

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.

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

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

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

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

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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. [REDACTED]

[REDACTED] who sort of led the analytic side of the investigation, I believe.

So there were there were FBI attorneys also that were involved. [REDACTED] 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.

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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?

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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 [REDACTED] 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.

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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

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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?

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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.

[REDACTED] was our deputy, one of our deputy chiefs in CES. And [REDACTED] was a line attorney in CES. She is now currently the deputy. [REDACTED] has left and she has become the deputy. But at that time, she was a line attorney.

And then we had two EDVA AUSAs, [REDACTED] who was the chief of the national security unit, and [REDACTED] who was, I believe, their deputy criminal chief, but a longtime veteran -- both [REDACTED] and [REDACTED] were longtime veteran prosecutors. We had a team of four attorneys, and that included [REDACTED] as a deputy within CES.

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

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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, [REDACTED] 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,

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

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?

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

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

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.

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

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.

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

COMMITTEE SENSITIVE

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.

COMMITTEE SENSITIVE

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.

COMMITTEE SENSITIVE

COMMITTEE SENSITIVE

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.

COMMITTEE SENSITIVE

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 [REDACTED] was aware?

A I would think [REDACTED] 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. [REDACTED] 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, [REDACTED] 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.

COMMITTEE SENSITIVE

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?

COMMITTEE SENSITIVE

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 [REDACTED] 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. [REDACTED] 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, [REDACTED] 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. [REDACTED] 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.

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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, [REDACTED] 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.

COMMITTEE SENSITIVE

[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 [REDACTED]

Q It was [REDACTED]

A I would say [REDACTED]

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 [REDACTED] 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. [REDACTED] called 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.

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

did would you 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.

COMMITTEE SENSITIVE

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.

COMMITTEE SENSITIVE

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?

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

COMMITTEE SENSITIVE

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 [REDACTED] 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

was with Mr. [REDACTED] 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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

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

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?

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

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

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

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 [REDACTED]

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,

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.

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

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

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:

"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?

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.

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.

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.]

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[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

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,

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.

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

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

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

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

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

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.

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,

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

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

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

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

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?

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.

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.

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.

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.

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

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

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

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

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

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

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?

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 Baker, [REDACTED] 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. [REDACTED] 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

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

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 of [REDACTED] [REDACTED]?

A I think [REDACTED] 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

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. [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

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 [REDACTED] 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,

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 [REDACTED] 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 [REDACTED] 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.

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

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,

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.

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