeting there was one meeting in person for sure, and I can't recall whether

Mr. Jordan. One meeting when he handed you a document or documents?

Mr. Baker. Yes. And then the next interaction

Mr. Jordan. Was it plural? Was it several documents or one documents?

Mr. Baker. It was like my recollection was it was a stack of material I don't know maybe a quarter inch half inch thick something like that clipped together, and then I believe there was some type of electronic media, as well, a disk or something.

Mr. Jordan. Documents and some kind of thumb drive or some kind of

Mr. Baker. I think that is right.

Mr. Jordan. Okay. You get that at the first meeting. There's a subsequent meeting where you tells you, hey, the press has some of this information, they are going to print it?

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Mr. Baker. Yes, there is some subsequent conversation like that.

Mr. Jordan. And did he tell you who in the press was going to print it?

Mr. Baker. He did not initially, and so there must have been a third conversation. So initially he did not tell us that. Later on he did.

Mr. Jordan. And can you tell me who that was?

Mr. Baker. Yes, I can.

Mr. Jordan. Was it David Corn? Who printed it?

Mr. Baker. No, it was not David Corn.

Mr. Jordan. Who did print it? Isikoff?

Mr. Baker. No. I am looking at the FBI. Can I go down this road or not, I mean, in terms of explaining?

Mr. Meadows. I don't think they need to protect the media. I think that would be the last thing that they would want to protect here, but

Mr. Baker. Okay. I just don't want to get in trouble.

Mr. Meadows. I mean, it is open source. Obviously we will be able to figure it out, but who printed it?

Mr. Baker. So they didn't print it initially. It was the New York Times.

Mr. Jordan. Okay. So the second meeting with Mr. Sussman, he tells you, hey, Jim, the stuff I gave you, the New York Times has this information, and they print some of it?

Mr. Baker. That is my recollection.

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Mr. Jordan. Okay. All right. And

Mr. Baker. Congressman, I am sorry, either in the first meeting or a second conversation, I don't remember the specifics, he tells us he tells me that the media has this, okay, he just tells us the media without specifying it, and they are going to publish something about it. So we take it back, we look at it. The assessment is we need more time to investigate this before the media publishes it.

Mr. Jordan. Okay. Stop one second, if I can just thank you. That is very helpful. The second meeting when he comes to tell you this, who was in that meeting, just you and him or you and someone else and him? Who was in the meeting?

Mr. Levin. I don't think he said it was a meeting. I think he said he wasn't sure.

Mr. Baker. It could have been a phone call. It might have been that I called Michael and said

Mr. Jordan. You called him this time?

Mr. Baker. I don't specifically remember.

Mr. Jordan. Okay. Just I just want to be clear. So you have a meeting, you get the information. Documents and some kind of electronic device. There is a subsequent conversation that you initiate or he initiated, but it comes after that.

Mr. Baker. Yes.

Mr. Jordan. How long after, a week after, a couple days after?

Mr. Baker. Soon, yes. A couple days or a week.

Mr. Jordan. Okay. Then you have been using the plural pronoun.

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You said "we" then looked at it all. Who was the "we" then who expected what you talked about on the conversation and the material you had?

Mr. Baker. I handled the material to the counterintelligence division, and they looked at it, scrubbed it, and look at the electric media. They assessed that my recollection is it was difficult to assess exactly what this was all about and how significant it was, but that they needed more time to evaluate it before the media started publishing stuff about this. So the request was, Jim, can you go back to Sussman and find out who in the media is going to publish this because we might want to ask them to delay.

Mr. Jordan. Okay. And the people who asked you to make that call back to Mr. Sussman and ask him, you know, to delay, who were those people?

Mr. Baker. I don't specifically recall, but I believe it was the

Mr. Jordan. Priestap.

Mr. Baker. I think it was Priestap, and I think it might be

Mr. Jordan. Strzok? Peter Strzok?

Mr. Baker. It may have been, but I am also thinking it was the director and/or the deputy director.

Mr. Jordan. So Mr. Comey got involved in this?

Mr. Baker. He may have. I don't specifically recall sitting here today. It is likely, given what this was all about that we briefed him on it.

Mr. Jordan. And Mr. McCabe?

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Mr. Baker. Yes, sir.

Mr. Jordan. And Lisa Page?

Mr. Baker. I don't remember Lisa being involved in this part.

Mr. Jordan. But McCabe, Comey, Priestap, and Strzok you believe were involved, that is the "we" who came to you and said call Mr. Sussman back and

Mr. Baker. Some combination of those people in a set of conversations over some period of time, yes. I know that is vague. I apologize, but that is what I recall.

Mr. Jordan. Okay. Do you know how Sussman got this material?

Mr. Baker. What I recall is he told me that there were some cyber experts that somehow would come across this information and brought it somehow to his attention, and that they were alarmed at what it showed, and that, therefore, they wanted to bring it to the attention of the FBI.

Mr. Jordan. Did he

Mr. Baker. They and Sussman.

Mr. Jordan. They. Any names?

Mr. Baker. I don't think I ever found out who these experts were.

Mr. Jordan. Did he indicate that he got this may have got some of this information from the Democratic National Committee?

Mr. Baker. I don't recall him saying that.

Mr. Jordan. Did you know when he was giving this information did you know he was working for that he did extensive work for the DNC and the Clinton campaign?

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Mr. Baker. I am not sure what I knew about that at the time. I remember hearing about him in connection when the bureau was trying to deal with the hack and investigating the hack, that my recollection is that Michael was involved in that process to some degree. I didn't interact with him on that, so I am not sure if I knew that before this meeting or after, but I don't recall him specifically saying

Mr. Meadows. But you said you were friends with him, right?

Mr. Baker. Yes, sir.

Mr. Meadows. So, I mean, you knew what his career was.

Mr. Baker. Generally speaking.

Mr. Meadows. And you knew generally speaking that he had some involvement with the Democratic National Committee.

Mr. Baker. Yes.

Mr. Meadows. Okay.

Mr. Jordan. Okay. Did you interact with any other attorneys at the law firm of Perkins Coie?

Mr. Baker. I have known them over the years, yes, I have known various people there.

Mr. Jordan. How about in the context we are talking about here relative the Russia investigation.

Mr. Baker. Just Michael.

Mr. Jordan. Just Michael?

Mr. Baker. I think so.

Mr. Jordan. Okay. And did you have any conversations with Mr. Sussman about certain individuals like Mr. Manafort? Did you talk

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about Mr. Manafort at all in this conversation?

Mr. Baker. I don't recall that, no.

Mr. Jordan. Did you talk about Carter Page?

Mr. Baker. No, I don't think so.

Mr. Jordan. Did you talk about anyone else associated with the Trump campaign that comes to mind?

Mr. Baker. I don't think so.

Mr. Jordan. All right. And this all again tell me the timeframe again, this was after the investigation into Russia had begun at the FBI, this was all post.

Mr. Baker. To the best of my recollection I think that is right. So I would say late summer, early fall is kind of roughly what I think.

Mr. Jordan. Okay. Good. Mark, do you have any more on this subject?

Mr. Meadows. So let me ask, so we are now up to potentially three meetings/phone calls.

Mr. Baker. Congressman, I can't say. Something like that.

Mr. Meadows. Listen, I know how memory I have a hard time remembering what I had for breakfast, I get that. And yet, it is critically important because if they gave you evidence why was it so important to Andy McCabe and Director Comey that the New York Times hold off on publishing this information?

Mr. Baker. Well, it was more important to Priestap. Priestap was the driving force on that. What I am telling you is

Mr. Meadows. You said you went back to we, and the we with Jim

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Jordan was all those other people, so and we have interviewed Mr. Priestap, and with all due respect he was not the decision maker on a whole lot of this information just to be blunt. I mean, there were other people calling the shots, and I think even he would admit that under a, you know, transcribed interview tapes and so as we look at this I guess the question I have for you is why would why would you go back to the New York Times and say not publish it, and if that is the case was the source of the New York Times getting it the very person that gave you the information because why would they have influence with the New York Times?

Mr. Baker. My assessment was that, yes, I don't know if Sussman said this, but my belief was that they had given it to the New York Times as well.

Mr. Meadows. So they give it to the New York Times, they give it to you, and does your bias alarm go off anywhere?

Mr. Baker. I was concerned about the nature of this material from the first instance.

Mr. Meadows. Thank you, and I agree, and there have been times where in the things that I have read I am now getting a face with the name because I have read your name a lot more. You are much more, you know, distinguished than the name would indicate, you know, because Jim Baker has all kinds of different connotations.

Mr. Baker. This is true.

Mr. Meadows. So I say that because here is the concern that I have, everything about this investigation seems to have been done in

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an abnormal way, the way that you have gotten the information, the way that Peter Strzok got information, the way that Bruce Ohr was used, the way that Perkins Coie actually came in and gave you information, the way that the media has been

It seems like everything is abnormal, and yet, one thing is consistent is that when we look at that there are alarms that would suggest that there is bias, inherent bias at each and every place that fails to get documented. It doesn't show up in the FISA applications that really any at stake. I mean, all of this stuff that we are talking about you would say, well, you ought to look at this with a jaundiced eye, would you agree? And it sounds like you did at times.

Mr. Baker. I had a jaundiced eye about everything, yes. I had skepticism about all this stuff. I was concerned about all of this. This whole situation was horrible, and it was novel and we were trying to figure out what to do, and it was highly unusual. I agree with you completely, but I will tell you when you were asking these questions before, my thinking was then and always in my career, I am following my oath to the constitution. I am going to do my damndest to follow that oath at every single turn, and whether that means that whatever that means, I am going to just do that, and without regard to politics quite frankly, and I just I am not good enough to sort out the political implications of a lot of things, so

Mr. Jordan. That first meeting with Mr. Sussman, Mr. Baker, you meet with him, I want to make sure I understand you. He told you at that meeting he was going to give this information to the press, as

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well?

Mr. Baker. This is what I can't remember. I think he said it was either in a first conversation or the so let me back up. Logically, A, I don't remember, so now I am just using logic to try to figure out. I think he may have said at the first meeting that here is this material, we got it from these cyber people, they're experts, they are worried about it.

Mr. Jordan. And didn't tell you who these cyber people were?

Mr. Baker. He never told me that that I recall.

Mr. Jordan. Okay.

Mr. Baker. And then he said sorry.

Mr. Levin. I think the question was did he tell you he was giving it to the press or is that something you surmised he might be doing?

Mr. Baker. I guess I surmised it. I guess I surmised that he had given it to them.

Mr. Jordan. At some point you knew because you went

Mr. Baker. At some point I knew he had given it to the press. I assumed perhaps, and I think probably accurately that it was him or his firm or somebody.

Mr. Meadows. But our back and forth just a few minutes ago you did acknowledge the fact that he mentioned his connection with the New York Times because that is the only way that he could get them to hold up on the story. If he is the source of the story he can say don't print it because it can't go on the record.

Mr. Baker. He was the source he told me the New York Times

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was aware of this. We, the FBI, went to the New York Times and then started a series of conversations with them to try to get them to slow down, and I am

Mr. Meadows. So when the reporting came out who did it say the source was? You obviously read it. You are intellectually curious enough to have read the report.

Mr. Baker. The New York Times report?

Mr. Meadows. Yes. Listen, we have emails back and forth. You all read more New York Times than the New Yorkers do, so go ahead.

Mr. Baker. So sitting here today I don't specifically remember that article. I may be intellectually curious, but I was also pretty damn busy, and so I just don't remember the details of that.

Mr. Meadows. You don't know who the source was?

Mr. Baker. The source for?

Mr. Meadows. The source for the New York Times article, you don't know who the source is today.

Mr. Baker. Sitting here today I don't recall having that information. It may be in the article, I just don't remember. I assume it was Sussman or somebody connected to him.

Mr. Jordan. Okay. Mr. Baker, are you an expert on the FISA process and FISA applications?

Mr. Baker. I would say generally yes.

Mr. Jordan. And when did you first learn of the Carter Page FISA application?

Mr. Baker. I think it was in a briefing about the Russia

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investigation in general. We were going through the different targets of the investigation, what was happening with each one, and somebody said, yes, we are seeking a FISA on Carter Page.

Mr. Jordan. And do you know about the timeframe when that took place?

Mr. Baker. Late summer, early fall sometime in there.

Mr. Jordan. Same time we are talking about?

Mr. Baker. Yes.

Mr. Jordan. Did you read the FISA before it went to the court?

Mr. Baker. I eventually read the factual section of the initiation. That is the best of my recollection.

Mr. Jordan. And that is the normal course of business at the FBI? Not?

Mr. Baker. No. I hardly read any FISAs when I was there. We had

Mr. Jordan. Why did you read this one?

Mr. Baker. Because I knew how sensitive it was.

Mr. Jordan. So you felt this how many FISAs have you read

Mr. Baker. I anticipated being sitting here in rooms like this down the road, I seriously did, and I knew that it was I knew that it was sensitive. I knew that it would be controversial.

Mr. Jordan. Sensitive or what is another word?

Mr. Baker. It was connected to a candidate this person had connections to a candidate for the office of President of the United States. That alone was enough to make me worried about it and made

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me focus on it. And I thought that it would be worth my spending time reading this thing to make sure that given my experience in FISA I could add whatever value I was able to add.

Mr. Jordan. How many other FISAs have you read in your time as general counsel?

Mr. Baker. My time as general counsel, a handful.

Mr. Jordan. So this was exceptionally

Mr. Baker. This was exceptional, yes.

Mr. Jordan. Okay. What are the requirements to obtain a FISA warrant on a U.S. person? You have asked that.

All right. Did you advise what advice did you provide to Director Comey in obtaining this FISA order on someone as you have described associated with a major party's Presidential candidate?

Mr. Baker. I think at some point I spoke to him about that and said that I had read it and thought that it was legally sufficient. And I believe I was also focused on I wanted to make sure that everybody through the system was focused on making sure that there is a legitimate foreign intelligence purpose for this surveillance and highlighting because when the director signs a certification one of the things he is signing is that there's a significant purpose of the application is to obtain foreign intelligence, and I wanted to make sure that people were crisp about that and making sure that they were all comfortable, whoever is signing this, that that was legitimate foreign intelligence purpose for this surveillance.

Mr. Meadows. So you read the Woods file?

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Mr. Baker. No, I didn't read the Woods file.

Mr. Meadows. I mean, from what I understand, and I am a novice, maybe you can help me understand this how would you know the veracity of the full legitimacy of the FISA application without reading the Woods file?

Mr. Baker. I was reading the so I know about the Woods file very well and the existence of it and the purpose of it. So I was aware that there would be a Woods file supporting the allegations in the application. I read the application. I made comments on it. I asked questions.

Mr. Meadows. Yeah but

Mr. Baker. But I didn't read the Woods file.

Mr. Meadows. you didn't read the Woods file. So how can you give advice on whether it is legitimate or not without reading the underlying documents that support the very application that you are making a recommendation on?

Mr. Baker. Well, the Woods file would go to the accuracy of the information in the FISA, not

Mr. Meadows. That's correct.

Mr. Baker. Correct, but not to the foreign intelligence purpose necessarily.

Mr. Meadows. Well, but here is the it gets back to probable cause. You know, you said that whole reason up front as an expert was the probable cause. How could you understand that without reading the Woods file?

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Mr. Baker. As I said earlier I think to the minority, I have participated in one way or another in the review of 10,000 FISA applications, and I don't think I ever read the Woods file contemporaneously with reading the application as it was on

Mr. Meadows. So would you say your recommendation would you say your recommendation then on whether to sign off on it or not was based on incomplete review?

Mr. Baker. No, I would not say that. I would say based on the normal review that I would do at my level

Mr. Meadows. So let me ask you this, so this is a hard question because some have suggested, and I don't want to make any suggestion, did you ever caution anyone on what may or may not have been included in the FISA application in the absence of other evidence that may have been appropriate to include?

Mr. Baker. I am not sure I understand your question.

Mr. Meadows. All right. So let me rephrase it as good attorneys would say.

There have been some who suggested that there were other compelling pieces of evidence that might have given us a better, more full flavor of the reason for this FISA application, and those documents or information were excluded from the FISA application. Are you aware of any information being excluded from the FISA application?

For example, Bruce Ohr said that he told the FBI that there was bias, there was the potential for bias, that there was potential for conflict in terms of the information he was getting from Nellie Ohr

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sat right where you are sitting and said that he communicated that to the FBI, and yet we can't find that anywhere in a FISA application. Did you caution them on not including that in there? Were you aware that Bruce Ohr said that there might be bias?

Mr. Baker. I don't recall ever hearing that before just right now.

Mr. Jordan. Did you review the three renewals on the FISA?

Mr. Baker. I don't specifically remember reviewing those renewals. I may have looked at one of them. I think there was some that went to court and I heard about it after the fact, and I was like oh, well, I probably should have known about that before, but, you know, the machinery was moving and the renewals they had expiration dates and so on.

So I think the one I focused on most closely was the initiation.

Mr. Jordan. When you review it what is the lag time between when you review it, give it then sign off and it actually goes to the court? Was it days, was it weeks? What was the timeframe?

Mr. Baker. So the way I thought about my review was my review was in parallel to everything else going on. So the applications moving forward other people are reviewing it within the FBI, DOJ is reviewing it. I asked to have a copy so I could look at it and then feed comments back into the stream of the flow of it, right? And so

Mr. Jordan. You ultimately saw the final, you saw the final copy, final document before it went?

Mr. Baker. I am not sure that the final would not necessarily

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have to come to me for approval.

Mr. Jordan. Okay.

Mr. Baker. So there was no delay, and my objective was not to have any delay in processing the thing. What I believe is when I found out that the Carter Page application was ready to go at some point in time I recall having a conversation with the director and just highlighting to him this thing I said a few minutes ago about the foreign intelligence purpose.

Mr. Jordan. In this process were you looking at and reading the factual part of the FISA, this all happened after you had had your conversations with Mr. Corn and he had given you part of the dossier and after your conversations with Mr. Sussman and he had given you whatever he gave you?

Mr. Baker. I can't remember when the initiation was on the Carter Page. Do you guys I just don't remember that.

Mr. Meadows. October 21st.

Mr. Baker. So that would have been before. The Corn thing October 21st?

Mr. Meadows. 2016.

Mr. Baker. I think the Corn, the positive information with me was slightly after that.

Mr. Jordan. Okay. What about Sussman?

Mr. Baker. Sussman was before that.

Mr. Jordan. Sussman was before?

Mr. Baker. Yes.

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Mr. Meadows. Okay. So you are saying that David Corn gave it to you after you opened on Carter Page, that would be not consistent with a timeline that I have been led to believe.

Mr. Baker. So I am just going on my recollection today. Go with whatever is in the 302.

Mr. Meadows. No, no, no. I don't want to put words in your mouth, but let me just tell you that your conversations with David Corn appear to have happened earlier than October 21st. They appear to happen in September.

Mr. Baker. And he gave us the dossier information?

Mr. Meadows. Well, where did he get the dossier from?

Mr. Baker. Sitting here today I don't remember him telling me that, where he got it.

Mr. Meadows. So you have a personal relationship with this reporter, you continue that personal relationship today, and you are telling me that he has never told you where he got the dossier from?

Mr. Baker. I am not saying that. I am saying I don't remember sitting here today whether he told me where it came from.

Mr. Meadows. So you have no recollection of where he got it from? That is your sworn testimony well, it is not sworn.

Mr. Baker. I just can't remember it, Congressman. I know it seems ridiculous. But I just I can't remember it, and whatever I knew about it I told the FBI at the time that they interviewed me for the 302.

Mr. Meadows. And so you are just saying your memory I mean,

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one of the most unbelievable pieces of evidence and you are in the chain of that evidence, which you said is abnormal, and you can't remember where that came from?

Do you think the FBI would have a problem of you not knowing where that information came from?

Mr. Baker. I don't know. I am sure they asked me, and I told them whatever he told me. I assumed that he got it from the I think I assumed at the time or knew, he may have told me, that he got it from Simpson or somebody acting on Simpson's behalf. Which is my

Mr. Meadows. So subsequent to that point obviously you have had multiple conversations with him. Has he told you since that point where he has gotten it?

Mr. Baker. I don't think so. But I believed my understanding at the time was that Simpson was going around Washington giving this out to a lot of different people and trying to elevate its profile. And so we had heard that it had been given to members of the media, and I assume David was there for one of the people who got it from Simpson.

Mr. Jordan. Okay. At what point did you know that the dossier was financed by the Clinton campaign and the DNC?

Mr. Baker. I don't remember exactly when, but I think I knew that I think I knew that at some point in this process.

Mr. Jordan. Before or after? Before the FISA application was taken to the Court or after?

Mr. Baker. I can't remember. I know that I didn't know all the

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facts with respect to the providence of this thing at the time of the FISA application. I think I was asking some questions in my notations about find out more information about it.

Mr. Jordan. Would you have been comfortable signing off on the FISA application without the dossier being part of it? In other words, was the dossier a central element to that in your mind?

Mr. Baker. The dossier was certainly an important part, and to the extent that we were going to include it then we were obligated to talk about Simpson and what the hell we knew about him I am sorry, what we knew about him. And but there were other things in that application that to me were alarming, as well. I am not going to sit here and say that there wouldn't have been probable cause or that there would have been probable cause without the dossier. I would have to go back and look at it again, but there were other activities of Mr. Page that were alarming to me that I thought certainly merited an investigation and

Mr. Jordan. Do you think it is important that the judge in the FISA court know who paid for the dossier, that information should have been made clear to the judge of the FISA court?

Mr. Baker. So I remember that in the I am not able to give you a clean answer on that. I can the Court needs to be apprised, absolutely needs to be apprised of all the material facts. And so I believe that we put language again, I haven't read it in a long time, I believe we put language in the application to try to alert the Court to the fact that there were a range of issues with respect to the

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providence of this information and the relationship that we had with respect to Mr. Simpson and his credibility.

Mr. Jordan. Do you know if President Obama or anyone at the White House knew about the existence of the Carter Page FISA?

Mr. Baker. I don't recall sitting here. I don't recall ever hearing that before, but I don't remember.

Mr. Jordan. You don't remember or you don't know?

Mr. Baker. I don't remember ever having heard that.

Mr. Jordan. Okay.

Mr. Breitenbach. I am sorry, would the White House ever have knowledge of an ongoing FISA?

Mr. Baker. Sometimes, especially like in a counterterrorism area.

Mr. Breitenbach. Would they have knowledge as to the would the Woods file or anything related to the Woods file ever be presented to the White House?

Mr. Baker. I would highly suspect that it would not be. I would be quite surprised if it were.

Mr. Meadows. So did you review the Comey memos?

Mr. Baker. Yes.

Mr. Meadows. And why did you review the Comey memos?

Mr. Baker. I reviewed them for a couple different purposes. One, he gave some of them to me contemporaneously, so I reviewed them. He asked me to take a look at them and so I read them then. And then eventually I also read all of them in connection with a classification

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review that we did of all the memos as a complete set.

Mr. Jordan. How about the McCabe memos, any of those?

Mr. Baker. I was aware of the McCabe memos, but I don't recall ever reading them.

Mr. Meadows. Were you in the meeting when deputy AG Rod Rosenstein suggested to wire tap or record the President of the United States as has been recently reported allegedly in the McCabe memos?

Mr. Baker. I was not at those meetings, but I heard about those meetings.

Mr. Meadows. And how did you hear about those meetings?

Mr. Baker. I heard about them, I believe, from Andy and from Lisa.

Mr. Jordan. At the time?

Mr. Meadows. At the time?

Mr. Baker. Shortly thereafter.

Mr. Meadows. So Andy and Lisa came to you and said the DAG is suggesting that we tape the President of the United States?

Mr. Baker. What they told I can't remember specifically who told me. It was I believe to the best of my recollection it was some combination of them that they told me that there had been a conversation with the DAG about the idea of the DAG wearing a wire into a conversation or conversations with the President.

Mr. Meadows. Did they take that seriously?

Mr. Baker. Yes.

Mr. Jordan. When?

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Mr. Baker. I beg pardon?

Mr. Jordan. When did this happen?

Mr. Baker. I believe this happened in the immediate aftermath of the firing of Director Comey.

Mr. Jordan. So May 9 Mr. Rosenstein writes the memo outlining why it was appropriate to fire Director Comey. Before we get to the question we want to ask here I want to ask you this, were you involved in any way in drafting that memo or reviewing that memo that Mr. Rosenstein wrote?

Mr. Baker. No. I saw it later, but not at the time.

Mr. Jordan. So that happens on May 9, and then sometime shortly thereafter there is this meeting. You were not in the meeting?

Mr. Baker. I was not in the meeting.

Mr. Jordan. But shortly thereafter you heard about the meeting and you heard about it from Mr. McCabe and Ms. Page?

Mr. Baker. I think I heard it from Mr. McCabe. I am quite confident I heard it from Mr. McCabe. I think I may have also heard about it from Lisa, but I don't specifically remember that

Mr. Meadows. And were they in that meeting?

Mr. Baker. My understanding was yes.

Mr. Meadows. Who else did they say who else was there?

Mr. Baker. People from the DAG staff, but I am not sure that they specifically told me who it was, but it wasn't just them and the DAG, it was the DAG and

Mr. Jordan. Scott Schools?

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Mr. Baker. He could have been, but I don't specifically remember.

Mr. Jordan. Bruce Ohr?

Mr. Baker. No, I don't think so. There was the chief of staff to the DAG at the time whose name I am drawing a blank on.

Mr. Jordan. Becky? No, that is on your side.

Mr. Baker. I want to say Jim Crowell maybe.

Mr. Jordan. Yes. How about Peter Strzok, was he there?

Mr. Baker. I don't think so.

Mr. Jordan. Okay.

Mr. Baker. This was to the best of my recollection this was between the time Director Comey was fired and when the special counsel was appointed.

Mr. Jordan. Right. Between the 9th and 17th. So tell us about that conversation that you had with Mr. McCabe and/or Ms. Page.

Ms. Bessee. Congressman, I just want to be clear on something. To the extent that Mr. Baker goes into the substance of what may have been in the memo if these conversations go into what is in the memos the memos are evidence in the special counsel

Mr. Meadows. We are talking about a conversation. We get that because it is part of that, but we are talking about a subsequent conversation that happened perhaps around a water cooler or a coffeepot, you know, whatever. I get where you are coming from, but we are talking about

Ms. Bessee. Okay. Okay.

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Mr. Meadows. Mainly because I don't believe the memos any ways, and so this is actually helping me understand what was happening. I have my questions having interviewed Mr. McCabe on the veracity of those memos any ways, but go ahead.

Mr. Baker. So, I am sorry, what do you want me to answer?

Mr. Jordan. Describe the conversation you had with Mr. McCabe and/or Lisa Page regarding the meeting in the DAG's office where he said that he was thinking about recording the President.

Mr. Baker. So what I recall is that there were that they, not me, they were going to they were having a series of meetings and conversations with the DAG and his staff trying to figure out what to do in the immediate aftermath of the firing.

The DAG was having a hard time with the blow back, I guess you would say, from the firing and the extent to which that he his recommendation to the President had been used to justify the firing. I understood that he thought that he had been used or misused with respect to the firing and that he was quite alarmed by this whole situation.

In the context of those conversations at some point in time I thought it was my understanding was it was the deputy attorney general who came up with the idea of wearing a wire into a conversation with the President and that my understanding from my conversations with at least with Andy and/or Lisa was that they took it as a serious statement, that it was a serious thing to think about.

Mr. Meadows. And the reason he was going to wear a wire was to

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Mr. Baker. Well, that is a good question. It was not exactly clear.

Mr. Meadows. get what kind of evidence?

Mr. Baker. Evidence with respect so I guess okay. My understanding would be it would be evidence with respect to the President's obstruction of the FBI's investigation.

Mr. Meadows. Into what?

Mr. Baker. Into Russia.

Mr. Meadows. And how that played into the Comey firing?

Mr. Baker. Yes, yes, the extent to which the firing of Director Comey was part of an effort to obstruct the FBI's investigation into Russia. That is what I understood from the context and what

Mr. Meadows. But you reviewed the Comey memo.

Mr. Baker. Yes, sir.

Mr. Meadows. And you actually apparently wrote some of the Comey memos, is that what you are saying or he just shared them with you, you helped with the drafting?

Mr. Baker. No, I never helped with the drafting.

Mr. Meadows. Okay. So you just reviewed them

Mr. Baker. I reviewed them.

Mr. Meadows. for typos, or

Mr. Baker. No.

Mr. Meadows. Why did you review them?

Mr. Baker. No, no. He had conversations with me so, there are a lot of memos, right? So

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Mr. Meadows. Because if there are copious notes of his own he doesn't need your refreshing because you weren't in the meeting.

Mr. Baker. No, but he would tell me about you have to ask me why he told me exactly, but he was telling me about interactions he had had with the President, so he would give in some instances he would give me an oral description of what his interaction was with the President and then he would say, and I wrote a memo on this, get it from Rybicki, he has got it, take a look at it. Or sometimes he handed them to me.

Mr. Meadows. Because the whole obstruction case, Jim, I guess question is you have read the memos, you have heard Director Comey testify. I in reading the memos and hearing him testify it didn't sound like he felt intimidated by the President at all based on those memos. I mean, I would use the memos as a defense, wouldn't you agree with that?

Mr. Baker. Well, so there is two things. One, what did the President I am not going to be able to analyze this all here sitting here right now, but what did the President intend, what did he try to do, and what were we willing to do, and were we the type of people who were going to be obstructed and tolerate that.

So that we would not be obstructed was clear and what exactly the President was trying to achieve was difficult to ascertain.

Mr. Jordan. I understand. We have a limited amount of time. So, Mr. Baker, you said your understanding was based on what Mr. McCabe and Ms. Page told you that Mr. Rosenstein was contemplating recording

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the President because of the obstruction of justice issue?

Mr. Baker. That is what my understanding was. I may be surmising that.

Mr. Jordan. Was there anything talked about the 25th Amendment issue?

Mr. Baker. Yes.

Mr. Jordan. So both.

Mr. Baker. Yes.

Mr. Jordan. So both. And you took their conversation as completely serious that Mr. Rosenstein was serious about wearing a wire and recording the President for both of those reasons?

Mr. Baker. No, no. I didn't connect the 25th Amendment thing to the wire. Maybe it was my mistake mentally. I connected that more to the obstruction matter. The 25th Amendment conversation, my understanding was that there was a conversation in which it was said I believe by the DAG that there were that there were two members of the cabinet who were willing to go down this road already.

Mr. Meadows. And so they reached out to you because they were looking for legal advice, that is why they were sharing this with you?

Mr. Baker. No. They came back to me they would come back from these meetings, and we would have conversations

Mr. Meadows. So you had little gossip sessions?

Mr. Baker. Beg pardon?

Mr. Meadows. You would have gossip sessions?

Mr. Baker. No. He was my boss. He would come, and I was the

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general counsel of the FBI, so he was seeking counsel, Jim

Mr. Meadows. No, that is what I was asking. You

Mr. Baker. Jim, help me figure out

Mr. Meadows. So they came back to you from this meeting where Rod said let me wear a wire, tape the President, and they were asking you for legal advice.

Mr. Baker. Not legal advice, but counsel. How do I deal

Mr. Meadows. Legal counsel. What is the difference?

Mr. Baker. I wouldn't even say it was necessarily legal counsel. It was just what do you think about this, how am I supposed to deal with this? I am now at that point Andy was the acting director. He needed help figuring out what to do, and I was there to help him.

Mr. Meadows. So why did you not blow the whistle? Because this would not just have I think ethical concerns, but it would also have national security concerns somebody going into an Oval Office wearing a wire, why would you not blow the whistle at that point, Jim?

Mr. Baker. Was it I would blow the whistle on some type of unlawful activity, and it was

Mr. Meadows. So it was just contemplated unlawful activity?

Mr. Baker. I don't know that it was unlawful.

Mr. Meadows. Unethical.

Mr. Baker. I don't know that it was unethical.

Mr. Meadows. So you had never gone to your FBI agents that they would wear a wire and go into the Oval Office and tape the President of the United States? I find that hard to believe.

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Mr. Baker. I never did a legal analysis of this matter because after the conversation came up it was quickly dismissed.

Mr. Meadows. Who dismissed it?

Mr. Baker. A, I don't really know, but, B, my belief is that it was just not something that made any sense to do, it was too risky, it just would not pay the benefits. It wouldn't obtain the information that they thought it would obtain, so it just was one of these things that didn't make sense from a commonsense perspective, despite any legal analysis.

Mr. Jordan. Do you know how the New York Times obtained this information?

Mr. Baker. Which information?

Mr. Jordan. The information about the McCabe the story that was written a week and a half ago about the McCabe memos and the fact that Mr. Rosenstein had this conversation in the presence of Mr. McCabe and Ms. Page, information you have just been talking about, do you know how they got a hold of this information?

Mr. Levin. Again, I am not going let him answer any questions about leaks.

Mr. Jordan. Did you talk Mr. Baker, have you talked to the New York Times about this information?

Mr. Levin. I am just not going to let him without in any way suggesting he has, I am not letting him answer any questions about conversations with reporters going in that direction, so I am just not allowing that.

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Mr. Jordan. I am sorry, Mark. Go ahead.

Mr. Meadows. So are you suggesting this this is part of the criminal investigation? Because this just happened. This would be beyond the scope, so what reason are you giving us for not answering this question?

Mr. Levin. There is still an ongoing investigation, and I don't know what the scope of it is.

Mr. Meadows. I beg your pardon?

Mr. Levin. There is still an ongoing investigation that the department hasn't closed, and I don't know what the scope is, and I don't know

Mr. Meadows. Yes, but this lead just occurred, so it would have had to have been

Mr. Levin. I am sorry, I am not allowing it. That is the answer.

Mr. Jordan. Let me try it this way. You told us that you have talked to Mr. Corn. Have you ever talked with the New York Times about the Russia investigation?

Mr. Levin. Again, I am not allowing the question. I am not allowing him to answer questions obviously you can ask whatever you want. I am not allowing him to answer questions about that.

Mr. Jordan. Thank you.

Mr. Meadows. We are out of time, so maybe a 5 minute break if you all want one, and then minority will

Mr. Levin. Again, I apologize, it is my fault, but we will stop at 2, and then we can always arrange to come back if it is necessary.

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M (b)(6), (b)(7)(C) per FBI As a cleanup matter, with respect to the request for the name of the GS 15 employee based on to confidential nature of the hearing, the general counsel has approved the release of the name Sally Moore.

Mr. Jordan. Do I understand we are done at 2:00? Is there a long break? Are we coming back or is 2:00

Mr. Meadows. Set up another time to come back.

Mr. Jordan. Another day. Okay. Thank you, guys.

Mr. Levin. Are we done now or are we going to go until 2:00?

[Recess.]

BY MS. SACHSMAN GROOMS:

Q Back on the record. It is 1:37. I am Susanne Grooms.

A Yes.

Q Can you explain what the atmosphere was like at the FBI after the President fired Jim Comey?

A I am not sure that I can reduce it to one or two words. It was an, I guess, horrible atmosphere. It was shock, dismay, confusion, at least initially that night and then and then a sense of resolve that came pretty quickly as well to continue the FBI's mission. And as I was saying earlier to the Congressman, make sure that we were all adhering to our oaths to the Constitution and executing our responsibilities.

Q Was there a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the FBI's investigation into the Russia matter?

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A Yes.

Q Was that a concern you had?

A Yes.

Q Was that concern shared by others?

A I think so, yes.

Q Who? Who else?

A The leadership of the FBI, so the acting director. I can't remember if we appointed an acting deputy director immediately. The heads of the national security apparatus, the national security folks within the FBI, the people that were aware of the underlying investigation and who had been focused on it.

Q Was there discussion about opening a case into the obstruction of justice matter?

A I am looking at the FBI to see if you have any objection to me answering this question in this format.

Ms. Bessee. Could you restate your question, please?

Ms. Sachsman Grooms. Was there discussion about opening a case to investigate the obstruction of justice matter?

Ms. Bessee. Okay. So that would that would call for a yes or no response. If we go further into that we may have to stop the witness from answering.

Mr. Baker. Yes.

BY MS. SACHSMAN GROOMS:

Q Was any of that discussion had with the Department of Justice?

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A Not by me, and I can't recall if anybody in particular had that conversation early on with the Department of Justice. I think eventually, yes, but I am not sure like in the first day or couple of days whether we had a conversation with the department about that.

Q Did individuals in leadership at the Department of Justice share the concern of leadership at the FBI that the President had fired Director Comey as part of an attempt to obstruct the FBI's investigation into the Russia matter?

A I believe the answer to that is yes. I am not sure that anybody has specifically told me that personally, but that is my understanding.

Q And where do you get that understanding?

A From conversations with other FBI executives.

Q FBI executives that communicated to you that they had been talking to people at DOJ or

A Yes, yes.

Q So in the previous round you mentioned that at some point you had a conversation with either Mr. McCabe or Lisa Page or maybe both about the idea of the Deputy Attorney General wearing a wire. Is that accurate?

A Yes.

Q Who was the conversation with?

A My conversation?

Q Yes.

A I believe it was with Andy McCabe and either at the same time

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or later I had a similar conversation with Lisa Page, I think.

Q And you were not there during the Deputy Attorney General's conversation?

A Correct.

Q And you don't know specifically who was in the room during the Deputy Attorney General's conversation?

A I don't know specifically who was in the room.

Q And when I believe you said that the issue had been dismissed rather quickly. Is that accurate?

A Yes.

Q Was it dismissed

A Not immediately, but rather quickly, yes.

Q Was it dismissed during the same meeting?

A My recollection is that there were discussions about it over a longer period than the course of one meeting. It was relatively short, but I don't believe it was just in the one meeting that it was dismissed.

Q And the conversations that continued having after the meeting were conversations at the FBI. Is that right?

A So the FBI, the acting director Andy McCabe and others were having conversations with the department and then after the fact I would hear about them.

Q So you are now telling us hearsay information about conversations that other people had, right?

A I am telling you information that I heard from people who

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were in the meeting who told me about what happened afterwards.

Q And the issue was dismissed because it didn't make any sense. Is that right?

A It just didn't make common sense. Yes.

Q Did you think it was a good idea?

A I am not sure that I ever reached that conclusion because it was kind of dismissed so quickly. So I saw the risks of it. I saw some potential benefits to it, but I am not sure that I ever came to a conclusion at that time I don't believe I came to a final conclusion like, yes, we should do this or, no, this is terrible. It was just that it was a stunning kind of idea and one that had all kinds of implications and problems associated with it. And so, yes, but there was not just one conversation about it, there were more than one conversation about it that I was present at to the best of my recollection.

Q And the conversations, that you were present at, nobody from the Department of Justice was present at. Is that right?

A That is correct.

Q And the conversations you were present at who else was present from the FBI?

A I believe it was Andy McCabe, Lisa Page, and eventually it might have been Carl Ghattas, as well, who was the head of the national security branch at the time.

Q And those took place in a very short period of time?

A Yes.

Q Is that

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A Excuse me, Bill Priestap may have also been present for one of those conversations. I am sorry.

Q And the short period of time was matter of hours, a matter of a day, 2 days

A A couple of days or something, yes.

Q And how did you learn that the idea had been dismissed?

A I don't think there was ever a formal decision at a meeting where let's dismiss this. It just kind of didn't it was an idea that just didn't go anywhere because it was too impractical, too risky, and unclear that it unclear that it would produce any results that would be useful.

Q You also said that you were aware, again not in any conversation with but of some hearsay information around a conversation about the 25th Amendment. Is that accurate?

A Yes.

Q Was the 25th Amendment conversation had in the same conversation as the wire conversation?

A I don't recall that. They were at or about the same time.

Q And you were in neither of those conversations, correct?

A Correct.

Q So at or about the same time you don't know whether they were part of the same conversation or different conversations. Somebody told you that the DAG had spoken about the 25th Amendment. Is that accurate?

A Andy McCabe told me that the DAG had talked about the 25th

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Amendment.

Q And what did Mr. McCabe tell you?

A To the best of my recollection he told me that the DAG said that he had at least two members of the cabinet who were ready to invoke the 25th Amendment.

Q And what happened after that during that conversation? Did Mr. McCabe tell you anything else?

A I am sure he told me other things in that conversation, but it was in part both of those things were relayed to me with other information with respect to the what the DAG was going through at the time and how he was thinking about his involvement in the firing of Director Comey and how he was thinking about proceeding after that.

Q Did people tell you that the DAG was upset?

A Yes.

Q Did they tell you that he was making jokes?

A No.

Q Did they tell you that

A This was not a joking sort of time. This was pretty dark.

Q And did they did Mr. McCabe explain to you in what context the 25th Amendment came up?

A Again, I think the DAG was struggling with figuring out what to do in the aftermath of the firing of Director Comey, and he was talking about and saying lots of different things. And my understanding these were long meetings that they had over at the department with the deputy, the deputy attorney general and that they

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were talking about lots of things, and these were two pieces of information among others that I heard about.

Q What kinds of other things?

A So trying to understand the role that the deputy attorney general played in the firing, the disclosure of this written I guess there was a draft of a first draft of something that the President or somebody on his behalf had written. I think we got a copy from the DAG of the memo or a document, whatever you want to call it, that he had written and sent to the White House.

There were discussions about what investigative steps made sense next. There were discussions about the Deputy Attorney General's sort of state of mind at the time that all this was going on, and then there were discussions about how we should proceed forward with a special counsel and so and what the FBI was going to do in terms of investigations that it might open in response to the firing as I just said a few minutes ago. So there was a range of topics that we discussed associated with all this. I am happy to say more about that if you want to ask me more questions, but

Q When Mr. McCabe spoke to you about these conversations was it immediately after the conversation?

A I think so. I think it was it was either the it was either that day or the next day.

Q And what was Mr. McCabe's state of mind?

A At this point in time Andy was unbelievably focused and unbelievably confident and squared away. I don't know how to describe

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it other than I was extremely proud to be around him at that point in time because I thought he was doing an excellent job at maintaining his focus and dealing with a very uncertain and difficult situation. So I think he was in a good state of mind at this point in time.

BY MS. SHEN:

Q So, Mr. Baker, last round there was discussion about the Carter Page FISA application. I believe you said that you had reviewed the factual part of that application?

A That's my recollection.

Q Okay. So I would like to introduce as Exhibit 1 pages 15 to 17 of the Carter Page FISA application, which was heavily redacted and released under the Freedom of Information Act.

[Baker Exhibit No. 1

Was marked for identification.]

BY MS. SHEN:

Q And on Page 15 there is a section entitled, "Page's Coordination with Russian Government Officials on 2016 U.S. Presidential Election Influence Activities?"

Mr. Baker, do you recall reading this portion of the document?

A I don't recall this specifically. As I flip the page and look at page 16 I remember a long footnote that seems to go on for at least a couple pages here. That I remember, and I remember focusing on that and spending some time on that.

Q Okay. So if you will bear with me I will just sort of quickly read right underneath it says, "According to open source information

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in July 2016, Page traveled to Russia and delivered the commencement address at the New Economic School. In addition to giving this address, the FBI learned that Page met with at least two Russian officials during this trip. First, according to information provided by an FBI confidential human source, (Source #1)."

And then there is a footnote, footnote 8, that references down to the page, and I believe that is the footnote you just referenced about, you know, going on for at least a page. And in that footnote it says, "Source #1's reporting has been corroborated and used in criminal proceedings and the FBI assesses Source #1 to be reliable."

Mr. Baker, is it a good indicator of a source's reliability when their information can be corroborated by the FBI?

A Yes.

Q Okay. Is it a good indicator of a source's reliability when their reporting has been used in criminal proceedings?

A Yes.

Q Okay. So it continues, "Source #1 has been compensated," redacted, "by the FBI and the FBI is unaware of any derogatory information pertaining to Source #1." So if I am reading this correctly, there was no derogatory information found by the FBI regarding Source #1 in this case, is that consistent with your understanding?

A So the people filing the FISA application and the people who checked the Woods file to verify that the way this works is that they would not have had any information that was derogatory about Source

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#1 at the time that this was submitted.

That there might exist in the files of the FBI or in somebody's memory some interaction that might be derogatory and that it didn't make it into the files I don't know that that happened or didn't happen. That kind of thing in theory, in theory could happen. So, but the people responsible for this FISA should have believed that that was accurate at the time and should have had documentation to support that assertion.

Q Okay. So the people according to the normal procedures of FISA, the information they had in hand there was no such derogatory information?

A There shouldn't have been, right, because I believe they would not try to file a false statement with a FISA court under any circumstances knowingly. No one would.

Q Okay. And just for clarification, you know, it is my understanding that Source #1 would be referring to Christopher Steele.

A I think that is right.

Q Okay. So I will ask you to turn to page 16. The last sentence in the first paragraph says, "The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign." So I believe that refers to Glenn Simpson who may have hired Christopher Steele to conduct research. Is that consistent with your reading of this?

A I don't remember who the identity was of the person.

Q Okay. So, you know, there have been allegations that the

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FBI and the Department of Justice abused the FISA process because they failed to disclose a possible political motivation from Christopher Steele to the FISA court judges.

Given the information in this footnote that was provided, including the FBI speculating that, you know, this information may have been used to discredit this candidate's campaign, do you believe this FISA information was sufficiently transparent? Do you believe there was abuse in failing to disclose additional information?

A I guess I would answer it a couple ways. One, I don't know what other information there is in the FBI files with respect to Christopher Steele. I don't fully know all of that, and I have heard some things today about the interaction between Bruce Ohr and Christopher Steele that I didn't to the best of my recollection I didn't know before. So I am not claiming to know everything that there is about that there is out there with respect to Christopher Steele.

What I would say is that that sentence at the end of the first paragraph on page 16, "The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign" puts is sufficient to put the FISA court on notice that there may be a political motive behind all this and that the court should take this into consideration. And so to me I can't see what is behind the blackout and I don't remember it.

My recollection is when I whatever last draft that I read about this, that I read of this application, whatever briefing I received from my folks about what was in the application, my assessment was that

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the information that we were providing was adequate and consistent, it was adequate to put the FISA court on notice of the important information that it needed to know, and we were doing so in way that was consistent with our practice with the FISA court that I have been involved with for 20 years.

Q So is it fair to say that because it appears that the FBI tried to put the FISA court on notice about possible political motivations that is a strong indication they were not trying to abuse the FISA process?

A I don't think I know that the FBI was not trying to abuse the FISA process. I never heard anybody say anything of that nature, and I certainly would not have countenanced that whatsoever.

Q Okay. Given that this footnote seems to span at least a page, how likely do you think it is that the FISA judges missed the footnote and did not read this? Do FISA judges tend to read footnotes?

A It is highly unlikely that anybody would miss a footnote that is this long, and I just note for the record it is not in small type or anything like that, it is in normal font.

Q Okay. I will just go further down on the same page. It says, "Notwithstanding Source #1's reason for conducting the research into Candidate #1's ties to Russia, based on Source #1's previous reporting history with the FBI, whereby Source #1 provided reliable information to the FBI, the FBI believes Source #1's reporting herein to be credible."

Sitting here today, do you agree with that assessment?

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A So I want to be careful. I don't know everything about Mr. Simpson, so today I can't assess that. I just don't know enough of the details. It would not be appropriate for me to say that.

Q Okay. And we

A I certainly believed this at the time. I am sorry.

Q Okay. Thank you. And just related to something we discussed in the previous round, this paragraph seems to assert that, you know, there is an awareness that, you know, that a reason for conducting the research, you know, may have political motivations, but nonetheless based on other information such as a credible, you know, previous history that the FBI ultimately concluded that Christopher Steele was a credible source. Do you agree that Christopher Steele was a credible source?

A That is what I thought at the time. Again, I don't know everything that he I don't know everything that is to be known about him, but based on the information presented to me and the way this was articulated, I thought that he was a credible and reliable source and certainly enough to put into a FISA application with the appropriate caveats and other disclosures to the Court associated with it.

Ms. Shen. Okay. Thank you.

Mr. Levin. This is probably a good time to stop then. We will work with Mr. Baker for another time.

Ms. Shen. Okay. Thank you.

[Whereupon, at 2:00 p.m., the interview was concluded.]

COMMITTEE SENSITIVE

Certificate of Deponent/Interviewee

I have read the foregoing pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
JOINT WITH THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JAMES A. BAKER (DAY 2)

Thursday, October 18, 2018

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:01 a.m.

Present: Representatives Meadows, Jordan, Ratcliffe, and Gaetz.

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Mr. Somers. Good morning. This is a continuation of the Committee on the Judiciary and the Committee on Oversight and Government Reform's transcribed interview of James Baker, the former general counsel of the Federal Bureau of Investigation.

I'm not going to read through the entire preamble again. I would just remind the witness that he is required to answer questions to Congress, including congressional staff, truthfully in a transcribed interview.

And the time is now 10:03. I'll turn it over to Mr. Jordan to begin our first hour of questions.

Mr. Jordan. Thank you.

Mr. Baker, thank you again for being here.

I want to pick up where we left off a couple weeks ago. You'd indicated that Mr. McCabe, Andrew McCabe, and Lisa Page came to you after a meeting with Deputy Attorney General Rosenstein where Mr. Rosenstein had said that he was looking at recording the President.

Mr. Baker. I'm sorry, Mr. Jordan. I'm having a little hard time hearing. I don't know what the --

Mr. Jordan. Okay. I'll do it again.

So, when we left off a few weeks ago, we were talking about a meeting you had with Andy McCabe and Lisa Page shortly after the meeting they had with Deputy Attorney General Rosenstein where Mr. Rosenstein indicated he was looking at the possibility of recording the President of the United States.

Tell me when that meeting that you had with -- when was the meeting

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you had again with Ms. Page and Mr. McCabe?

Mr. Baker. Okay. First of all, if I can just say, at some point in time, there's something I remembered from last time I'd like to -- that I didn't remember when we were sitting here together. I'd look to talk about that at some point and put that on the record. I don't want to interrupt your flow of questions.

Mr. Jordan. Go do that. If there's something you want to clarify from last time, do that upfront, and then we'll go right back to my question.

Mr. Baker. Okay. Sure. It's not directly related to this, and I'm happy to answer your question that you just asked me.

Mr. Jordan. Okay.

Mr. Baker. So I recalled after -- just actually a few days ago -- that another incident when a -- this time an attorney on behalf of a client came to me and wanted -- came specifically to me and wanted to make information available to the FBI in the form of electronic media that he wanted to get into the --

Mr. Jordan. Different case or same case?

Mr. Baker. Different case.

Mr. Jordan. Okay.

Mr. Baker. Well, a completely different case. Different attorney, different client, but insistent on meeting only with me or the Director. And then he did not have the material with him at the time. We had to actually dispatch FBI agents to go to a -- from a field office to go collect this material. It was in the -- to the best of

my recollection, it was roughly in the late summer, fall of 2016 timeframe.

Mr. Jordan. Can you tell us the case?

Mr. Baker. It was Larry --

Mr. (b)(6), (b)(7)(C) per FBI Mr. Baker, please do answer the question, but if it's in a -- if it's a matter that's totally unrelated to what's being discussed here, I'd ask you not to discuss any specific investigative details. Can you answer the question?

Mr. Baker. Can I give the name of the attorney?

Mr. (b)(6), (b)(7)(C) per FBI The name of the -- absolutely. Yes, sir.

Mr. Baker. Okay. The name of the attorney was Larry Klayman, and he also brought one of his associates with him whose name I don't recall at this point in time, and it was on behalf of a particular client. Anyway, that's what I recalled. And we were talking about that last time, and I did not remember that incident. Now I do.

Mr. Jordan. Okay. Thank you. Let's go back to Mr. McCabe, Ms. Page, and --

Mr. Breitenbach. I'm sorry, Mr. Jordan. Can I just follow up?

Mr. Jordan. Sure.

Mr. Breitenbach. With regard to Mr. Klayman coming to visit you, was it with regard at all to surveillance concerns that he had concerning the general fact pattern that we're here to discuss today?

Mr. Baker. Well, it had to do with surveillance. It had to do with an allegation about unlawful surveillance, but it was -- I believe it was different from any fact pattern that we talked about last time

here.

Mr. Breitenbach. Unlawful surveillance of whom?

Mr. Baker. Of Americans, including government officials.

Yeah. I can go -- I mean --

Mr. Jordan. Who was his client?

Mr. Baker. Can I just -- I'm turning to the Bureau to describe this. So his client was an individual named Dennis Montgomery, who I believe, to the best of my recollection, he said that he had been a U.S. Government contractor and, in the course of that work, had come across evidence of unlawful surveillance by the government of Americans -- and including government officials -- and wanted to give that information to the Bureau, which eventually did take place.

Mr. Jordan. And was this -- I'm sorry. Go ahead.

Mr. Sommers. During what time period?

Mr. Jordan. Yeah. That's what I was going to ask.

Mr. Baker. To the best of my recollection, it's in the late summer, early fall 2016.

Mr. Sommers. And the surveillance, what time period was that?

Mr. Baker. I'm not entirely sure what the timeframe was. It was a significant -- it was -- one of the issues in the case was it was a large amount of data that he had that he wanted to provide, that these -- these disks or other media had a lot of data on them about this, allegedly.

Mr. Sommers. Surveillance by whom?

Mr. Baker. By the U.S. Government itself of Americans,

unlawfully.

Mr. Jordan. Interesting. All right. Thank you. All right. Let's go back to the McCabe-Page-Rosenstein meeting.

When did you talk to Lisa Page and Andy McCabe about the meeting they had with Mr. Rosenstein?

Mr. Baker. I don't remember the particular date. I believe it was shortly after they had met with the Deputy Attorney General, and this was in the days immediately after Director Comey was fired, which I'm drawing a blank on right now.

Mr. Jordan. Just to be clear, then, was it minutes after the meeting, hours after the meeting, or days after the meeting?

Mr. Baker. I believe it was the day after.

Mr. Jordan. The day after?

Mr. Baker. I think so.

Mr. Jordan. Okay. So was that --

Mr. Baker. I believe there were a couple of different meetings, and they -- I believe there were a couple of different meetings, and each time, I think, it was the day after because I believe the meetings went late into the evening. That's to the best of my recollection.

Mr. Jordan. Okay. And is it your understanding that there were multiple meetings that Mr. McCabe, Ms. Page, Mr. Rosenstein had about the potential of recording the President?

Mr. Baker. I don't know. I know that they had multiple meetings with the Deputy Attorney General discussing a lot of things in the immediate aftermath of the firing, and I don't specifically remember

how many times this was discussed.

Mr. Jordan. So, just to be clear, the firing of Mr. Comey took place on May 9th, and then the hiring of the special counsel took place on May 17th. So these numerous meetings and the one you had with Mr. McCabe and Ms. Page took place between the 9th and the 17th?

Mr. Baker. I believe that's correct.

Mr. Jordan. Okay. All right. And you said you took it -- you took it as serious. When they presented it to you, their recollection or their recalling to you what took place in the meeting with Mr. Rosenstein about recording the President and talk about the 25th Amendment, you took it as serious?

Mr. Baker. I took it seriously because my assessment was that they took it seriously.

Mr. Jordan. Right. Okay.

Mr. Baker. I could have been wrong. They could have been wrong. But that's how -- that's what I assessed.

Mr. Jordan. Okay. What did you do then? So you got the deputy -- well, actually you've got the Acting Director of the FBI, Andy McCabe, you've got FBI counsel Lisa Page, who's been intricately involved in this case, the Trump-Russia case, and now you as the FBI general counsel are all taking it seriously that Mr. Rosenstein had said he was going to record the President. What did you do then?

Mr. Baker. I believe that we discussed it internally within the FBI, to the best of my recollection, maybe with a couple other people who were there at the time. And --

Mr. Jordan. And who were those other people?

Mr. Baker. To the best of my recollection, it was Colonel Gattis (ph), I think, who was a high-ranking national security official at the Bureau.

Mr. Jordan. Yep.

Mr. Baker. So I think we talked about it with that small group, but I believe that's it.

Mr. Jordan. So McCabe, Page, Mr. Gattis (ph), one other person.

Mr. Baker. Maybe one other person and myself.

Mr. Jordan. Okay. Do you have any idea who that other person is?

Mr. Baker. It could have been Bill Priestap, but I'm not really sure.

Mr. Jordan. It could have been Mr. Priestap. So five of you have subsequent meeting or meetings?

Mr. Baker. On the -- let's just take them. On the wiretap one -- or not the wiretap, but the wearing a wire, I think it was just one conversation about it.

Mr. Jordan. Okay. And that's in addition to the -- the initial conversation you had with Mr. McCabe and Ms. Page, you have that conversation, you're, like, "Wow, this is serious; they're serious; I'm taking it as serious," and then there's a meeting at some later time?

Mr. Baker. So I'm trying to be clear and not confusing, and I apologize.

I believe that Andy told me about this conversation about wearing a wire. I think separately Lisa told me about it.

Mr. Jordan. Okay.

Mr. Baker. And at some point, it could have been -- I don't think there were more than two conversations about it total, at least with me, but then part of those conversations, including me being told about what happened and then us discussing it -- so I think in some combination of those two conversations, it was informing me, and then let's talk about this idea.

Mr. Jordan. So was there a scheduled meeting? It's like, okay, we need to get Mr. McCabe, Ms. Page, yourself, Mr. Priestap, Mr. Gattis (ph) together to -- a scheduled a meeting where you then talked about how you were going to deal with this?

Mr. Baker. I don't recall that, no.

Mr. Jordan. So these are just conversations in the hall, conversations -- what, they'd stop by your office or a few people would show up?

Mr. Baker. I believe they were in Andy McCabe's office.

Mr. Jordan. Okay. I mean, this is a serious issue that they're talking about recording the President of the United States. Did you do any type of -- did anyone do any type of legal analysis, did you do some, we'd better check some case law, we better look at what we can do, and if we are going to do it, what are the procedures within the Department that you have to go through in order for someone to actually go record an elected official?

Mr. Baker. To my recollection, we didn't do any legal research or anything of that nature.

Mr. Jordan. So then what happened? You just dropped it, like, okay, no big deal?

Mr. Baker. We decided that it was -- my recollection is that the discussion was that this was an idea that did not make any sense from an investigative or operational perspective and really shouldn't be pursued further. That's my recollection.

Mr. Jordan. Go ahead.

Mr. Meadows. So help me. Bring me inside the room with these conversations. Characterize, if you could, for me the attitude of either Lisa Page or Andy McCabe. Were they excited, were they concerned, were they talking about whether this would be done or not? Help me understand what was going on in those conversations.

Mr. Baker. So, obviously, it was a very stressful time to begin with, right --

Mr. Meadows. Right.

Mr. Baker. -- because the Director had just been fired, and so that was number one. And then we were trying to figure out, okay, what do we do, how do we run the organization, what steps need to be taken and so on. I think Andy McCabe had to come up to the Hill, like, the day or two after that, so it was a very, very challenging and stressful and tumultuous time. So that's sort of the background.

And then there are these -- some number of conversations with the Deputy Attorney General about what to do next, what needs to be done,

and my recollection is numerous topics were discussed, and these were among them. The wearing the wire and the 25th Amendment were one of a list, one or two of a list of things that we were going -- that people were going through to try to figure out what to do.

My recollection is that I think, at least with Andy McCabe, that's what I'm remembering more clearly, I think he was sort of -- he was list -- he was sort of going through and summarizing the conversation that he'd had with the DAG and mentioned this with the wearing the wire, and I guess I would say he was sort of stunned, surprised, didn't know how to really react to that kind of a suggestion. It seemed extremely unusual, obviously. So it was surprised, stunned.

Mr. Meadows. But you weren't sitting there laughing about the fact that it was brought up? I guess that's what -- I guess what -- I'm trying to figure out, because if it's a joke, you know, you'll say, "Hey, you can't believe what Rod said," and you end up laughing it off, but it sounds like you had at least two conversations, maybe three conversations about this. And if it's a joke, it's either about the joke being in poor taste or, you know, it's about whether it was a joke or not.

And so help me -- you don't have multiple conversations about something unless it's seriously -- or at least thought to be serious.

Mr. Baker. Yeah. Again, I think, on our side of the street, we thought it was serious. So my recollection is, yeah, it was -- we were stunned and surprised. I don't think people laughed it off as a joke. It wasn't like that, but it was an idea that just did not make a lot

of sense, and operationally to try to pull this off, how are you going to do this? It just -- I'll say that it seemed crazy. I don't remember Andy saying that literally, but it just seemed like a crazy idea that didn't make sense, and so there was no real reason to pursue it further, at least from our perspective.

Mr. Meadows. So one last followup. So you say that this was one of several things that the team discussed in the aftermath of James Comey's firing. Discussed to do what? I guess my question is, was there the feeling that the President needed to be removed from office? I mean, what were the other things? If this is a list, you know, in a litany of long items that you discussed in terms of action items, what were the other action items?

Mr. Baker. So I'm going to pause and just to ask the Bureau if there's any issue with me responding to that question here.

M (b)(6), (b)(7)(C) per FBI May we can confer with the witness?

[Discussion off the record.]

M (b)(6), (b)(7)(C) per FBI Congressman Meadows, at this time, we'll instruct the witness not to answer. I anticipate that you will ask us to seek clarity from our chain of command in reference to this question.

Mr. Meadows. This is not your first rodeo. So, if you will do that, I will say it nicely and politely: Obviously there are concerns, and we all know that there are potential talks about obstruction of justice, and certainly if this gets over into those, but this can't be just singularly about obstruction of justice if there's a long list of things that you were talking about, but --

M (b)(6), (b)(7)(C) per FBI We will seek clarification, and we thank you for the opportunity.

Mr. Meadows. Yeah. And so let me follow up. Obviously you thought it was crazy. Did that get communicated back to Rod Rosenstein that it was crazy?

Mr. Baker. It's a good question. I don't know the answer to it. I'm not sure.

Mr. Meadows. So you did not communicate to Rod?

Mr. Baker. I did not communicate it, no.

Mr. Meadows. And you have no knowledge of Andy communicating that?

Mr. Baker. Not specifically, no.

Mr. Meadows. So, for all you know, he could have gone ahead with the wiretap?

Mr. Baker. As far -- I have not confirmed one way or the other whether it took place. That's true.

Mr. Jordan. I just want to be clear on that. So, when you were first told by Mr. McCabe that Mr. Rosenstein had made this statement, what was your response? Did you say that to -- "Well, that's crazy," or what did you say?

Mr. Baker. Something -- words to that effect, yes. I thought it was a --

Mr. Jordan. You made very clear right at the front that --

Mr. Baker. To the best of my recollection, sir, yes.

Mr. Jordan. Okay.

Mr. Baker. I just did not think it was a good idea.

Mr. Jordan. And did you do any followup with the Deputy Attorney General? Did you talk to Mr. Rosenstein and say --

Mr. Baker. I did not talk to him about it, no.

Mr. Jordan. And Mr. Meadows asked, you don't know if Mr. McCabe did or Ms. Page did?

Mr. Baker. I specifically don't know the answer to that, yes.

Mr. Jordan. Okay. Have you ever met with Mr. Mueller?

Mr. Baker. Mr. Mueller, yes.

Mr. Jordan. Did you meet with him between May 9, 2017, and May 17th?

Mr. Baker. May 17 is the day he was appointed?

Mr. Jordan. Yes.

Mr. Baker. No, I did not meet with him during that time.

Mr. Jordan. You didn't talk to him at all?

Mr. Baker. Not to my recollection.

Mr. Jordan. On the phone?

Mr. Baker. No. Not that I recall.

Mr. Jordan. Do you know if Mr. Mueller was in the meeting with Mr. McCabe, Ms. Page, and Mr. Rosenstein when this was said?

Mr. Baker. Not to my knowledge. No one -- I don't recall anybody mentioning his presence there, no.

Mr. Jordan. And do you know if Mr. Mueller was -- my understanding is Mr. Rosenstein was communicating with Mr. Mueller prior to the 17th and may have been with him the day that Mr. Mueller

interviewed with the President for the job of Director of the FBI. Do you know anything about that?

Mr. Baker. No.

Mr. Jordan. Okay.

Mr. Baker. Not to my -- to the best of my recollection, no.

Mr. Jordan. Okay.

Have you got anything more on this, because I'm --

Mr. Meadows. Yeah. One other. I want to make sure we're clear. The reference to tape the President of the United States came from Rosenstein to McCabe, not from McCabe to Rosenstein. Is that correct?

Mr. Baker. My recollection, it was the Deputy Attorney General who had the idea, or who made the suggestion, at least, and that went to Andy McCabe, and then Andy McCabe told me.

Mr. Meadows. And you don't know who else was in that meeting? They never -- Lisa and Andy, other than the ones you've mentioned, they didn't mention who else was there?

Mr. Baker. It was other -- my recollection is that there were other people in the room from the Deputy Attorney General's Office. I wasn't there and don't specifically recall who it was. I think it was Jim Crowell at least, who I think was the chief of staff at the time to the DAG, but beyond that, I'm not sure who was there. It may have been -- actually, it may have been Scott Schools also from the Department who worked in the DAG's office.

Mr. Meadows. But there were a couple of other people?

Mr. Baker. My recollection is that Andy and Lisa told me that

there were several people in the room from the DAG's staff as well.

Mr. Meadows. Did they mention who would wear the wire?

Mr. Baker. My understanding was the DAG -- the idea was the DAG would wear the wire.

Mr. Meadows. Was there any mention of Bob Mueller wearing the wire?

Mr. Baker. No. Again, I don't remember Mueller's name coming up during this time period at all until immediately -- like, immediately before the Deputy Attorney General briefed Congress on the fact that he was appointing a special counsel and --

Mr. Meadows. Well, the only reason why I ask is, in this particular timeframe, obviously, there was an interview with Mueller going in for an interview for Director, there were multiple conversations with Rod in terms of being the special prosecutor. I mean, a lot happened in a 72-hour period. And what you're saying is you're unaware of any of those personal conversations where Bob Mueller would have been part of that?

Mr. Baker. Not with Mueller. I was aware of the conversations about the special counsel being created and that topic, and not specifically associated with Director Mueller as the person. That, I didn't hear, to the best of my recollection, until after I was up here with the DAG and Andy McCabe on the Hill and the briefing was provided to the leadership.

Mr. Meadows. Okay. And I'm going to refer -- after this last question, I'm going to go back to my good friend from Ohio.

Back to the special prosecutor, we now have evidence that would suggest that a special prosecutor was being discussed prior to the firing of Director Comey. Specifically it's in Bruce Ohr's notes where he was having conversations about a special prosecutor in March of 2017.

Did you have conversations prior to the firing of James Comey about a special prosecutor?

Mr. Baker. To the best of my recollection, that topic came up, but I don't remember a specific conversation sitting here today about it, but I remember it coming up, but not like a meeting or anything of that nature. It was mentioned as a possibility or --

Mr. Meadows. Why was it mentioned as a possibility?

Mr. Baker. I'd have to think about it that. I don't recall, off the top of my head.

Mr. Meadows. I mean, what would be the conflict of you all continuing your investigation?

Mr. Baker. Well, I think it was as the Russia investigation was moving forward and the interactions that the President was having with the Director, Director Comey, and it was sort of on the -- it was on the margins of some type of conversation. I don't even remember who said it, quite honestly, but I'm telling you that the topic did come up before the firing. I just don't have a --

Mr. Meadows. So, before the special prosecutor, we've had other witnesses who have said that, at that point, they could not prove collusion, other FBI officials. Is that your understanding?

Mr. Baker. I'm sorry. I don't understand the question.

Mr. Meadows. Prior to the appointment of the special prosecutor, as late as May of 2017, we've had other witnesses that have suggested that they could not prove collusion between the Trump campaign and the Russians as late as May of 2017. Is that your understanding?

Mr. Baker. I've heard press reports to that effect, or seen press reports to that effect.

Mr. Meadows. Do you have any evidence to the contrary that you observed personally in your official capacity?

Mr. Baker. So the difficulty I'm having with your question is, what does "collusion" mean, and what does "prove" mean? And so I don't know how to respond to that.

Mr. Meadows. I'll yield back.

Mr. Jordan. Okay. You said you had conversations with folks at the FBI about the appointment of a special counsel prior to Mr. Comey's firing.

Mr. Baker. Well, I don't specifically remember who it was. I believe it was people at the FBI, and it was just about a special counsel in general, and it was not a long conversation. It was a mention of a --

Mr. Jordan. Did you talk to Director Comey about this?

Mr. Baker. That's what I can't recall sitting here today. I apologize. It could have been, but I don't specifically remember that.

Mr. Jordan. Could it have been Mr. -- I mean, not could. Did you talk to Andy McCabe about it?

Mr. Baker. I'm hesitant to say who it was specifically because I think it was a passing conversation that could have been with the Director, with the Deputy Director, and some of the other senior leaders.

Mr. Jordan. And this was in what timeframe again?

Mr. Baker. Sometime -- it was sometime after the Russia investigation started, but I don't specifically remember when. I don't remember being part of long conversations about it, quite honestly.

Mr. Jordan. Did you talk to Peter Strzok about it?

Mr. Baker. About a special counsel?

Mr. Jordan. Yep.

Mr. Baker. Not to my recollection.

Mr. Jordan. Lisa Page?

Mr. Baker. I don't think I discussed it with Lisa.

Mr. Jordan. So it was the discussions, then, most likely Mr. Comey and/or Mr. McCabe? Is that fair?

Mr. Baker. Most likely it was people in the FBI leadership, not including Lisa and Pete.

Mr. Jordan. Okay. Then --

Mr. Baker. I can't specifically remember who it was.

Mr. Jordan. Okay. So, then -- so FBI leadership, but not Peter Strzok or Lisa Page. Then Mr. Comey is fired on May 9th. Between May 9th and May 17th, did you have conversations about a special counsel then?

Mr. Baker. Yes.

Mr. Jordan. In that week?

Mr. Baker. Yes.

Mr. Jordan. And who were those with?

Mr. Baker. So I think the people that I was in communication with would have been the people I mentioned before, so it would have been Andy McCabe, I think Carl Gattis (ph) was there, probably Lisa Page, Bill Priestap. I don't specifically remember Pete Strzok being in those conversations.

Mr. Jordan. So these are the same group of people you talked about earlier you were having these conversations discussing a number of items, including Mr. Rosenstein's statement about recording the President and including now the appointment of a special counsel?

Mr. Baker. Yes.

Mr. Jordan. Okay. In your last time here with us, you were asked about, was there anything talked about the 25th Amendment issue? And your response was, "Yes."

So, on that list of things you're talking about, you're talking about Mr. Rosenstein recording the President. You're talking about possible appointment of a special counsel. Again, this is all between May 9th and May 17th. And you're also now talking about the 25th Amendment. Is that accurate?

Mr. Baker. It was -- well, yes. It was -- the topic was brought up.

Mr. Jordan. Okay. So tell me about those conversations. Who

discussed that, and what did you discuss?

Mr. Baker. On the 25th Amendment?

Mr. Jordan. Yes.

Mr. Baker. Yeah. Okay. So, again, my --

Mr. Jordan. Let me ask you one other question. Well, no. Go with that. Go with that.

Mr. Baker. To the best of my recollection, it was the same kind of thing I described with respect to the wire, that I was being told by some combination of Andy McCabe and Lisa Page that, in a conversation with the Deputy Attorney General, he had stated that he -- this was what was related to me -- that he had at least two members of the President's Cabinet who were ready to support, I guess you would call it, an action under the 25th Amendment.

Mr. Jordan. So both Andy McCabe and Lisa Page told you that Mr. Rosenstein had indicated to them that two members of the President's Cabinet were serious about the 25th Amendment approach to removing --

Mr. Baker. I had the impression that the Deputy Attorney General had already discussed this with two members in the President's Cabinet and that they were -- what I understood was that they were onboard with this concept already.

Mr. Jordan. Okay. Do you know which direction that went? Was it Mr. Rosenstein seeking out members of the Cabinet looking to pursue this 25th Amendment approach, or was it the other way around?

Mr. Baker. What I recall being said was that the Deputy Attorney

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General had two members of the Cabinet. So he -- how they came to be had, I don't know, but --

Mr. Jordan. So he had two members, almost like he was taking the initiative and getting the members.

Mr. Baker. That would be speculation on my part.

Mr. Jordan. Okay. And do you know who these two members were?

Mr. Baker. I do not. I never heard, no.

Mr. Jordan. Any idea from what -- from the context in what Mr. McCabe and/or Ms. Page related to you after that meeting, any idea?

Mr. Baker. Lisa and Andy did not tell me, and my impression was they didn't know themselves. So I'm not -- it wasn't that they were holding it back, or I didn't have that impression that they were holding it back. My impression was that they didn't know either.

Mr. Jordan. Okay. So the same question I asked you earlier, then, in relation to what you did when you heard about the recording. What did you do in response to you now have the Deputy Attorney General relaying to the top people at the FBI, the Acting Director of the FBI, that there are two members of the United States Government, two Cabinet members who are looking at the 25th Amendment. What did you guys do then?

Mr. Baker. I don't think we did anything. My recollection is this was a matter for the Deputy Attorney General to sort out. This was not an FBI matter. We should stay out of that.

Mr. Jordan. So no subsequent action?

Mr. Baker. I don't believe that we took any subsequent action

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on that, to my knowledge.

Mr. Jordan. So, when you were told this -- I mean, I'm just curious. You're told this. You're the chief counsel at the FBI. You're told that the Deputy Attorney General had just told the Acting Director of the FBI that two members in the United States Government, in the Cabinet, were looking to invoke the 25th Amendment. Did you -- was it, like, did your jaw hit your chest, or what was your reaction when you got that information?

Mr. Baker. My personal reaction? I guess I was surprised. I was surprised, but this was at the end of -- you know, for me, this is a stream of activity starting with the Hillary Clinton investigation and everything having to do with that, up until the election, and then everything having to do with the Russia investigation, the Director's conversations with the President, everything else that was going on, and this -- and then the Director being fired. So this was a tumultuous time to say the least. And so it was one, frankly, crazy thing after another, unusual thing after another, and this was --

Mr. Jordan. This one was -- this is a little more -- I mean, I agree there's lots of crazy things going on, but this one is as crazy as it gets.

Mr. Baker. Well, the Director being fired because the President doesn't like the fact that we're investigating Russia was pretty crazy to my mind.

Mr. Jordan. I'm going to come to that. I know Mr. Meadows has a question.

Mr. Meadows. Yes. So --

Mr. Jordan. One second, Mark.

So just so I understand, I'm trying to develop this list of things you were discussing between May 9th and May 17th, and that is the recording of the President, Mr. Rosenstein's statement, that is the 25th Amendment, and that is the appointment of a special counsel. All those things were ongoing items of discussion with the top people at the FBI and, frankly, top people at the Justice Department? Is that fair?

Mr. Baker. Yes. Yes. But most importantly, I think, at the Bureau, we were trying to figure out what investigative steps we needed to take in light of the firing. And I'm --

Mr. Jordan. I want to come -- I'm coming there next.

Mr. Baker. That was sort of -- to me in this time period, that was the thing that the Bureau and the Bureau's --

Mr. Jordan. I understand, and that's where I'm going next, but Mr. Meadows has some other questions.

Mr. Baker. Yes, sir.

Mr. Meadows. So how long did you work in either DOJ or FBI? How many years?

Mr. Baker. I worked at DOJ from 1991 to 2007. Then I left in 2009 to 2011, and then from 2014 to 2018. So 23, 24 years, something like that.

Mr. Meadows. So more than two decades of experience?

Mr. Baker. Yes, sir.

Mr. Meadows. In those more than two decades of experience, have you ever had a Deputy Attorney General or anyone high ranking come to you about invoking the 25th Amendment?

Mr. Baker. No.

Mr. Meadows. Have you had anyone come to you, a Cabinet member, seek you out to get your opinion on the 25th Amendment or have you heard of that?

Mr. Baker. No.

Mr. Meadows. What would be, in your mind, the probability -- well, I won't ask you. I'm a math guy, so I won't ask you that.

Do you find it highly unusual that two Cabinet members independently would reach out to Rod Rosenstein on their own to discuss the 25th Amendment without it being initiated by Mr. Rosenstein?

Mr. Baker. I'm not sure I can answer that question. That's a hard one to answer. I'm not sure I can assign a probability to that.

Mr. Meadows. All right. But in your opinion, you believe, based on your previous testimony, that it was Deputy Attorney General Rod Rosenstein that reached out to them, based on the way it was communicated to you?

Mr. Baker. Let me say it this way: I had the impression that he was an active participant in those discussions, because he said he had two members.

Mr. Meadows. And so, as part of this conversation, I think in your previous testimony the other day, you mentioned that there was

some question about Rod Rosenstein's state of mind at that point. Was that because he was being blamed for Director Comey's firing, or why would you question his state of mind?

Mr. Baker. I think it was that my impression was it was the Deputy Attorney General having a -- yes, a reaction to the events that occurred -- remember, this is shortly after he arrives in office -- and the belief, at least in the public to some degree and among others, that he supported or facilitated or was responsible for in some fashion Director Comey's firing, that he provided the President with some information that allowed the President to rely on that and --

Mr. Meadows. Well, indeed he did write -- I mean, we know that, that he wrote a memo. So what you're saying is, is that his communication to you was that he didn't think that Director Comey should be fired?

Mr. Baker. Say that -- his communication to me?

Mr. Meadows. Right.

Mr. Baker. I don't think he ever communicated to me directly about that.

Mr. Meadows. Okay. So was he denying it, from what you heard from others, that he -- because that's a key point. If he's making a recommendation of the President to terminate and then he comes back and denies it with his colleagues, it would create some angst.

Mr. Baker. My recollection and my impression wasn't that he was denying that he had participated in the firing. My recollection was that he believed that either he made a mistake or was fooled or drawn

into it in some way that he didn't anticipate how it was going to turn out, and that he had extreme regrets about what had happened.

I guess that's the last point. He regretted the facts and circumstances that led to the firing and was very upset about it.

Mr. Meadows. And so that's why he wanted to tape the President of the United States, because he was upset about it and the backlash he was getting?

Mr. Baker. My recollection is that the reason for the taping was to obtain evidence with respect to the President's state of mind with respect to why he fired Director Comey.

Mr. Jordan. So it was all about the obstruction of justice issue?

Mr. Baker. I beg your pardon?

Mr. Jordan. It was all about the obstruction of justice issue?

M (b)(6), (b)(7)(C) per FBI I'm sorry. I'm going to instruct the witness not to respond directly to that question. We are trying to give as much latitude here as we can today.

Mr. Jordan. But, I mean, I can tell Mr. Baker wants to talk about this obstruction of justice issue. I mean, he's been wanting to get in there the whole time -- I mean, the last several minutes.

(b)(6), (b)(7)(C) per FBI Believe me, Congressman Jordan, we are sitting between members very interested in getting answers to these questions, and my former boss, who I can tell, he's anxious to answer them. At this time, I must instruct him not to answer. As I represented to Congressman Meadows, we will take your question back and seek clarification, and if we may allow him to answer, we --

Mr. Jordan. Can I go for a second, Mark?

So, again, I'm developing this list. You had numerous conversations between the 9th and the 17th on the 25th Amendment issue, on the wiretapping -- or wearing a wire to record the President issue, and on the appointment of a special counsel. Were there any other issues you talked about, big issues, you're talking about what was going on at the FBI now that Mr. Comey had been fired, any other issues that were big in that list of categories I'm making, notwithstanding, of course, what I think is the biggest one and the one I think you want to talk about, which is the obstruction of justice issue?

Mr. Baker. I can't recall any other big issues. I mean, other than trying to run the FBI in this tumultuous time.

Mr. Jordan. Right.

Mr. Baker. Andy's the Acting Director, and we're trying to figure out how to support and help him.

Mr. Jordan. So there's four big things that are going on there then. You've got the special counsel issue, you've got the wearing the wire to record the President, and you've got the 25th Amendment issue, four big things you're talking about.

Mr. Baker. And the investigative actions of the FBI. That's the other thing, right.

Mr. Jordan. Of course your normal work. I get that.

Mr. Baker. Well, but we're -- relative to this. This is the thing --

Mr. Jordan. Relative to this.

Mr. Baker. -- we can't talk about.

Mr. Jordan. All right. Were you upset that James Comey was fired?

Mr. Baker. Was I?

Mr. Jordan. Yes. Personally.

Mr. Baker. I didn't hear the word, though. Sorry.

Mr. Jordan. What was your reaction? Were you upset by the fact the President had fired Mr. Comey?

Mr. Baker. Yes.

Mr. Jordan. And is it fair to say Lisa Page was upset about that and Andy McCabe was upset about that?

Mr. Baker. Yes. I think everybody was upset about it, yeah.

Mr. Jordan. And now what you just related to Mr. Meadows, it sounds like Mr. Rosenstein was upset about it, even though he wrote the memo recommending it?

Mr. Baker. I think he was upset about it too, yeah. But I think one of the things that I urged everybody, having been through many crises in the past, was to immediately retain our laser focus on what needed to be done, because that's what the American people were counting on us to do, and just keep focused on what the Bureau needed to do, not lose sight of that, not be distracted by all these other things, and move forward professionally and quickly to deal with whatever it is we needed to deal with.

Mr. Jordan. Go ahead.

Mr. Meadows. So let me follow up on that, because what it sounds

like is that the conversation about taping the President was retaliatory. It sounded like, "Well, gosh, we couldn't get him this way, so let's find another means of proving our case," and one of those was taping, the other would be a special prosecutor, but --

Mr. Baker. I would disagree that it was retaliatory. It was an effort to obtain information. In my mind, that --

Mr. Meadows. Well, you said you never spoke to the DAG, so how would you know that it's not retaliatory?

Mr. Baker. I don't know. You'd have to ask him. That's a fair point. That's a fair point. But that was not how I thought about it on our side.

Mr. Meadows. So how did you think about it?

Mr. Baker. That this was a suggestion with respect to an investigative step that could be taken to obtain further information on whether the President had obstructed the FBI's investigation of Russia.

Mr. Meadows. All right. So here's what it's boiling down to, it sounds like to me, and I think with a little bit of latitude from your counsel at the FBI, we might be able to get to this. It sounds like that, at that particular time, once Director Comey was fired, the shifting of the investigation shifted from a Russia collusion investigation to an obstruction investigation. And that's really what it sounds -- I mean, in the context of where you are, it sounded like it shifted in May of 2017 from collusion to obstruction. Is that correct?

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M (b)(6), (b)(7)(C) per FBI At this time, I will have to instruct the witness not to respond directly to that question. And I know what request is coming, and I assure you we will follow up on that.

Mr. Jordan. Was there any talk -- and maybe you'll give me the same answer, Counsel, but was there any talk of an obstruction of justice investigation prior to the firing of Mr. Comey?

Mr. Baker. Yes. Well, obstruction of the FBI's investigation.

Mr. Jordan. When did that start?

M (b)(6), (b)(7)(C) per FBI Again, I'm going to have to instruct the witness not to answer that.

Mr. Jordan. So I'm going to -- I want you to look at this.

Can we make a copy of this for Mr. Baker?

I want you to look at this text message from May 9th. This is a text message from Mr. Strzok to Ms. Page.

Can you make a copy of that? Do you have it? Okay. Can you give Mr. Baker a copy? And the minority's going to want one too, I'm sure.

It's the one that says: And we need to open the case we've been waiting on now while Andy is acting.

Mr. Baker. Sir, what page are you on?

Mr. Jordan. Whatever they just handed it.

Mr. Baker. Page 32? Oh, it's all 32. Okay.

Mr. Jordan. Thirty-two. It's about two-thirds of the way down the page.

Mr. Baker. Okay. I see that. Yes.

Mr. Jordan. What are they talking about?

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Mr. Baker. Well, A, I'm not really sure, so I can speculate, but I can speculate that I believe they are talking -- well, okay.

M (b)(6), (b)(7)(C) per FBI Before the witness speculates, may we consult with the witness?

Mr. Jordan. Yep.

Mr (b)(6), (b)(7)(C) per FBI Thank you.

[Discussion off the record.]

Mr (b)(6), (b)(7)(C) per FBI Can we have the question read back or re-asked again, please?

Mr. Jordan. So Mr. Baker had said -- I asked him what this text message refers to. I think he said he's speculating that it refers to something, and then you -- that you needed to have a little sidebar.

Mr (b)(6), (b)(7)(C) per FBI So I'm going to instruct the witness he may answer if he knows what the text refers to, but I'm going to instruct him not to discuss any speculation of any investigation that it may refer to. So, first of all, if the witness would answer whether he knows what it refers to, I think that may help us.

Mr. Baker. I don't know specifically what they were talking about.

M (b)(6), (b)(7)(C) per FBI And if the question is for him to speculate as to what it may pertain to, I would instruct him not to discuss any potential or ongoing investigation.

Mr. Jordan. So just again to set the context here, this is literally, it looks like, could be minutes, could be hours after Mr. Comey has been fired, it's the same date, May 5th, 2017: We need

to open the case we've been waiting on now while Andy is acting.

Just a few minutes ago, I asked you were you discussing obstruction of justice prior to the firing of Mr. Comey, and you said yes.

Now, on May 17 -- or excuse me, May 9 of 2017, Mr. Comey gets fired, and we have a text message from Peter Strzok to Lisa Page saying: We've got to open the case now while Andy is Acting.

It sure looks like they're talking about an obstruction of justice investigation. Would you agree with all that?

M (b)(6), (b)(7)(C) per FBI Again, we would instruct the witness not to discuss any ongoing investigation.

Mr. Jordan. I'm not going to discuss it. I'm just asking whether you agree with the assessment I just laid out. It looks pretty obvious to me, but I'd like the former chief counsel of the FBI's opinion.

Mr. Sinton. If you know.

Mr. Baker. I don't know what -- I can guess, but I don't know.

M (b)(6), (b)(7)(C) per FBI So, again, we want to be helpful here. It sounds, if I'm understanding you correctly, Congressman, that you're asking him if he agrees that a certain inference could be drawn.

Mr. Jordan. Yep. Exactly what I'm asking.

M (b)(6), (b)(7)(C) per FBI All right. You may respond.

Mr. Baker. Okay. I'm slightly confused, but I think it looks as though they are talking about opening an obstruction investigation. That's what I interpret from this.

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Mr. Jordan. An obstruction investigation based on the fact the President fired Mr. Comey?

Mr. Baker. In addition to other things.

Mr. Jordan. Okay. And can you talk about those other things?

Mr. Baker. I think that's what we just said. I can't talk about it.

Mr. (b)(6), (b)(7)(C) per FBI We will have to instruct the witness not to respond at this point.

Mr. Jordan. The gentleman from Texas wants some time.

Mr. Ratcliffe. For the record, I'm John Ratcliffe. I represent the Fourth District of Texas, Mr. Baker. Thank you for being here today. I'm sorry I was a few minutes late.

You've been instructing the witness not to answer certain questions as it relates around obstruction, just so I'm clear on the admonition that you've given him for today.

Mr. (b)(6), (b)(7)(C) per FBI Are you asking me, Congressman?

Mr. Ratcliffe. Yes.

M (b)(6), (b)(7)(C) per FBI It's difficult to respond in the abstract, but as questions arise that we have concerns could impact any ongoing investigation, particularly with reference to the special counsel's equities, we are doing our best to permit the witness to answer, but there are some questions where we either know his testimony could adversely affect the investigation or where we feel we'll need to get additional clarification before we can allow him to respond, but we are certainly doing our best to be as accommodating as we can today.

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Mr. Ratcliffe. Okay. The reason I ask, I want to probe a little bit with you, Mr. Baker, the legal basis behind some of the things the FBI was doing as it relates to potential obstruction, because I heard you say earlier, I think I wrote this down correctly, in response to Congressman Jordan's question about the 25th Amendment and the assertion, and you said that against a President is a crazy thing or that there's nothing more crazy than that; you said: Well, a Director being fired because the President doesn't like us investigating Russia is pretty crazy.

Do you recall saying that?

Mr. Baker. Words to that effect, yes.

Mr. Ratcliffe. Okay. Or words to that effect.

Okay. And so you very clearly have said that you didn't like that, but I'm trying to find out what basis you think that that was somehow inappropriate or improper, much less illegal? And so the Russia investigation was opened as a counterintelligence investigation, correct?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. So, in fact, I'll just tell you, on March 20 of 2017, Jim Comey said that the FBI was conducting the investigation into Russia as part of our counterintelligence mission, end quote.

Do you agree with that?

Mr. Baker. Yes.

Mr. Ratcliffe. And you were his general counsel at that time,

correct?

Mr. Baker. Yes.

Mr. Ratcliffe. We know at some point in time that elements of the counterintelligence investigation into Russia's actions gave rise to criminal investigation, because of the appointment of Special Counsel Robert Mueller, correct?

Mr. Baker. I'm not sure I understand the premise of your question.

Mr. Ratcliffe. Well, what I'm trying to find out, Mr. Baker, is at what point in time, as the FBI general counsel, can you tell us that this counterintelligence probe became a criminal investigation?

Mr. Baker. From its inception.

Mr. Ratcliffe. Explain that to me.

Mr. Baker. That as a general -- so when the FBI -- the FBI has numerous authorities and numerous responsibilities, and whenever it investigates anything, especially in the national security area, it brings to bear with respect to that issue or that investigation all of its authorities.

So, when we confront a problem, yes, we're looking at it from a counterintelligence or intelligence perspective using our intelligence authorities, but to the extent that that same activity at the exact same time also involves criminal activity, we're investigating that as well. And so this is one of the fundamental changes that occurred post-9/11 with the bringing down of the wall, that this line that people try to draw between intelligence or

terrorism, counterterrorism, counterintelligence and criminal is really illusory. It doesn't really exist, and the FBI has all of its authorities all the time and can look at something from -- look at a set of the facts from a counterintelligence perspective trying to understand what the foreign adversary is doing, their tradecraft is, things along those lines, and whether a crime was committed and be looking at it simultaneously from both of those perspectives. So they occur at the same time; they're part and parcel of each other. They're not easily separated.

That's the hard part, I think, about this, and I think unfortunately has led to the -- the fact that this is how it's done and a, you know, especially in the media, lack of understanding about that leads to confusion, unfortunately.

Mr. Ratcliffe. Okay. So let me drill down on that a little bit further. The purpose of a counterintelligence probe and the reason that it's not defined as a legal proceeding in the U.S. attorney's manual and under the penal code is because it's specifically for the purpose of advising the President as to foreign threats, correct?

Mr. Baker. Well, so you're -- so the purpose of a counterintelligence investigation is to thwart the activities of an adversary, to identify, understand and thwart, disrupt, defeat, whatever words you want to use, the activities of the adversary. To the extent that that produces intelligence information, then, yes, that should be reported to appropriate officials within the U.S. Government and our foreign partners, including the President of the United States

if it warrants his attention, but at the same time, you're also -- the FBI is also, because it's the FBI, not the Justice Department prosecutors, the FBI is investigating to assess whether or not any crimes were committed.

In a typical counterintelligence case, you would be looking at espionage, for example, let's say, which is a crime, obviously, and so you're investigating that from the get-go and you're also trying to figure out, you know, let's say the Russians, what were the Russians doing, how were they doing it, what Russian diplomats might have been involved in this kind of a thing, intelligence officers, that thing. You're trying to understand the full nature and scope of everything that happened, including whether there were any crimes committed, including whether there were any Americans who were involved in these offenses.

Mr. Ratcliffe. So, with that explanation, would you agree with me that the President, as the head of the executive branch, has the ability to end a counterintelligence probe at any point in time; lawfully, lawfully end a counterintelligence probe at any point in time?

Mr. Baker. Does he have the constitutional authority to do so?

Mr. Ratcliffe. Yes.

Mr. Baker. This is a difficult question to answer. If you look narrowly, I think, at Article II, your answer would be yes. I think if you look more broadly at all of his responsibilities under the Constitution, including his oath of office, I think it's less clear,

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especially when the investigation may pertain to him or people associated with him.

Mr. Ratcliffe. And did you have that discussion at the FBI during the timeframe that we're talking about here about whether it was proper for the FBI to be engaged in these types of obstruction conversations?

Mr. (b)(6), (b)(7)(C) per FBI I believe the witness, I think, wants to answer, but I'm going to instruct him not to answer at this time.

Mr. Meadows. Let the record reflect that Mr. Baker nodded twice in the affirmative.

Mr. Baker. Well, I nodded in the affirmative because I am prepared to answer the question and ready to answer the question, but I will not.

Mr. Meadows. So I want to make sure --

Mr. Baker. It was not a substantive nod. It was a nod of willingness to respond to the question.

Mr. Meadows. Well, I've made lots of money reading people. And so what you're saying is that at no time did you agree with Mr. Ratcliffe's statement, that that nod was not affirmative? I want to make sure. Listen, you've been an honest broker with me to date, and I'm just telling -- don't equivocate.

Mr. Baker. So, sir, to be honest, I'm not sure I can remember exactly now, with the back and forth, what his question is. If he wants to ask it again, I'd be happy to try to deal with it.

Mr. Meadows. He's not going to let you answer.

Mr. Baker. Okay.

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Mr. Ratcliffe. Well, and I'm not trying to -- what I'm really trying to do here, Mr. Baker, is to understand. I get the fact that, as you've testified, you were upset and Ms. Page was upset and Mr. McCabe was upset about Jim Comey being fired and that you didn't like it and that you thought it was crazy and that you didn't think it was a good idea, but that's all different than indicating that there was something unlawful about that. And you've just told me that you think that the President constitutionally has the authority to end a counterintelligence investigation at any point in time.

Does a President have the ability to, as the chief executive, end a criminal investigation at any point in time?

Mr. Baker. Can I answer this question? Yeah.

Does the President have the authority to end a criminal investigation at any point in time? I would answer in this way: Yes, insofar as his doing so, either with respect to a criminal investigation or an intelligence investigation, is not otherwise in contravention of his other responsibilities under the Constitution.

Mr. Ratcliffe. And how would those other responsibilities come into play in this situation?

Mr. (b)(6), (b)(7)(C) per FBI again, it's that last part of "in this situation" that, at this point, we must instruct the witness not to respond.

Mr. Breitenbach. Without getting into any of the substance as to the answer to Mr. Ratcliffe's question, are you aware whether there was any legal analysis performed by either the FBI or the Department of Justice into whether the FBI could engage in particular

investigations subsequent to the firing of Director Comey?

Mr. Baker. Yes.

Mr. Breitenbach. And were these written legal memos that were addressing whether this was an action that could be taken?

Mr. Baker. I don't recall a written legal memo. I would say that there were conversations and perhaps some emails, that type of thing; not like a formal memo or anything like that that I recall.

Mr. Ratcliffe. So, again, let me -- I'm trying to understand, since you were the general counsel lawyer for the FBI Director at the time, to understand here about how anything could be improper or how the President could have possibly been obstructing justice at any point in time.

I'll just say for the record, I'm not one of those folks that say that a President cannot obstruct justice. I think that there are times if performing illegal acts aimed at corruptly influencing legal proceedings, for instance, suborning perjury or bribing witnesses, those types of things, but would you agree with me as the FBI general counsel that a President cannot commit obstruction by performing lawful acts to which he is authorized under the Constitution?

Mr. Baker. If those acts are in fact lawful with respect to all of his duties and responsibilities under the Constitution, I would say yes.

Mr. Ratcliffe. Okay. Well, let's talk about what lawful actions may encompass. A President has the lawful authority to dismiss executive officers, including FBI Directors, correct?

Mr. Baker. Well, so, yes. We could go down a list of things that the President can do, but at the end of the day, if the President's purpose is in contravention of his other duties under the Constitution, in my view, he cannot do those things.

Mr. Ratcliffe. Yeah. And so I guess we need to get to that in terms of the things that when you talk about his other duties and how those would come into play here, I think it's important that we try and understand that, but -- so you agree that generally a President has -- it is a lawful action to dismiss executive officers, correct?

Mr. Baker. Well, again, so is the President executing his responsibilities in connection with his oath of office to preserve, protect, and defend the Constitution in connection with that particular action? If it's not, then I say no. If he's not -- the President has a solemn obligation under the Constitution to take care that the laws are faithfully executed, all of the laws simultaneously. It's a hard job to do that and to reconcile how that actually has to be done, but if he is somehow in this particular action not doing that, then I would say no, that is not a constitutionally authorized activity.

[10:59 a.m.]

Mr. Ratcliffe. So it's your opinion that the termination of an FBI Director can be a violation of lawfully and faithfully executing the laws and the Constitution of the United States?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. So do you -- back to the question I had before. We can talk about whether or not a President shouldn't interfere in pending criminal investigations. What is your opinion about whether or not -- whether or not -- regardless of whether one shouldn't or historically doesn't, whether or not a President can?

Mr. Baker. Interfere in a criminal investigation?

Mr. Ratcliffe. Yes.

Mr. Baker. Again, in theory, the President can. But if it's for a purpose that is contrary to his other responsibilities on the Constitution, then he can't.

Mr. Ratcliffe. Okay. So, again, I'm going to --

Mr. Baker. A narrow reading of Article II would lead you to conclude that he could do that because the -- all the executive branch is under his command. But if he is doing that for some purpose that is not appropriate, I'll use that word, not lawful, then I don't believe he can. I don't believe he has that authority.

Mr. Ratcliffe. Okay.

Mr. Meadows. So, Mr. Baker, prior to the firing of Director Comey, you instructed Peter Strzok and Lisa Page to open up an investigation. What investigation was that?

M (b)(6), (b)(7)(C) per FBI May we confer quickly with the witness?

[Discussion off the record.]

Mr (b)(6), (b)(7)(C) per FBI If we may, can we have the question read back or re-asked, just because I believe the wording of it as it was asked may be significant into whether he can answer or not.

Mr. Meadows. Prior to the firing of Director Comey, you instructed some members at the FBI -- it was communicated between Lisa Page and Peter Strzok, but they were referring to you -- that you instructed them to open an investigation, and I said what investigation is that.

Mr. Baker. So the --

Mr. Meadows. In April of 2000 --

Mr. Baker. April?

Mr. Meadows. Well, the text message was April 26, 2017, where it's going back and forth. And I can give you a copy of this. It says: Why -- we need to know why you didn't open the case when you were directed by the -- you, the GC.

Can you give him a copy of that?

Well, here you can have mine, the highlighted one.

Mr. Baker. I'll read it and hand it back.

April 26th.

Mr. Meadows. And we'll get the minority a copy as well.

Mr. Baker. Yeah. That -- that one, given the timeframe, I'm not sure what they're talking about, quite honestly.

Mr. Meadows. So you didn't instruct anyone to open an

investigation prior to the firing of Director Comey? Because obviously you -- something came to mind because that's why you conferred with counsel.

Mr. Baker. Something later came to mind. I don't -- I don't believe that I did instruct anybody to open an investigation, not to the best of my recollection sitting here today.

Mr. Meadows. Well, there will be enough of an audit trail where we'll be able to figure it out.

So are we quibbling over a couple of days or -- I mean --

Mr. Baker. This is -- this is before the firing, right?

Mr. Meadows. That's correct.

Well, I mean, according to the date stamp, it would be, yes.

Mr. Baker. So, A -- I guess I would respond, A, I don't believe I instructed anybody to open the investigation. B, I wouldn't have the authority to tell the Counterintelligence Division they must open an investigation. That's --

Mr. Meadows. But it's not referring to that. It's just saying that they had your approval.

So what case were you talking about opening that obviously had you cc'ing the DD --

Mr. Baker. So, again --

Mr. Meadows. -- the Deputy Director?

Mr. Baker. -- the April 26th thing, I don't remember. I'd be interested --

Mr. Meadows. Let's take away the date. What case would you have

copied the Deputy Director on opening?

M (b)(6), (b)(7)(C) per FBI At this point, we'll have to instruct the witness not to respond to the question.

Mr. Meadows. But, Counselor, this is critically important. If we're talking about obstruction before the firing of Director Comey, then it fundamentally undermines many of the arguments that are being made.

Mr (b)(6), (b)(7)(C) per FBI Congressman --

Mr. Meadows. And so the date is critical.

So here's what I need you to do.

Mr. Somers. Are you going to answer the question before you object to it?

Mr. Baker. Which question are you talking about?

Mr. Somers. Which case?

Mr. Baker. What's throwing me off is the date. So I don't know what -- I'm having a hard time figuring out what they're talking about given that date.

If I had emails, they would be helpful to me, perhaps, you know, my own emails. If I had cc'd the Deputy Director on something, that would be helpful to me to figure out. And I'd be happy to answer the question once I was able to ascertain what the heck they're talking about.

Mr. Meadows. So is it your testimony that you have no knowledge of discussing or directing anyone to open up an investigation prior to the firing of Director Comey?

Mr. Baker. I -- I don't recall that specifically sitting here today. I'm not saying that in the course of my 4 years at the FBI I didn't suggest or tell --

Mr. Meadows. Obviously we're not talking about the course of 4 years. We're talking about specifically as it relates to Mr. Trump and to this -- this initiative in terms of either obstruction or other related matters.

It appears that you were talking about it prior to the firing of Director Comey.

M (b)(6), (b)(7)(C) per FBI So, again, I'm going to have to instruct you not to respond to that question or premise. Will you abide by the instruction?

Mr. Baker. Yes, I will not answer that.

I will say that, as a matter of public record, the Director, former Director, has already talked about the fact that, even before he was fired, that I had thought that the President of the United States was a subject of the investigation that we were already conducting before then for a variety of different reasons.

Mr. Meadows. Yeah, but that investigation started over a year prior to this --

Mr. Baker. Yes, I --

Mr. Meadows. -- the one that you're referring to.

We're out of time.

Mr. Jordan. Let me --

Mr. Meadows. I tell you what. We'll get you copies of this.

And then hopefully in the next hour we can have some of your emails as well delivered, refresh your memory.

Mr. Baker. You're more of an optimistic on that than me, but okay.

Mr. Jordan. And maybe you can't answer this, maybe you've said this already, but I keep coming back to this. Why are -- why are or on what basis were you discussing obstruction of justice prior to the firing of the Director?

Mr. (b)(6), (b)(7)(C) per FBI Again, we'll have to instruct the witness not to respond to a question that specific that pertains to special counsel ongoing investigative efforts.

Mr. Jordan. But it doesn't -- I mean, this is -- the special counsel was named after the firing of Mr. Comey. That was the catalyst for the naming of the special counsel. Why would you be talking about obstruction of justice prior to the firing of Director Comey?

M (b)(6), (b)(7)(C) per FBI Again, same instruction to the witness on this question.

Mr. Jordan. Okay. Thank you.

[Recess.]

[11:24 a.m.]

[Baker Exhibit No. 2

Was marked for identification.]

Ms. Sachsman Grooms. It's 11:25. We'll go back on the record.

BY MS. SACHSMAN GROOMS:

Q Mr. Baker, I just wanted to start by going over a couple things that went through on the previous round. And one thing that got raised following your last time before us, I've entered as exhibit 2, a FOX News story.

The headline of the FOX News story is "Top FBI lawyer Baker offers explosive testimony on, quote, abnormal, unquote, handling of Russia probe into Trump campaign, colon, lawmakers."

And Mr. Meadows is quoted in here saying, and I quote, "Some of the things that were shared were explosive in nature," speaking of your previous testimony from the last time. Quoting again, "This witness confirmed that things were done in an abnormal fashion. That's extremely troubling," end quote.

And then there's a description that says, and I'm quoting from the article now, not Mr. Meadows: Meadows claimed the abnormal handling of the probe into alleged coordination between Russian officials and the Trump Presidential campaign was a reflection of inherent bias that seems to be evident in certain circles. The FBI agent who opened the Russia case, Peter Strzok, FBI lawyer Lisa Page, and others sent politically charged texts and have since left the Bureau, end quote.

So following when that occurred, I pulled your transcript from the last time you were here on October 3rd. And I'm just going to assert for the record that you never used the word "abnormal," but you did respond to this question on page 102. Mr. Meadows said: So is that why you took the abnormal or unusual step in this particular situation was because it was sensitive? And you answered yes.

I just wanted to give you a chance to explain whether you felt that the receipt of the information from Mr. Sussmann or anything else that occurred in the -- in the case that you were involved in you considered to be abnormal.

A It was unusual for me to be the recipient of information directly from the public or a lawyer or anyone else about an allegation of a crime. However, the FBI accepts information and encourages the public to provide the FBI with information as much as possible. And so there are numerous structures built within the FBI, 800 tip lines, online abilities to do this, you can phone the field office or other parts of the FBI. The FBI has a variety of, especially in the terrorism area, mechanisms built into place to make sure that we receive and act on and handle appropriately all kinds of tips and other offers of information to us.

And so to the extent that I was receiving information -- and I amplified that earlier today, I don't know if you were in the room with respect to this information that Mr. Klayman brought to me, so I remembered another incident when this happened. I wasn't in the business day to day of receiving information from the public or evidence

from the public about ongoing crimes or national security issues. But the FBI, of which I was a part, does that all the time, indeed it's part of the bread and butter of our business.

Q Did you think there was anything improper about you receiving the information yourself?

A At that time, no, I did not think it was anything improper. I was aware of the fact that I was taking in evidence and wanted to quickly get it to agents as fast as I could. But I didn't -- it did not strike me as unethical, improper, illegal, contrary to FBI policy, or anything like that.

Q And you said "at that time." Do you still hold that belief?

A Yes.

Q And you just mentioned that also, while it was not a usual practice for you to do, that you recalled in between the interview last time and today that you had done -- you had received information in a similar fashion at least one other time. Is that right?

A Yes.

Q So in addition to --

A Well, it's a total of two other times. So Klayman, Sussmann, and Corn, as I explained last time.

Q And the information that you received from Mr. Sussmann was unrelated to the dossier, right?

A To the best of my knowledge, it was unrelated to the dossier.

Q I think there's been an implication that the information you received from Mr. Sussmann was then folded into the Carter Page FISA.

Can you speak to that?

A I have no knowledge of that being the case. I believed them to be separate reporting. At the end of the day, it had to do with the same foreign power at issue, but the cases were separate. I didn't understand what Mr. Sussmann to have given us, the FBI, to have anything to do with the Carter Page FISA or the dossier or anything along those lines.

M (b)(6), (b)(7)(C) per FBI Let me just give the witness one general instruction so we don't interject a lot as you go.

Mr. Baker, to the extent you're asked questions today about the Carter Page FISA or any other FISA process, please confine your answers to matters you know to be declassified. And if you're uncertain, just please ask to consult with FBI counsel.

Thank you.

Mr. Baker. Sure.

BY MS. SACHSMAN GROOMS:

Q So similar to that discussion the last time, I just want to go through a couple words that were raised in the first hour as part of a question that you didn't address specifically in your answer to make sure that we can clarify your meaning on that and essentially that you weren't adopting the words in the question, because I think that's been at odds a little in the past.

During the first round, you were asked questions about Mr. McCabe and whether Mr. McCabe thought that the information about wearing a wire was serious. Did Mr. McCabe ever explicitly tell you that he

thought that the conversation was a serious conversation?

A I don't think he literally said those words. That was my impression. I -- I tried to convey that earlier today, perhaps I didn't do a good job of it. But that's -- yeah, that was my impression based on the words he said, his demeanor, and so on.

Q Also in the previous round you were asked a question that in my notes reads as, for all you know, he, meaning the DAG, could have gone through with a wiretap. Was there ever any discussion of a wiretap?

A Of a wiretap? No, not to my -- not to my recollection.

Q So the discussion was wearing a wire?

A Wearing a wire, yes.

Q Sometimes the words are switched?

A The activity -- and that activity falls within the scope of the Wiretap Act, so I may not have been precise on that.

Q Again, I'm not talking quite so much about your answers as about the questions.

A I see.

Q That -- sort of implicit words that were stuck into question.

If the DAG had decided to move forward with wearing a wire, wouldn't the FBI have been aware of that and that you would have -- someone from the FBI would have been involved in that process?

A I'm speculating, but most likely yes. Somebody would have had to have provided the DAG with the technical capability to do that. Other Federal investigative agencies have that capability, ATF,

Marshals, DEA, people like that. But in these circumstances, I would have expected that it would have been something that would have gone through the FBI.

Q So would you have expected, in this instance, if the DAG had decided to move forward with that process, someone would have known about that at the FBI?

A I'm almost completely confident that Andy McCabe would have told me about this had it gone forward.

Q And as far as you know, it did not go forward, right?

A As far as I know. Yes. Yes, it did not go forward.

Q In the previous round, you were asked a question about -- about the time period before the special counsel was appointed. And you were told that other witnesses had told us they could not prove collusion at that time, which was May 2017, and asked if you agreed.

What was your view of the case at that time?

M (b)(6), (b)(7)(C) per FBI Could you clarify the question, what you mean when you refer to the case?

Ms. Sachsman Grooms. Sorry. So the question -- the essential question was whether you could prove collusion between the Trump campaign and Russia in May of 2017. And I believe your response was the difficulty was you -- you didn't know what he meant by prove or collusion, so you didn't know how to respond. And I just wanted to open up the question so that you could explain in your own words.

Mr (b)(6), (b)(7)(C) per FBI If you can respond to the question without

discussing an ongoing criminal investigation into any individual or enterprise, please answer. If not, then I'd instruct you not to respond further.

Mr. Baker. So I guess I would say that the investigative activity that we were engaged in at this time with respect to which we're having this conversation today, I believed at the time, and still believe today, was a lawfully authorized investigation by the FBI consistent with the Constitution and laws of the United States, including Attorney General guidelines. So I believe that what we were doing was an investigation to determine what the facts were.

There was evidence -- I'm not going to go into the details of it -- which that evidence, information, the types of things that are recognized as authorizing and being the foundation for an FBI investigation, we had that type of, I'll call it stuff. And so, therefore, I thought that what we were doing was a legitimate investigation that was progressing as other investigations of this sort would in the sense that it's difficult to conduct counterintelligence investigations. They're hard things to do. It's hard to actually ascertain what happened. It's hard to get into people's heads and understand what they're thinking, those types of things. So my assessment was it was a lawfully authorized and predicated investigation.

BY MS. SACHSMAN GROOMS:

Q Had the investigation concluded?

A No.

Q Had you obtained sufficient evidence within the investigation to indict someone?

A Whether we had or had not, so I won't comment on that, I guess. I would say that we had not discussed or sought an indictment at that point in time.

Q In the previous round you were asked a question, which really was a statement, that said that you had questioned the deputy attorney general's state of mind.

I just want to be clear on this one. Do you have any actual concerns about the deputy attorney general's state of mind?

A Currently or at that time?

Q Currently or at that time. And I mean, you know, the kinds of concerns that one would have about someone's state of mind, the way that that language is often used, which is that they would have trouble working through normal daily activities or judgments or that they would maybe need to go into a hospital or something to that extent. Mental issues.

A I -- I don't -- so my understanding was that it didn't reach the level of requiring hospitalization or an intervention in that sense. My understanding was that the Deputy Attorney General was upset for a variety of reasons. I'll use that word, but that -- and that some of the suggestions he was making, again, I -- I don't know what is in his head or what was in his head, and I'm not commenting on that at all. All I'm saying is what I thought based on what I was being told.

So, anyway, I'll just say that the deputy attorney general's assertions in public directly and through the department could be true and yet at the same time what I'm saying could be true, because we were just -- we didn't talk directly about these things.

He seemed, based on the information I had, upset. And I think he was -- he was in a difficult position having to make hard decisions under incredible pressure. And so I'm not sure what else to say about that.

Q Sure. You also described yourself as upset. Is that accurate?

A Well, upset, yes, in that -- I mean, not -- I don't want to create a misimpression. Not like falling down on the floor and crying and that kind of thing. I think it was upsetting on a personal level because of my close working relationship and personal relationship with the Director and the team around him, but that I also immediately was very focused on what we needed to do to keep the organization moving forward and address all the matters that had to be addressed. We had to make legal decisions that evening with respect to a number of different matters having to do with the Director coming back on the FBI plane, that kind of thing. And so we just got back to business.

And so, yeah, that -- I just knew that is what we had to do, having been through crises before in the past.

Q I think in the previous round some of our Republican members were concerned that your emotional state or your preference for Mr. Comey might have caused you to want to retaliate against the

President. Do you feel that that's accurate?

A No.

Q Did you consider -- well, how about for the DAG? Did the DAG's emotional state cause him to want to retaliate against the President, as far as you know?

A Not -- not as far as I know, no.

Q And to the extent that you were upset about the firing of Director Comey, was part of that based on substantive concerns that you had about the firing?

A I was upset because my friend had been fired in a very public way. So -- but I had -- so that's, I guess, what it was. It was on that personal level. On a work-related level, we had to execute our responsibilities, because we had all taken an oath to the Constitution, and we had to do what we needed to do, and we had to get back to our jobs immediately.

And so, yeah, having been -- you know, just -- a comment I'll make is having been through 9/11, right, which was a very challenging thing to go through and to have to be in a position of responsibility on that day and have to get my workforce to go back to work immediately to deal with the counterterrorism matters we had to deal with, I know what is required to stay focused on the task at hand, even in challenging and difficult circumstances. And the Bureau is comprised of professional people who are able to do that, even in difficult circumstances.

Q So then putting aside the fact that you were upset about your

friend being fired, did you also have serious concerns about the circumstances of the firing?

A From a legal perspective and from a national security perspective, yes.

Q What were those concerns?

A Well, this is where I'm a little -- I'm concerned about --

M (b)(6), (b)(7)(C) per FBI If I may, as I understand the question, it did not ask you to comment on any investigative steps or measures. I believe the question was just asking you about your views of the appropriateness. I would instruct you not to relate your answers to any ongoing investigative interests, but you may comment on simply if you had views about whether the firing was appropriate or not. If you need to consult, then we would ask that we get a chance to consult with you if you feel you're unable to respond.

Mr. Baker. I guess I was -- I was gravely concerned about the firing with respect to the implications for the country.

Ms. Sachsman Grooms. What implications for the country?

Mr. Baker. Can I just go talk to --

Ms. Sachsman Grooms. Sure. Of course.

[Discussion off the record.]

Mr. (b)(6), (b)(7)(C) per FBI Thank you for that opportunity.

We will allow the witness to answer the question. But just so the record is clear, because we don't want any misunderstanding of his testimony, the FBI is instructing him to give a very general, nonspecific response to this question. But he may do that.

Mr. Baker. So I was very concerned about the implications of the -- of the firing with respect to the Russia investigation.

Ms. Sachsman Grooms. The last time you were here, you stated that there was, quote, a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the investigation into the Russia matter and that this concern was shared by others, including the Acting Director, the heads of the national security apparatus, the national security folks within the FBI, and leadership at the Department of Justice. Is that right?

Mr. Baker. I don't remember off the top of my head what I testified about last time. I'm sorry.

Ms. Sachsman Grooms. No, that's fine. My question is was there a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the investigation into the Russia matter?

Mr. (b)(6), (b)(7)(C) per FBI Could you rephrase the question?

It won't surprise you, the word "obstruct" has legal significance, particularly when there are ongoing investigations.

Ms. Sachsman Grooms. He's already answered this question.

Are we -- are we working off of different guidelines than last time?

Mr. (b)(6), (b)(7)(C) per FBI No, we are not. As you can imagine, these are very difficult matters for us to navigate. I would ask that you rephrase the question. But if the witness has already responded to it, then, of course, he can reconfirm his prior answer.

Mr. Baker. I don't remember what I said last time. But I was

doing my best to try to answer truthfully last time, so I would rely on whatever the transcript says, I guess.

Ms. Sachsman Grooms. Okay. Did you have concerns that the President's firing of Director Comey was done in order to prevent, stop, or inhibit the Russia investigation?

Mr. Baker. So I've been instructed that I can answer that question, and the answer is yes.

Ms. Sachsman Grooms. And why did you have that concern?

M (b)(6), (b)(7)(C) per FBI Again, if you can respond without discussing in detail any ongoing investigation of any individual or enterprise, please go ahead. I believe the question was referring to your mind state at the time, and I believe that's appropriate for you to respond to.

Mr. Baker. Okay. So can you just ask the question again --

Ms. Sachsman Grooms. Sure.

Mr. Baker. -- just so I answer it properly?

BY MS. SACHSMAN GROOMS:

Q So you said that you had a concern that the President's firing of Director Comey was done in order to impede or interfere with, something like that, the investigation into the Russia matter. Is that right?

A I'm relying on whatever I said last time in the transcript, yeah.

Q Yes. And I asked why you had that concern.

A In trying to answer that question within the parameters of

what the FBI has said that I can do, I would say that it was the facts and circumstances directly surrounding the firing, but then also the buildup to it and the interactions, activities that had taken place prior to that, that I don't feel I can go into any more detail here given what the FBI's instruction to me is.

Q Were the facts and circumstances that you're referring to the ones that Director Comey testified to in front of the Senate?

A They would include those, yes.

Q Were there ones in addition to that?

A I think so, yes.

Q Can you tell me what those are?

M (b)(6), (b)(7)(C) per FBI Again, I would ask the witness to abide by the previous instructions that he's received and invite him to consult with the FBI if he needs to.

Mr. Baker. Well, I guess I would -- in trying to answer it at a high level, it was the other discussions that I had with people at the FBI as well as my own analysis of the facts and concerns that I had.

Ms. Sachsman Grooms. Can you give me any more detail into your analysis of the facts and concerns that you had?

Mr. Baker. I don't -- I'm not sure that I --

M (b)(6), (b)(7)(C) per FBI I believe that we've let the witness go as far as we can on this line of questioning.

Ms. Sachsman Grooms. It's still well within his state of mind.

M (b)(6), (b)(7)(C) per FBI Within his state of mind, but, of course, his state

of mind includes ongoing investigative equities, and that's the difficulty for us.

Ms. Sachsman Grooms. How serious was your concern?

Mr. Baker. Extremely serious.

Ms. Sachsman Grooms. What would be the implications of a President firing the FBI Director in order to stop an investigation of his own campaign?

M (b)(6), (b)(7)(C) per FBI Please, go ahead. Yes.

Mr. Baker. I assume I can answer that one?

So one of the implications of that would -- one -- one -- let me stress one of the implications of that would be that such an action would be contrary to the President's responsibilities and obligations under the Constitution of the United States.

BY MS. SACHSMAN GROOMS:

Q Would it also have national security implications?

A Yes, potentially.

Q And can you describe what some of those, in general, national security implications would be?

A Well, it depends on why -- are we saying a President? If we're just saying a President, it would depend on why a President was doing it. If it was done for some purpose, again, that's contrary to the Constitution and the interests of the American people, then I think that would be alarming and concerning.

Q In this instance, did you think that there was a threat to national security?

A In this instance?

Q Yes.

A Well, yes, because we had a national security investigation that was opened.

Q Did you think that the additional action of firing Director Comey added to that threat to national security?

Mr. (b)(6), (b)(7)(C) per FBI You can respond.

Mr. Baker. Yes.

Ms. Sachsman Grooms. In what way?

Mr. Baker. I'm just hesitating because I'm not sure what I can -- how much detail I can go into.

Mr. (b)(6), (b)(7)(C) per FBI Can we consult?

Thank you.

[Discussion off the record.]

M (b)(6), (b)(7)(C) per FBI Thank you for that opportunity. And we thank Mr. Baker for being a very conscientious witness.

We will allow him to answer the question, again, consistent with other instructions we've given today. We do want him to confine his answer to general topics and not to discuss any ongoing investigative measure or matters.

So can you ask your question again? I'm sorry.

Ms. Sachsman Grooms. No problem.

BY MS. SACHSMAN GROOMS:

Q You had said that the President's firing of Director Comey you considered to be a threat to national security. And my question

was, in what way was it a threat to national security?

A So the investigation at a high level was about Russia, period, full stop. And it was trying to assess, in this particular instance, what the Russians were doing or had done with respect to the 2016 Presidential election. We were trying to investigate what the Russians did and what any -- and whether there were any Americans or others who had done things in support of those efforts, either knowingly or unknowingly, so that we could understand the full nature and scope of what the Russians had attempted to do.

And so to the extent that this action of firing Director Comey may have been caused by or was the result of a decision to shut down that investigation, which I thought was a legitimate investigation, then that would frustrate our ability to some degree to ascertain what the Russians as well as any other Americans or others had done in furtherance of the objectives of the Russian Federation.

So not only -- I guess the point is not only would it be an issue about obstructing an investigation, but the obstruction itself would hurt our ability to figure out what the Russians had done, and that is what would be the threat to the national security. Our inability or our -- the inability or the delays, the difficulties that we might have with respect to trying to figure out what the Russians were doing, because our main objective was to thwart them.

Q "Them" being the Russians?

A The Russians.

Q Can you pinpoint when was the first time that you had

concerns that the President of the United States would attempt or was attempting to interfere with the Russia investigation?

M (b)(6), (b)(7)(C) per FBI We're going to instruct the witness not to respond to that question. Thank you.

Ms. Sachsman Grooms. Was there anything particular going on in the Russia investigation shortly before or at the time that the President fired Director Comey that would have particularly made the President concerned enough about his own personal liability or that of his close associates that the President would have taken the extreme step of attempting to interfere with the investigation?

Mr (b)(6), (b)(7)(C) per FBI Same instruction.

BY MS. SACHSMAN GROOMS:

Q Let's start at the beginning of the Russia investigation.

As I understand it, and I believe Lisa Page explained this one to us, the counterintelligence investigation was initiated on July 31st. Were you aware of it at the time of its initiation?

A I don't remember the dates specifically, but I think I was aware of it before it was initiated, when we first received the information that started the investigation. And that -- I can't remember exactly how much of that's been declassified. But we had received information from a third party that caused us to open the investigation. I was aware of that at or about the time that it came into the Bureau. And I think that was even before officially that the investigation was opened.

Q Do you recall exactly how long after that information came

in the investigation was opened?

A I think relatively soon thereafter.

Q And you wouldn't have been involved in the actual opening of the investigation, right?

A Not that particular investigation, no.

Q What was your role?

A With respect to this particular investigation?

Q Yes, sir.

A To at -- fundamentally, to make sure that the FBI had the best legal advice -- was receiving the best legal advice with respect to the investigation from whomever had to give it or could give it. So whether from my troops, the Department of Justice, or anybody else that we needed assistance from. So that was fundamentally that.

The second part was that I played a role of a, I guess, counselor/advisor with respect to how to handle the -- many of the various aspects of the investigation when they reached the attention of the Director, the Deputy Director, or other senior leaders.

So I wasn't there every day advising agents, conducting the investigation, reviewing documents, reviewing papers as a general matter and that kind of thing. I was advising the Director, Deputy Director, other leaders about how to confront investigative matters that came up from -- on a day-to-day basis.

Q And what was the initial concern/issue raised in the investigation?

A Well, the initial -- the initial issue was whether there had

been interactions of an unlawful nature or that were a threat to the national security, or both, in connection with the -- the -- at least some people in the now President's campaign with the Russian Federation, witting or unwitting.

Q And these were related to George Papadopoulos?

A Yes. Information that he conveyed, yes.

Q Can you confirm that the initial allegation that started the Russia counterintelligence investigation had nothing to do with the Steele dossier?

M (b)(6), (b)(7)(C) per FBI We'll instruct the witness he may answer if he can do so in an unclassified setting. I believe the question was a yes/no question, if he can --

Mr. Baker. Based on the information that I have seen in the public domain, I think I can answer it. And I think the answer is it did not have to do with the dossier.

BY MS. SACHSMAN GROOMS:

Q In fact, the Steele dossier was not provided to the FBI until later in 2016. Isn't that right?

A I -- yes. I'm not sure of the date when we first started to get parts of the dossier.

Q Sure. Lisa Page explained to us that, upon opening the investigation, I'm just going to quote from her, we had a number of discussions up and through and including the Director regularly in which we were trying to find an answer to the question, right, which is, is there someone associated with the campaign who is working with

the Russians in order to obtain damaging information about Hillary Clinton, end quote.

Were you part of those conversations?

A I believe so, yes. It was broader than that, I would say, but that -- I was part of conversations having to do with the Russia investigation, yes.

Q And can you describe the broader context?

A We were trying to figure out what the Russians were doing, period. Like the full nature and scope of what they were up to, part of which may have had to do with the -- with the emails. But it was really trying to understand more broadly what they were up to.

Q And how important was it at the time to keep secret the aspect of the investigation related to the campaign?

A I think our collective assessment was that it was critically important to keep it secret at that time because we were at the very, very outset of the investigation. I think everybody recognized from the outset that this would be a hard case to investigate, that we needed to move carefully so that we would not alert anyone to the fact that we were investigating this in order for us to be able to figure out what happened and to not alert, importantly, the Russians, about what we were up to and what we already knew about them.

Q Did you keep it secret?

A Yes.

Q Were there other steps taken at the FBI to keep it secret?

A I think there were -- yes, there were. I mean, there were

a number of steps taken to try to limit the number of people who had access to this information.

Q How serious was the threat to national security of these allegations that someone associated with the campaign was colluding or working with the Russians to impact the upcoming election?

A The 2016 elections?

Q Yes.

A So, again, I -- this word "colluding," I have a hard time understanding what that means, so -- we were concerned that the Russians were engaged in an effort to try to impact our elections -- that particular election, and we were trying to figure out exactly what they were doing and how they were doing it. And that -- there were various strands to that. And we were trying to learn as much as we could from our existing information that we had accessible to us and then to take logical investigative steps in a nonalerting way so that we wouldn't tip off what we were up to to understand what they were doing across the board with respect to our elections.

I'm not sure -- does that answer your question?

Q Well, was the case a priority for the FBI?

A Yes.

Q Did you think that was the right decision?

A Yes.

Q Why?

A Because if the Russians were trying to influence something as fundamental as a Presidential election, then I thought that would

be a particular threat to the country, because so much of our system depends on the integrity of our elections. So much of our constitutional system depends on the integrity of our elections.

Q Would that threat to the national security increase if the President was the elected and, therefore, obtained classified briefings and was exposed to the Nation's most sensitive secrets, if there was someone within -- if he or someone within his campaign had been, in fact, working with the Russians?

A Let me answer that generally. I guess I would say we would -- I think we would -- well, I think we were concerned about anyone who might enter government and be in a position to have access to classified or sensitive information who might provide that to a foreign power.

Q How serious would that concern be?

A Extremely serious.

[Baker Exhibit No. 3

Was marked for identification.]

BY MS. SACHSMAN GROOMS:

Q I'm going to enter into the record exhibit 3. It's Director Comey's statement for the record before the Senate Select Committee from June 8th, 2017.

A I'm ready whenever. I don't know what particular part to look at, but just tell me.

Q I'm going to -- have you read it before?

A I think I read it at or about the time that he gave it.

Q Did you watch Director Comey's testimony before the Senate?

A I watched most of it, yes. I didn't see all of it, but I watched most of it, I think.

Q To the extent that you're aware of them, did you find Director Comey's description of the events in his written and oral testimony to be consistent with the contemporaneous descriptions that he had shared with you at the time of the events?

M (b)(6), (b)(7)(C) per FBI You may respond.

Mr. Baker. Yes.

BY MS. SACHSMAN GROOMS:

Q Do you believe that Director Comey accurately shared with the Senate his memory of those interactions with the President to the best of his recollection?

A Yes, I think so.

Q And why do you believe that?

A Based on conversations that I had had with Director Comey at the time of the events that he described as well as my review of the memos and discussions with him about the events after they had taken place.

Q I'm going to start with the January 6 Trump Tower briefing. It's on the first page.

Director Comey wrote that on January 6, he first met with President-elect Trump at Trump Tower in New York. It was at this meeting that Director Comey first informed President-elect Trump about the Fusion GPS dossier.

He wrote that, quote, prior to the January 6 meeting, I discussed with the FBI's leadership team whether I should be prepared to assure President-elect Trump that we were not investigating him personally, end quote.

He then wrote that he did offer President Trump that assurance.

Were you part of the FBI's leadership team with whom Director Comey discussed this briefing before it occurred?

A Yes.

Q And after this meeting, did Director Comey discuss this interaction with you?

A Yes.

Q Is this statement consistent with what Director Comey recounted to you about the meeting?

A So I'm going on just what you read orally, and so I haven't had a chance today sitting here to read the written testimony or review his transcript. But based on what you said, yes, that sounds accurate.

Q Can you describe to us any other details about the conversation that you had with Director Comey about his January 6 meeting with the President?

A So I'm going to look to the FBI to see -- I'm not sure to what extent I can go into these conversations.

Mr. (b)(6), (b)(7)(C) per FBI You may respond as long as you do so keeping your responses to unclassified information, information that you know has been officially declassified. If you're not certain, if you say so, we'll try to address that with the committees.

Mr. Baker. Okay. So, in general, I had several conversations both before and after the briefing with the Director, the Deputy Director, and other people at the FBI about both the substance and the format of this interaction.

What did we say the date was?

Ms. Sachsman Grooms. January 6.

Mr. Baker. January 6. How it was -- what was going to be said, how it was going to be conveyed, who would be in the room, and then what would -- and then getting an assessment from the Director afterwards about how it all had gone down. So I was involved in all of that trying to figure out how to do it.

BY MS. SACHSMAN GROOMS:

Q And did the Director describe to you how it went down?

A He did -- initially, he wrote a memo with respect to how it went down, which I read. At various points I read it a couple times, I think. And then I'm trying to remember if he had a conversation with us from New York. He may have had a conversation with the Deputy Director from New York. And then I heard about it from the Deputy Director. And then I think we talked about it as well when the Director was back in town.

Q And what did you hear about from the Deputy Director?

A Well, it was -- it was a summary of the meeting, again, the -- what was discussed, who was there, what the interactions were, who was -- who was taking the lead on discussing things, the fact that there was a -- sort of a, I guess you would say a sidebar discussion

in the room about how to handle certain aspects of what had been disclosed among the President and his key advisers in front of the other participants from the intelligence community that I think people found unusual. So --

Then other details. I mean, I can't remember all the details about the meeting. I haven't read the memo in a long time. But, yeah, we -- the Deputy Director gave me a high level discussion -- high level description of that, and then I got more details as time went by from the Director.

Q Were the director's details consistent with the details that you had heard from the Deputy Director?

A Yes, I think so. Yeah.

Q And were those descriptions consistent with the memo that you read that the Director wrote?

A Yes. To the best of my recollection, yes.

Q Do you remember any more details from the discussion with the Director?

A I mean, I guess other than what has been conveyed in the memo that he produced or his testimony in front of the Hill -- or on the Hill. I mean, he conveyed things about the atmospherics in the room, things of that nature, his concerns that he had going in with having to convey this information, being the one selected to convey the information, how uncomfortable he was about that. We had conversations about whether that was a good idea, a bad idea, whether somebody should go with him in that room, including, potentially, the

Deputy Director going in the room, who is an FBI agent and who could be present were statements to be made that would be related to our underlying investigation. It was ultimately decided that that was not a good idea.

But, you know, we had numerous conversations about how to handle the interpersonal aspects of the conversation that we all knew was going to be extremely difficult and uncomfortable.

Q Can you explain why you determined it was not a good idea to have an agent in the room?

A Because the Director -- to the best of my recollection, the Director was anticipating a long relationship with the President, and he wanted to have that relationship founded on -- founded on trust. And -- meaning that the -- that the President could count on the Director to always tell him the truth and to advise him to the best of his ability.

And so by bringing anybody else into the room to discuss this sensitive material that was being described to the President, we thought that that might throw off that dynamic, that would be one thing. That it would not allow a relationship of trust to get off on the right foot. And it would also then convey, which would have been accurately, that we had an agent there who could become a witness were there to be any problems down the road. And that -- and that, you know, Andy McCabe, in this case, is authorized and could have produced an FBI 302 with respect to the interaction, which is of a very different tenor than a conversation -- a conversation about a sensitive matter between

the Director and the President of the United States.

[12:15 p.m.]

BY MS. SACHSMAN GROOMS:

Q Following the meeting, did Director Comey share any concerns with you about the meeting?

A Concerns. I mean, he -- I think he described what happened and his uncomfortableness with being the person having to convey this information to the President and what it meant for the President's thoughts about the Bureau and how he would think about the Bureau, how he the President would think about the Bureau and whether he would think negatively about the Bureau, and how that would impact us. Things along those lines.

Q Let's turn to the January 27th dinner at the White House. That's the next meeting that's recounted in Director Comey's statement. It's a January 27th dinner in the green room at the White House. Director Comey wrote that he received the invitation around lunchtime and that he arrived at the White House to find that he and the President were dining alone.

Director Comey wrote, quote: "The President began by asking me whether I wanted to stay on as FBI Director, which I found strange because he had already told me twice in earlier conversations that he hoped I would stay, and I had assured him that I intended to," end quote.

He also wrote, quote: "My instincts told me that the one-on-one setting, and the pretense that this was our first discussion about my position, meant the dinner was, at least in part, an effort to have me ask for my job and create some sort of patronage relationship. That

concerned me greatly, given the FBI's traditionally independent status in the executive branch," end quote.

The President then informed Director Comey, quote: "I need loyalty, I expect loyalty," end quote.

Did you discuss the dinner invitation with Director Comey before he attended?

A To the best of my recollection, no.

Q Did you discuss the dinner with Director Comey after it occurred?

A Yes.

Q Is this statement consistent with what Director Comey recounted to you about the meeting after it happened?

A Yes.

Q Do you recall him recounting to you the President's statements about needing and expecting loyalty?

A Yes.

Q Did Director Comey express concern about that?

A Yes.

Q What was the concern?

A That he didn't want to give an impression that he was pledging undying loyalty to the President, and he talked about how he -- there was a discussion of the loyalty at the outset of the conversation. The conversation then went in many other directions, and then the President looped back to the -- my recollection is the President looped back to the conversation about loyalty at the end.

And Director Comey described to me how he tried to make sure that while the President was talking about these topics, that he kept his head exactly level and never made any effort to nod one way or the other, to make any head movements, because he didn't want the President to misinterpret any head movement as an acceptance of what the President was saying -- so he was very focused on that -- and that, yeah, he tried to convey to the President he was going to be -- the message, I believe, that he was trying to convey that he talked to me about was that he would be loyal to the President in the sense that he would tell the President the truth, he would give the President his honest -- he would tell him truthful facts and that he would convey his honest opinion about whatever the President in the future would ask him about, especially given the sensitive role the FBI plays within the executive branch and the government. And so that is what he tried to convey, and that Director Comey and I in the past had talked numerous times about the importance of having relationships based on that kind of honesty, and, for example, that's the kind of relationship that he and I had and expected from each other, and so that's what he was trying to convey.

It was an extremely uncomfortable -- he described it as a very uncomfortable meeting overall, and he was quite concerned about it.

Q Did you share the concern?

A Based on what he was telling me, I was concerned also about what was going on, yes.

Q In your 24 years at the FBI, had you ever had anything like

that happen?

A No.

Q I mean, is it fair to say --

A Well, 24. It was 4 years at the FBI and 20-some odd years at the Department of Justice, yeah.

Q I apologize.

A Yeah.

Q In your 20-some odd years at the Department of Justice and 4 years at the FBI, had you ever had anything like that happen?

A No.

Q What's the concern about the President of the United States demanding loyalty or requesting loyalty from the FBI Director?

A So I guess the -- I have to try to give you a structured answer. I would have to think about it for a moment here. I mean, there are concerns at a number of different levels.

The FBI is supposed to be and is trusted, I think, by the American people, the other parts of the executive branch, the Congress, to be independent and professional and to render its views without respect -- to render its views and conduct its activities without respect to political party, political affiliation, an eye towards the political impact of what we would be doing, how that would play out. And so for an FBI Director to somehow pledge loyalty to one particular President would fundamentally undermine, I think, if it were to be learned by the public, it would fundamentally undermine in the minds of a significant portion of the public that confidence that the FBI

was an independent law enforcement and national security agency, so it goes to sort of the core of what the FBI is all about.

Q Would there be concerns even if the public didn't learn about it?

A Absolutely, yes, because behind closed doors -- eventually the public would learn about it, but even so, yes. I mean, it would call into question what we were doing and whether we were doing things in a lawful way and whether we were -- we ourselves were adhering to our oaths to the Constitution.

Q Is it fair to say that you believe that the FBI should act in an independent fashion and not take direction on specific matters from the President?

A Well, it's -- no, I wouldn't go that far, because especially, you know, for example, in a counterterrorism matter, let's say, there are regular interactions between the FBI and the President of the United States, regardless of who that is; especially, you know, if you think about President Bush after 9/11, the FBI had numerous interactions with the President to keep him informed, to keep him up-to-date. So certain types of interactions with the President are not only natural; they're expected and necessary. But with respect to pledging loyalty to a particular occupant of the office, that is something else, and to pledge loyalty to any political party is something else as well, if that's what was being discussed.

Q Did you think that the request was improper, the request of the President, that the loyalty pledge was improper?

A I had grave concerns about it.

Q What were your grave concerns?

A Well, along the lines that we just discussed. And I also worried -- I mean, one of the things that I worried about was whether, and then discussed with Director Comey, whether the President was -- whether the President, because he was new to government, perhaps didn't understand all of the intricacies of the relationships that had existed over time within the government and how the FBI had handled itself with respect to its exercise of its duties. I was concerned that people around the President might not be giving him the best advice with respect to that.

And so I had hoped that the FBI might be able to play a role in terms of helping the President understand how we helped him execute his responsibilities under the Constitution and laws of the United States and that we would be able to educate him in some fashion.

Q On January 24, 2017, the FBI had a voluntary interview with Michael Flynn during which he lied to FBI agents about his conversations with the Russian ambassador, Sergei Kislyak.

Were you aware of that at the time?

M (b)(6), (b)(7)(C) per FBI I'm sorry. We will have to instruct the witness not to respond to the question.

BY MS. SACHSMAN GROOMS:

Q On February 13, 2017, the President fired National Security Advisor Michael Flynn. The next day, on February 14th, Director Comey met with the President alone in the Oval Office at the President's

request. That is described in Director Comey's statement before the Senate Select Committee on Intelligence.

He states, and I quote, I'm on page 5: "The President began by saying Flynn hadn't done anything wrong in speaking with the Russians, but he had to let him go because he had misled the Vice President. He added that he had other concerns about Flynn, which he did not then specify."

The President then said, according to Director Comey, quote: "'He is a good guy and has been through a lot.' He repeated that Flynn hadn't done anything wrong with his calls with the Russians but had misled the Vice President. He then said, 'I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go.'"

Did Director Comey discuss the February 14 interaction with you --

A Yes.

Q -- at the time?

A Yes.

Q Is Director Comey's written statement consistent with the way that he described the events to you after the meeting?

A Yes.

Q Did the meeting cause him concerns?

A Director Comey?

Q Yes.

A Based on what he told me, the answer is yes.

Q Why?

A Again, it's concerns at a number of different levels having to do with the independence of the FBI; the President speaking to the FBI Director about a particular case that we were handling, that was of particular concern; the implication that the President was trying to direct an outcome with respect to that particular investigation. They were very alarming on a number of different levels.

And I think -- if I'm not mistaken, I think this is the meeting when the President excluded the Attorney General and others from the meeting, and Director Comey discussed at length with me that issue and the fact that he was quite concerned about that fact.

Q Did you share his concerns?

A Yes.

Q In Director Comey's statement, he described, and I quote: "I had understood the President to be requesting that we drop any investigation of Flynn in connection with false statements about his conversations with the Russian Ambassador in December," end quote.

Is that what he relayed to you at the time?

A I don't remember those exact words, but generally speaking, yes.

Q Did you also have concerns that the statements by the President were requesting that the FBI drop the investigation of General Flynn?

A Yes.

Q And why would it be concerning if the President asks the FBI to drop the investigation of his National Security Advisor?

A Well, A, it's an investigation, period. It's the President, I mean, I guess you would say breaking a norm in that sense, the President actually intervening while it's going on with respect to a particular investigation.

It also goes back to what we talked about earlier. It has to -- it's not just some investigation; it's an investigation that is also related to the Russia matter that we were investigating, right, so it was not a freestanding independent investigation; it was something related to these other things. So it was alarming in that regard, too.

Q Is it alarming even if the FBI has no intention of dropping the investigation?

A Well, we didn't have any intention of dropping the investigation, so -- but it's alarming nonetheless, yes, because we'll -- you know, at a minimum, the existence or the fact of the -- at a bare minimum, the fact of this conversation just, again, looks bad if it were to ever -- would look bad if it were to ever become public, because it looks like the President's trying to put his finger on the scale to cause the investigation to go in a particular way, and that would hurt the FBI's credibility and reputation for independence. That was very alarming.

Q You said it would look like that to the public. Did you believe that's what actually was going on?

A That the President was trying to put his finger on the scale? Yes, that's what I thought was going on.

I was quite concerned with all of these interactions between the Director and the President and had numerous conversations about that. I don't know if we'll get to that, but, anyway, I was uncomfortable with the way that these conversations were -- the fact that they were occurring in the first place and the way they were going, and the Director and I talked about how to try to deal with that. That eventually played out over time. That eventually plays out, and you see that in the memos as things progress.

Q Is it fair to say that your concerns were growing as the conversations continued?

A Yes.

Q And why is that?

A Because they touched on -- they continued to touch on matters that I thought were not appropriate, a good idea to be talking to the President of the United States about directly with the FBI Director. And I thought if there were to be interactions between the President and the Department of Justice about a particular matter, that those should go through his staff to the Attorney General or the Deputy Attorney General, as opposed to directly to the investigative agency, including the Director.

Q Was that the practice in the previous administration?

A That's generally how -- I mean, the practice ebbs and flows and changes over time depending upon which administration is in power

and the preferences of the AG and the White House counsel and the President and that kind of thing, and then also what kind of a matter you're talking about, for example, as I said earlier, counterterrorism, but generally speaking, you know, the White House is not calling the FBI about particular ongoing criminal investigations that are not directly related to some urgent threat or something like that.

Q And had the -- was it unique that the White House was contacting -- or the President in this case was contacting the FBI directly about a matter that concerned the President's staff? I mean, had something like that ever happened before?

A I can't say whether it ever happened before. To the -- based on what I know, it was unique, I guess, in that -- I was unaware of prior instances of that. I can't say whether these kinds of conversations had taken place in prior administrations with prior Directors, that kind of thing.

Q Is it more concerning if the President is having that kind of contact and directing the FBI to stop an investigation of somebody that he knows or has a personal relationship with or works with him or he has a financial relationship with?

A That's concerning. That would not be typical.

Q You alluded to the fact that, at some point, you had a conversation with Director Comey about an ongoing concern about these conversations with the President and how to deal with them. Can you explain when that occurred?

A I had numerous conversations with the Director over an

extended period of time about how to effectively interact with the President, and so I don't -- so it was, you know, starting before the January 6 meeting, which was obviously before he became President, and then continuing up to and around the time that he, Director Comey, was fired.

Q In this timeframe, right, which is around the firing of General Flynn and this request to drop the General Flynn investigation, do you recall what those conversations with Director Comey were about?

A Not specifically, sitting here today. Generally what happened was if the Director knew that he was going to have a conversation with the President, we might talk about it beforehand. He would go have whatever conversation. We would talk about it afterwards. Sometimes I would read his memos that he had prepared. I didn't -- I don't think I read all of them contemporaneously, but I think I read most of them. Then I might loop back with him and have a further conversation with him about it. We would have lunch sometimes in his office and we would talk about how to interact and how to handle these situations, what the right thing to do for him as the leader of the organization, for the organization, for the Department of Justice, how to help the President deal with this new situation that he's encountering as President for the first time, and how to protect himself, he the Director personally, with respect to these interactions. Yeah. So we talked about a lot of things with respect to all this.

Q Director Comey described in his statement, quote: "The FBI

leadership team agreed with me that it was important not to infect the investigative team with the President's request, which we did not intend to abide," end quote.

He also stated that the leadership team discussed whether to share the President's request with the Department of Justice, which it did not do.

Were you involved in those discussions?

A Yes. I think it was my idea to make sure that that did not happen, that we had to be very sensitive about who was being exposed to these conversations.

Q I'm sorry. Just to be clear, because I had combined two things in one, it was your idea to make sure that which thing did not happen?

A That we made sure that -- there was one meeting in particular where the Director was describing, I can't remember exactly which interaction it was, with the President, and I was alarmed about it and said that we needed to take steps to make sure that none of the actual investigators learned about these interactions and what they were discussing so that they -- so that, to the extent that this was intended to influence them, that we would make sure that it did not.

Q Were you part of the discussion about not sharing the President's request about General Flynn with the Department of Justice?

A That, I don't remember specifically, sitting here today.

Q The written statement describes that Director Comey subsequently informed Attorney General Sessions about the President's

concerns with leaks and that he, quote, "took the opportunity to implore the Attorney General to prevent any future direct communication between the President and me. I told the AG what had just happened - him being asked to leave while the FBI Director, who reports to the AG, remained behind - was inappropriate and should never happen," end quote.

Did Director Comey discuss his intention to raise this concern to the Attorney General with you before he did it?

A Yes.

Q And did he talk to you about it after?

A I think so.

Q Is this statement --

A I can't remember specifically right now, but I know we had numerous conversations about pushing this out -- making -- pushing this away from the Director and making sure that these interactions, to the extent that they were going to occur, would occur between the Department leadership and the President or his staff.

I was -- I was urging the Director to not have these interactions anymore and to have them go through the Department of Justice.

Q And is Director Comey's statement in his testimony before the Senate Select Committee consistent with what he recounted to you about his meeting with the Attorney General?

A I don't remember all the parts of that, especially the parts about the leak at the start, that doesn't ring a bell with me, but generally speaking, that he would prefer that these interactions took place between the AG or the DAG and the President, yes.

Q Do you recall how the Attorney General responded -- or how Director Comey described to you that the Attorney General responded?

A I remember discussing it, but I can't remember the details of it right now, but I think that the -- I think the Department was receptive to taking on a more active role in trying to deal with these types of interactions.

Q Let's go to the March 30th call. The written statement then says that on the morning of March 30th, President Trump called Director Comey at the FBI. Director Comey wrote that the President, quote, "hoped I would find a way to get it out that we weren't investigating him," end quote.

And then he shifted the conversation to Mr. McCabe, raising concerns about a potential conflict of interest because Governor McAuliffe, who is close to the Clintons, had donated to Mr. McCabe's wife's campaign.

Director Comey wrote that immediately after the conversation, he called the Acting Deputy Attorney General to report the substance of the call from the President.

Did Director Comey discuss this interaction with the President with you after it happened?

A Yes.

Q Did he disclose to you the comments by the President about Mr. McCabe?

A Yes.

Q And did he discuss with you that he was calling the Acting

Deputy Attorney General Dana Boente at the time?

A Yes, because I think I urged him to do that.

Q Are the facts in Director Comey's written statement consistent with what he recounted to you about the call?

A I haven't read these statements today, but my recollection having read it before and what he testified about is that he accurately portrayed what he had told me, what we had discussed at the time.

Q Why did you urge him to call the Acting Deputy Attorney General?

A Because I thought that he needed to get out of these kind of -- he, the Director, needed to get out of having these kind of interactions and needed to get some cover from the Department, and to tell them about it, and to get them to take over this role as quickly as possible in terms of interacting with the President about ongoing matters. I just didn't feel comfortable with it and thought it was not a good idea for the Director to be having these conversations.

Q Let's turn to the April 11th phone call. Sorry. There are a lot of these. This is the last interaction that Director Comey wrote about. The President asked what Director Comey, quote "had done about his request that I 'get out' that he is not personally under investigation," end quote.

Director Comey recounted that the President stated to him, quote, "'Because I have been very loyal to you, very loyal; we had that thing you know,'" end quote.

Did Director Comey discuss this interaction with the President

with you after it happened?

A Yes, to the best of my recollection.

Q Do you recall him recounting to you that the President stated, "Because I have been very loyal to you, very loyal; we had that thing you know"?

A Yes, he talked about that part with me.

Q Did that concern him?

A Yes.

Q Why?

A Because he thought that the President was misremembering the conversation at the dinner. I think that's what the Director interpreted that to mean. Well, the Director told me at the time that he had -- that he believed that the President was referencing the loyalty conversation that took place at the dinner and that somehow the President was misremembering those facts, or the facts of what actually took place in the conversation.

And at some point in time, I think there's a part of this conversation I think when the Director didn't agree with some part of what the President was saying, he perceived a change in the President's demeanor and tone with respect to what -- with respect to the rest of the conversation, if I'm remembering correctly the conversations.

Q Were the facts in Director Comey's written statement consistent with what he recounted to you about his call?

A Again, I haven't read it today, but that's my recollection from having looked at it in the past.

Q Is it fair to say that the repeated and ongoing contacts increased your concern at the time?

A Yeah. I haven't done an analysis of the frequency of them to tell whether they were increasing or decreasing, but the nature and scope, the subject matter of what was being discussed alarmed me considerably and I just didn't think it was a good idea to have the Director continue these conversations with the President -- and to try to figure out a way to get him out of having these types of interactions and get this in a different lane.

Q Were these conversations that we've discussed that are recounted in Director Comey's statement to the Select Committee on Intelligence part of why you had concerns when Director Comey was fired that the President had fired him in order to impede the Russia investigation?

M (b)(6), (b)(7)(C) per FBI May we consult?

[Discussion off the record.]

Mr. Baker. Okay. I'm sorry. Just for the record, could we just get the question -- or can I just get the question again?

Ms. Sachsman Grooms. I will try my best.

Were these conversations that we've been discussing and that Director Comey recounted in his testimony before the Senate Select Committee, these conversations that Director Comey had with the President, part of why you had a concern when the President fired Director Comey that he had done so in order to impede the Russia investigation?

Mr. Baker. Yes.

Ms. Sachsman Grooms. Can you describe it in any more detail?

M (b)(6), (b)(7)(C) per FBI I think we've instructed the witness not to elaborate.

Ms. Sachsman Grooms. Got to try.

BY MS. SACHSMAN GROOMS:

Q Did Director Comey explain to you why he decided to write the memos and share them with you?

A Yes, he did.

Q And what was his explanation?

A His explanation was that he was concerned about, again, the nature and scope of these conversations and wanted a more or less contemporaneous record of what was discussed in case there were questions -- he was ever questioned about it down the road.

Q Who did he anticipate he'd be questioned about it down the road by?

A It could be the Congress in particular, the public, inspector general.

Q Did you agree with him that it was a good idea to make these memos, the contemporaneous memos?

A Yes, I did.

Q And why did you think they were important?

A For the exact same reasons that he did.

Q And I'm sorry. I think I've asked this before, but you believe that Director Comey's memos were accurate to the best of his

recollection?

A The memos were -- obviously, I was not in the meetings or on these phone calls. The memos were consistent with the oral statements and oral descriptions that the Director provided directly to me at or about the time of the events and at or about the time that he did the memos.

Q Did you ever have any concerns that the memos, writing the memos might be considered improper or wrong?

A No, I didn't think that. I mean, they reflected, unfortunately, I think, the fact that the President was saying things that we thought required there to be memos about.

Q Which in its own sort of very nature you found to be disturbing?

A Yes, disturbing, unfortunate. I'm not sure. It just did not bode well for the relationship between the President and the Director and the FBI in general.

Q You said originally that, at some point early on, you thought the problem was just that the President didn't understand the nature between -- the nature of the traditional relationship between the FBI and the White House.

Did you come to a point where you thought or felt that he did understand it and was just ignoring it?

A That's hard for me to answer. I don't specifically remember thinking that. Yeah. I don't specifically remember thinking that.

Initially, it was my -- and I urged the Director to try to figure

out a way to help the President understand more about the historical role for the FBI and why it was that way, but that the nature of the conversations with the President were such that it was difficult or impossible for the Director to present that type of information to him.

And then as time went on and the President seemed to be -- well, having the types of conversations that he had with the Director, I became, I guess -- I came to the belief that the President would not be interested in that kind of a conversation, given what he was doing, but I remained concerned that the President was not getting good advice from people around him in the White House who should have been steering him away from these kinds of conversations. Like, in other words, why didn't someone tell him, "You shouldn't be alone with the Director of the FBI. That is a bad idea for you"? Forget the FBI. "That's a bad idea for you. That looks bad. That's breaking all kinds of norms." And it would have seemed to me that somebody around the President should have been looking out for his best interests and telling him not to do that.

Q But was it your impression that Director Comey attempted to communicate to the President the norms that he thought were the appropriate norms?

A He tried to, especially later on when he raised this issue of, "Mr. President" -- I don't remember the exact words, "but these kinds conversations really should take place between the Department of Justice and you or the White House, White House counsel, that kind of thing, chief of staff."

Q And did the conversations continue after that?

A No. I think they eventually ended after the one that you cited; I don't remember the exact date of it, April 11 or something like that.

Q And did --

A It may have been the case that -- I think the Director at that point in time took a firmer line with the President about how "these conversations were not a good idea, sir," and that's when, again, I think the President's tone changed a bit and -- but I think the conversations stopped at that point in time.

Q And then Director Comey was fired?

A Eventually, a few weeks later, yeah.

Ms. Sachsman Grooms. I believe I'm out of time. Let's go off the record.

[Recess.]

Mr. Gaetz. Matt Gaetz representing Florida. I want to offer my objection on the record to this proceeding occurring behind closed doors. I know of no House rule that binds any of the Members or any other observers or witnesses to the confidentiality provisions that were expressed at the beginning, and I don't consider myself bound by them, and I wanted to log that objection for the record.

Mr. Meadows. So, Mr. Baker, let me come back to a few things.

Mr. Baker. Excuse me, sir. The FBI is not here right now, so --

Mr. Meadows. We would prefer to go without the FBI. We'll hold the clock.

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[Recess.]

Mr. Meadows. All right. So, Mr. Baker, we'll go back on the record. And I wanted to follow up on just a few things. One is, when you came in today, you mentioned that in terms of other people coming to you directly, Larry Klayman actually came to you directly, and that's the only other time that you could recall, but you clarified the record from our previous time together that him coming to you to actually give you documents -- was it documents he was giving you?

Mr. Baker. Well, he didn't give them to me. It was -- what I remember is he wanted to come specifically to either me or the Director, because he lacked confidence in other parts of the FBI, and to basically get me to get the FBI to take these electronic media. I don't think they were printed documents. I could be wrong, but I think --

Mr. Meadows. Were there six thumb drives? Does that ring a bell?

Mr. Baker. I think it was more massive than a thumb drive. I think these were very large --

Mr. Meadows. Yeah. Six different ones, is what I --

Mr. Baker. Six or some number, yeah. A large number of very high-capacity --

Mr. Meadows. And what did he indicate that this was proof of?

Mr. Baker. To the best of my recollection, and I haven't gone back to look at it, but it was an allegation that there was an effort within the United States Government to conduct unlawful surveillance of other Americans, including government officials.

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Mr. Meadows. Did he indicate that there was surveillance of Members of Congress?

Mr. Baker. I can't remember that specifically. I remember him telling me that it had to do with members of the judiciary. I think it was a range of government officials. I don't specifically remember Congress, but it certainly could have been, and it was --

Mr. Meadows. Did he indicate that there was surveillance of Donald Trump and his associates?

Mr. Baker. Sitting here today, I can't specifically remember that. I'm sorry. And I haven't gone back and looked at anything since that time.

Mr. Meadows. So, when you were given this, did the FBI investigate that?

Mr. Baker. Eventually, yes. FBI agents went and seized the material, not me. FBI agents went out and seized the material.

Mr. Meadows. Did you open an investigation on it?

Mr. Baker. To the best of my recollection, yes.

Mr. Meadows. Is that investigation ongoing?

Mr. Baker. I don't -- when I left the Bureau, I believe there were no further investigative activities occurring, but I don't know that it was technically closed.

Mr. Meadows. Was George Papadopoulos surveilled by extraordinary measures?

(b)(6), (b)(7)(C) per FBI We're going to have to instruct the witness not to respond to that question.

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Mr. Meadows. Under what grounds?

M (b)(6), (b)(7)(C) per FBI Again, our understanding is that it pertains to an ongoing investigation.

Mr. Meadows. Mr. Papadopoulos has been sentenced, and that investigation is over as it relates to Mr. Papadopoulos.

Mr (b)(6), (b)(7)(C) per FBI I certainly understand your point, Congressman, that he has been sentenced, but our concern is that answers the witness may give could still affect the ongoing investigation. It may not affect Mr. Papadopolous' personal legal jeopardy, but our concern is that it could affect the overall investigation itself.

Mr. Meadows. So, in any event, you're instructed not to answer it.

Would it surprise you to know that there is credible evidence that Mr. Papadopoulos was surveilled in a manner with either tapes or some kind of recording device? Would that surprise you?

Mr (b)(6), (b)(7)(C) per FBI We'll give the same instruction.

Mr. Meadows. So, Mr. Baker, then, let me ask it in more of a generic sense.

Is it common practice for the FBI to actually surveil individuals without their knowledge, U.S. citizens, and tape them for investigative purposes with confidential human sources?

Mr. Baker. So, as a general matter, it is an approved investigative technique under Attorney General guidelines and internal FBI policy to allow that to occur with appropriate predication and appropriate approvals. I can't remember the specific approvals,

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sitting here today, for where it --

Mr. Meadows. Would you be part of those approvals?

Mr. Baker. In a particular case, usually not.

Mr. Meadows. If it involved a Presidential campaign, would you have been involved in it?

Mr. Baker. So I was not involved in -- so, for example, in the two Presidential campaigns in 2016, I didn't usually -- usually -- get involved in details of the investigations like that.

Mr. Meadows. So what do you mean "usually"?

Mr. Baker. Well, sometimes --

Mr. Meadows. Did you get involved?

Mr. Baker. Well, sometimes, for example, the Hillary Clinton search warrant, or the Anthony Weiner --

Mr. Meadows. Yeah. In fact, that was part of when I went back and forth, you talked about the narrow scope and the fact that some of those emails weren't read because of the narrow scope, and that's what I've read more about you than anything else.

So, if we look at this, the claims that have been made about some members of the Trump campaign being surveilled, it is within the scope that that is possible, is what you're saying?

Mr. Baker. Well, okay. So "surveilled" to me has multiple meanings, meaning electronics --

Mr. Meadows. You can take electronic --

Mr. Baker. Physical surveillance.

Mr. Meadows. -- taped. No, I'm not talking about physical

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surveillance. I'm talking about taped, extraordinary measures where they would either tape conversations, wiretap conversations. Is it within the realm of possibility that that happened?

Mr. Baker. Is it within the realm of possibility? Given the constraints of what the FBI --

Mr. Meadows. No. He's not constraining you.

Mr. Baker. I'm having a hard time answering.

Mr. Meadows. Do you want to follow up and clarify?

Mr. Ratcliffe. Yeah. Can I?

Mr. Meadows. Yeah.

Mr. Ratcliffe. So, Mr. Baker, were you involved in the FISA application with respect to Carter Page?

Mr. Baker. Yes.

Mr. Ratcliffe. All right. And the Russia counterintelligence probe was opened by Peter Strzok, correct?

Mr. Baker. I believe I've heard that in the press. I don't specifically remember myself.

Mr. Ratcliffe. All right. And also it's been reported in the press and in testimony, it was opened based on intelligence relating to George Papadopoulos having a conversation with an Australian diplomat?

Mr. Baker. I don't know whether the country of origin of that person has been publicly disclosed, but the information had to do with George Papadopoulos, yes.

Mr. Ratcliffe. And the conversation that he had with a foreign

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diplomat?

Mr. Baker. I don't even know if we've identified -- I just, I really don't know what's been made public.

Mr. Meadows. It's been widely reported.

Mr. Ratcliffe. It's okay. I don't -- but I'm just trying to understand your knowledge as someone that was involved in that FISA application.

Mr. Baker. There had been a conversation between George Papadopoulos and another person, and that information was relayed to us.

Mr. Ratcliffe. Okay. And --

M (b)(6), (b)(7)(C) per FBI If I may. I'm sorry. I don't want to keep interjecting. I know you're trying to move fast.

Again, if you can respond to a question about the Carter Page FISA application without discussing information that's classified, please go ahead. Feel free to respond to this line of questioning.

Mr. Ratcliffe. So that conversation and the basis for which the Russia probe was opened allegedly related to Trump campaign officials working with the Russian Government to access hacked emails of either Hillary Clinton or the DNC, correct?

Mr. Baker. I don't remember the specifics of the reporting. If you had a piece of paper to look at it, but generally speaking, that sounds correct to me. I'm not 100 percent sure, but I --

Mr. Ratcliffe. Okay. So question for you. Prior to the October 21, 2016, FISA application, the initial FISA application, had

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you seen contradictory or exculpatory evidence about whether or not George Papadopoulos had any knowledge about Trump campaign officials working with the Russian Government?

Mr. Baker. Exculpatory information about Papadopoulos.

Exculpatory in what sense?

Mr. Ratcliffe. Exculpatory or contradicting --

Mr. Baker. Contradicting his initial report?

Mr. Ratcliffe. Yes.

Mr. Baker. Not to my recollection, sitting here today.

Mr. Ratcliffe. Okay. If there was exculpatory or contradictory evidence, would you agree with me that that should have been presented to the Foreign Intelligence Surveillance court in October of 2016?

Mr. Baker. Again, not knowing what you're talking about, but generally speaking, the government has a very high duty of candor to the FISA court and should make -- and must make sure that all material information is provided to the FISA court. So, if there is information that undercuts the reliability of information that we're putting forward, then generally speaking, yes, it should be -- the court should be informed of that.

Mr. Ratcliffe. Thank you.

Mr. Meadows. And so, if, indeed -- because on that particular FISA application, going back to our previous conversations the other day, you reviewed the FISA application as it related to the probable cause portion of that. Is that correct?

Mr. Baker. That's my recollection. The first one, at least.

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Mr. Meadows. Right. So how many FISA applications did you review as it relates to Russia?

Mr. Baker. In my career or at --

Mr. Meadows. Yeah. As it relates to Russia collusion, this whole -- how many FISA applications did you review?

Mr. (b)(6), (b)(7)(C) per FBI I think we will have to instruct the witness not to respond to that.

Mr. Meadows. On what basis?

Mr. (b)(6), (b)(7)(C) per FBI Again, Congressman, by discussing the frequency and the quantity of use of that particular investigative technique, which is, as you know, quite sensitive and almost always classified, our concern is that it could impede the ongoing special prosecution.

Mr. Meadows. Well, there was a text message in a nonclassified setting that would indicate that there were multiple FISA applications, as many as 17 different FISA applications that may or may not have related to this particular subject. Would it surprise you to know that there were -- or is there more FISA applications beyond just the Carter Page FISA application that we've been discussing as it relates to this investigation?

Mr. (b)(6), (b)(7)(C) per FBI Again, in the abstract, we'd give him the same instruction. However, I certainly take your point, Congressman, if there's a particular text that the FBI's produced that you'd like to --

Mr. Meadows. There's multiple texts. There's multiple texts that would indicate Lisa Page -- it's in a text message between Lisa Page and Andy McCabe that says, you know, your particular -- I can read

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it. Would you like me to read it?

M (b)(6), (b)(7)(C) per FBI That actually would be extremely helpful, Congressman. Thank you.

Mr. Meadows. Okay. On October the 19th, 2 days before the FISA was opened on Mr. Page, it's Lisa Page going to Andy McCabe: There will be nine packages for you to sign, with the possibility of eight additional if the NSLB signs off on them. They'll probably won't be WUDsd (ph) by 7:30. The FISA team will be delivering them at 7.

So that would indicate multiple FISAs that may or may not relate to this, but as your -- since you reviewed those, were there more than one FISA application candidate or subject other than Carter Page? Were there other FISA applications? And this was in a nonclassified setting, text messages back and forth.

M (b)(6), (b)(7)(C) per FBI Again, Congressman, I appreciate your reading the text for us. My understanding of those texts is that they do not necessarily relate to the special counsel or the Russia investigation.

Mr. Meadows. It's great -- Counsel, I'm not asking you the question. I'm asking him a question. Does he have knowledge of anybody else involved in the Russia investigation where a FISA application was taken out on them?

M (b)(6), (b)(7)(C) per FBI Respectfully, Congressman, I'm certainly not disagreeing or arguing the point that you're making, but I'm explaining the basis for our objection that stands.

Mr. Meadows. Okay. I would ask that counsel goes back and get us an answer to that. And even if we've got to have that in a classified

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setting, that would be appropriate.

Mr. (b)(6), (b)(7)(C) per FBI We certainly anticipate your following up with our employer about that.

Mr. Meadows. No. I'm asking you to follow up so I don't have to.

Mr. (b)(6), (b)(7)(C) per FBI We certainly will do so.

Mr. Meadows. Okay.

Mr. Sinton. For clarity, read back the specific question pending, please.

Mr. Meadows. So let me restate it so you don't have to read it back.

Were there other individuals connected directly or indirectly with the Trump campaign that had a FISA warrant placed on them for the purpose of surveilling conversations and collecting data other than Carter Page that you're aware of?

Mr. (b)(6), (b)(7)(C) per FBI And the same instruction --

Mr. Baker. I'm not going to answer it right now.

Mr. (b)(6), (b)(7)(C) per FBI -- but we'll represent to the committee that we will take this back and check on obtaining an answer to that question if we are able to do so.

Mr. Meadows. All right. So let me finish up, and then I'll yield back to the gentleman from Ohio.

There is great concern, from my standpoint, with regards to the actions of Mr. Rod Rosenstein in terms of his state of mind. You said you questioned his state of mind when he said that -- now, certainly

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you didn't mean that you questioned his state of mind in terms of was he capable of carrying out his job. Is that what you meant?

Mr. Baker. It was a bad idea for a number of reasons, this idea of wearing a wire. So --

Mr. Meadows. I understand it was a bad idea, but were you questioning his ability to carry out his job?

Mr. Baker. I was not questioning his ability to carry out his job. However, I knew that he was quite upset at the time about what had happened. I --

Mr. Meadows. He was quite upset about being blamed for Director Comey's firing?

Mr. Baker. Yes. Among other things, yes. That's my understanding. I didn't talk to him directly about that, but that's what I heard from others.

Mr. Meadows. Okay. So, if that is indeed the case that he was concerned, did you elevate that concern to anybody else?

Mr. Baker. I was speaking directly to the Acting Director of the FBI about it, so I didn't know where else I could go.

Mr. Meadows. So what actions did Mr. McCabe take on that?

Mr. Baker. Well, I think, like, for example, with that idea, the wearing a wire idea, the FBI, to the best of my knowledge, took no further action, because it was something that --

Mr. Meadows. But they didn't tell anybody? They didn't tell the Commander in Chief. They didn't tell anybody else that, "Hey, we're thinking about taping the President of the United States"?

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Mr. Baker. To my knowledge, they didn't tell anybody outside the Bureau.

Mr. Meadows. Do you think that -- you know, you were talking earlier about it looking bad? Do you think that looks bad, that you wouldn't tell somebody that you might be taping the President of the United States?

Mr. Baker. So the only -- so the --

Mr. Meadows. Because you're not an independent agency. I want to make clear. You've been talking about independence. You are not an independent agency.

Mr. Baker. I understand well the nature of the FBI's --

Mr. Meadows. Well, but you've been kind of characterizing it very different. You talk about independence, and we certainly want you to have a fair and independent investigation, but you are not an independent investigation. You go to the -- you know --

Mr. Baker. We're not --

Mr. Meadows. -- you report up to the AG, and you are a function of the executive branch.

Mr. Baker. I agree completely.

Mr. Meadows. Okay. So did you not have an obligation to let someone know that someone may be trying to tape the President of the United States?

Mr. Baker. At that time, I did not think we had an obligation to tell anybody.

Mr. Meadows. And why is that? Because you thought it was a good

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idea?

Mr. Baker. I didn't think it was a good idea.

Mr. Meadows. No, you didn't think it was a good idea. So, if you thought it was a bad idea, why would you not communicate that up the line?

Mr. Baker. So, up the line, the only person --

Mr. Meadows. Other than the other person that was in the intimate conversation with you, Mr. McCabe. Why would you not notify someone like the White House counsel or someone like that? Why would you not do that?

Mr. Baker. Because I didn't think that the suggestion, even though it was operationally a bad idea, I didn't think it was an illegal concept that the Deputy Director was -- or that the Deputy Attorney General --

Mr. Meadows. So you wouldn't think that it would be insubordinate?

Mr. Baker. Insubordinate?

Mr. Meadows. Yeah. You got the number two guy at DOJ going to tape his boss. I mean, if I came and taped you, wouldn't you think that that would be insubordinate? You know, if I'm taping everything right now, would that be in keeping with what is normal protocol, as you would say?

Mr. Baker. Everything's being taped right now. I'm well aware of that, Congressman. So -- but I didn't --

Mr. Meadows. Would it not be insubordinate?

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Mr. Baker. I didn't think it was unlawful, immoral.

Mr. Meadows. I didn't ask that. You answered that the other day.

Would it have been an insubordination?

Mr. Baker. I'm not sure I would use that word.

Mr. Jordan. Did you tell the Attorney General?

Mr. Baker. I beg your pardon?

Mr. Jordan. Did you tell the Attorney General?

Mr. Baker. No, I did not tell the Attorney General.

Mr. Meadows. Did anybody tell the Attorney General?

Mr. Baker. Well, the Attorney General, if my -- I believe was recused by this point in time.

Mr. Meadows. He was recused on Russia. He was not recused on obstruction or anything else, and so, at this particular point, it's a totally different matter. It would be an employee matter. Why did you not tell the AG?

Mr. Baker. With all due respect, I don't agree that it was a completely separate matter. So I would have thought --

Mr. Meadows. Okay. So saying it's the same matter, why would you not tell the AG, because he was recused?

Mr. Baker. I would not have told the AG because he was recused on this particular matter.

Mr. Meadows. So did Andy tell Rod that it was a bad idea?

Mr. Baker. I don't know what Andy told him.

Mr. Meadows. What do the memos say?

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Mr. Baker. I haven't read the memos.

Mr. Meadows. You have them in your possession, is what you told us, I believe, the McCabe memo?

Mr. Baker. Not McCabe's memos.

Mr. Meadows. But you talked to him about those?

Mr. Baker. I knew that he was doing memos.

Mr. Meadows. Well, I think the other day you said that you talked to him about the memos.

Mr. Baker. Yes. I knew that he had prepared memos of his interaction --

Mr. Meadows. So he didn't talk about the content of it?

Mr. Baker. So he -- well, he told me contemporaneously about what was going on, but he didn't read the memos to me; he didn't ask me to look at them.

Mr. Meadows. That's not the question I asked.

Mr. Baker. I don't know exactly what's in them.

Mr. Meadows. Do you know in general what are in the McCabe memos?

Mr. Baker. I do not.

Mr. Meadows. Does Rod have the memos?

Mr. Baker. Who?

Mr. Meadows. Rod Rosenstein.

Mr. Baker. I don't know. That's a good question. I don't know the answer to it.

[1:17 p.m.]

Mr. Meadows. So we have these memos. Who all has them?

Mr. Baker. I don't know.

Mr. Meadows. Does Lisa Page have them?

Mr. Baker. Currently? I --

Mr. Meadows. Did she have them?

Mr. Baker. I would think yes, but I don't know the answer to that question.

Mr. Meadows. All right. So multiple people at the FBI knew that there was this conversation about invoking the 25th and taping the President of the United States, and you didn't tell the Attorney General?

Mr. Baker. Correct, to my knowledge. I did not.

Mr. Meadows. All right. I'll yield back.

Mr. Jordan. Thank you, Mark.

Mr. Baker, I want to go back to Michael Sussmann. We have your calendar here, some dates, Monday --

Mr. Baker. Excuse me, sir. I don't think your mic's on.

Mr. Jordan. Monday, September 19, you met with -- 2016 -- you met with Michael Sussmann. I think last time we were together you said he reached out to you. Is that right?

Mr. Baker. That's my -- so we're talking about the September 19 thing?

Mr. Jordan. Yes.

Mr. Baker. Yes. That's my recollection, that he reached out to

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me.

Mr. Jordan. Okay. Did Mr. Sussmann talk with anyone else at the FBI, to your knowledge?

Mr. Baker. About this particular matter or the matter that I talked about last time? What do you mean?

Mr. Jordan. Anything -- I know what you talked about last time. Anything relative to Russia? Any -- or, frankly, did Michael Sussmann, during this timeframe, talk to anyone else?

Mr. Baker. Not about this issue.

I just want to clarify that Michael Sussmann had been -- has had numerous interactions with the FBI over a period of time because he represents a number of different clients that interact with the FBI. So I have talked to Sussmann about, you know -- his clients have sued us and otherwise interacted with us. So the FBI has had many interactions with Sussmann --

Mr. Jordan. About this subject matter.

Mr. Baker. With respect to this?

Mr. Jordan. Yeah.

Mr. Baker. To my knowledge, I don't think he talked to anybody else in the FBI other than me.

Mr. Jordan. Okay. So didn't talk to Mr. Comey?

Mr. Baker. I don't believe so, no.

Mr. Jordan. Mr. McCabe?

Mr. Baker. Not to my knowledge.

Mr. Jordan. All right. How did Mr. Sussmann get the

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information that he gave you, do you know?

Mr. Baker. To the best of my recollection, he told me that it had been obtained by some type of cyber experts, and I don't know who -- how they started their inquiry into this. But that is what he told me, that some certain cyber experts had obtained information about some anomalous looking thing having, to my knowledge, nothing to do with the dossier. But anyway --

Mr. Jordan. Did he mention -- did Fusion GPS play a role in him getting information that he subsequently gave to you?

Mr. Baker. I don't remember him mentioning Fusion GPS in connection with this material.

Mr. Jordan. Did he mention at all when he was talking to you?

Mr. Baker. Not to my recollection, no.

Mr. Jordan. What about Glenn Simpson?

Mr. Baker. Not on this thing, no.

Mr. Jordan. How about Christopher Steele?

Mr. Baker. No.

Mr. Jordan. Okay. Did you meet with anyone else at Perkins Coie relative to this issue, Russia investigation issue?

Mr. Baker. I believe that Sussmann came in by himself, so I think the answer is no.

Mr. Jordan. Didn't talk to Marc Elias?

Mr. Baker. Who?

Mr. Jordan. Mr. Elias.

Mr. Baker. No.

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Mr. Jordan. All right. Was Mr. Sussmann's information used -- the information he gave you, was it used to support the FISA?

Mr. Baker. Not to my knowledge, no.

Mr. Jordan. Okay. Did you know -- did you know that Mr. Sussmann was also communicating with reporters?

Mr. Baker. At some point in time, either in that initial conversation or perhaps a subsequent one, I think I said last time he told me that the press had some or all of this information.

Mr. Jordan. Did he say who in the press?

Mr. Baker. Eventually he did tell us, yes.

Mr. Jordan. And when did he tell you that?

Mr. Baker. I'm sorry?

Mr. Jordan. When did he tell you that?

Mr. Baker. That was in a subsequent, I think -- I think it was a phone call, a subsequent phone call that I had with him, because we asked him -- we -- I asked him on behalf of the Bureau, after having discussed it internally, who it was at the press that -- that we could talk to about this, because we wanted them to not publish right away.

Mr. Jordan. And subsequently, was it the next day? Was it still in September? When was it?

Mr. Baker. I think it was like maybe a week -- sorry. A week or two later.

Mr. Jordan. Okay. I want to -- and I thought I had some copies here.

I want to have you look at a handout. It's footnote 43. Where

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did I -- oh, right here they are.

This is a footnote from the House Intelligence Committee's report. I just want to walk you through it.

Mr. Baker. Could I get one?

Thank you.

Mr. Jordan. I'm looking at footnote 43.

Mr. Baker. Okay. I've read through it.

Mr. Jordan. Okay. So in September 2016, redacted, shared similar information, whatever's above the large block of redacted information -- shared similar information in a one-on-one meeting with FBI General Counsel James Baker.

Is the redacted name there, is that Mr. Sussmann?

Mr. Baker. I don't know what's behind the redactions. I'm sorry.

Oh, in this? I would -- I'm sorry. In that September 2016?

Mr. Jordan. Yeah.

Mr. Baker. Yeah. I was talking about all the blackout above that.

Mr. Jordan. Yeah. No, I'm not asking about that.

Mr. Baker. I would guess, from -- my assumption is, from the context, that that's Sussmann.

Mr. Jordan. Yeah. That's what I think too.

And then as conveyed in an executive session December 18 of, blank, around the same time as the meeting with the FBI, blank shared the information with journalists, including a name at Slate Magazine.

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Follow all that? And, again, this is -- the redaction is Mr. Sussmann -- the two smaller redactions.

Mr. Baker. It seems like that, yes.

Mr. Jordan. Okay. First of all, why was it redacted? Did you -- the FBI do this?

Mr. Baker. You have to ask the Bureau. I don't know. I didn't participate in that process, to my recollection.

Mr. Jordan. Yeah, I don't know why that would be redacted.

Okay. And then it says Slate, who published at a Trump service communication with Russia, published an article that was titled, Was a Trump Service Communicating with Russia, on Slate Magazine October 31st, 2016.

I'm just curious, did you happen to read that article?

Mr. Baker. No, I did not.

Mr. Jordan. Okay. Do you know anything about what the article said? Have you read it since then?

Mr. Baker. I have not read the Slate article, no.

Mr. Jordan. It talks about some bank in Russia, Alfa-Bank, communicating with some Trump financial institutions in the server there.

None of that kind of conversation was related to you by Mr. Sussmann when you met?

Mr. Baker. Oh, yes. I mean, that is what he told me about. Yeah, absolutely.

Mr. Jordan. Okay. So -- well, tell me more about that.

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Mr. Baker. I didn't read the Slate article, but Sussmann told me that that's, in essence, what this was all about.

Mr. Jordan. Okay. We'll go into more detail about that, because I think the last time we talked, you just said it was something about some hacking. We didn't get into what it was hacking about.

So what did Mr. Sussmann tell you?

Mr. Baker. So now I'm nervous that maybe the last time the FBI interposed an objection, so --

M (b)(6), (b)(7)(C) per FBI May we consult very quickly?

I know you're on a tight clock.

Mr. Jordan. Yep.

[Discussion off the record.]

Mr. Baker. So if the question is what did Sussmann tell me?

Mr. Jordan. Yeah.

Mr. Baker. Okay. And given the guidance I just got from the FBI, so I'll answer this at a somewhat high level.

So he was describing a -- what appeared to be a surreptitious channel of communications -- communication between some part of President Trump's, I'll say organization but it could be his businesses. I don't mean like The Trump Organization, per se. I mean his enterprises with which he was associated. Some part of that and a -- an organization associated with -- a Russian organization associated with the Russian Government -- a private organization associated with the Russian --

Mr. Jordan. Private organization in Russia associated with the

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government had some kind of electronic communication with some organization, some business associated with the Trump family or the Trump organization?

Mr. Baker. Yes, sir. And there was some effort -- there was some belief that this was a -- being conducted in a way so as to make it a covert communications channel.

Mr. Jordan. Okay. And my first question would be how'd you get this? Did you ask that question?

Mr. Baker. I did ask that question at a high level, yes. And he explained that he had obtained it from, again, cyber experts who had -- who had obtained the information, and he said that the details of it would explain themselves. That's my recollection.

Mr. Jordan. And was he representing a client when he brought this information to you? Or just out of the goodness of his heart, someone gave it to him and he brought it to you?

Mr. Baker. In that first interaction, I don't remember him specifically saying that he was acting on behalf of a particular client.

Mr. Jordan. Did you know at the time that he was representing the DNC in the Clinton campaign?

Mr. Baker. I can't remember. I have learned that at some point. I don't -- as I think I said last time, I don't specifically remember when I learned that. So I don't know that I had that in my head when he showed up in my office. I just can't remember.

Mr. Jordan. Did you learn that shortly thereafter if you didn't know it at the time?

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Mr. Baker. I wish I could give you a better answer. I just don't remember.

Mr. Jordan. I mean, I just find that unbelievable that the guy representing the Clinton campaign, the Democrat National Committee, shows up with information that says we got this, and you don't ask where he got it, you didn't know how he got it. But he got it from some, you know, quote, expert.

Mr. Baker. Well, if I could respond to that.

Mr. Jordan. Sure.

Mr. Baker. I mean, so I was uncomfortable with being in the position of having too much factual information conveyed to me, because I'm not an agent. And so I wanted to get this -- get the information into the hands of the agents as quickly as possible and let them deal with it. If they wanted to go interview Sussmann and ask him all those kind of questions, fine with me.

Mr. Jordan. Did that happen?

Mr. Baker. I don't know that. But I -- I mean, I -- well, A, I did hand it off to the -- to the investigators.

Mr. Jordan. I think you told us you handed it off to Mr. Strzok and Mr. Priestap?

Mr. Baker. My recollection is Mr. Priestap.

Mr. Jordan. Okay. And you don't know if they followed up or not?

Mr. Baker. Bill Priestap told me that they did follow up extensively.

Mr. Jordan. And back to a question I asked earlier. This was

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not part of the FISA that was taken to court on the FISA ap for Carter Page?

Mr. Baker. To the best of my recollection, it was not part of that.

Mr. Jordan. It was not. Okay.

Mr. Ratcliffe wants to get in here, so I'm going to jump around here a little bit now.

Did any -- did Franklin Foer, the guy who wrote this article, did he ever reach out to you?

Mr. Levin. I'm not going to have him answer any questions as asking about any interactions with the press.

Mr. Jordan. I'm not talking about whether he reached out to reporters. I'm asking did reporters reach out to you? So it's coming this direction.

Mr. Levin. I understand. I'm not going to have him talk about any conversations with reporters.

Mr. Jordan. Well, I think we -- last time we talked about Mr. Corn pretty in-depth.

Mr. Levin. I don't believe we --

Mr. Jordan. Yes, we did.

Mr. Levin. We talked about him bringing some information in, but I don't believe we -- anyway, that's -- I'm not going to let him answer the questions about whether he had conversations with reporters.

Mr. Jordan. Are you going to give me the same answer when I ask did Mr. Isikoff ever reach out to you?

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Mr. Levin. Yes. Same instruction to him.

Mr. Jordan. Okay. All right.

So let's go to a couple text messages so Mr. Ratcliffe can take over.

Can we get him the same one where -- you had it earlier where it says, and we need to open this case while Andy is acting?

You got it?

Go to the bottom of that page.

Mr. Baker. So just to be clear, we're on page 32 here?

Mr. Jordan. Yep.

Mr. Baker. Okay.

Mr. Jordan. Go to the bottom.

We need to lock in blank in a formal charge of a way soon.

Who's the blank?

Mr. Sinton. What's the date of that?

Mr. Levin. The date is 5/10/2017.

Mr. Baker. We need to lock in blank in a formal charge of a way soon.

I can't figure that one out.

Mr. Jordan. Pardon?

Mr. Baker. I can't figure that one out. I don't know what's behind the blank.

Mr. Jordan. Okay. Thank you.

Let's go to the other one. This one is page 56.

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Do we have that one for --

Mr. Levin. No, we don't have that yet.

Mr. Jordan. Text messages 56. This is -- can you make copies of that real quick? I want to move on to another question while we're waiting.

There was -- the Office of the Inspector General just released a report recently, maybe even 2 days ago, findings of misconduct by FBI official for accepting gifts from members of the media and for lack of candor.

Are you familiar with what the Inspector General --

Mr. Baker. No, I haven't seen that one yet.

Mr. Jordan. Have you got copies of this? You got a copy of that?

All right. Give him one of those. Let me have one back.

Thank you.

All right. We'll go back to this one. While we're doing that, can you make copies of this? I thought we had this.

So let's go back to the text messages between Page and Strzok. This is the now somewhat famous insurance policy text message. It should be page 56, if you got it in front of you.

Mr. Baker. Fifty-six? I've got 56.

Mr. Jordan. Middle of the page. I want to believe the path you threw out for consideration in Andy's office, 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.

Were you in that meeting?

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Mr. Baker. To the best of my recollection, no. I don't remember a conversation about an insurance policy.

Mr. Jordan. Okay. Do you have any idea what they mean when they say "it's like an insurance policy"? What does that refer to?

Mr. Baker. You know, I can't remember if Mr. Strzok was questioned about this and testified and said something about it. To be frank, sitting here today, I just don't understand what it means.

Mr. Jordan. Okay. All right. I want to come back to that as soon as we make copies, but let me ask you a few other things here.

Did you have contact with anyone at the State Department about the subject matter we've been -- about the Trump-Russia investigation or dossier or anything related to that? Any folks at the State Department?

Mr. Baker. Not -- not to my recollection, no.

Mr. Jordan. Victoria Nuland?

Mr. Baker. I don't recall interacting with her on this, no.

Mr. Jordan. Liz Dibble?

Mr. Baker. No.

Mr. Jordan. Okay.

Mr. Baker. Not that I recall.

Mr. Jordan. Anyone from the Clinton campaign ever talk to you about this issue?

Mr. Baker. About Russia?

Mr. Jordan. Yeah.

Mr. Baker. Not to my recollection, no.

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Mr. Jordan. Sidney Blumenthal ever talk to you? Ever have --

Mr. Baker. No.

Mr. Jordan. -- any conversation with him?

Mr. Baker. Not to my recollection. I don't think I've ever met him.

Mr. Jordan. Okay. And then, Mr. Ratcliffe, while I'm waiting for -- did you ever travel to London or to the U.K.?

Mr. Baker. In my life, yes.

Mr. Jordan. No, I'm talking about this time.

Mr. Baker. No, not in connection with any investigative matter pertaining to Russia.

Mr. Jordan. Okay. How about Mr. -- relative to this subject, did you ever talk to Mr. Brennan?

Mr. Baker. About this particular investigation?

Mr. Jordan. Yeah.

Mr. Baker. I don't recall that I personally spoke to him about that, no.

Mr. Jordan. Mr. Clapper?

Mr. Baker. Not me personally, no.

Mr. Jordan. And how about General Rogers -- or Admiral Rogers? Excuse me.

Mr. Baker. About Russia? I don't think we ever discussed Russia. I've had -- the reason I'm hesitating, I've had conversations with Admiral Rogers. I don't recall ever discussing that with him.

Mr. Jordan. How about Susan Rice?

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Mr. Baker. No, not to my recollection.

Mr. Jordan. Okay. So I just want to take a quick look at this, and then Mr. Ratcliffe will have the remainder of our time.

This is from the Inspector General just a couple days ago, October 16. I just want know if you know who this is.

Mr. Baker. I beg your pardon?

Mr. Jordan. I just want to know if you know who it -- who is he referring to? Who's the FBI official who took tickets and then wasn't square with the investigators and took tickets from people in the press?

Mr. Baker. I would -- I would have to guess at who it is, and I don't know if I should do that. I don't know what the Bureau's policy is on disclosing that since it appears that the IG did not do that. And I'm worried about it would be a violation of the Privacy Act.

Mr. Jordan. Okay. All right.

Thank you very much, Mr. Baker. I appreciate it.

Mr. Baker. Thank you.

Mr. Ratcliffe. Mr. Baker, I want to start out by making sure the record is clear about the conversation that we had earlier.

I asked you this morning, when did the counterintelligence probe into the Trump-Russia matter become a criminal investigation, and I thought I heard you say "from the beginning." Is that right?

Mr. Baker. I think that's what I said. I don't remember the record -- we have the record, but --

Mr. Ratcliffe. It's not a trick question. I'm trying to -- I want to make sure I understand, because I think we see this differently.

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But as I understood your explanation, was post 9/11, when the wall came down between law enforcement and intelligence, that every counterintelligence probe is simultaneously a criminal investigation.

Is that a fair summary of what you testified to?

Mr. Baker. That the FBI always has all of its authorities in dealing with a counterintelligence matter. And so to my mind, the FBI walks in with all of its options on the table. And it can pursue things in a strictly, you know, foreign intelligence channel, interacting with other intelligence agencies and things like that and never have anything to do with, you know, a grand jury subpoena or putting anybody in a courtroom or anything like that, or an indictment.

But at the same time, if the facts and circumstances warrant going -- using criminal tools, including up to and including prosecution, then the FBI can do that. And so I think it's just misleading to think of a counterintelligence investigation as not also being, in part, at least potentially a criminal investigation.

Mr. Ratcliffe. And to that point, I was trying to find out at what point this counterintelligence probe crossed over into a criminal investigation, and that's where you and I disagree, that there is such a point in time, correct?

Mr. Baker. I think we disagree, yeah.

Mr. Ratcliffe. Okay. So --

Mr. Baker. Or at least we're not -- I don't know exactly what, but, yes, I think --

Mr. Ratcliffe. So did Director Comey, do you know, did he share

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your opinion during his tenure that counterintelligence probes were simultaneously criminal investigations?

Mr. Baker. I --

Mr. Ratcliffe. If you know.

Mr. Baker. I don't know. You'd have to ask him.

Mr. Ratcliffe. Do you know if he shared that in connection with this particular counterintelligence probe into Russia?

Mr. Baker. Well, let me back up. I think, obviously, Director Comey understands very well how to conduct a counterintelligence investigation. And so -- and I think he knew full well that the criminal tools were always available to him as Director, and so he could -- if the facts warranted, we could go down the criminal route, get a criminal search warrant, get a grand jury subpoena, indict someone, and so on, from the same investigative origin.

Mr. Ratcliffe. Okay. So in 2016, obviously we know -- we've talked about the Comey memos. And in those memos and in subsequent public statements and in testimony, Director Comey has said that he told President Trump that President Trump was not under investigation during that point in time, correct?

Mr. Baker. That's what I understand, yes.

Mr. Ratcliffe. Okay. Well, you've seen the memos.

Mr. Baker. Yes. To the extent he talked about it in the memos. And I know he's also testified about this publicly, yes.

Mr. Ratcliffe. Right. So do you know if at any point in time, did Jim Comey as FBI Director ever tell President Trump that President

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Trump was under criminal investigation?

Mr. Baker. I think -- my understanding and belief is that he never told -- that he told the President the opposite.

Mr. Ratcliffe. He told the President the opposite. Okay. So I'm trying to still figure out how the firing of Jim Comey, while upsetting or crazy, in your mind, was in any way possibly unlawful.

Answer this question for me. How could President Trump obstruct a criminal investigation into his actions if he doesn't know there's a criminal investigation into his actions?

Mr. Baker. So, first of all, I'm not sure I used the word -- I don't think I personally used the word "crazy" with respect to the firing. I think -- I think I said I was upset, but I don't believe I characterized the President's action as crazy, so just for the record.

Mr. Ratcliffe. Okay.

Mr. Baker. Theoretically, how could it happen? Theoretically -- let's just be very clear, I'm speaking theoretically. If the President of the United States fired Jim Comey at the behest of the Russian Government, that would be unlawful and unconstitutional.

Mr. Ratcliffe. Is that what happened here?

Mr. Baker. I don't know.

M (b)(6), (b)(7)(C) per FBI I instruct the witness not to answer a question like that.

Mr. Baker. Okay, sorry.

Mr (b)(6), (b)(7)(C) per FBI Thank you.

Mr. Ratcliffe. Okay. So let's set that aside as a possibility.

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That doesn't say that you don't agree with me that President Trump could not have or did not fire Jim Comey for the purpose of obstructing justice into an investigation of President Trump.

Mr. Baker. I'm sorry. I lost the thread of your question. I'm confused.

Mr. Ratcliffe. So setting aside the possibility that you just gave us, that the reason was that the Russian Government told Donald Trump to fire Jim Comey, you still agree with me, based on the fact that President Trump didn't know that he was under criminal investigation, because he was never told, that President Trump could not have fired Jim Comey for the purpose of obstructing an investigation into the actions of President Trump.

Mr. Baker. So it's unclear to me what the -- so -- I'm not sure I can answer that question easily, because it depends -- so now I'm going to -- I'm worried about going into what the FBI would be concerned about.

It depends on the President's state of mind whether the Director told him something or not.

Mr. Ratcliffe. But we've already -- you're not aware of any -- that the President was told that he was under investigation. In fact, just the opposite happened. So what I'm just trying to do is narrow it down.

The President could not have fired Jim Comey because he was trying to obstruct an investigation into the actions of President Trump.

Mr. Baker. But he could have tried to obstruct the investigation

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with respect to others.

Mr. Ratcliffe. Say it again.

Mr. Baker. He could have tried to obstruct the investigation with respect to others, even if he thought -- even if he thought, which I don't know -- what he thought in his mind.

Mr. Ratcliffe. And I accept that premise as a premise. But what I'm trying to do is eliminate possibilities. And one of those is that, is there any basis that you're aware of as the FBI general counsel at the time for the notion that President Trump, because he wasn't aware of any criminal investigation into his actions, could have possibly obstructed justice by firing Jim Comey for an investigation into his actions that he wasn't aware of?

Mr. Baker. And I'm answering, yes, I think he certainly could have obstructed justice by interfering with an investigation --

Mr. Ratcliffe. No, no, no. Into -- you said into the actions of others. I'm talking about President Trump's actions.

Mr. Baker. I guess we're talking past each other. I'm not sure I fully understand what you're driving at.

Mr. Ratcliffe. Well, what I'm driving at is it's one thing to say that the President tried to obstruct justice into the actions of Michael Flynn or Paul Manafort or some other person. That's different than obstructing justice into an investigation of President Trump's actions. And Jim Comey has expressly told President Trump that he's not under investigation for his actions, correct?

Mr. Baker. But if the President -- yes, that's correct, to

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answer your question directly.

But if the President had in his state of mind -- if he was -- if he had guilty knowledge, even if the FBI didn't have it, and he was attempting to thwart the investigation before it got to him, then I think that would also be -- I think that would be obstruction. The President at the time --

Mr. Ratcliffe. Do you believe that happened?

Mr. Baker. I don't know. I'm not -- I'm not part of the investigation anymore. I don't know what the investigators have determined.

Mr. Ratcliffe. Well, did Jim Comey ever indicate that that was something that was going on? Because it's not reflected in his memos and it's not been reflected in his public testimony.

Mr. Baker. But Jim Comey didn't write things about that at the FBI after he was fired, obviously.

Mr. Ratcliffe. Okay. So your notion is that President Trump may have obstructed justice possibly because of the actions of others.

Are there any limitations on a President's pardon authority?

Mr. Baker. Well, the contours of the President's pardon authority, I think, are not completely clear. So the question, for example, can the President pardon himself?

Mr. Ratcliffe. But we're talking about others.

I'm trying to figure out why President Trump would obstruct justice into an investigation of Michael Flynn or Paul Manafort or anyone else if he had the ability to pardon those folks, which I believe

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is an absolute authority under the Constitution.

Mr. Baker. So I think the answer is not completely clear with respect to the contours of that. And I would say that if the President's action in pardoning someone was otherwise contrary to his other obligations under the Constitution, I think that would raise serious constitutional concerns.

Mr. Ratcliffe. Okay. So going back to your original premise between -- or as to how President Trump could have obstructed justice. You gave as an explanation, if the Russian Government instructed him or he did it at their behest.

Mr. Baker. That was a hypothetical and theoretical thing.

Mr. Ratcliffe. Okay. I want to ask -- so was there a discussion about that with Director Comey?

Mr. Baker. I'm just looking at the FBI.

Can I go into this?

Mr. Ratcliffe. Don't cue the FBI, Counsel.

Mr. Baker. I don't want to get myself into trouble with them in terms of --

(b)(6), (b)(7)(C) per FBI If we may, I think it's best we consult, especially in an unclassified setting. We will be brief.

[Discussion off the record.]

Mr. Baker. So I'm going to try to answer your questions yes or no here, just to be careful. And then we'll just sort of go one question at a time, if that's okay.

Mr. Ratcliffe. Well, so --

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Mr. Baker. That's my instruction.

Mr. Ratcliffe. All right.

What was the question?

I think it was did you have a discussion with Director Comey about the possibility that the Russian Government may have ordered his firing.

Mr. Sinton. The hypothetical, theoretical, as he's characterized it.

Mr. Baker. So that particular question, to the best of my recollection, no, I did not discuss that with Director Comey.

Mr. Ratcliffe. Okay. Did you discuss it with anyone?

Mr. Baker. To the best of my recollection, yes.

Mr. Ratcliffe. Who did you discuss it with?

Mr. Baker. We discussed, so to the best of my recollection, with the same people I described earlier: Mr. McCabe, possibly Mr. Gattis, Mr. Priestap, possibly Lisa Page, possibly Pete Strzok. I don't remember that specifically.

Mr. Ratcliffe. So there was -- there was a discussion between those folks, possibly all of the folks that you've identified, about whether or not President Trump had been ordered to fire Jim Comey by the Russian Government?

Mr. Baker. I wouldn't say ordered. I guess I would say the words I sort of used earlier, acting at the behest of and somehow following directions, somehow executing their will, whether -- and so literally an order or not, I don't know. But --

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Mr. Ratcliffe. And so --

Mr. Baker. As a -- it was discussed as a theoretical possibility.

Mr. Ratcliffe. When was it discussed?

Mr. Baker. After the firing, like in the aftermath of the firing.

Mr. Ratcliffe. All right. And it sounds like a fairly large group. Was there more than one discussion about that?

Mr. Baker. So I would not categorize it as a large group. I would categorize it as a small group, in my opinion.

Mr. Ratcliffe. A small group of five or six people that you've identified?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. And what do you recall about that conversation, the dialogue between the five or six of you that were in that --

Mr. Baker. So the basic idea was that we were trying to under -- throughout the whole investigation, we were trying to understand what was going on here. And at -- that was one extreme. The other extreme is that the President is completely innocent, and we discussed that too. And so -- and then you have things in the middle. And so -- so that was how it came up. There's a range of things this could possibly be. We need to investigate, because we don't know whether, you know, the worst-case scenario is possibly true or the President is totally innocent and we need to get this thing over with -- and so he can move forward with his agenda.

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Mr. Ratcliffe. Were you aware during that conversation at that point in time of the level of bias that folks like Peter Strzok and Lisa Page and Andy McCabe and others may have had or did have against Donald Trump?

Mr. Baker. So I don't know how to respond to the bias question. I did not -- I was unaware of the text messages at that time that were going back and forth between Lisa and the nature of those types of conversations.

Mr. Ratcliffe. Okay.

Mr. Baker. That was unknown to me at the time.

Mr. Ratcliffe. You were unaware of those. Do you agree that those text messages reflect an inappropriate level of bias?

Mr. Baker. All I can tell you is that when you use the word "inappropriate" as folks have done, I did not see, in their official actions, evidence of bias in their official actions.

Mr. Ratcliffe. Well, that doesn't really answer the question, though, do you think it was appropriate.

Let me move on, because my time is very limited. And I've got to ask you about this because we need to shift gears with respect to Bruce Ohr.

You were aware of Bruce Ohr's involvement in the Trump-Russia investigation?

Mr. Baker. I had some knowledge of that, yes. I was -- yes.

Mr. Ratcliffe. Do you know if Sally Yates was aware of his involvement?

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Mr. Baker. Bruce Ohr's involvement?

Mr. Ratcliffe. Yes.

Mr. Baker. I don't know.

Mr. Ratcliffe. I'm trying to understand how the number four -- or a number four, as he's been described at the Department of Justice, was part of the chain of custody in evidence supporting a FISA application.

Mr. Baker. Is it Bruce Ohr?

Mr. Ratcliffe. Bruce Ohr, yeah. Were you aware of the operational role that he was playing with respect to Christopher Steele?

Mr. Baker. I had -- I can't recall the specifics of that. I heard that -- I heard, on a couple of occasions, at least, that Bruce Ohr played some role with respect to Steele and had a relationship, or something like that. And I don't remember the specifics about how exactly that played out. I had some consciousness of it at the time.

Mr. Ratcliffe. Well, even after the fact, were you trying to determine or did you play a role in trying to determine whether or not it was appropriate for the number four person at the Department of Justice to be involved in the creation of a piece of evidence that became the central piece of evidence the Department of Justice was using?

Mr. Baker. I never heard that he was involved in the creation of that. Ohr was.

Mr. Ratcliffe. Do you agree that he was involved in the chain of custody of that evidence?

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Mr. Baker. I'm not sure. I'm not sure. I don't know exactly how --

Mr. Ratcliffe. Well, are you aware that Christopher Steele or Nellie Ohr or Glenn Simpson gave him information that was shared with the FBI?

Mr. Baker. Gave Bruce Ohr information?

Mr. Ratcliffe. Yes.

Mr. Baker. I had some level of understanding of interactions between Steele and Ohr and the FBI. The precise details of that, I don't know. I don't remember.

Mr. Ratcliffe. You agree with me he should have had some authority from someone within the Department of Justice to be engaged in that type of activity?

Mr. Baker. I would have thought that he would have informed his boss at least. I'm not sure who that was at the time, but -- unless the FBI instructed him not to. I just don't know the details of that.

Mr. Ratcliffe. Is it appropriate, under FBI protocols, to work with sources that have been terminated by the FBI?

Mr. Baker. It's a bit of a tricky question, I think, to answer because sources keep coming back. When they've been terminated, they don't always like that and still want to try to provide information to the FBI. And so they go back to their handlers from time to time. And so sometimes disengaging with those folks can be challenging.

Mr. Ratcliffe. Okay. But I want to get into specifics here. Christopher Steele. You were involved in the FISA application

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with respect to Carter Page.

Mr. Baker. Yes.

Mr. Ratcliffe. And you know, then, that Christopher Steele was terminated because of his engagement with the media.

Mr. Baker. To the best of my recollection, that's right.

Mr. Ratcliffe. So in that specific circumstance, would it have been appropriate to use a terminated source to continue for the -- let me strike that.

Would it, in that circumstance, be appropriate for Bruce Ohr to be working with a terminated source?

Mr. Baker. Well, Bruce Ohr, at that point in time, would not be part of the -- he was not part of the FBI. So I -- I don't know what the department's rules would have been on that vis-à-vis him.

Mr. Ratcliffe. Okay. When did you become aware that the wife of the number four person at the Department of Justice was helping in the creation of the Steele dossier?

Mr. Baker. The Nellie Ohr involvement?

Mr. Ratcliffe. Yes.

Mr. Baker. To the best of my recollection, I think I learned about that through public reporting.

Mr. Ratcliffe. At what point in time?

Mr. Baker. I don't remember.

Mr. Ratcliffe. All right.

Mr. Baker. Late -- later on. Much later on in the investigation.

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Mr. Ratcliffe. All right. Would you agree with me that that's a material fact, that the wife of the number four person at the Department of Justice is involved in the creation of the central piece of evidence in the FISA application?

Mr. Baker. I would -- to be able to answer that, I'd have to know more about what she did and exactly what role she played.

As I said earlier, we have an obligation to report all the material facts to the court. I don't disagree with that for a second. But me rendering some judgment on this interaction, I don't know enough about what she did, so I would -- I don't know how to answer that question.

Mr. Ratcliffe. Well, Mr. Baker, with all due respect, you and I both worked at the Department of Justice at different points in time. Do you think it's appropriate for folks to be aware that the number four person at the Department of Justice is involved in the chain of custody and his wife is involved in any capacity in creating a piece of evidence and those facts are not disclosed to the Foreign Intelligence Surveillance Court?

Mr. Baker. So if what you say is true, and I don't know it to be true, then it seems as though the institution of the Department of Justice should provide that to the FISA court. The difficulty is do the people who are actually going to the FISA court know these details, right? That's the problem. You have an -- in this case, an FBI agent who literally will be signing the application attesting to the accuracy of the information. You have particular attorneys reviewing it, a particular structure up to and including the Director and so on. If

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those people don't know about it, then -- then I'm not sure that they -- you know, I would say they didn't do anything wrong.

But the institution of the Department of Justice had a breakdown somewhere, and information that, again, assuming what you say is true, should have been, you know, at least discussed about whether it should go on the FISA application.

Mr. Ratcliffe. So I agree with that with respect to -- but none of that excuses the misconduct. It just raises a question about who didn't disclose the material facts that should have been to the court. Obviously you can't disclose what you're not aware of, right?

Mr. Baker. Right.

Mr. Ratcliffe. But you agree with me, generally speaking, that if the number four person at the Department of Justice and his wife both play roles with respect to the creation of a piece of evidence, that the Foreign Intelligence Surveillance Court should have been apprised of that fact.

Mr. Baker. If they played a role in the creation of it, and that's how it came to the Bureau, then that seems like something that at least -- again, I would like to know more details about it, but it seems like something that should have been evaluated about whether it should go into the FISA application or not. I would have -- what you say concerns me and I would like to know more about it.

Mr. Ratcliffe. Okay. You told the Inspector General that the conduct of Hillary Clinton and her associates was appalling with respect to the handling of classified information, correct?

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Mr. Baker. I believe that's correct.

Mr. Ratcliffe. Okay. And do you still believe that?

Mr. Baker. Yes.

Mr. Ratcliffe. All right. And I have reason to believe that you originally believed it was appropriate to charge Hillary Clinton with regard to violations of law -- various laws with regard to the mishandling of classified information. Is that accurate?

M (b)(6), (b)(7)(C) per FBI You may answer.

Mr. Baker. Yes.

Mr. Ratcliffe. All right. Are you a reasonable prosecutor?

Mr. Baker. Not anymore. I'm not a prosecutor anymore.

Mr. Ratcliffe. Were you a reasonable prosecutor?

Mr. Baker. I think so.

Mr. Ratcliffe. And you came to that conclusion?

Mr. Baker. So I had that belief initially after reviewing, you know, a large binder of her emails that had classified information in them. And I discussed it internally with a number of different folks and eventually became persuaded that charging her was not appropriate because we could not establish beyond a reasonable doubt that -- we, the government, could not establish beyond a reasonable doubt that she had the intent necessary to violate --

Mr. Ratcliffe. And I understood that, that you had to be persuaded, and stated as a basis that ultimately you were persuaded there was a lack of evidence establishing knowledge or criminal intent, correct?

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Mr. Baker. Yes.

Mr. Ratcliffe. Okay. When were you persuaded?

Mr. Baker. Sorry. Pretty late in the process, because we were arguing about it, I think, up until the end.

Mr. Ratcliffe. Yeah. So Jim Comey had reached the opposite conclusion as early as -- or I guess as late as May the 2nd of 2017, as reflected in the memo that he created, correct?

Mr. Baker. Well, I know there's been a lot of public discussion about that. The way I experienced that interaction and other interactions with Jim Comey is he would throw things out like that to get people to start talking and thinking about it and test his conclusions against others and get them to push back. And so it was -- I believe it was in that process that I read these emails and we had these discussions and arguments.

So I -- if I had been -- I believe if I had been persuaded that she had the intent, I would have argued that vociferously with him and maybe changed his view. And I think he would have been receptive to changing his view even after he wrote that thing.

Mr. Ratcliffe. So, again, so the record's clear, as the -- as the FBI general counsel, you originally believed it was appropriate to charge Hillary Clinton with violation of the law for mishandling classified information?

Mr. Baker. My original belief after -- well, after having conducted the investigation and towards the end of it, then sitting down and reading a binder of her materials, I thought that it was

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alarming, appalling, whatever words I said, and argued with others about why they thought she shouldn't be charged.

Mr. Breitenbach. Under what legal standard were you basing your opinion that she should have been charged?

Mr. Baker. Well, it was the statutes that we were considering at the time. I'd have to sit down and relook at them again. But it was the -- it was the nature and scope of the classified information that, to me, initially, when I looked at it, I thought these folks should know that this stuff is classified, that it was alarming what they were talking about, especially some of the most highly classified stuff.

Mr. Breitenbach. So that sounds like a knowledge standard rather than an intent standard.

Mr. Baker. Well, knowledge, intent. I mean, I think those things are hard to distinguish and --

Mr. Breitenbach. They're actually -- I just want to point out they are distinguished --

Mr. Baker. I know they're distinguished in the statute.

Mr. Breitenbach. -- specifically in the statute. You have -- are you aware of that already, that they are distinguishable?

Mr. Baker. I haven't looked at the statute, but I know -- I mean, obviously you're looking at a statutory standard in trying to figure out how to apply it. I was struggling with the facts about even just ascertaining what literally did she know and what was reasonable to infer about what she knew.

Mr. Ratcliffe. So I appreciate that. We're limited on time,

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so -- but if what ultimately persuaded you and what you really had to look at was knowledge or the lack of evidence establishing knowledge or criminal intent, wouldn't the best evidence of that been not a binder of emails but, instead, Hillary Clinton's own testimony?

Mr. Baker. Well, maybe not. I don't know. It depends. I mean, her testimony could be false, right? I mean, theoretically.

Mr. Ratcliffe. Well --

Mr. Baker. I'm not saying it was, but I'm saying once you start --

Mr. Ratcliffe. This debate was taking place before and -- Mr. Comey wrote this memo months before Hillary Clinton was ever interviewed by the FBI.

Mr. Baker. That's correct.

Mr. Ratcliffe. So months before the FBI ever asked the subject of this investigation about her knowledge or her intent, the FBI Director had written a memo saying that no reasonable prosecutor would bring these charges.

Mr. Baker. To the best of my --

Mr. Ratcliffe. First of all, yes or no?

Mr. Baker. I believe that's correct.

Mr. Ratcliffe. All right. And then -- but ultimately, even though you were of a different opinion, he ultimately persuaded you that she should not be charged.

Mr. Baker. He and others, yes. I had discussions with numerous others.

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Mr. Ratcliffe. All right. Thank you.

Mr. Jordan. Thank you.

Mr. Baker. Thank you.

Ms. Sachsman Grooms. We'll go back on the record.

I understand you have a hard stop, so I just have a couple quick followups.

BY MS. SACHSMAN GROOMS:

Q In the last round, I believe you said that you were uncomfortable to get too much factual information from Mr. Sussmann because you were not an agent?

A Uh-huh.

Q Can you explain what you mean by that?

A Well, I didn't want to -- I was trying to avoid becoming too much of a witness. So obviously he showed up, he had this material. I knew that I was going to be a witness of some sort in terms of the chain of custody, because he was giving it to me and then I was going to give it to agents.

So he made some statements, but I didn't want to conduct an interview like this or a deposition, or however you want to think about it, because I wanted to get this in the hands of the investigators and let them sort it out.

Q So your discomfort was related to the fact that you did not want to become a fact witness --

A In an investigation.

Q -- in an investigation?

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A Yes.

Q Were you at all uncomfortable about the fact that he was giving you the information in itself?

A No.

Q You didn't think there was anything improper about that?

A No.

I knew Michael. He was a -- we had a prior existing relationship. He was bringing me material that he, as an -- at least as a citizen, if nothing else, thought was evidence either of a crime or of some threat to national security. And so he brought it to the FBI, which is the appropriate institution. And I, as a representative of the FBI, accepted it and then passed it off to the investigators.

Q Switching topics just quickly to Bruce Ohr. Was Bruce Ohr the number four person at the Department of Justice at the time?

A Well, I was running through that in my head. But I think -- I believe he was a deputy assistant attorney general. So attorney general, Deputy Attorney General, assistant attorney general, deputy assistant attorney general. I think that's how you would work it.

Q And there are a number of --

A But there are -- the SG, the solicitor general, and the associate attorney general cloud that picture in terms of who's number one, number two, number three, number four.

Q And there are a number of that -- roles that Bruce Ohr has, right?

A Yes, there are many number fours.

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Q So even if he was the number four, he would be one of like seven or eight number fours?

A More than that, yeah. I don't even know how many. Still a high ranking position, the deputy assistant general. But, yes, there are many DAAGs, D-A-A-G-S.

Q And then your discussion -- you don't know what Nellie Ohr did or didn't do?

A I do not.

Q In your discussion in the previous round about what should or shouldn't be put into the FISA court was, more or less, hypothetical based on a hypothetical that Nellie Ohr had created information that then got turned over to her husband that then got turned over to the FBI. Is that right?

A Yes, because that would have -- yes, as a hypothetical, because I don't know any of those facts. And it has to do with the origin of the material, and the source of the material is something that's obviously relevant to a FISA application in terms of evaluating the reliability of that source.

Q Would your concern be obviated if Nellie Ohr was not involved in actually creating that material?

A Well, if she was not involved, then she wouldn't be a source of it. So, then, yes, that would be -- that would diminish my concerns.

Q Would your concerns be diminished if she just worked for the same employer?

A And had no role in the preparation of the material?

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Q Yes.

A Yes, my concerns would be diminished.

Ms. Sachsman Grooms. Okay. I think that's all I have. Thank you very much.

[Whereupon, at 2:07 p.m., the interview was concluded.]

EXECUTIVE SESSION
COMMITTEE ON THE JUDICIARY,
JOINT WITH THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: GLENN SIMPSON

Tuesday, October 16, 2018

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:05 a.m.

Present: Representatives Meadows and Biggs.

COMMITTEE SENSITIVE

Mr. Somers. Good morning. This is the deposition of Glenn Simpson, conducted by the House Committee on the Judiciary. This deposition is occurring under a subpoena issued by Chairman Goodlatte as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform.

Could the witness please state his name and the name of his employer for the record and current position with his employer?

The Witness. Glenn Simpson, Bean, LLC, d/b/a Fusion GPS. I'm the chief executive.

Mr. Somers. Thank you. My name is Zach Somers, and I'm the general counsel for the committee's majority staff.

I will now ask everyone else who's in the room here today to introduce themselves for the record.

Mr. Baker. Arthur Baker, investigative counsel, majority staff.

Mr. Biggs. Andy Biggs, Arizona five.

Mr. Castor. Steve Castor, with the Committee on Government Reform, majority staff.

Mr. Meadows. Congressman Mark Meadows.

Mr. Ventura. Christopher Ventura, House Judiciary Committee, majority.

Mr. Buddharaju. Anudeep Buddharaju, House Oversight, majority.

Mr. Breitenbach. Ryan Breitenbach, senior counsel, House Judiciary, majority.

Mr. Parmiter. Robert Parmiter, House Crime, Terrorism, House majority, Judiciary.

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Ms. Sachsman Grooms. Susanne Sachsman Grooms, House Oversight, minority.

Ms. Hariharan. Arya Hariharan, House Judiciary, minority.

Mr. Hiller. Aaron Hiller, House Judiciary, minority.

Mr. Morgan. Matthew Morgan, House Judiciary, minority.

Mr. Levy. Joshua Levy, counsel for Mr. Simpson.

Mr. Muse. I'm Bob Muse, also counsel for Glenn Simpson.

Ms. Clattenburg. Rachel Clattenburg, also counsel for Glenn Simpson.

Mr. Somers. The committee appreciates your appearance at this deposition. Before we begin, I'd like to go over a few ground rules and explain how the deposition will proceed.

The way the questioning proceeds is the majority will ask questions for the first hour, and the minority will have an opportunity to ask questions for an equal period of time. We will go back and forth in this manner until there are no more questions and the deposition is over.

Questions may only be asked by members of the committees or by Judiciary Committee staff attorneys. Unlike a deposition in Federal Court, the committee format is not bound by the rules of evidence or civil procedure. The witness or his counsel may raise objections for testimonial privileges, subject to review by the chairman of the committee. Members and committee staff, however, are not permitted to raise objections when the other side is asking questions.

You are welcome to confer with counsel at any time throughout the

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deposition, but if something needs to be clarified, we ask the witness make this known. If you need to discuss anything with your counsel, we will go off the record and stop the clock to provide you with this opportunity.

We encourage witnesses who appear before the committee to freely consult with counsel, and you do have counsel present here today.

Could counsel please state his name for the record?

Mr. Levy. Joshua Levy.

Mr. Muse. Bob Muse.

Ms. Clattenburg. Rachel Clattenburg.

Mr. Somers. Typically we take a short break at the end of each hour of questioning, but if you would like to take a break apart from that, please let us know.

As you can see, there is an official reporter taking down everything that we say to make a written record, so we ask that you give verbal responses to all questions. Do you understand that?

The Witness. Yes.

Mr. Somers. We want you to answer questions in the most complete and truthful manner possible, so we will take our time. If you have any questions or if you do not understand one of our questions, please let us know. If you honestly don't know the answer to a question or do not remember it, it is best not to guess. Please give us your best recollection, and it is okay to tell us if you learned the information from someone else, just indicate how you came to know the information. If there are things you don't know or can't remember, just say so and

please inform us who, to the best of your knowledge, might be able to provide a more complete answer to the question.

Mr. Simpson, you should understand that you are required to answer questions from Congress truthfully. Do you understand that?

The Witness. Yes.

Mr. Somers. This also applies to questions posed by congressional staff in a deposition. Do you understand this?

The Witness. Yes.

Mr. Somers. Witnesses that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Do you understand this?

The Witness. Yes.

Mr. Somers. Is there any reason you're unable to provide truthful answers to today's questions?

The Witness. No.

Mr. Somers. Pursuant to House deposition rules, the witness must be sworn in before providing testimony during his deposition.

Could you please raise your right hand?

Do you solemnly swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

Mr. Somers. Let the record reflect that the witness answered in the affirmative.

Finally, I'd like to note that what we discuss here today is confidential. In order to preserve the integrity of our

investigation, we ask that you not speak about what we discuss in this deposition to anyone not present here today. This confidentiality rule applies to everyone present in the room today.

That is the end of my preamble. It is now about 10:10, and I'll turn to Mr. Biggs for the first round of questions.

Mr. Biggs. Thanks.

So you work at Fusion GPS. This is a company I assume you founded?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the United States Constitution and decline to testify.

Mr. Biggs. And so what are your duties at Fusion GPS?

Mr. Somers. On advice of counsel, I proudly invoke my privileges under the First and Fifth amendments to the United States Constitution and decline to testify.

Mr. Biggs. So before your current occupation, where did you work?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. Isn't it true you worked at S&S Global?

The Witness. On advice of counsel, I proudly invoke my privileges under the Fifth and Fifth Amendments of the Constitution and decline to testify.

Mr. Biggs. And who established S&S Global, was that you?

The Witness. On advice of counsel, I proudly invoke my

privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. All right. So did you, your staff, on behalf of clients Fusion GPS or Penn Quarter Group, communicate with anyone about writing, placing, or sourcing stories or researching Members of Congress?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. Did you, your staff, on behalf of your clients Fusion GPS or Penn Quarter Group, communicate with anyone about writing, placing, or sourcing stories or researching Congressman Jim Jordan?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. Well, surely you don't have a problem, it is not going to be a problem for you, to just tell us where you worked before working at Bean, LLC, d/b/a Fusion GPS, are you?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the United States Constitution and decline to testify.

Mr. Biggs. So you actually have a problem telling us even where you work?

Mr. Levy. Congressman?

Mr. Biggs. Yes.

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Mr. Levy. Congressman, respectfully, you have asked the witness now close to a dozen questions. As to each one --

Mr. Biggs. Right.

Mr. Levy. -- he has clearly asserted his constitutional privileges not to testify, and at this point we ask that you excuse the witness.

Mr. Biggs. No, because as the way this works is this isn't like a deposition in Federal Court where you get to go or I get to call the judge, which I would normally be doing right about now. As we go through this deposition and he's going to basically -- it's my understanding that he probably is going to take the Fifth Amendment on every question we ask from here on out.

Well, at that point, the chairman of this committee gets to determine whether that was a valid use of his privilege. And if it's an invalid, then he gets to come back in and either answer them or be held in contempt.

So we're going to lay a record right here right now of all these questions that he gets to invoke his Fifth Amendment right, and if he's done so in an invalid manner and this committee's chairman determines that, then he gets to come back in and answer those questions or reinvoke or whatever he chooses to do, and then the chairman will go from there. Do you understand?

Mr. Levy. May I respond?

Mr. Biggs. Yes. I mean, you're killing my time, so I'm going to ask you to stop the time while we're having this --

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Mr. Levy. The witness has cleanly asserted his privileges. There doesn't seem to be any question as to the appropriateness of the assertion of the privilege.

Mr. Biggs. But, again --

Mr. Levy. He has never testified before this committee before, and he's cleanly asserting the privilege. He's not speechifying. He has that right under the Constitution as a U.S. citizen. We hope this committee is respectful of that, and we ask that he be excused.

Mr. Meadows. Mr. Biggs?

Mr. Biggs. And that request is being denied.

Mr. Meadows. Mr. Biggs, perhaps you could make an inquiry. I'm unaware of what defensive privilege that the First Amendment would give. It's normally an affirmative right, not a defensive right, and so perhaps there could be some clarity since he's claiming the rights under the first and fifth. I'm aware of the fifth, but I'm not aware of what defensive rights that the First Amendment. So what case law would he be referring to Mr. Biggs?

Mr. Levy. Congressman Meadows, thank you first for acknowledging that the Fifth Amendment privilege applies here. As to the First Amendment privilege, there is --

Mr. Meadows. I want to make clear, I wasn't saying it applied here. I was saying that my personal knowledge is that that's the only thing I know of. And I'm not an attorney, so I was hopeful you could illuminate what defensive right the First Amendment would give you here.

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Mr. Levy. Sure. Well, certainly, he does have a Fifth Amendment right here not to testify. And under the First Amendment, there is published case law in which individual Americans have been subpoenaed for testimony. Those Americans, through counsel, asserted their First Amendment privilege, and on those --

Mr. Meadows. What case law is that? I mean --

Mr. Levy. Pebble Limited Partnership versus EPA.

Mr. Meadows. And that was under congressional deposition?

Mr. Levy. It was a subpoena for a third-party's deposition in a --

Mr. Meadows. I don't see where that applies here.

Mr. Levy. There's no contrary precedent, Congressman.

Mr. Meadows. But there's no affirming precedent either. And what I'm saying is is that to claim the fifth would certainly have precedent. To claim the first, I'm not aware of any.

Mr. Levy. I've just cited you this case, which does have applicability, and Congress is of course bound by the Constitution and the courts.

Mr. Biggs. Okay. So the discussion -- the discussion is over. We're going to keep asking questions, and he's not going to be excused. And we're going to run it through the procedures and the rules of this committee, and you'll be able to raise that later. You're not going waive your privilege to raise that issue later, but we have a right. He's been subpoenaed. We have the right to ask questions. We're not going to excuse him.

Mr. Levy. I'd just like to supplement my answer, if I may, to Congressman Meadows' question. There's a Supreme Court case, sir, from 1957. It's called DeGregory versus the Attorney General for the State of New Hampshire. The citation is 383 U.S. 825. And at page 829 of that decision, let me read from it. It says: The First Amendment prevents use of the power to investigate and force by the contempt power to probe at will and without relation to existing need.

Mr. Meadows. Well, I appreciate the gentleman, but obviously invoking the fifth along with that would indicate that there is some kind of criminal investigation here of which there is none.

Mr. Levy. That, sir, is absolutely not true. That is not the way the Fifth Amendment is treated under law, and I recognize you're not an attorney, but that kind of commentary is reflective of the worst practices within this body in terms of marring an individual's exercise of his constitutional rights.

Mr. Meadows. So your concern is more of potential criminal exposure. Is that correct?

Mr. Levy. No.

Mr. Biggs. This discussion has gone on -- we're going to go back to questions. You're not excused. And here we go.

The Witness. Excuse me, could I have some water?

Mr. Biggs. Here's one right here.

So, Mr. Simpson, are you ready?

The Witness. Yes.

Mr. Levy. Congressman Meadows, there's a Supreme Court case that

clearly states that any link in the chain of evidence that can be used for prosecution --

Mr. Meadows. Yes, but there has to be an apprehension of some criminal prosecution.

Mr. Levy. Members on this committee have accused -- falsely accused Mr. Simpson of a crime.

Mr. Biggs. Mr. Levy, you can --

Mr. Levy. Congressman Gaetz said in the newspaper that he was, quote, lying, unquote, to Congress.

Mr. Biggs. Mr. Levy --

Mr. Meadows. I don't think I'm making any such claims.

I yield back.

Mr. Biggs. -- if you have a beef about that, you can raise that later. We're not going there. We're going right here to Mr. Simpson right now.

Mr. Levy. I object.

Mr. Biggs. So noted.

So, Mr. Simpson, how long have you known Bruce Ohr and Nellie Ohr?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the United States Constitution and decline to testify.

Mr. Biggs. And where did you meet Bruce Ohr?

Mr. Levy. Congressman Biggs, D.C. legal opinion, Legal Ethics Opinion No. 358 states that we --

Mr. Biggs. We're not bound by that opinion. We don't want to

hear it. You can submit it in writing.

Mr. Simpson, please.

Mr. Levy. Staff might be in as much they're members of the D.C. bar.

Mr. Biggs. Please, Mr. Simpson.

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the United States Constitution and decline to testify.

Mr. Biggs. When and where did you meet Nellie Ohr?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. How often would you speak with Bruce Ohr?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the U.S. Constitution and decline to testify.

Mr. Biggs. Did you ever pass information through the FBI or DOJ that they'd be interested in to Bruce Ohr before 2016?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. Were you aware that Nellie Ohr might have passed information to Bruce Ohr?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the United States

Constitution and decline to testify.

Mr. Biggs. Did you direct Nellie Ohr to pass information to Bruce Ohr?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the Constitution and decline to testify.

Mr. Biggs. Did Bruce Ohr tell you of meetings and 302s that he was writing in conjunction with those meetings with the FBI?

The Witness. On advice of counsel, I proudly invoke my privileges under the First and Fifth Amendments to the U.S. Constitution and decline to testify.

Mr. Biggs. And did he tell you about conversations he was having with Christopher Steele?

Mr. Levy. Congressman, you've now asked upwards of 20 questions. It's clear to everybody in this room that the purpose here is to burden the witness --

Mr. Biggs. No.

Mr. Levy. -- and embarrass him, and --

Mr. Biggs. This is a confidential hearing, so it's not to embarrass him, sir. What this is is to get at the truth. He has his right to assert the Fifth Amendment privilege. He's asserting that. We can go forward. The chairman will rule on those assertions later. That's what this is. He's under subpoena. Please don't interrupt me.

Mr. Levy. Respectfully, I've been reviewing the news reports about this committee for the last 3 months, and the members do not

respect the confidentiality of these proceedings. What's happened in the past, if it's prologue, is that one or two of you is going to walk out of this room and tell the news media what happened here based on your own narrative. I don't think the confidentiality of the proceeding has any bearing on the fact that we're here for you to embarrass my client and burden him with false accusations and insinuations.

Mr. Biggs. That's not why he was brought in, and you have made that assertion in the press. We're going to leave that.

We're going to go back to you, Mr. Simpson.

Mr. Meadows. Mr. Biggs, if you would yield?

Mr. Biggs. I'll yield to the gentleman.

Mr. Meadows. My understanding is that on November the 14th of 2017, the witness testified before the Senate Judiciary Committee, is that correct, on matters relevant --

Mr. Biggs. Who are you directing the question to?

Mr. Meadows. To Mr. Simpson.

Mr. Levy. Mr. Simpson has asserted his privileges not to testify.

Mr. Meadows. All right. So from a counselor standpoint, will you acknowledge that, indeed, that your client has testified before the Senate Judiciary Committee on November 14, 2017, on similar questions and on the similar matter that's the subject of this particular questioning?

Mr. Levy. I'm not sure your dates are correct, but it's of no

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moment here because the law on the Fifth Amendment, Congressman, says that there's a waiver --

Mr. Meadows. It would have been August 22nd. I think they've got -- right.

Mr. Levy. I'm not quibbling with that.

Mr. Meadows. And before the House Intel Committee, is that correct, on a similar matter?

Mr. Levy. The law on --

Mr. Meadows. I just need a yes or no. Did he testify on this same subject?

Mr. Levy. He's never testified in this committee.

Mr. Meadows. No, I mean --

Mr. Levy. The law of waiver pertains to a single proceeding. Those are separate proceedings, and I'll cite to you in re: Neff, the Third Circuit in 1958 Supreme Court decision.

Mr. Meadows. I'm not asking for citations. I'm asking for an answer to the question, did he testify in two different committees, both in the Senate and the House Intel Committee, on similar matters without invoking the fifth?

Mr. Levy. If you're talking about those two committees as well as the Senate Intelligence Committee?

Mr. Meadows. Yup.

Mr. Levy. I don't know if your dates are correct, but he has testified in those three committees.

Mr. Meadows. Without invoking the fifth?

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Mr. Levy. With a letter from the chair and the ranking member of each of those committees stating clearly that nothing he said before those committees would waive his privileges before those committees. We have those letters.

Mr. Meadows. And so is your concern today, are you indicating that your witness would actually be willing to testify if we went into a SCIF with just one or two members -- so he's invoking the fifth not for confidentiality reasons but to avoid criminal prosecution?

Mr. Levy. For neither, sir. He is invoking his Fifth Amendment privilege because he has a legal basis for doing so, period.

Mr. Meadows. Even though we can't bring criminal charges from this body?

Mr. Levy. This testimony could be used by people with the authority to bring criminal charges, would be part of a record, and so he is exercising his constitutional privileges not to testify. He has that right as an American citizen.

Mr. Meadows. Okay. Mr. Biggs, I know that you have a number of questions. Honestly, I fail to see how this is going to change the rest of the afternoon. You know, if there's one or two pertinent questions that you feel like we need to get on the record and make sure that he's not going to answer, I would certainly support you in that, but I think it's obvious that he is going to be a noncooperative witness at this particular point.

Mr. Biggs. Well, my only concern, Congressman Meadows, is that the rules of the committee have indicated that the chairman will review

these questions, the assertion of the privilege, and determine whether it was a valid assertion. And if it's an invalid assertion, then we have the privilege -- we have the privilege to resubpoena him, bring him back in, give him another opportunity to hear or to answer those questions.

Mr. Meadows. So, Mr. Biggs, I would ask one other question of the counsel with your permission.

Mr. Biggs. I'm sorry?

Mr. Meadows. With your permission I'd like to ask another question of the counsel.

Mr. Biggs. I'll yield.

Mr. Meadows. So is there any proffer that could be offered at this point to actually encourage your witness -- your client to testify before this committee? I mean, if he's worried about criminal prosecution, you know, getting to the bottom of it is probably more important for us, so is there any proffer that you would be offering for compliance?

Mr. Levy. I don't want to, through my answer, accept the premise of everything that you just said. However, he is here to cleanly assert his Fifth Amendment privileges. He's done that. And I agree with you, sir, I would very much like for the witness to be excused.

Mr. Meadows. I yield back, Mr. Biggs.

Mr. Biggs. Thank you.

I'm not inclined to excuse the witness. We might want to recess this and we might come back another day, but basically you're telling

me no matter what question we ask here from this point forward, he's going to assert the Fifth Amendment privilege?

Mr. Levy. Yes.

Mr. Biggs. And you're willing to then submit -- if I give the questions to the chairman that we have intentions to ask, it doesn't matter what we're going to ask, Mr. Simpson's going to invoke the fifth, and you're willing to submit to the ruling of the chair on that point?

Mr. Levy. I would need to see the ruling of the chair to be able to tell you whether we submit to it or not, but he is going to cleanly continue to assert his privilege not to testify if the committee continues to ask him questions. He does not want to be falsely or accurately accused of waiving his privilege, and so we are cleanly asserting it today.

Mr. Biggs. You mean inaccurately accused of waving his privileges. But in any event, the point I'm trying to make is this will go to the chairman, and we'll give him our questions that we're going to ask, and he can determine whether he thinks that was valid or not, and we might see a repeat of this in the near future.

Mr. Levy. If you do submit that to the chairman, counsel would like the right to respond.

Mr. Biggs. That'll be up to the chairman, not me.

Mr. Levy. We would like notice under the Fifth Amendment due process clause to see the charge as well.

Mr. Somers. We'll give you the notice that's required under the House deposition rules before any ruling is made.

Mr. Levy. Do the rules permit us to have notice?

Mr. Somers. I believe they permit you to have notice. We can double check the rules, if you'll indulge me.

Mr. Levy. I appreciate it, Zach. Thank you.

Mr. Somers. I have lost that page in the rules. Somehow between when I just looked at the rules and walked into the room here I lost the relevant page in the rules. I do recall reading something about notice in the rules. If it is required by the House deposition rules, we will provide you with notice as required by the rules.

Mr. Levy. Thank you, and we renew our request.

Mr. Somers. And certainly provide you the ruling before we ever called your client back in.

Mr. Biggs. And so before we go into recess, I just want to make sure you understand we are, in my opinion, attempting to comply with the constraints of the Constitution as well. And quite frankly, as I said before, if I was sitting somewhere and someone was invoking their fifth as on the most innocuous of questions as we started off, and that's when we began with the fifth, I'd be on the phone with the Federal judge, and I don't -- or the State court, whatever. We don't have that luxury, so we're going to proceed through the Judiciary Committee's procedures, which is our constitutional right and our obligation to do as well.

So, you know, with that, unless there's something from --

Mr. Somers. I would just like to -- Aaron, are you fine with us recessing at this point in time?

Mr. Hiller. So long as that we also have the opportunity to look

at any decisions made by the chair.

Mr. Somers. Sure, absolutely.

Mr. Hiller. Certainly the questions in advance as well, I think we could.

Thank you, Mr. Simpson, for coming in today.

Mr. Levy. Congressman --

Mr. Biggs. Yes.

Mr. Levy. -- just one additional observation, and I think this might be helpful to you to understand why we're proceeding in the way Mr. Simpson has proceeded today.

Mr. Biggs. In reality, you don't have to give that explanation because that's his personal choice on advice of counsel, and you've advised him to proceed in this way.

Mr. Levy. More the legal rationale in that this -- not this committee, but the House Oversight and Government Reform Committee in 2014 referred an American citizen for contempt under the argument that she had waived her privileges by saying not very much. And while the Department of Justice ultimately found that she did not waive her privileges, we're before the same -- a similar body in the House Judiciary Committee working with members of that committee, and we do not want to put our client in a position where this committee or another House committee is going to create a waiver trap for him or accuse him of waiver. And so that's why it may seem like these questions are innocuous to you, but we're just doing our job here, sir.

Mr. Biggs. Look, I understand that. I'm just -- I'm also

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wanting to suggest to you that we're aware -- I'm aware fully of his constitutional rights to assert the privilege. Whether it's a valid assertion or not is not even for me -- whether I think it's valid or not is probably a legal question, it's not a Biggs question. You've asserted it. I disagree with you. In my opinion, I think that if I would have spent time on it, I could have found cases indicating that he may have waived as well, but we're not going to do that right now.

We're going to recess because it would be dilatory, quite frankly, to sit here and -- but I want to make clear we have a stack of questions, and without any uncertain terms, he is going to invoke the fifth on every question. And that's what you're asserting, that's what you're representing?

Mr. Levy. Yes.

Mr. Biggs. Okay. And so, with that, rather than adjourning, we're going to recess this deposition until we've got a ruling from the chair.

Mr. Levy. Okay.

Mr. Biggs. Understood. Good?

Mr. Hiller. We're good. Thank you.

Mr. Biggs. Thanks.

[Whereupon, at 10:32 a.m., the deposition was recessed.]

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CERTIFICATE OF COURT REPORTER

UNITED STATES OF AMERICA)
DISTRICT OF COLUMBIA)

I, REGINA TELL, Official Reporter, U.S. House of Representatives and Notary Public in the District of Columbia, certify that the witness appeared before me; that the witness was duly sworn; that I was authorized to and did stenographically report the proceedings in the above transcript; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action to my knowledge, nor am I financially interested in the action.

REGINA TELL

Notary Public in and for the District of Columbia

My commission expires: _____