

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: SALLY MOYER

Wednesday, October 23, 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 Sally Moyer.

Chairmen Goodlatte and Gowdy requested this interview as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform into decisions made and not made by the Department of Justice and the Federal Bureau of Investigation regarding the 2016 Presidential election.

Would the witness please state her name and position at the FBI, for the record.

Ms. Moyer. Sally Moyer. I'm a unit chief in the Office of General Counsel.

Mr. Somers. Thank you.

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

I'd now like to ask everyone else who's here in the room to introduce themselves for the record, starting with Art Baker.

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

Mr. Breitenbach. Ryan Breitenbach, senior counsel, House Judiciary Committee, majority.

Mr. Castor. Steve Castor, Government Reform Committee and majority staff.

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Mr. [REDACTED]. [REDACTED], FBI, Office of Congressional Affairs.

Mr. [REDACTED]. [REDACTED], FBI, Office of General Counsel.

Ms. [REDACTED]. [REDACTED], FBI, Office of General Counsel.

Ms. Fink. Sarah Fink,

Mr. Pittard. I'm Bill Pittard, Office of General Counsel,

and with Sarah here on behalf of Sally.

Ms. Hariharan. Arya Hariharan, Judiciary.

Mr. Morgan. Matt Morgan.

Ms. Shen. Valerie Shen, Oversight and Government Reform
Committee.

Mr. Hiller. Aaron Hiller.

Mr. [REDACTED]. [REDACTED], Office of Congressional Affairs.

Mr. Buddharaju. Anudeep Buddharaju, House Oversight staff,
Mr. Gowdy staff.

Mr. Brebbia. Sean Brebbia, OGR majority.

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

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

Typically, we take a short break at the end of each hour of
questioning, but if you would like to take a break apart from

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that, please let us know. We may also take a break for lunch at the appropriate point.

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

As you can see, there is an official reporter taking down everything that is said to make a written record, so we ask that you give verbal responses to all questions. Do you understand that?

Ms. Moyer. Yes.

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

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

Would counsel please state his name for the record.

Mr. Pittard. Again, it's Bill Pittard on behalf of Sally Moyer.

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.

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?

Ms. Moyer. Yes.

Mr. Somers. This also applies to questions posed by congressional staff in an interview. Do you understand this?

Ms. Moyer. 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?

Ms. Moyer. Yes.

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

Ms. Moyer. No.

Mr. Somers. Finally, we ask that you not speak about what we discuss in this interview today with anyone who is not here in the room in order to preserve the integrity of our investigation. This confidentiality rule applies to everyone present here today.

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

Ms. Moyer. I do not.

Mr. Somers. The time is now 10:07. And I'll turn it over to Art Baker to begin our first round of questions.

EXAMINATION

BY MR. BAKER:

Q Good morning. As we indicated when we introduced ourselves this morning, if you need a break or something other than water, let us know. The goal here is to make you comfortable as you're testifying before us today.

And I'll say from the very start, one of the reasons you're here is because of -- I think it's generally known in the counterintelligence community, and we certainly heard it during our interviews of some people on the record and some interviews we did of people that did not appear, that you are viewed as a very competent person in the area of counterintelligence law. I believe that there are a lot of things related to counterintelligence at the FBI that pass through you or that pass over your desk.

We've heard from witnesses that testified here, a lot of times their answers to things were they didn't know because that happens at a level above them or they didn't know because it happens at a level below them. And I think you're one of the people that were at a level where things actually happened, where

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you were involved in decisions both from what we now know was called the Midyear Exam and maybe some decisions with the genesis of the Russia investigation.

So that's really why you're here, to just shed some light for us on things that we've heard and to get your opinion on some things based on your knowledge.

You've been at the FBI for how long?

A Thirteen years.

Q And in what capacity have you been employed at the FBI?

A I've always been in the Office of General Counsel. I started as an assistant general counsel, and then eventually I was promoted to unit chief. And the whole time I've worked in the counterintelligence law unit.

Q So your whole time, your 13 years, you say, at the FBI has been as a lawyer and in counterintelligence law?

A Correct.

Q Where would you put your tenure, not necessarily in the general counsel's office, but in the counterintelligence division or a person doing legal things for counterintelligence agents? Are you one of the more tenured lawyers doing that type of work?

A There's a number of people that have had just as much experience as I have. We tend to stick around in OGC.

Q Okay. And you have stuck around why?

A I enjoy the work.

Q You enjoy the work.

Who did you work for during your tenure, during the Midyear Exam? Who did you report to?

A So for Midyear Exam, I was an acting unit chief at the time. My unit chief was acting section chief. That is, he's a non-SES employee, so I've been instructed by the FBI not to name those individuals. He reported to the deputy general counsel, Trisha Anderson, who reported to the general counsel, Jim Baker.

Q Okay. So you did not report directly to Anderson?

A No, but it's not as formal as it might be in some other parts of the Bureau.

Q Okay. In preparation for your appearance here today, did you prepare in any way, review anything? How did you prepare for your appearance?

Mr. Pittard. Art, what are you getting at? The question makes me a little bit nervous in terms of getting into privileged communications with counsel and that type of thing.

Mr. Baker. Aside from any communications that you had with Mr. Pittard, did you prepare by talking to other people who have been before the committee, reviewing any documents?

Mr. Pittard. So the question then -- just to be clear, the question is excluding conversations that would have included me or my colleague, Ms. Fink, did she have any other meetings to prepare for this?

Mr. Baker. Yes.

Ms. Moyer. No.

BY MR. BAKER:

Q Did you review any notes that you took contemporaneous with your duties?

A Aside from my conversations with counsel, no.

Q Did you review, either in preparation for this or when it was released, the Inspector General report?

A I read parts of the Inspector General report either right before it was released and -- actually, right before it was released. I don't think I've read it since.

Q Okay. But did you have any conversations with other FBI employees about today's testimony?

A No. I mean other than counsel.

Q Other than counsel. Okay.

Mr. Pittard. Other than meetings that included counsel?

Ms. Moyer. Correct.

Mr. Pittard. We're excluding --

BY MR. BAKER:

Q Okay. You were assigned a role in the Midyear Exam investigation?

A Correct.

Q What was your role specifically?

A I think I was -- I would be considered the line attorney on the case. Even though I was an acting unit chief at the time, I was still probably the line attorney, because that was something I was experienced in.

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Q And what would a line attorney do?

A The line -- you would provide counsel to the investigators as they proceeded with their investigation. So if they had questions about whether or not they're meeting certain standards for a search warrant or if we should open a spinoff investigation or any questions that might come up related to law or policy, we would provide counsel to the investigators making those decisions.

Q How did you come to be chosen for the team?

A The case was -- the genesis of the case was in [REDACTED], which is the counterespionage section at the Bureau, and that -- I had been counsel to the [REDACTED] for a number of years. So I was the logical choice for someone to work on the case.

Q So it wasn't where there was a posting, for a lack of a better word --

A Oh.

Q -- looking for attorneys to work on this big case? You were solicited based on your training, knowledge, expertise, reputation, what have you?

A There was no posting. And I'm not sure I was solicited or just told I was going to be doing it. I can't quite remember.

Q But based on the work you normally did --

A Yes.

Q -- in [REDACTED], espionage, and the counsel you've previously given on counterintelligence matters, you would have been a

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logical choice?

A Correct.

Q Okay. Do you know how other members of the team were selected?

A So there was a transition.

Mr. Pittard. And if I could just interject. Certainly answer to the extent you know. But I think the instructions were at the beginning, don't speculate. If you don't know how other people were picked, I don't think they want you to guess.

Mr. Baker. Sure.

Ms. Moyer. Right. So I was not involved in choosing any of the team members, but there was a transition. Originally, the case was being run from [REDACTED], a headquarters component, and then at one point they decided to have like a squad from a field office come and work on the case. And then that was the team that actually did the bulk of the investigation.

BY MR. BAKER:

Q Were you concerned or interested how -- once you understood the facts of the case, I'm talking the very initial facts of the case that would have predicated the opening, did you have any concern about the classification of the case, that it landed in counterintelligence versus maybe a criminal matter or -- did you have any concerns about that?

A No. I don't -- I think there's some confusion about whether this was a criminal case or not. A counterintelligence

case, all of our cases could include criminal charges. And all of the espionage cases or the cases out of [REDACTED] tend to have -- similarly be both a national security case for collection of foreign intelligence as well as potential criminal charges if warranted.

Q Okay. Were there any people that you're aware of that felt it really should have been a criminal matter and handled out of the criminal division rather than where it ended up?

A Not that I'm aware of.

Q Based on other cases, having nothing to do with Midyear, you provide counsel to the field offices too, I would assume, in some way, shape, or form?

A Sometimes. The field offices have their own counsel. They have a chief division counsel or associate division counsel, so, I mean, our role is really to focus on the headquarters' agents.

Mr. Breitenbach. Real quick. You mentioned [REDACTED]. Can you explain what that means?

Ms. Moyer. Sure. So the counterintelligence division is broken up into specific sections and they're numbered. And [REDACTED] happens to be the section that includes -- is the counter-espionage section. So counterintelligence is primarily looking at foreign intelligence officers and their actions in the United States. But the counter-espionage section is looking at U.S. persons who may be helping those or being targeted or

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recruited by those foreign actors.

Mr. Breitenbach. Okay. Thank you.

BY MR. BAKER:

Q I think you mentioned chief division counsels that service the legal needs of the field offices. Would it be correct to say they're more general practitioners, they entertain a lot of different legal issues?

A I've never been a chief division counsel so -- some of them, I think, are more specialized, but I can't say for certain.

Q Generally speaking, how many chief division counsels would there be in an FBI field office?

A Well, there's one chief division counsel, but they have ADCs. I just don't know -- I mean, I think almost all of them have ADCs now, but like I said, I've never been one.

Q Okay. So if a legal matter, a legal issue or legal question comes up in the field, would the chief division counsel or his or her staff reach out to a legal unit at headquarters that handles a particular type of law all the time for clarification or guidance?

A I would think it depends on the issue and whether they'd seen it before, but, again, you'd have to probably talk to ADCs and CDCs about that.

Q Okay. Who were -- you're picked as a legal -- a line attorney for Midyear. Once the team was assembled, you, in particular, as this line attorney, did you serve on any -- for

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lack of a better term -- like subgroups or committees, like a privileged team?

A I'm not really sure what you're getting at. There was a filter team. Of course, I was working the investigation, so I was not a part of the filter team.

Q Okay. So you're actually working on the investigation providing legal guidance for investigative steps?

A Correct.

Q What would you describe or how would you describe your -- you've talked a little bit about the FBI's assembling the Midyear Exam team. It's my belief that the Department of Justice is also assembling a team that would represent the Department on Midyear Exam. Is that correct?

A I don't know what the Department was doing at the time.

Q But the Department had people that would be at meetings representing the Department on Midyear Exam matters?

A Yes, but -- and they were the attorneys that usually worked the counter-espionage matters.

Q Okay. What was your relationship with those attorneys? What was the FBI's legal department or general counsel, what was their relationship with the people that were handling legal matters for the Department?

A I think it's the same as it is in any other case. We would be in meetings together, we would talk over issues. We would -- they would be focused on the prosecution side of things,

if there was going to be a prosecution, or, you know, more criminal techniques, like subpoenas and search warrants, and I was advising the agents about our own policies and procedures and working with them.

Q Was there any tension between the FBI lawyers and the DOJ lawyers?

A I wouldn't call it tension.

BY MR. SOMERS:

Q I just had a question because you mentioned, I believe earlier, that one of your roles was working on search warrants. So what's the division there between what DOJ would do vis-a-vis a search warrant or subpoena versus what you would do?

A So DOJ would ultimately approve going forward with a search warrant in a criminal case, in any of these cases. My role is often to help the agents, either talk to them about whether or not they have enough for a search warrant, work with them if they've drafted something, if there's like -- where there might be like issues that might be missing or places where they could beef it up.

DOJ attorneys also do that too at a certain stage, but I'm sometimes working with the agents earlier on and helping them present what they think the case might be to DOJ.

Q So your interaction was more with the agents versus with DOJ attorneys on a search warrant or is it both?

A It's both, but probably a little bit more with the

agents.

Q So who would ultimately -- would it be the agent that would ultimately go to the whatever DOJ attorney and say, hey, I need a search warrant, or would you do that?

A Yes, I think at the end of the day it's ultimately the agent, but we would meet regularly like as a group, so, you know -- I guess at the end of the day the agents would ask for the search warrant, yeah.

Q Okay.

BY MR. BAKER:

Q Back to the idea of there may be being tension. I mean, it's my understanding that it's normal for there to be tension between headquarters and main Justice or in the field between the agents working a case and the AUSAs that prosecute a case. Tension that's often, when you step back and look at it, healthy. It creates a dynamic where a lot of issues are discussed that but for the tension might not rise to a point where they're actually resolved. Was there any of that kind of tension?

A Yeah, I just -- I didn't want to characterize it as if there was personal tension. There's always -- and it's usually that the FBI wants to be a little more aggressive than the prosecutors or the DOJ attorneys. And this case wasn't any different than any other case we had.

Q But would you say that in this case, like other cases you've generally alluded to, was that the posture of the FBI and

DOJ? FBI wanted to be more aggressive?

A For the most part, I would think most of the issues it would be characterized that the FBI wanted to be more aggressive, but that's, you know, that wasn't every issue.

Q Okay. I'm sure as today goes on we'll get down in the weeds a little more on specifics, but in a very high-level general matter, was every issue that presented itself -- and I don't want to say FBI versus DOJ, that's too extreme -- but where there was a disagreement, was everything ultimately resolved to the liking of the FBI team? Not that the FBI's view won the day, but it's my understanding that sometimes things were talked about and there were concessions, and there was a general consensus on things that ultimately everybody was in agreement about the path forward on certain matters.

A Yeah.

Mr. Pittard. And, again, just a caution that you should answer to the extent you know.

Ms. Moyer. Right. Yeah, I couldn't speak for the entire team, but I think -- I think that at the end of the day, we got all the information we needed to properly investigate and assess the case. And so at the end of the day, I think our issues were resolved with DOJ, in my mind.

BY MR. BAKER:

Q You deal with -- separate and apart from Midyear, you deal with investigations that relate to the handling of classified

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materials or the improper handling of classified materials?

A Yes.

Q What is your role in those cases? They're opened in the field, I assume, and then what is your role? Do you advise, based on the facts and circumstances, whether an investigative technique is pursued? Or what is your role in just the ordinary, normal mishandling case, what do you add to that?

A Let me back up for a second. I think you said the improper handling. I would call them the unauthorized disclosure of classified information.

Q Okay.

A And that can be both mishandling the information or disclosing it to foreign officials or media or something like that. So my role is very similar to the role I played in the Midyear case. I work with the headquarters section, and they have -- they supervise the field that investigates the cases and we discuss possible avenues for -- investigative steps, what our policies and procedures might be. It's basically the same, I think.

Q Okay. Maybe this is jumping ahead. My colleagues will pull back to ask more specifics if it is, but based on the training, knowledge, expertise you've developed with these other improper disclosure cases and what you now know in hindsight on Midyear, was Midyear handled, from your position and what you may know about the prosecution or declination or any decisions

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regarding prosecution or declination, was this handled the same way that any of the other improper -- other than the sensitivity and the caution that would go with any case involving a public figure, were the actual facts, were they handled the same way that any of the other matters would have been disposed of that crossed your desk involving improper disclosure?

A That's a really broad question. What I would say is that this case was handled -- the investigation of this case was handled just like other investigations of unauthorized disclosure or mishandling.

The management may have been slightly different because of the public figure, the nature of the public figure, but the investigative techniques and the steps that the case agents took I think are the same as would have been expected in any other mishandling case.

Q And nothing jumps out at you about the facts and circumstances in these other cases where a prosecution is given, or not given, that this other case, Midyear, was handled differently? I think you say --

A No --

Q Go ahead.

A I think the decisions in this case were in line with all the decisions I'd seen in my experience.

Q Do you get frustrated, in the other cases, a large volume of documents? And here's what I'm getting at. I think on

page 165 of the IG report, and you don't need to get it --

A Okay.

Q -- you say something to the effect -- and I think it leans towards a declination of prosecution in Midyear -- you say something to the effect, you have all kinds of cases on your desk with thousands of documents that were improperly handled or disclosed and they don't warrant a prosecution. I think -- do you remember anything like that?

A I don't remember specifically talking about that to the IG or that reference in the IG report, but we have had cases like that.

Q Okay. So nothing in Midyear -- you're not left with a belief in Midyear that there were so many things that were released or improperly transmitted that there should have been a prosecution?

A I do not believe that that case warranted prosecution in line with all the other cases that I had experience with.

Q And is that a general consensus of the Midyear team? They reached that consensus at some point?

Mr. Pittard. To the extent you know,

A Yeah. I don't know what everybody -- we didn't take a vote, so I don't know what everybody thought. No one raised any concerns in my presence that this case was different.

Mr. Baker. How was a consensus reached then? If there wasn't a vote, how -- there were these meetings, how would

different opinions ultimately morph into a consensus of something?

Mr. Pittard. I'm sorry to interject. Art, I think your question presumes there was a consensus. There may have well been, I don't know, but I'm not sure that Ms. Moyer has said so or has said that she had that perception one way or the other.

Mr. Baker. No. And I'm curious what your perception was, because we've heard that there ultimately was a consensus, that everyone sort of came around. And then some people have maybe hinted that maybe not everyone came around. I just want what your opinion was of a consensus when there were issues in meetings that you were in.

Ms. Moyer. So it would depend on who you're talking about. So do you mean a consensus with DOJ, a consensus within the FBI, with the investigative team?

Mr. Baker. Well, I mean, I think --

Mr. Somers. Let's start with the investigative team. Was there a consensus with the investigative team that there should be no prosecution?

Ms. Moyer. So like I said, there was no, like, straw vote or anything like that. We discussed -- I was present for a discussion in which Pete raised the issue about prosecution and whether or not this case would go forward, and explained that he did not think that the prosecutors thought we should -- we had a prosecutable case here, and no one raised objections or like pointed out specific facts or argued with that decision. And then

Pete said that if anyone had concerns, they could talk to him.

Mr. Baker. And Pete is Peter Strzok?

Ms. Moyer. Oh, I'm sorry. Yes, Pete Strzok.

BY MR. SOMERS:

Q And who else was -- at least for the SES people, not their names, but for the non-SES people, types of people, who were in the room -- who was in the room for that conversation?

A It was what I would call the investigative team. And that's the case agents, the supervisory special agent, a couple of the analysts, I was there, Pete Strzok, Jon Moffa. We met regularly. And that was the team that there -- there was one discussion that I remember about that.

Q And then were you involved in meetings -- so there was a -- I think there was an investigative -- from previous interviews, there was an investigative team and then there was more like an executive team that, I guess, looked over the decisions of the investigative team in order to decide whether to prosecute or whether to recommend prosecutions, since it is the FBI. Were you involved in any of those meetings with deputy director, the director, et cetera?

A Yes.

Q And in those meetings, was there a consensus that there should be no recommendation of prosecution?

A So, again, we didn't have like a specific day where we all decided and took a vote. But there was no -- I do not recall

anyone making any specific concerns, raising any specific concerns. I think the director made the ultimate decision, but I don't think anyone had any specific concerns about it.

Q Was there a similar moment? I mean, you just described a moment where Pete Strzok said, hey, we shouldn't recommend prosecution. Does anyone have a disagreement?

Was there a meeting where Director Comey said, hey, I don't think we should prosecute. Does anyone have a disagreement? Was there a meeting like that?

A I don't remember that. It's more fluid than that, but I don't remember any specific meeting with the executive team about that.

Q Are you aware of whether Jim Baker had any feelings on whether Secretary Clinton should be prosecuted or not?

A I actually don't know. He didn't raise any with me.

Q He didn't raise any in any meetings you were in?

A The meetings I was in, Jim would always be the voice of poking the decision. I don't even know how to best describe that. But he would always raise issues and make sure that people were thinking about them clearly. So I don't remember specifically about this decision, but that was generally his role as general counsel.

Mr. Breitenbach. Can you go through some of those instances? Can you recall any of the instances where Mr. Baker was poking at the particular decisions being made throughout the investigation?

Ms. Moyer. I can't recall any specific to this case. Possibly, I think he raised some questions about the statement, whether or not the director -- Director Comey should have made the statement. But I don't remember anything else. It wouldn't have registered with me because that was how Jim was.

BY MR. BAKER:

Q Are you aware of any conversations that Mr. Baker had or calls he made to DOJ voicing his concern, and these are my words, that they were essentially being weak in their stance in the investigation and kind of wanted to get it moving along and wanted to be more aggressive on matters?

A No, I wasn't involved in any conversations like that.

Q You indicated earlier when we were kind of talking about the chain of command in the general counsel's office, your particular unit, as a unit chief you supervise other people, right?

A Yes.

Q And then you're supervised by the section chief?

A Yes.

Q And you said the section chief at the time was acting?

A Yes.

Q And was below a 15 -- or below an SES -- you can't mention the name?

A Correct.

Q But then above that was Trish Anderson?

A Yes.

Q What was your view on Trish Anderson as a subject matter expert on counterintelligence matters?

A I was very impressed with Trisha's ability to learn. I don't know that she had any experience in counterintelligence before coming to the Bureau, but immediately I took to her and I relied on her for her guidance and her judgment. And she was very quick to learn the different issues related to counterintelligence, from what I could tell.

Q But she didn't have any counterintelligence experience coming into the Bureau?

A I don't think so.

Q But she's put at a fairly high level? She was a --

A Right, but she was the deputy general counsel for national security and cyber law, so that's much broader than just counterintelligence.

Q And she had an expertise in one of the other areas, then, that would qualify her for the position?

A I don't know exactly what her background was, but I know she had had experience in dealing with some of the national security issues both at DOJ and at the Treasury Department.

Q So would you be in meetings with her and Jim Baker when it related to Midyear --

A Yes.

Q -- or were there meetings that you weren't at? I mean,

you wouldn't necessarily know if you weren't at meetings, but were there meetings you knew about that you weren't at that you felt you should have been at?

A I'm sure there were at times. But I -- yes, I'm sure there were.

Q Were there any meetings that you recall, even if you only recall them generally, that you felt you really should have been there and were upset that you weren't included in them?

A Can I talk to counsel for a second?

Q Sure.

[Discussion off the record.]

Ms. Moyer. Sorry.

Mr. Baker. Sure. Do that as many times as you need.

Ms. Moyer. That's what I've been told. Well, I still want to get out of here so I'll use it judiciously.

Mr. Pittard. I think Ms. Moyer's testimony would be that absent discussions that she had with counsel in advance of this, she has no memory of that sort of thing. And you can hear the implication there, that there may have been a discussion with counsel about a meeting like that, but absent that discussion, she doesn't have -- she doesn't remember, she doesn't have an independent memory of that meeting that you're describing or a meeting like the one you're describing.

Mr. Baker. Okay. Would this jog your memory -- do you recall anything like this: So angry about this. I bust my ass

trying to do anything and everything around here, and come to find out they're having secret meetings behind my back on the one case that I'm involved in.

Is that you or someone else?

Mr. Pittard. And, again, excluding any discussions you've had with us. So, yeah, you can answer in that way.

Ms. Moyer. I don't specifically recall that.

Mr. Somers. Okay. That quote or having that feeling?

Ms. Moyer. Well, I have that feeling all the time. I mean, it depends on the cases, so I'm sure that that could have been me, but I don't specifically recall that incident.

Mr. Baker. But are there secret meetings that you're not in all the time?

Mr. Pittard. If you know.

Ms. Moyer. No, I don't -- I would not know if there were secret meetings, but I'm trying to answer. If that is a quote from a document that I wrote, that's probably a bit hyperbolic.

Mr. Baker. Okay.

Ms. Moyer. I would use that to sort of to vent as opposed to more, you know, a more accurate description of what was happening.

Mr. Baker. Okay.

BY MR. BREITENBACH:

Q So let me just -- Mr. Baker just read just a portion of that quote, but let me just go through it just to see if this jogs your memory any further.

Quote, "All these, quote, 'secret meetings' that Trish and Jim are having re, regarding, MYE and, redacted, include George Toscas. I get that TBA might want to brainstorm with Stu on these issues" -- in parenthesis -- "although I don't really see how it's in his lane. But why is George included and not our own people, especially when, if the reporting is true, there is a real conflict of interest?"

And then it goes on to repeat what Mr. Baker just said: "So angry about this. I bust my ass trying to do anything and everything around here, and come to find out they're having secret meetings behind my back on the one case that I'm involved in."

A Is that the full extent of the document? Do you have the document.

Q We do not have the document.

Do we?

A Thank you.

Q This is an email.

Mr. Sinton. Okay.

BY MR. BREITENBACH:

Q We see that in the email there are OGC, Office of the General Counsel, attorneys that are exchanging this email, but they're all redacted.

A Uh-huh.

Q And the title of the person who is sending it is assistant general counsel, national security law branch.

Do you recognize this email?

A So I don't recognize the email. I don't remember the email. It looks like it could have been written by me. That sounds like me. And I will say I remember the issue, because I do remember Trisha wanting to talk to Stu about a particular issue, so I know what that's referring to.

Q Do you know who might the other OGC attorney be that is on this email?

A I -- it could be a number of people. And the two people I'm thinking of are both non-SES.

Q Could it be Kevin Klinesmith?

A The two people I'm thinking are both non-SES, so I can't say.

Q And he is non-SES? Mr. Klinesmith, that is?

A Yes.

Q So it could be Mr. Klinesmith that you are discussing?

A Like I said, I don't remember --

Q If it is you?

A -- who I talked to about it or who it is.

Q Do you have any recollection what the secret meetings could be about?

A Like I said, I remember the issue that Trisha was talking to Stu Evans about.

BY MR. SOMERS:

Q What was that issue?

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A It was a classified issue.

Q Was it related to Midyear Exam?

A Tangentially.

Q But it wasn't related to Russia? Or was it related to Russia?

A I'm sorry, what do you mean by related to Russia?

Q The FBI's investigation into possible Russian collusion in the 2016 election.

A It is not related to that.

BY MR. BREITENBACH:

Q So I think what we're trying to understand is the feeling of exclusion in going to secret meetings. One, whether that is a feeling that you were having concerning so-called secret meetings, and then, secondly, what those secret meetings are about.

So I think, firsthand, do you recall feeling excluded from particular meetings where Trisha Anderson was attending?

A So this email jogs my memory. First of all, the secret is in quotes, so that, again, was me being hyperbolic. If it -- I do think it's me, but I can't tell because the name's redacted.

Q Although, you did just indicate that the meetings may have been concerning classified information?

A Right, but it wasn't -- when I put "secret" in quotes like that, if -- like I said, I think this is me so I'm going to answer the questions as if it is me.

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Q Okay.

Mr. Pittard. Why don't -- if I could suggest, why don't we focus on the substance of what's in the email and what you know or don't know about it, since the email itself, you think it might be you but you're not certain, but probably what actually matters to you is the substance of what they're discussing rather than --

Mr. Breitenbach. Well, actually, going back to the prior question, just the feeling -- whether Ms. Moyer feels as if she had been excluded from particular meetings.

Ms. Moyer. So at the time -- there were times when I would be frustrated with my supervisors, and I don't remember feeling excluded from this particular issue, but this -- if this email was written by me, that makes sense.

I'm struggling because I don't really know what you're trying to -- what your concerns are.

BY MR. BREITENBACH:

Q Well, do you have any particular reason to believe you were being excluded for a particular reason?

A Oh, no. I think that they -- that this issue was being handled by Trisha and Jim, and so they believed that they were handling the issue. I don't think I was specifically excluded because of, you know, because of my role or because of my opinions on anything.

Q Have you read the classified annex to the IG report?

A I have.

Q Are these meetings potentially concerning that classified annex or issues that are included in the classified annex?

Mr. Wellons. May we confer with the witness very briefly?

Mr. Breitenbach. Sure.

Mr. Wellons. I sense a concern here about going into classified information with that info. So it would be helpful if we can confer very quickly.

Mr. Castor. Before we do that, though, there -- I mean, I think we need to find out if these redactions -- if Ms. Moyer is one of these redactions. It's a little ridiculous to talk about an email that she may or may not have written. And all we need to do is find out what's under the redactions. I mean, we have six lawyers here today.

Mr. Wellons. We can take that back up. I believe Ms. Moyer has already testified that she doesn't know, but I understand you're asking us if we can go back --

Mr. Castor. If you can go back and see what's under the redactions.

Ms. Bessee. To see whether it's Ms. Moyer's?

Mr. Castor. Yes.

Mr. Breitenbach. Let me help with that. So how many assistant general counsels were working on this case?

Mr. Pittard. By "this case," you mean the Midyear case?

Mr. Breitenbach. Correct.

Ms. Moyer. Two.

Mr. Breitenbach. And one was you?

Ms. Moyer. Yes.

Mr. Breitenbach. And who was the other?

Ms. Moyer. Like I said, an assistant general counsel wouldn't be SES, but there were -- my understanding of this email is that there may have been -- this is relating to more than one case. So there could have been other people or I could have sent it to someone that wasn't working on the case.

Mr. Breitenbach. Okay. If you needed to confer on the prior question, feel free.

Mr. Pittard. And to be clear, what is the -- what's the question? I know the issue is that this implicates some sort of classified information, but what's the question?

Mr. Breitenbach. That's exactly right. So the question is, first, whether you had read the classified annex to the IG report, and I believe you answered in the affirmative.

Ms. Moyer. Correct.

Mr. Breitenbach. Secondly, are these so-called secret meetings referring to the classified annex of the IG report?

[Discussion off the record.]

Mr. Breitenbach. Thank you.

Ms. Moyer. Yes, I believe it's related to the classified annex.

Mr. Breitenbach. Okay. And can you go into what you might

recall meaning when you say, "especially when, if the reporting is true, there is a real conflict of interest"? What might that conflict of interest be?

Ms. Moyer. I think that gets into details from the classified annex.

Mr. Breitenbach. So it would be classified information if you answered?

Ms. Moyer. I don't think I can answer in this setting.

Mr. Somers. Was the meeting regarding -- or, I don't know, what you're talking about with regard to the classified annex, did it have to deal with whether -- I have not seen the classified annex. I have seen the IG report where it discusses the classified annex. It discusses in there that there was a discussion about whether the material that is now contained in the classified annex should be searched or not. Is that what this meeting was about that you were excluded from, to your understanding?

Ms. Moyer. Let me think about this. I'm trying to think of an answer that won't lead to classified information.

I don't think that this was about searching that material. I think it was more about how to handle material that they had seen.

Mr. Somers. Who's they?

Ms. Moyer. That we had -- I'm sorry, material that had been discovered during the course of the investigation.

BY MR. BREITENBACH:

Q One more question I have on this. So it starts off, the email starts off with "all the secret meetings that Trisha and Jim are having." So that indicates there are more than one, that there are many secret meetings or meetings where just the two potentially are meeting. But you testified earlier that you felt that, at least in your opinion, that all the potential issues had been settled in your mind concerning the potential of charging Secretary Clinton.

Is it possible that, if you are excluded from multiple meetings, that there are particular individuals who are on the investigative team or those attorneys who are working this case might not have had all of the details or the facts concerning Secretary Clinton's use of classified email in any way?

A I think that might be reading too much into this email.

Q Well, I think what I'm asking is there are the two primary principals within the general counsel's office who are working on this case. And if the two primary people working -- or two primary principals who are working on this case are having multiple meetings excluding the line attorney, as you called yourself, then how can you -- is it reasonable to suggest that you could be cut out from particular decisions made on this case?

A Well, first, when I say all these secret meetings, I think -- I mean, that seems to imply to you that there are a lot of secret meetings, that, I think is just a phrase, a term of art. I don't recall there being a number of secret -- and again, secret

in quotes -- meetings.

Secondly, I know what the topic of this was, and so I -- we had discussed it. They were having meetings at a higher level. I was just a line attorney on the case. They were meeting with George Toscas and others at a higher level, so it did not raise concerns for me, other than my frustration of wanting to be included.

So that's what this is. That's what this email is about, if it was me, which I think it is.

Q And again, why do you think you were excluded?

A Because they were discussing more sensitive issues with higher level officials at DOJ.

Q And who were those higher level officials?

A Stu and George.

Q Anyone else?

A I don't know.

Q And Stu referring to whom?

A Stu Evans.

Q And George Toscas?

A Correct.

Q You don't know whether there were any other higher level officials who were in meetings concerning this issue?

A I know that they met with other officials. I just don't know if that's what I'm referring to in this particular email, that they met with David Margolis.

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Q Okay. And anyone else?

A That's the only people I know about.

Q Okay.

BY MR. BAKER:

Q You indicated earlier that there's an acting section chief?

A Yes.

Q Were they involved in these meetings that were higher than you?

A No. And at one point, our actual section chief, she was on detail to another agency, and at one point, probably before this timeframe, she had come back.

Q So that would be an SES person?

A Yes.

Q So that would be a name you could name?

A Sure. Karen Davis Miller.

Q Okay. So she came back --

A Yes.

Q -- to be the section chief?

A Yes. But because she had not been involved in the case, we -- I just basically worked with Trisha and Jim on the case. Karen wasn't involved.

Q And then the acting section chief went back to being a unit chief? Or where did they go?

A Yeah. It's a little more complicated than that, but

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essentially, yes.

Mr. Somers. Was the acting section chief, was that person involved in the MYE investigation?

Ms. Moyer. Not really. Like I said, I worked very closely with Trisha and Jim.

Mr. Somers. So while you didn't officially directly report to Trisha Anderson for purposes of MYE, you basically reported to Trisha Anderson. Is that correct?

Ms. Moyer. That's how I'd look at it, yeah.

BY MR. BAKER:

Q So you can't name the acting section chief --

A Right.

Q -- because the real rank would be lower than the SES?

A Yes.

Q Are they in the room currently today?

Mr. Wellons. We would instruct the witness not to answer a question like that yes or no because it's clearly intended to get at the identity of a non-SES person.

Ms. Moyer. Okay.

BY MR. BAKER:

Q Okay. Staying on the theme of exclusion, do you -- have you had occasion, during your tenure at the FBI, to work with an attorney named Lisa Page?

A Yes.

Q What was Lisa Page's role in relationship to Midyear

Exam, in relation to Midyear Exam?

A So Lisa was not involved in Midyear Exam initially. When Andrew McCabe was named deputy director, she began working for him as a special counsel to him. And so she would be involved at that level in meetings in which he would be involved.

Q Were you aware of any issues with Ms. Page's role as an assistant to Mr. McCabe in getting information from Midyear meetings or Midyear employees, and then taking that to Mr. McCabe who occupied, as you know, the position of deputy director, but bypassing other people in the chain of command, like the assistant director, the executive assistant director? Have you heard any complaints about that?

A Not specifically about Midyear. And I had no complaints. I had no knowledge of that.

Q Okay. Did you hear complaints about that in other cases?

A I had heard that there was other executives that were frustrated with Ms. Page's role.

Q For the same reasons that there was information being passed to a higher level that was bypassing them or for what other reasons?

A I'm not exactly sure. I just don't think they appreciated her having, having a role or expressing opinions in meetings.

Q Was Mr. McCabe aware of this frustration?

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A I wouldn't know.

Q Were you aware of any discussions or concerns about what Ms. Page's title would be working for Mr. McCabe?

A No.

Q Special counsel versus special assistant?

A No, although there was a running joke about special assistant so -- but not related to Ms. Page, specifically.

Q So what is the running joke? Is a special assistant not desired or is a special --

A Oh, no, I think it's a good job, but if you shortened the title it --

Q Oh.

A Yeah. So I don't know that people wanted to be called special assistants after --

Q Okay. That's the running joke. Is that the only reason they wouldn't have to have the title?

A Oh, yeah.

Q It's my understanding that there was some more prestige was attached for some reason to the title of "special counsel" versus "special assistant," that it might mean more in the outside world, outside of government?

A Oh, I don't know. I have no idea.

Q Okay. What -- in your role as a line attorney, you didn't answer to Lisa Page and you didn't supervise Lisa Page?

A I did not -- in this case, I did not answer to Lisa. I

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did supervise her for a short period prior as acting unit chief.

Q Prior to this case?

A No, prior to her becoming the deputy director's special counsel.

Q Okay. So was it during this case for a short time?

A Yeah, I think it was.

Q Okay. So she had some knowledge of Midyear prior to going to --

A She wasn't assigned to the case.

Q Okay.

A She was working a different --

Q Other matters but you were her supervisor --

A But I was her supervisor --

Q -- in your counterintelligence unit?

A Yeah, as acting unit chief.

Q So she had some counterintelligence experience --

A Yes.

Q -- prior to going to Mr. McCabe's office?

A Yes.

Q Okay. What was your nonofficial relationship with Lisa Page? Were you friends, social acquaintances?

BY MR. BREITENBACH:

Q I'm sorry, just to interrupt. During the time that you were supervising her, you said she was not involved in the MYE case, was she at all involved in any case related to Russia?

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A Again, can you -- Russia generally, or --

Q Russia generally.

A She worked on counter-proliferation matters so that covers the whole world.

Q So you're not aware whether she was involved at all in any efforts, any case investigating efforts by Russia to influence the 2016 election prior -- during the time that you were supervising her?

A She would not have been involved in any case like that during the time I was her supervisor.

Q Okay thank you.

BY MR. BAKER:

Q What was your nonwork-related relationship with Lisa Page?

A We're friends.

Q And when you say "friends," you socialize outside of work?

A Yes.

Q How long have you been friends with Lisa Page?

A Probably from the time she started working in NSLB.

Q And that was when, or approximately? Years, months, many years?

A A few years, I think, maybe 2014, 2015.

Q Was she in the Bureau before you were or she came after?

A She came after.

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Q Okay. So she's there somewhere lesser than 13 years?

A Yes, definitely.

Q Okay. Were you ever concerned about activities of Ms. Page that were not work related?

A No.

Q Were you aware she was having an affair with Peter Strzok?

A No.

Q You did not bring the affair to the attention of anyone?

A No, unaware of it.

Q So you learned about it when the public learned about it through the texts and the publication of certain texts?

A I learned about it when the, I believe The Washington Post had an article.

Q Okay. In your -- I know you're not the espionage unit, or you don't work in the espionage unit. Did you say you did work in the espionage unit at one time?

A I have never investigated espionage cases. I'm not an agent. So I, but I have been counsel to the counter-espionage section, yes, which investigates the espionage cases.

Q Is there concern in espionage matters, or is an indication or a vulnerability to commit espionage, is having an extramarital affair something that you're familiar with in your knowledge of espionage matters?

A That's one of many factors that can be used to try to

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recruit a subject.

Q But it is a factor for recruitment?

A It can be, yeah.

Q So it is a potential weakness?

A Sure.

Q A potential vulnerability?

A More specifically, the secretive nature of it.

Q So if it were open and notorious, it might not be as much of a vulnerability?

A That's my understanding. But like I said, I've never investigated, myself, investigated espionage cases.

Q But it sounds like from what you said moments ago, the relationship between Ms. Page and Mr. Strzok was not notorious?

A I was unaware of it.

Q And you were close friends with Lisa Page?

A I was friends with her, yeah.

Q So it's probably something you would have known about if it were out in the open?

A Oh, probably.

Q Are you aware of anybody, not Lisa Page, making you aware of it? You didn't know anything about it until The Washington Post story?

A Correct.

BY MR. BREITENBACH:

Q Switching gears slightly. Were you ever aware whether

there were any meetings with the Obama White House during the pendency of the MYE investigation?

A I was unaware of any meetings like that.

Q So did you ever attend any meetings at the White House concerning any cases that you've ever been involved in?

A That's a big question. I have attended meetings at the White House.

Q Concerning particular cases?

A Not the White House.

Q Sure.

A The executives, the executives.

Yeah, possibly concerning specific cases, but in order to do that, there is a policy in which we coordinate with the Department of Justice before meeting with the White House about a particular case that could involve criminal charges.

Q Okay. Can you explain some of that policy?

A That's basically it. There is a policy that if we are talking to the White House about strictly national security issues, we don't need to go to DOJ, although we often will. We, the FBI. But if the FBI intends to talk to the White House about a case in which, I think it says something about charges are, like, being considered or actively investigated, criminal charges, then we, the FBI goes to, and makes sure the Department of Justice, that the DAG's office is informed.

Q So as the line attorney, would have you been aware

whether there were any meetings at the White House concerning the MYE investigation?

A I think I would have been aware, but I wouldn't necessarily -- I wouldn't have had to check off on something like that.

Q Are you aware whether there was any interest expressed by anyone in the White House during this period in the FBI's investigation?

A I'm unaware of it.

BY MR. SOMERS:

Q I think you said earlier you've been involved in the investigative side of espionage cases?

A Yes.

Q 793(e)?

A It's 793 generally.

Q Well, I'm asking you specifically.

A Specifically 793(e)? Yes, although I always get that confused with 793(f).

Q I think there is some confusion in our minds between 793(e) and 793(f).

A I'm sorry, I get it confused with 793(d). I misspoke. 793(f) is the gross negligence provision.

Q 793(f) is the gross negligence. 793(e) --

A I always get 793(d) and (e) confused. Those are the charges that are most likely to be used.

Q Have you ever been involved in an investigation involving 793(f)?

A No.

Q Outside of Midyear Exam?

A Let me clarify. I have not been involved in which we've charged -- we, the Department of Justice -- have charged 793(f).

Q I guess what I'm asking is have you been involved, because you're on the investigative side of it where, at least during the investigative stages of a case, 793(f) -- I'm asking this question excluding Midyear Exam -- where 793(f) was considered in the investigative stages of a case?

A We have raised it maybe once. The FBI has raised it maybe once that I remember in my experience.

Q Outside of Midyear?

A Outside of Midyear.

Q And what was the reaction from the Department of Justice? I assume when you say you raised it, meaning you raised with the Department of Justice?

A Correct. And they were not inclined to charge that particular provision because they were, I was told there were constitutional concerns.

Q Okay. And that instance was prior to Midyear Exam or after?

A Prior.

Q Okay. And 793(f) was raised in the Midyear Exam

investigation?

A I don't remember discussing it specifically. Let me clarify that. We definitely discussed 793(f) at the end of the case. I don't remember talking to the prosecutors during the case, during the --you know, prior to the May/June timeframe about 793(f).

Q So when you say the end of the case, you mean May, June?

A Timeframe.

Q So why was it raised at that point in time?

A Because we were, at that point in time, considering what potential charges --if there was anything that we had not considered.

Q So what was under consideration prior to the May/June timeframe?

A Like I said, I get confused between 793(d) and(e).

Q So one of those, not 793(f)?

A I think, and I apologize if I'm making things confusing. Because we don't talk about it as, like as specific charges. We talk about what we found and whether -- so it's not like we had a discussion about each section of the statute, we just talk generally about prosecuting and discussed sort of what the facts were.

Q And what's your understanding of what is required under 793(f) in terms of knowledge, mens rea?

A So I know that the statute says gross negligence. My

understanding is that the legislative history and the case law would make it closer to an intent of willfulness.

Q You understand that how?

A Based on my review of the legislative history and some of the few cases that were published on --

Q Have you talked to the Department about what is required?

A Not specifically. Like I said, I had talked to them previously about a different case on 793(f).

Q Was it your understanding that the Department wouldn't allow 793(f) to be prosecuted in the Hillary Clinton matter? Or charged, I should say?

A So the Department makes final charging decisions, and it's been my experience that they don't charge 793(f).

Q I'd like to show you a document here, ask you to -- it's a multiple pages -- this is the page we're concerned with here.

I guess my question is have you seen this chart before?

A Yes.

Q And then obviously, I've been asking about 793(f) so that's the block on the chart that I care about and it's just the last bullet.

Mr. Pittard. Zack, can you give us a minute to look at it?

Mr. Somers. I'm just trying to tell her where to look. I'm not asking the question right now. I'm just looking at the note in the middle.

Mr. Pittard. Is the chart -- it is an attachment to one of these emails. Oh, it's an attachment to the top email on the string?

[Discussion off the record.]

Ms. Moyer. Okay.

BY MR. SOMERS:

Q So looking at the bullet point there that says "note, DOJ not willing to charge this, this being 793(f)." Is that your understanding of DOJ's position?

A Yeah.

Q Generally or specifically with regard to this case?

A Generally.

Q Generally. I guess I'll --

A I don't recall any specific conversations with this case with them.

BY MR. BAKER:

Q Real quickly going back just a second.

If we were told by an FBI employee that you affirmatively reported the Lisa Page/Peter Strzok affair to supervisors, how would you assess the validity of that information?

A That's not true.

Q Thank you.

[11:19 a.m.]

Mr. Morgan. And it is 11:19, and we are back on the record.

EXAMINATION

BY MR. MORGAN:

Q Just as an opening matter, Ms. Moyer, I just want to say, you know, we're going to cover some of the same ground that we did in the previous round and just we'd ask for your patience. Some of the questions might seem a little redundant, but we're just trying to make certain that the transcript is as complete and accurate as possible.

A Okay.

Q But before we kind of touch on some of these issues, I wanted to start with some questions raised by our colleagues in the previous round related to this April 8, 2016, email about these, quote, unquote, "secret meetings." So, again -- and I think you pointed this out several times previously, but secret is in scare quotes in this email, correct?

A Correct.

Q And you said previously that you were being a little hyperbolic; is that correct?

A I did say that.

Q Yes. Do you feel that Ms. Anderson and Mr. Baker were trying to hide something improper from you when you --

A No. At the end of the day, I -- this is something that

they were handling as the executives, the senior attorneys on the matter.

Q And I just want to be clear about something, you are not at the SES level, senior executive service level, correct?

A That is correct.

Q But they are; is that correct?

A Yes, that's correct.

Q And you're a unit chief, but you also reported to -- report to a section chief, I believe you said, correct?

A Oh, yes, and the deputy general counsel and the general counsel.

Q Right. So would it be fair to say then that this was a meeting between your boss' boss and your boss' boss' boss, or to word it another way, that this was a very high-level meeting, correct?

A Yes.

Q And would you say that you were express -- and sorry, this email, the recipient is redacted, but this person would be below the SES level too, correct?

A I would expect so because of the redactions.

Q Okay. And would you -- would it be fair to say that you would characterize that this is an email between you and a work colleague or a --

A Oh, yeah.

Q Right. And a -- kind of a -- I'm sorry.

A Again, if I wrote this -- I'm pretty sure I wrote it, but I can't tell for certain, but, yes, if I wrote this, it was an email between me and a colleague where I'm venting.

Q Okay. Correct. So would it then be fair to kind of characterize this as kind of any kind of similar workplace email where two colleagues are kind of venting the fact that the higher-ups are kind of excluding you, and -- not because of any improper reasons, as you said previously, but because of just -- I think you said previously -- expressing some frustrations that, you know, you're not being perhaps recognized for your hard work by being included in some of these?

A Right. Correct.

Q So you don't believe that they were trying to exclude you for any nefarious purpose or --

A Oh, no.

Q Right. This was just more of a workplace, petty workplace grievance? Would that be fair to kind of characterize it as that or --

Mr. Pittard. I would object to the reference to petty.

Ms. Moyer. Yeah. I would say --

BY MR. MORGAN:

Q A minor workplace grievance?

A It was me venting my frustrations, which -- again, if I wrote this, which is not uncommon.

Q Right. Oh, go right ahead.

BY MS. SHEN:

Q Yes, I'll disassociate myself with the word "petty" specifically.

Mr. Morgan. Pardon me.

BY MS. SHEN:

Q But just so I understand correctly, and kind of to recap, you know, this was a meeting you felt excluded from, and you felt some frustration, but it wasn't due to any substantive improper reasons. Is that correct?

A Not -- no, I don't believe so.

Q Okay. And so you never suspected Jim Baker or Trisha Anderson as being part of something that was politically biased or inappropriate? Like that wasn't the reason why you made these comments, if you, in fact, had made these comments?

A No, not -- I never suspected that.

Q Okay. And as my colleague was describing before, you know, I know that I've -- you know, I personally have perhaps made very similar comments about certain colleagues having, you know, quote/unquote, "secret meetings" without me, you know, people have meetings and sometimes include some people and not include others. So would it be fair to say that these are the comments that are -- might be pretty typical in any workplace by any number of types of colleagues?

A I don't know about typical in other workplaces, but this is not surprising to me about -- if I made these comments on this

case or I may have made comments -- similar comments on other cases. It's typical for me to complain about that sort of thing.

Q Okay. And so there's no reason to believe that these comments are an indication of some kind of problem that should bring into doubt the legitimacy of the investigation?

A Right.

Q Okay. Thank you.

BY MR. MORGAN:

Q So just kind of turning back to kind of some general questions about the Midyear Exam investigation, what kind of decision-making authority did you hold regarding investigative decisions in Midyear Exam?

A I don't make investigative decisions at the FBI. I'm a counsel. I'm an attorney. So I would advise the investigators, and sometimes the executives about what our policies and procedures are, what the law is. You know, it's an advisory role, not a decision-making role.

Q Okay. So would you say it'd be fair to say that you held no authority to make investigative decisions like how to acquire evidence or what order in which to interview subjects?

A Correct.

Q What decision-making authority did you have for legal decisions in the Midyear Exam case?

A That would depend on what the questions were. You know, I made -- the prosecution decisions, and like I explained earlier,

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like whether to get subpoenas and search warrants, those are more criminal process issues. That's -- the final decision-makers on that are at the Department of Justice.

Q So you've just played more -- as you said, you played more just an advisory role regarding even searching whether or not to obtain process or obtain compulsory process or --

A Correct. I would advise the agents about what to ask for maybe, or how best to present the facts to the DOJ attorneys.

Q Can you describe the process by which the Midyear team narrowed down the range of relevant statutes in the Midyear case?

A So there was no particular process. This is more of a -- like there's no like way that we just sit down and look at all the statutes together as a team. It is -- as we collect evidence about the case, we talk about -- as the investigators collect evidence about the case, there are discussions about, you know, what this might help prove related to different elements of different charges. But this idea that there was a meeting that we discussed particular charges, either internally with the investigative team, or with the Department of Justice, it's not like that formalized.

Q Okay. So you would say it's more of an organic process informed by the experience of Justice Department prosecutors familiar with handling classified information cases, or discussion with them kind of -- from what you describe, it's not formal. It's more just informal, organic --

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A It's --

Q -- running discussion?

A Yeah. There's not a specific day where we sit down and look at all the elements and discuss whether or not the evidence meets that statute.

Q Would you say, though, that that process though was informed by independent legal research conducted by FBI lawyers like yourself?

A I don't recall -- well, yeah. Yes.

Q At any point, did any improper consideration, such as political bias, enter the discussion on what statute to apply?

A Not in -- I was not aware of any discussion like that.

Q Did any political appointee -- to your knowledge, I should say, did any political appointee at DOJ direct your team to use, or not use a particular statute in this matter against the prevailing opinion of the Midyear team?

A I was unaware of anything like that.

Q What was your professional relationship like with Lisa Page? I think you touched on this previously, but --

A My professional?

Q Yes.

A So for a short time, she was an attorney in my unit when I was acting unit chief. And then when she worked with the Deputy Director, I would interact with her regularly about this case and possibly other counterintelligence matters.

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Q Okay. So in your time working together with her, both on Midyear and then previously when you supervised her, did you ever witness Lisa Page taking any official actions based on improper motivations, including political bias?

A No.

Q What was your professional relationship like with Peter Strzok?

A We had worked on numerous cases together over the course of my 13 years there.

Q Okay. So in your time working together, both before and during the Midyear Exam, did you ever witness Peter Strzok taking any official actions based on improper motivations, including political bias?

A No.

Q What was your professional relationship like with Jim Baker?

A He was the general counsel, so he was my supervisor's supervisor's supervisor, I think you put it.

Q Okay. But in your time working with him -- I know you are involved in various -- did you ever witness Mr. Baker taking any official actions based on improper motivations, including political bias?

A No.

Q What was your professional relationship like with Andrew McCabe?

A I don't know how to -- he was the deputy director, so I did not work directly with him, although I was in a number of meetings with him related to this case and some other matters.

Q So based on your experience with him generally, and then including the Midyear Exam, did you ever witness Mr. McCabe taking any official actions based on improper motivations, including political bias?

A No.

Q I believe the answer will be somewhat similar, but what was your professional relationship like with Director Comey?

A The same. He's the Director. I am a unit chief now. I would not normally be working directly with the Director, but I did have a number of meetings with him about this case and other matters.

Q So based on that experience with him, albeit it sounds somewhat limited though, did you ever witness James Comey taking any official actions based on improper motivations, including political bias?

A No.

Q What was your professional relationship like with Trisha Anderson?

A So although she was not my direct supervisor, I worked with her closely on a number of issues.

Q And in your time working together with -- did you ever witness Ms. Anderson taking any official actions based on improper

motivations, including political bias?

A No.

Q In your experience, was there any improper political interference with the Clinton investigation?

A I did not see anything like that.

Q Is it consistent with your experience that the case was investigated, you know, quote/unquote, "by the book"?

A I don't know what to say about by the book. I will say, like I said previously, that this was in line with other cases that I have seen with similar facts in my experience with working with the counterespionage section.

Q In your experience, did any political appointees at DOJ intervene in or attempt to intervene in the Midyear investigation?

A I did not hear anything about that.

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

A Nope. I have no experience with that.

Q Are you aware of any conduct by any member of the Midyear team that had the effect of invalidating the outcome of the investigation?

A I'm not sure what you mean by that.

Q Like did anyone take any -- did anyone take any steps -- pardon me.

Could any one person alter the outcome of the investigation

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in any way, or were they in a position to be able to do so?

A I wouldn't think so. In my experience, we -- like I said before, we had meetings, we discussed issues as the investigative team, as well as the executive team. So I don't think any one person had the authority to make those, or the ability to make decisions without the other folks on the team --

Q At least knowing what was --

A -- or being suspicious of it.

Q All right. In your view, was the Clinton email investigation as thorough -- a thorough and fair investigation?

A Yes.

Q So I want to turn now to questions regarding the FBI's gathering of evidence related to the intent of Secretary Clinton. From our -- I think our understanding from the IG report is that fairly early on in the FBI investigation, I think you all determined that intent would be -- evidence of intent would be key to any possible charges. Would you say that that's fair?

A That's probably fair in most cases where you're thinking about criminal charges.

Q Okay. In most investigations, even before the last witness has been interviewed, do investigators and prosecutors discuss whether there is enough evidence to charge a case?

A Like I said, I don't remember like a specific meeting where we discussed this, but in most -- in my experience in investigations, these are sort of -- or, you know, discussions

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that -- they're iterative. You talk about them as the case is going along.

Q And those discussions would include other things such as where to search for additional evidence, and whether searches for additional evidence have been successful, that type of thing?

A So --

Q That's done before even the last witness is interviewed, correct?

A So it sounds like those are two different questions. So generally, yes, the discussions are, you know, this is what -- what I've been in part of discussions in which we talk about what evidence has been discovered and what additional evidence we might need for particular charges or that -- places we can go to look for that.

The second part of your question, I think, was more about the timing. Is that right?

Q More just whether those searches have been -- for additional evidence, have been successful, that you found what you thought you might be looking for or --

A Sure. That's sometimes discussed.

Q In your experience, when in the lifecycle of a case do those discussions start?

Mr. Pittard. Sorry, can you clarify?

BY MR. MORGAN:

Q Regarding the previous question, in terms of like when

you start to discuss it, whether or not there's enough evidence to charge a case, when in a lifecycle do those questions typically occur?

A It really depends on the case, but it goes on as the case is being investigated.

Q So it's ongoing at various points?

A Yeah. But it -- yeah. But I couldn't say specifically, because it would depend on the facts and circumstances of each case.

Q Even before the last witness has been interviewed in a case, do investigators and prosecutors typically discuss the chances of success for a potential case, not just in terms of obtaining an indictment, but also at trial?

A Sure, yes.

Q Sorry. Just to clarify for the record, kind of why it is I am asking questions in this vein, there have been allegations made that decisions regarding whether to charge Mrs. Clinton was made early in the case before all the evidence was in, or that there were improper motivations.

So what I'm trying to get at is, kind of, you know, typically, when do you have discussions like this in a case just generally as we previously discussed, and then I'm going to kind of go into questions more specific about the Midyear. But that's what we're kind of -- we're trying to get at.

A Okay.

Q There have been allegations that the decision to charge her had been made before all the evidence was obtained, before there were interviews, before she was -- obviously famously -- before she was interviewed. So that's where this line of questioning is headed, just for context and for the record for you.

A Okay.

Q So with that in mind, was Secretary Clinton's knowledge and intent key to the FBI's recommendation not to charge Secretary Clinton?

A I --

Mr. Pittard. To the extent you know.

Ms. Moyer. Yeah. So I did not make the final determination about the recommendation. That was Director Comey.

BY MR. MORGAN:

Q Right.

A I don't know about the term "key." It was certainly a significant factor. There were other factors as well, I think.

Q Okay. But based on your understanding of the case, why was the lack of evidence on intent fatal to the case?

A So based on my experience and my understanding of the facts, the -- there -- most of the charges for -- under 793 require an element of intent.

Q Right. When did you first understand that evidence of Secretary Clinton's intent would be important to the charging

decision?

A I expected that from the very beginning, because, like I said, in my experience, normally the intent is relevant to any criminal charge, and in specifically, to 793.

Q Did the FBI ultimately find sufficient evidence of Secretary Clinton's knowledge and intent to recommend -- sufficient to recommend charging a criminal case against her?

A So ultimately, the Director made a decision not to recommend prosecution. I'm not sure I can clarify whether it was sufficient or not. That was the final decision. So, I mean, I -- the Director ultimately made the decision not to recommend prosecution.

Q Okay. But do you -- but in your experience, do you think they found sufficient evidence? Do you agree with that --

A So I agree with the decision not to recommend prosecution, yes.

Q Is that based on the fact that there wasn't enough evidence regarding intent?

A It was based on that and also my experience in other cases on what would be required.

Q Okay. Did the FBI --

BY MS. SHEN:

Q Sorry, just to clarify one point. So you said it was the Director's decision not to charge Secretary Clinton

ultimately. Is it your understanding that that was based upon the -- you know, the careerist FBI's collectively, you know, not finding sufficient evidence to support, you know, charging Secretary Clinton?

A So I don't know -- you know, I don't know exactly what the Director was thinking. But I do know that the investigative team briefed the Director on what the facts and circumstances that we -- that the team had found. So I expect that that was part of the decision-making process.

Q Okay. So you don't have anything that would contradict the FBI, you know, not finding -- sorry. Let me rephrase.

You aren't aware that the FBI did, in fact, find sufficient evidence to charge Secretary Clinton and then Director Comey somehow overruled that decision?

A No. There -- that's -- that was not what I was implying.

Q Okay. So it would be consistent, with your understanding, that whatever evidence the FBI had and briefed Director Comey, that wouldn't have been sufficient to charge Secretary Clinton?

A That would be my opinion. I don't make the final decisions about prosecuting. That's normally not my role. But that would be my opinion based on what I was told.

Q Okay. Thank you.

BY MR. MORGAN:

Q Continuing, did the FBI investigate this matter as aggressively as it would any other --

A Yes --

Q -- in your experience?

A -- in my experience.

Q When did the Midyear team roughly complete the review of the emails in this case?

A What emails?

Q Just the -- so based on the emails that the FBI reviewed from Secretary Clinton, when was that review complete, the emails that the FBI obtained?

A So the FBI obtained various emails throughout the course of the investigation.

Q Right. When was that -- but when was that review -- that ultimately the review of all that information that they had obtained, when was that roughly completed?

A You mean prior to the July 5 statement?

Ms. Shen. Whether or not it's prior to the July 5 statement, if you can remember. So, you know, the body of evidence of Secretary Clinton's emails, do you recall when the review of all of her emails was completed?

Mr. Pittard. If I could interject, I think maybe some of the confusion is, one of the issues that came up in the investigation was that, as I understand it from public reporting, that the FBI did an investigation, presumably reviewed some emails, came to a

determination on its recommendation to DOJ. Later, some additional emails were located, and I think that might be the --

Ms. Shen. Yes. Thank you for the clarification. So --

BY MR. MORGAN:

Q Yes. Thank you.

We're talking about before Mr. Comey made -- in July, made his recommendation regarding charging, so prior to the July 5 statement.

A So prior to the July 5 statement, I don't know specifically when it was completed. It was within -- like around June.

Q Okay. Did those emails yield any, you know, smoking gun evidence of Secretary Clinton's intent?

A So I don't want to use the word "smoking gun," but I do not believe that the -- I did not see any of those emails that indicated any sort of intent.

Q Okay. Do you know when the Midyear team -- when did the Midyear team interview the individuals who had sent Secretary Clinton classified information or emails? Do you recall?

A That was throughout the course of the investigation.

Mr. Pittard. If I could, I think the question -- could you repeat the question, please?

BY MR. MORGAN:

Q When did the Midyear team interview the individuals who had sent Secretary Clinton classified information in her emails?

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A Yeah. Do you have any -- do you have a specific person?

Q I am just asking just generally.

A Oh.

Q Was it throughout the investigation? Was it --

A The FBI team conducted a number of interviews throughout the investigation.

Q Okay. And did it --

BY MS. HARIHARAN:

Q Were you involved in those interviews?

A I went to one interview.

Q Which one?

A What's his name? Patrick Kennedy.

BY MR. MORGAN:

Q To your knowledge, did those interviews yield any smoke -- I know your -- any smoking gun evidence of Secretary Clinton's evidence of Secretary Clinton's intent or any dispositive evidence regarding her intent?

A Not to my knowledge.

Q To your knowledge, did the investigation ever yield any evidence dispositive of Secretary Clinton's intent at all?

A I'm sorry, could you repeat it?

Q Strike that question. Let's continue on.

A Okay.

Q I'm going to read you a section from the inspector general's report, which states, quote, "Our review found that the

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Midyear team concluded beginning in early 2016 that evidence supporting a prosecution of former Secretary Clinton or her senior aides was likely lacking. This conclusion was based on the fact that the Midyear team had not found evidence that former Secretary Clinton, or her senior aides, knowingly transmitted classified information on unclassified systems because, one, classified information exchanged in unclassified emails was not clearly or properly marked; and two, State Department staff introducing classified information into emails made an effort to, quote, 'talk around it,' end quote.

Is this conclusion consistent with your own experience on the case?

Mr. Pittard. I want to -- I don't mean to be difficult, but do you have a copy of the actual IG report that she could see for context?

Mr. Sinton. And if you could give a page reference, that would be helpful.

Mr. Morgan. Pardon me. That's from page 163 of the IG report.

Mr. Sinton. Thank you.

Ms. Moyer. Okay. Could you repeat the question? Sorry. You don't have to reread the --

BY MR. MORGAN:

Q No, I won't. Is the conclusion you just read in the IG report consistent with your experience on the case?

A So the conclusion about the intent and about the State Department talking around the issues, that I remember and is consistent. I don't remember talking about this as early as early 2016, but -- so I don't remember that part.

Q But --

A But the conclusion about the intent and, you know, why we weren't seeing intent is consistent with my understanding.

Q Okay. And would you agree with the next sentence that occurs in the IG report, which says, "The Midyear team continued its investigation taking the investigative steps and looking for evidence that could change their assessment"?

A Oh, yeah.

Q So you would agree with that statement?

A Yes.

Q Okay. So kind of going back to some of the questions raised in the previous round, I want to discuss some of the issues regarding disagreements over kind of the use of compulsory process versus, say, consent agreements in terms of obtaining evidence.

In the Clinton email investigation, did the investigative team generally advocate for aggressively seeking and compelling evidence?

A Sure, yeah.

Q Did you -- did Peter Strzok and Lisa Page advocate for or against the use of compulsory process?

A So Lisa was not a part of the investigative team and so

I would not put -- she may have been involved in some discussions, but I would not put her in the category of even making any sort of investigative decisions. Pete did argue for compulsory process at times.

Q Okay. Do you know why that -- do you recall why that was, generally speaking?

Mr. Pittard. Is there a -- I mean, if you can answer generally, but maybe it's hard to talk about why he -- it's hard to talk about why he thought anything, period.

BY MR. MORGAN:

Q Let me put it this way: But he -- would you say that Mr. Strzok was aggressive in trying to use compulsory process when he believed it was necessary in order to investigate the case?

A Yes, I believe so.

Q Were there disagreements in when to use or not use compulsory process?

A Disagreements amongst whom?

Q Between members of the Midyear team, between the FBI and the line prosecutors or the Department of Justice?

A I think more so between the FBI and the prosecutors at DOJ.

Q Okay. Generally, did the FBI advocate for the use of -- why did the FBI advocate for the use of compulsory process?

Mr. Pittard. To the extent you know, and if you can --

Mr. Morgan. In your experience on the case.

Mr. Pittard. And it may be useful to talk about particular circumstances, in that conceivably it's different in different circumstances.

Ms. Moyer. Yeah. So that's a tough question, because there were different -- there are different moments that these kinds of questions came up over the course of the case. So generally, I think, as a big picture matter, people argue for process because they believe they will get more information from compulsory process.

BY MR. MORGAN:

Q Okay. So, generally, when there were disagreements between the FBI and DOJ on how to seek evidence, what was DOJ's position? Do you recall? Or were you familiar with their general position based on your --

A It would depend -- I think it sort of depended on -- like I said, there were numerous points throughout this case in which this was a question.

Q So let me ask this question then: Do you think that when there were disagreements, or when there were discussions, were these -- these were based on the facts and discussing investigative strategy, correct, or differing opinions in terms of the appropriate investigative strategy? Would you say that that's correct?

A So when there were disagreements between the FBI's team and the DOJ about compulsory process versus consent, was that

based on a difference in agreement -- or a difference of opinion on investigative strategy? Is that what you're asking?

Q Yes.

A Sort of. I think that the angles were the same for both sides. I just think that the Department had a different opinion about how to get to that point. But so I don't want to say we had a different viewpoint on investigative strategy, because I think we did have an overall investigative strategy that the FBI team and the Department agreed to, but just these decisions throughout.

Q Okay. Do you think that DOJ career prosecutors were making any of these decisions -- I think you mentioned that ultimately decisions rested with them -- based on their personal political views, or based on any other improper considerations?

A I had no indication of that at all.

Q Did any of these discussions or disagreements on how to obtain evidence affect the thoroughness of the investigation?

A I don't believe so.

Q In your experience, did any senior political leaders at DOJ intervene in the decision to seek or not seek compulsory process?

A I was not involved in any discussions that would indicate that.

Q Okay. So in your experience, Loretta Lynch didn't seek to intervene regarding these discussions, in your experience?

A Not to my knowledge.

Q What about Sally Yates?

A Not to my knowledge.

Q Matt Axelrod?

A Not to my knowledge.

Q John Carlin?

A Not to my knowledge.

Q In your experience, is it common to have disagreements between FBI agents and DOJ prosecutors working on a case?

A Yes.

Q Is it common for the FBI to want to move more quickly or aggressively and for the Department to ask for more evidence or to take a more cautious approach?

A Yeah.

Q Based on your answers in this section, is it fair to say that you believe the FBI was aggressive in suggesting the Clinton email investigation make use of compulsory process?

A Yeah. That's not something I would have -- I would not have characterized it that way. I'm not sure I would have asked that question, but yes.

Q Okay.

BY MS. SHEN:

Q So just so I'm clear, because I know that some of the back and forth might have been a little bit confusing, you know, there have been a series of allegations that I've heard, certainly in person, that, you know, certain members of the FBI

investigative team, or perhaps the DOJ investigative team, you know, might have, you know, not been as aggressively investigating Secretary Clinton for improper reasons or political bias, essentially going easy on her, right.

And so I guess I'll just ask the blanket question: Do you have any reason to believe that any member of the MYE investigative team chose not to aggressively pursue Secretary Clinton's case based on improper political considerations?

A Are you asking about the investigative team or the prosecution team?

Q Both.

A The answer to both is no.

Q Okay. Thank you.

BY MR. MORGAN:

Q So now I want to turn to questions regarding the editing and drafting of Director Comey's July 5 statement.

A Okay.

Q There have been many allegations regarding the July 5, 2016 statement Director Comey drafted on the Clinton investigation recommending not to prosecute Secretary Clinton, so I just want to walk through in detail kind of what happened.

Do you know who drafted the statement initially?

A It's my understanding Director Comey drafted it.

Q And who held the authority to approve the final language of the July 5, 2016 statement?

A Director Comey gave the statement, so he would have been the ultimate approval.

Q Did Peter Strzok or Lisa Page have the authority to approve the final language of the July 5, 2016, statement recommending not to prosecute Secretary Clinton?

A Not that I'm aware of.

Q Did you ever make edits or suggestions to the statement with the purpose of helping Secretary Clinton or damaging the Trump campaign?

A No.

Q To your knowledge, did anyone else?

A No.

Mr. Somers. Can the witness give a verbal response? There hasn't been one, at least not that I can hear.

Ms. Moyer. Oh, I was, and the answer was no.

Mr. Pittard. It's on.

Ms. Moyer. Oh, yeah, it's on.

BY MR. MORGAN:

Q Were members of the Midyear exam FBI team free to express their concerns throughout the drafting process? Did they feel free to be able to express any opinions or concerns regarding the statement?

Mr. Pittard. To the extent you know.

Ms. Moyer. So the investigative team did not review the statement. So the case agents and analysts did not review the

statement, but -- so they did not have that opportunity. Some executives, I believe, reviewed the statement.

BY MR. MORGAN:

Q Okay. Including -- and you reviewed the statement as well, correct?

A I did, yes.

Q And did you ever feel like you could not -- you weren't free to express any concerns throughout the drafting process?

A No.

Q Do you recall any member of the team who reviewed the statement expressing significant disagreements about the statement's final wording?

A No.

Q Do you know why was the initial statement drafted before the FBI officially closed the Clinton investigation in July 2016?

A So I don't know why specifically. The Director drafted it himself, so you'd have to ask him. We had had -- been having some discussions about what happens when we come to an end to this investigation.

Q Do you believe that Director Comey acted improperly or prematurely by drafting an initial statement before Secretary Clinton's and others -- other interviews occurred?

A No, I don't.

Q Can you explain why is that?

A I think we may have talked about this before, but as

cases go on, you kind of get a sense of where they're going. And so to be prepared with, you know -- to be prepared if we decided that -- if it was decided there wouldn't be a prosecution, that made sense to me. Of course, the whole time it was, you know, barring any new information that we would have gathered that could have changed the outcome.

Q And to your last statement there then, if the FBI's interviews of Secretary Clinton and others produced new evidence that supported prosecuting Secretary Clinton, would the FBI have ignored that evidence and stuck with the existing draft statement?

A I don't believe so.

Q So in other words, did the initial draft statements in the spring of 2016 lock in the FBI's recommendation not to prosecute regardless of any new evidence?

A No.

Q But the FBI did not actually -- kind of touching back on our previous conversation -- but the FBI did not actually receive new evidence in these interviews that supported prosecuting Secretary Clinton; is that correct?

A At the end of the day we did not find anything that changed the opinion of that statement.

Q I want to talk a little bit more in detail about the editing process. And I'm going to -- I'd like to introduce as exhibit 3, I believe, H. Res. 907, which was introduced by Republican Members of Congress on May 22, 2018, and it requests

that the attorney general appoint a second special counsel to investigate the Department of Justice and the FBI.

[Moyer Exhibit No. 3

Was marked for identification.]

BY MR. MORGAN:

Q So I just want to direct your attention to page 4 and the first clause. And that clause begins, quote, "Whereas Director Comey in the final draft of his statement, allowed FBI Agent Peter Strzok to replace 'grossly negligent,' which is legally punishable under Federal law, with 'extremely careless,' which is not legally punishable under Federal law." The inspector general's report actually makes clear that the change in Director Comey's statement was not Mr. Strzok's doing. It was based on legal discussions by you and other attorneys in your office. Is that also your understanding?

A Yes.

Q So FBI attorneys, not Mr. Strzok, would have made the substantive decision to change "grossly negligent" to "extremely careless." Is that correct?

A We would have made a recommendation. The final decision as to what changes to accept was Director Comey's.

Q Okay. And just to be clear, I know we touched on in the previous round some discussions regarding the statute considered during the case, but did you believe that Secretary Clinton's conduct did not constitute gross negligence under 793(f)(1)?

A There was very little case law under 793(f)(1), and I did not believe that Secretary Clinton's conduct was similar to the very few instances in which I had seen that provision.

Q Again, I believe this was touched on earlier, but is it true that the gross negligence provision is considered by the Justice Department to be potentially unconstitutionally vague?

A So that is what I was told. The Department -- you'd have to ask the Department specifically about what they think of that provision.

Q Have you ever done any independent legal research?

A I have reviewed -- yeah, I've done some legal research on gross negligence.

Q And what was -- and what was the result of that research, would you --

A Like I said, there were very few cases on it.

Q Okay. Can you describe why you and others in the Office of General Counsel believed Director Comey should not use the phrase "grossly negligent," which is a phrase with a separate legal meaning, if he was using it in a colloquial sense, you know, not as a legal term of art?

Mr. Pittard. I think you can speak to what you thought. I'm not sure you can speak to what anybody else thought.

Ms. Moyer. Right. So I -- my understanding was that the Director was using the term "gross negligence" in more of a colloquial way. We had -- there had been discussions where I was

present in which we discussed whether or not the facts supported a prosecution of Secretary Clinton, and my understanding is that the Director was not intending to say that the facts did support a prosecution.

So I think that he used that more -- my understanding was that he did not intend for that to have statutory significance, and that is why I suggested we change that provision, that phrase.

BY MR. MORGAN:

Q Did the edit of replacing "grossly negligent" with "extremely careless" change the FBI's substantive legal conclusions in any way?

A No. It was -- I think the intent, at least my intent, was to make it more clear about what the decision was.

Q Okay. To your recollection, was the edit made because of any inappropriate considerations, including trying to help Hillary Clinton avoid prosecution?

A No. It was made more because I did not believe that the conduct rose to the level of cases that would be prosecuted under that provision.

Q And did anyone else ultimately disagree with the decision to omit the phrase "gross negligence" and instead use "extremely careless"?

Mr. Pittard. To the extent you're aware.

Ms. Moyer. Yeah, I don't know what other individuals thought. The change was accepted eventually.

BY MR. MORGAN:

Q Did you ultimately agree with Director Comey's decision to include criticisms of Secretary Clinton's uncharged conduct in his statement?

A I did not raise any objections at the time. Looking back on it, I -- I'm not sure I agreed with the -- I think it caused more confusion than it needed to.

Q The IG report concluded -- and this is on page 238 of the IG report. So I'm going to go ahead and read this paragraph into the record, quote, "We found no evidence that Comey's public statements announcing the FBI's decision to close the investigation was a result of bias or an effort to influence the election. Instead, the documentary and testimonial evidence reviewed by the OIG reflected that Comey's decision was a result of his consideration of the evidence that the FBI had collected during the course of the investigation, and his understanding of the proof required to pursue prosecution under the relevant statutes."

A Okay.

Q Is this conclusion consistent with your experience during the case?

A Yes.

Q So bias or any effort to influence the election was not part of the FBI's decision-making in any way?

A Correct.

Q Do you have any reason to believe that Director Comey's recommendation against prosecuting Hillary Clinton was influenced by any improper considerations, including political bias?

A No I don't have any reason to believe that.

Q Was your opinion influenced by political bias?

A No.

Q Was your opinion based on the law and the facts?

A Yes.

Mr. Morgan. So I think that concludes our questioning for this round. Thank you very much.

Mr. Pittard. Thank you.

[1:00 p.m.]

BY MR. BAKER:

Q The time now is 1:00, and we're back on the record.

Ms. Moyer, when we went through your chain of command earlier, we discussed briefly that Lisa Page, in addition to being an associate, work -- involving work-related matters, you also had a social relationship with her.

A Yes.

Q What about other members in OGC that you answer to?

Were you in a social relationship with Trisha Anderson?

A I had seen her outside of work but not as often.

Q What about Jim Baker?

A No.

Q Outside of the OGC realm, what about Mr. McCabe?

A Oh, no.

Q Okay. I think we'll go back to some of the Midyear Exam questions shortly, but I want to just jump to one thing that is really more contemporary than some of the other questions that we'll ask.

Were you involved in any meetings where you heard firsthand, or were you involved in any conversations with Ms. Page in a social setting, where you learned that there had been discussions, apparently at the Department of Justice, about the Deputy Attorney General wearing a recorder or a transmitter, some type of -- my terms -- body recorder, to record President Trump?

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A I was not at any meetings that that was discussed, but Lisa Page did mention it to me.

Q And what were the circumstances around her discussing this with you?

A I believe we were commuting home and she brought it up.

Q And what did she bring up?

A I think -- my recollection is that we were kind of discussing some of the -- how difficult some of the questions were surrounding what was going on at the FBI at the time, and she mentioned that it's difficult -- sort of, it's difficult for everyone and kind of explained that as an example.

Q So she had been at a meeting and had heard this firsthand? What was her basis of knowledge?

A Yes, that's my understanding.

Q And what else did she elaborate on?

A I just remember that she said that the -- that it was with the DAG, and that he was concerned, and that he mentioned wearing a wire.

Q She was concerned that he mentioned wearing a wire?

A No, no, that -- that -- I was not at the meeting, so I don't know how it came up.

Q Sure, I understand. I understand.

A She mentioned that he seemed concerned and that he had suggested wearing a wire.

Q He seemed concerned about what? What was your

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understanding of --

A I'm not sure.

Mr. Brebbia. I'm sorry, can I just jump in?

BY MR. BREBBIA:

Q According to Lisa Page, who discussed tape-recording the President?

A So what she told me was that the DAG brought it up.

Q And was she present for the conversation?

A I believe so, but I don't know that I asked specifically.

Q In response to the DAG bringing it up, what actions did Lisa Page take?

A I don't know what she did.

Q Did she -- this is, I understand, all based on discussion with you. In her discussion with you, what did she say to you about the DAG bringing up tape-recording the President?

A Like I said, it was not a discussion where we were talking about steps we would be taking. It was more of a, can you believe the world we're living in now.

Q And may I ask, specifically, did she discuss whether this was a serious request from the -- from the DAG -- the DAG Rosenstein, just to be -- that's what we're talking about, right?

A Oh, yes, I'm talking about Rosenstein.

Q Was this a serious request to tape-record the President from DAG Rosenstein?

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A I don't know. She did not say one way or the other.

Q Did she say what Deputy -- what Director -- was he Director at the time, Director McCabe?

A He was Acting Director, yes.

Q Did she say at the time what Acting Director Andy McCabe said about tape -- about the DAG, Rosenstein, discussing tape-recording the President?

A Not that I remember. Nothing that I remember, I guess. She didn't say anything.

Q So, can I just understand a little bit. Can you flesh out a little bit more the conversation that you had specifically as it pertained to tape-recording the President?

A Like I said, it's -- you know, I don't have -- I can't remember it specifically. It was a while ago. She just said that -- you know, we were talking about atmospheric and about some of the difficult questions we were dealing with, and she said, you know, that even the DAG has -- isn't sure what some of the answers are, and said that he had suggested wearing a wire.

Q Other than this one conversation with Lisa Page, did you discuss, with anyone else, wearing a wire or tape-recording the President --

A Oh, no.

Mr. Pittard. You're talking about before all this became in the press and --

Mr. Brebbia. Yes, yes, yes.

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Yes, at the time, around this time period with Acting McCabe, and Lisa Page still at the FBI, and with DAG Rosenstein, did you discuss with anyone else this idea of tape-recording or wearing a wire to record the President?

Ms. Moyer. No.

Mr. Breitenbach. Although I would be interested if it's come up after the press reports.

Mr. Pittard. And you probably want to exclude from that question conversations with counsel, conversations that would have involved her counsel.

Mr. Breitenbach. I think -- yes. I mean, we're not getting into any attorney/client privileged issues. I think just the idea of recording the President or putting a wire on someone to record the President, has that come up at all in terms of your discussions at the bureau?

Ms. Moyer. No.

BY MR. BREBBIA:

Q I am sorry, one final -- did you do any legal research into the FBI's ability, policies, procedures, any research into tape-recording the President?

A No.

Q Did the topic of the 25th Amendment arise -- arise in any conversations you had with personnel at the FBI?

A So I think I'm -- I heard at one point something about the 25th Amendment, but I don't think it was in relation to this.

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BY MR. SOMERS:

Q And it wasn't -- wasn't brought up during that conversation -- the conversation where wiretapping or recording the President was brought up with Lisa Page, did the 25th Amendment come up during that conversation?

A Not between her and I.

Q Yeah, that's all I have.

BY MR. BREBBIA:

Q Could you tell us what the circumstances were when the 25th Amendment was being discussed?

A So, again, it's a vague recollection. I can't even remember exactly who -- who I talked to about it. But someone said they had heard that there was talk of the 25th Amendment and people being -- like heard that there was talk of the 25th Amendment and that there were votes for it, or something like that.

Q And -- and --

A Like, I said, it's such a vague recollection, I don't -- I don't know who it was, or any more specifics than that.

Mr. Somers. Was it around the time -- probe just a little bit further -- I know you just said you don't remember the specifics -- around the time Director Comey was fired?

Ms. Moyer. I don't think so. I think it was after that.

BY MR. BAKER:

Q When you say there were -- you recall somebody saying

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there were votes for it, did you take that to mean there were Cabinet Members in favor of it, invoking it? Or proceeding with it?

A That's what I took it to mean, but I -- you know, it was -- it was kind of gossip, so it wouldn't have meant anything to me, like I didn't know if it was true or -- or what.

Q And then you said earlier, in response to the issue of a wiretap, that Ms. Page said something that made you think Mr. Rosenstein had concerns, and that's why he was willing to wear the wire? I guess I'm getting at concerns with the President's behavior, not concerns over any other thing.

A I can't say that. I don't -- I did not intend to imply that. I don't know. I think my impression was that Mr. Rosenstein wasn't sure what to do next. Like, wasn't sure -- my impression was, it was, like, a question of the special counsel and what -- what are the next steps. Not concerns about the President specifically or his actions. Again, I can't say.

BY MR. SOMERS:

Q You just said there was gossip -- I think that was your word -- surrounding the 25th. Just to be a little more specific, did that gossip, or however you want to characterize it, did that involve the DAG, or was it just -- not -- not involve. I mean, was he part of that story, hey, the DAG is talking about the 25th Amendment?

A I don't think -- I don't remember that. I don't

remember the DAG being a part of it.

Q But it was -- there was serious discussions at the Department -- I mean, I'm just trying to understand what the gossip was about the 25th Amendment.

A I apologize, I don't really remember the specifics. So it's hard. I just remember hearing someone say they had heard that there were a couple of votes on the Cabinet for, you know, invoking the 25th Amendment.

BY MR. BREITENBACH:

Q You mentioned that this happened during a commute back home with Ms. Page?

A The original conversation relating to the wiretap.

Q Okay, did you end up engaging in conversation when she told you this? Was there any advice that she provided, Ms. Page, when she first told you this --

A No.

Q -- information?

A No.

Q No?

A No.

Q So it just was mentioned and then it dropped?

A Yeah, I think it was just, again, more about sort of gossip, atmospherics, sort of talking about, you know, the significant issues that we're dealing with at the FBI at that time. So it wasn't about taking action. It was just sort of

discussing the atmosphere of what was going on.

Q Did she indicate anybody else might have been in the meeting when she first heard this?

A The Deputy Director would have been there. And I believe at that -- I believe that there were staff members from the DAG's office.

Q Do you recall anyone who might have been there from the DAG's office? Was Tashina Gauhar this meeting?

A I don't know if she was at this meeting.

Q Is that -- is that one of the people that you would consider might have been?

A Yes.

Q Anyone else?

A I believe Scott Schools may have been there.

Q When you say you believe, is this just a recollection of yours, or is --

A Based on a second conversation I had with Lisa.

Q That particular conversation on your commute?

A No, not --

Q This was a subsequent discussion?

A A subsequent discussion about -- when the news hit about this -- this issue --

Q Okay.

A -- she and I had a subsequent discussion about it.

Q Okay. So this is after she has already left the FBI?

A Yes.

Q Can you go into discussing what this subsequent discussion with Ms. Page --

A Sure.

Q -- concerned?

A It was when the news hit about the wiretap and the Department's position and what they were saying happened, and she was indicating she did not believe that they were telling the truth.

Q "They" meaning?

A The Department.

Q The Department?

A Uh-huh. And the source that was quoted in the paper.

Mr. Baker. Telling the truth about it being a joke?

Ms. Moyer. Yes.

Mr. Breitenbach. And who was the source quoted in the paper?

Ms. Moyer. I don't know. She thought it was Scott Schools.

Mr. Baker. But for her to believe it was untrue and a joke, is it fair to say that she took the matter seriously when she first heard it?

Mr. Pittard. To the extent you know.

Ms. Moyer. Yeah, I don't know that -- I don't know what she thought at the time, but she definitely -- yeah, I don't know what she thought.

BY MR. BAKER:

Q But if she thought the public reporting from the Department was a joke and not the truth, and they are saying it was a joke, then would it be fair to believe that her belief was, it was not a joke and it was to be taken seriously?

A That's how I'd interpret that, but you'd have to talk to her.

Q And you carpool with Ms. Page?

A Occasionally she'd give me a ride home.

Q Okay, but not a regular --

A No.

Q Okay.

BY MR. BREITENBACH:

Q Did she give you any impression as to her impressions how Mr. McCabe took the discussion concerning recording the President or the 25th Amendment?

A No.

Q Have you ever been involved in a case where --

A Just to clarify?

Q Sure.

A She did not tell me that -- about the 25th Amendment part, I don't think.

Q Okay, thank you.

A I mean, like I said, I don't remember.

Q Thank you. I think you had said that earlier, so I apologize.

A There were definitely two different conversations. I don't remember who I talked to about the 25th Amendment.

Q Okay. Have you ever been involved in providing legal guidance as -- concerning the body wire recording of a subject?

A Yes.

Q Can you go into a little bit of explaining the legal parameters if the FBI decides to record someone?

A The primary issue is the consensual recording and making sure that there was consent on the part of one of the parties and figuring out whether or not the State that you're recording in is a one- or two-party-consent State. So, because if you have the person wearing the wire, they can consent, and if it's a two-party State, you have to take additional act- -- we used to have to get additional approvals to -- to do the recording.

Q Okay, so barring the fact that the suggestion was that DAG Rosenstein was going to record the President of the United States, in a general circumstance, if you're recording somebody in D.C., are you aware what's required legally?

A I've actually --

Q And secondly -- I am sorry. And secondly, depending on whether D.C. is a one-party or two-party State, would the FBI follow the State or the locality rules concerning recording of the subject?

A So the FBI follows all the laws and rules required. At least I advise them to follow all the rules and the laws required.

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Q Okay. So you would --

A I can't say for certain that they -- yeah. But --

Q You would advise then that when there's a local or State rule concerning one-party or two-party requirements, you would advise that the FBI follow that local rule?

A The policy of the FBI used to be that if there was a two-party-consent State, we would have to get otherwise illegal activity to conduct a one-person -- one-party-consent recording. Subsequently that has been revised by the Department and in our -- in our DIOG -- the -- I don't remember the name of it -- the Domestic --

Mr. Baker. Domestic Investigation Operations Guideline.

Ms. Moyer. -- Investigation Operations Guide. They have changed that rule and we no longer need to get OIA for that circumstance.

BY MR. BREITENBACH:

Q OIA?

A Otherwise illegal activity.

Q Therefore, then --

A Because of the -- because a fed- -- the Federalism. Because we're doing it on the part of a Federal investigation.

Q So then that would indicate you do not follow the State rules as to whether --

A Right.

Q -- it's a one-party or two-party State?

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A But we follow the guidance and guidelines provided by the Department and by our -- our DIOG on that, yes.

Q And so if it is someone that is a source or an undercover for the FBI that is doing the recording, then that person doing the recording equates to the one-party consent --

A Yes.

Q -- that's needed?

A Usually, yeah.

Q Okay, so going back --

A Depends on where the recording is.

Q But I thought you just said that it doesn't depend on where the recording is.

A No, like if the person is wearing the recorder, then, yes, because they would be there for the conversations. Then some of the questions come up about where you can place a recorder.

Q Okay. So if --

A Sorry, I don't mean to make it too complicated.

Q No, no, we're trying to figure out how complicated it is. So if in the scenario that is mentioned by the DAG, that he is wiring -- getting wired to go record the President, would a court order be needed to do so? Or would that fall within a consensual recording because it's a Federal operation?

A So, I did not look into this issue. I don't -- I'm sure there are other -- other things to think about with regard to wearing a recording -- or wearing a wire at the White House and

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the President and all those other issues. I didn't -- I didn't research that.

Q You're familiar with the Wiretap Act?

A Yes. But I -- I'm familiar with it.

Q Are you familiar that oral communications require a court order to obtain a wiretap on someone?

A Yes, barring other exceptions, is my understanding of the act.

Q So if this situation does -- I'm trying to think of the alternative. If this situation that is presented by the DAG's suggestion of going to put a wire on himself to record the President, if it does not fall within the consensual recording idea that we've discussed, then by extension, would it -- would it fall within a court order? Or otherwise known as a wiretap in this case?

A You know, I didn't look -- I didn't look into this issue at all. Maybe there's other exceptions, I don't know.

Q Okay.

BY MR. BAKER:

Q I'm curious to follow-up on some of Mr. Breitenbach's questioning in our attempt to kind of understand this. You had indicated earlier, I think, that in a State or a jurisdiction that would require two-party consent, you no longer had to go through some of the hoops that you had to, because the Department had given some more guidance on that?

A I think so. I know our DIOG changed, and I think it's in relation to Departmental guidance.

Q I'm curious, are you familiar with something called McDade?

A I've heard of McDade, but I couldn't discuss it right now.

Q So does that have anything to do with the original problem? My understanding of McDade is that it required Department attorneys to comply with the laws of the jurisdiction, the State jurisdictions they were in, contrary to any issue of Federalism, and where you might have normally been able to do a one-party consent, if you were -- as a Federal operator, if you were in a State that only allowed two-party consent, you had to follow the two-party-consent rule. That's not necessarily a part of this as far as you know?

A Not -- I don't know.

Q There were hoops for two-party consent and the Department worked them out?

A Right. We changed our DIOG, and our DIOG is approved by the Department.

Q Okay.

A So I expect that -- I was not involved directly in those changes.

Q As a practical matter, if the decision was made by the Deputy Attorney General to either on his own wear a wire, or he

had the blessing of the Department, the FBI, whoever, where would he get such a device? It's my understanding they're not just lying around in a supply closet, that they're very tightly controlled. You have to bring the legal process that authorizes it to the custodian of such devices. If he decided to go off on his own and wear such a thing, or with a very limited number of people knowing about it, where would he, as a practical matter, get the physical hardware?

A I don't know. I would not know how to get one.

Q And yet you deal with, at least on some level, giving legal advice for that investigative technique, where it's properly sought?

A Right.

Q But you wouldn't know where to get one, per se?

A Correct.

Q Okay.

BY MR. BREITENBACH:

Q You're familiar with FISA and the probable cause required to obtain a FISA order?

A Yes.

Q Are you aware that the probable cause to obtain a FISA order is different than the probable cause to obtain a wiretap?

A Yes.

Q And can you explain what you -- your understanding on the probable cause needed to obtain a wiretap?

A I believe that there needs to be probable cause to -- that there's someone committing a crime. And I apologize, I'm usually dealing with FISA and not the Wiretap Act.

Q Sure, I think that's accurate. So if this hypothetical, or potential reality, had eventually occurred where the DAG had recorded the President, then if you were proceeding under a court order, then -- and it's a criminal case, then they would have obtained probable cause that the President was engaged in a crime?

A You know, I don't know. Unless there's another exception. It sounds like -- anyway, I don't want to speculate about this. This is not something I've looked into at all.

Q Fair. So hypothetically, if this were to have proceeded as suggested, would probable cause that the President had engaged in, or about to engage in a crime, been required to obtain a wiretap?

Mr. Pittard. If you know, or if you have a basis to say.

And, you know, I think you're acknowledging there are several levels of sort of hypothetically embedded in your question and -- which makes me terribly nervous.

BY MR. BREITENBACH:

Q Well, let me -- let me make it simpler.

So in order to obtain a wiretap or a recording on someone when you are not proceeding under the consensual requirement, you need probable cause on that subject in order to obtain a wiretap?

A Like I said, that's not my area of expertise, but that

is my understanding of the Wiretap Act.

Q And your understanding is that the probable cause would be that someone has engaged, or is about to engage, in a crime?

A Yes.

Q Do you know in your discussion with Ms. Page, whether she eventually took any actions concerning what she discussed with you?

A I'm not aware of her taking any action.

Q Okay, thank you.

BY MR. SOMERS:

Q Just to get back to that conversation with Lisa Page, so the 25th Amendment did not come up during that conversation?

A I don't -- no, I don't think so.

Q Did the appointment of a special counsel come up during that conversation?

A I can't recall specifically.

Q Do you know if --

A It must -- yeah, I guess it did, because I knew that was the nature of the conversation she was having at the DAG's office.

BY MR. BAKER:

Q I guess for at least a little bit we'll go back to Midyear.

A Oh, gosh.

Q I think -- I think you addressed this during the last round with our colleagues, but I want to make sure the record's

full regarding the press statement that Director Comey gave, announcing that it was going to be closed, or there would be no prosecution. I think you said that you were involved in the actual word change. Could you elaborate on that?

Mr. Pittard. And -- if you want to specify the word change, I think I know what you're talking about, but --

BY MR. BAKER:

Q Yeah, I think it went from -- without pulling it out -- he had "grossly negligent" -- or whoever drafted it, had "grossly negligent" in it, which I think the reason for the change was probably commonsense in that if you're not charging a statute that uses that language, your press statement probably shouldn't have the words that mirror the statute. I think. But I'd like your opinion on that.

A Yeah, so my understanding is the Director drafted the statement, and I was involved in suggesting the change to that -- in taking out that term, because that was -- that was, even though it's not a -- I don't want to say never used, it's not a never -- it's never used, but it's not usually used, that provision of the statute that is part of the book, the statute on the books. So I was involved in taking those words out. And --

Q And you felt they needed to come out to not cause confusion with words that were in the statute?

A Correct. And so it was redlined so -- it's not that I officially changed the statement, but I made that recommendation.

Q You made the -- you made the suggestion based on your knowledge of the statute?

A Correct. And we were in a group, but I was the one that made the suggestion -- I believe I was the one that made that suggestion specifically.

Q Were you in any groups or meetings regarding the timing of that announcement?

A No. Well, I might have -- I don't remember anything specifically, but we may have discussed the timing in the meetings with the executives.

Q And I think we've heard -- I think it's in the IG report -- that at the time when he started drafting that, even though it was pretty early on, in the spring, I think the consensus was that there had already been a determination made that there had been no intent found, and that absent the Secretary giving information against her interest during her interview, that she would probably be the recipient of a declination.

A So I don't know that I'd characterize it as -- that we had already made a determination. I think that the -- the facts in evidence at that time had not shown any information that led to intent. But I don't know specifically when the Director drafted his statement.

Q Okay. So would it be fair to say that while every bit of investigation that was still to come, there would be open minds

to whatever evidence came from that, the information around that time was trending that there had not been evidence of a crime?

A Correct. I think that's fair to say that.

Q Okay. So were you involved in meetings about the notice to Congress that the investigation was being re-opened?

A Yes.

Q And what did you add, or what did you take from those meetings?

A I'm not exactly sure.

Q What was your -- what was your contribution to those meetings? I'm guessing there was a discussion. I'm fairly certain there was a discussion at the high level, do we need to notify Congress that we're re-opening this investigation.

A Yeah. I don't remember saying anything specific about that. The only thing I remember specifically addressing was at the end when it was decided, there was a question of whether we sent the letter, posted the letter to our website. And I just suggested that the letter is actually just supposed to go to Congress, I believe.

Q Okay.

A And that suggestion was taken.

Q Were there people that were against -- that took the view there wasn't a need to notify Congress?

A I think there was -- there were people on both sides of that, yes.

Q And was this another -- an example of discussion and debate where ultimately a consensus was reached where there would be a notification to Congress?

A Yes, I think people had stronger views not to notify than -- than previously, not to make the statement in July. The ultimate decision was made by the Director. In both cases.

Q And would it be fair to say, based on what you either knew during these meetings and his advocacy for notifying Congress, or things you've learned afterwards, was his view that he had an obligation to do that based on the fact he had previously appeared before Congress and felt that he needed to keep that dialogue open --

A So I --

Q -- regarding this topic?

A I'm sorry. I've certainly seen him say that. I don't know if that was the only consideration.

Q Okay. Was there any consideration or a factor given on his part for needing to notify Congress based on there being so many leaks from the FBI, that it would leak to Congress, and then he'd be in a worse position by them finding out about the existence of the re-opening anyway, than if he just formally notified them and let the leaks travel wherever they may?

A I remember someone bringing up the fact that it's possible that it would leak, not to Congress, but to the public.

Q Okay. But then Congress would learn about it?

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A Well, everybody would learn about it, yeah.

Q Sure, sure.

A So to get out in front of that, I --

BY MR. BREITENBACH:

Q Going back to Mr. Baker's prior line of questioning concerning the change -- the suggested change that you believe you made, from "gross negligence" to "extremely careless," can you explain how you came up with the term "extremely careless"?

A I did not come up with that term. We were looking at the draft. And the Director has a way of speaking and a way of writing, Director Comey did, that I'm sure you've all heard -- he had drafted it himself -- and when we were reviewing it, I suggested that we -- we take out the words "gross negligence" and then we just moved another section of that statement up, to say "extremely careless." I wish I had thought more about that before keeping that -- keeping that wording in there.

Q Well, knowing what you know now, can you discuss your understanding about the difference between the two terms?

A I think that they're very similar colloquially, like you would use them interchangeably if you were just talking to people. But the "gross negligence" has a more specific legal meaning in this case, and so that's why we wanted to make sure it wasn't -- wasn't used, but --

Q So should, back in 1917, when they were discussing the eventual language that ended up in the statute, should they have

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landed on using "extremely careless"? That would have been in your mind equated to "grossly negligent"?

A I think the term "extremely" -- I just don't think of that -- because of my legal training, I think of "gross negligence" as having legal meaning, but I don't think that the rest of the world necessarily thinks of it that way. So "extremely careless" would not -- I would not suggest putting "extremely careless" in the statute because I don't know that it has any legal meaning.

Q But for someone trained in the understanding of what "grossly negligent" means, such as yourself, it equates in your mind, to the idea of being extremely careless?

A I think in my mind, it's a little bit more than that. Like, it has more of a legal meaning, but -- this, I think, might be why it's such a difficult section to --

Q What's that -- what is that more that you're referencing?

A I think -- and I think it's in the legislative history, too, that it's almost -- there's almost intent there. It's not the same as just being extremely careless, but there's something almost -- there's almost willfulness.

Q Well, to that -- to that point, let me -- let me go to the legislative history.

A Okay.

Q I'm going to introduce -- I'm not sure where we are on

exhibits, but introduce an email that is from George Toscas at the Department of Justice to Jim Rybicki, formerly Chief of Staff to Director Comey, copying himself -- George Toscas. And he is passing along what seems to be legislative history, and it's referencing the House debate on May 3rd, 1917. Do you see that?

A Okay, yeah.

Q Are you -- have you ever seen this email?

A No.

Q Were you ever aware that a discussion, or at least the actual legislative history, was passed to anyone in the FBI?

A I was aware that OGC got a copy. I don't remember exactly when. But I was not aware of this.

Q Did you ever discuss legislative history with your client? So, I'm saying with anyone inside the FBI that you were advising legally, or are you discussing the specifics as to the legislative history that indicated to you that "grossly negligent" was not going to be an appropriate standard to charge in this case?

A No. Not that I remember.

Q Are you aware whether any attorney inside the FBI had done any type of legal analysis on the legislative history?

A I don't know what you mean by "legal analysis," but --

Q Was any attorney inside the FBI aware of the legislative history concerning the espionage act?

A I know I --

Q And specifically the "gross negligence" portion.

A I know I've looked at it. I don't remember when I looked at it. But analysis -- I've never done any sort of write-up of it.

Q Okay, I'm going to introduce another exhibit. This is an exhibit that was compiled by our law clerk, but it's essentially write-ups of the legislative history from 1917.

A Okay.

Q So, what I want to point out here is that there is indication in the legislative history concerning the inclusion of "gross negligence" in the chapter, in the espionage chapter. There are some highlighted provisions, very vaguely highlighted, or faintly highlighted, that I just want to go through real quick.

There is a Mr. Nelson -- this is on the middle of the first page -- you said, that is intended to meet such a case as occurred within a year or two at San Francisco. A Naval officer who was entrusted with our Naval Code Book, through his negligence, lost it, laid it aside. The result was that the code book fell into the hands of another government, and our government has been propelled to prepare a new code.

Mr. Cummins' responds, I've been told that that was the instance which suggested this provision, but because an officer in the Navy lost a code book, which fell into the hands of another government, are we to punish every officer, or clerk or employee, who may have lost some writing or note?

So that seems to me to indicate that there is some back-and-forth on whether to include "gross negligence" in the chapter of the Espionage Act. Would you agree with me?

Mr. Pittard. I don't know if you've ever seen this before, but maybe you should -- before answering any questions about it, maybe you should --

Ms. Moyer. Read the whole thing?

Mr. Pittard. -- take a minute to read it, yeah.

BY MR. BREITENBACH:

Q So Ms. Moyer, I don't think you have to read the entire first page, but just in terms of my question, I think -- I think we see from this discussion that there is a back-and-forth on the inclusion of "gross negligence" in the chapter, eventual inclusion of "gross negligence" in the law?

A Yes.

Q If you turn to the second page of the exhibit, Mr. Cummins, at the top, says, but suppose no one is killed, Mr. Sutherland responds, it is not because he is willed that the thing shall be done, but because he has been grossly negligent about it.

Following in the next paragraph with Mr. Cummins, who was, by the way, opposed in this discussion of including "gross negligence," he says, I have no objection to making gross negligence an offense. I assume that there are times when gross negligence ought to be punished with death.

So I think just -- and there's additional discussions further on in the exhibit about gross negligence, and pretty significant discussion about gross negligence. So the question for you is, were you aware of this legislative history when advising on the decision whether to change "gross negligence" to "extremely careless"?

Mr. Pittard. And, again, you haven't been given a chance to read all of this.

Mr. Breitenbach. Counselor, I think -- sorry.

Mr. Pittard. Maybe -- if the question is, were you aware of legislative history about the "gross negligence" provision at any particular time, that seems like something she could answer, to the extent she remembers.

But if it's to opine on particular legislative history that we're not letting her read right now, and we don't know that she's ever read before, and, you know, I presume this was, like, part of the legislative history and not all of it, and I guess that makes me a little bit uncomfortable.

Mr. Breitenbach. I understand. I think -- let me rephrase the question then.

Mr. Pittard. All right.

BY MR. BREITENBACH:

Q In your time advising on this particular case, providing legal guidance on this particular case, did you have the opportunity to read through this particular legislative history,

or legislative history concerning the Espionage Act?

A During my time with Midyear?

Q Correct.

A I don't remember. I don't remember when I reviewed it.

Q I think you -- I think you previously testified that you had reviewed the legislative history.

A I have. But I don't remember what the timing was.

Q Okay. Are you aware, whether you have read the legislative history that we've just gone through?

A It seems familiar, but I don't -- didn't have it memorized.

Q Are you aware whether any other attorneys may have read through the legislative history in providing guidance on the change from "gross negligence" to "extreme carelessness"?

Mr. Pittard. In the context of the Midyear investigation?

Mr. Breitenbach. Correct.

Ms. Moyer. I don't know what the other attorneys have reviewed.

BY MR. BREITENBACH:

Q Let's by extension, move on to the search warrants that were obtained in the Midyear Exam.

A Uh-huh.

Q We have two search warrants that I'll give you as exhibits as well. I'll give you a second to familiarize yourself with the general document.

Are you familiar with these documents?

Mr. Pittard. If you can give her just another minute to --

Mr. Breitenbach. Sure.

Ms. Moyer. I don't remember ever seeing the one to Google.

BY MR. BREITENBACH:

Q And which one is that?

A It's the one from July 4th -- or from June 20th, 2016.

Q Okay. How about the first one?

A Yes.

Q Can you explain what the first search warrant is attempting to authorize for seizure?

A This was related to the server.

Q What server is that?

A I believe it's the -- I'd have to read it.

Q Would this have been a server related to Secretary Clinton?

A Yes.

Q Okay. So if we look to Page 3 of that particular search warrant, which I misspoke earlier -- it wasn't seeking to authorize -- it did authorize the seizure of, and the search of, that particular server. On Page 3 of that search warrant, No. 6, and I'll just read it, under 18 USC 793F, quote -- and it just proceeds to state the entirety of that particular statute.

A Uh-huh.

Q In prior testimony today, you had indicated, in so many

words, that you were told by the Department of Justice that 793 was unconstitutionally vague.

A No, I was told that 793F was -- that that they had Constitutional concerns about 793F.

Q Okay. Did you -- did you ever approve this particular search warrant?

A I don't approve search warrants.

Q Did you ever provide legal guidance as to this search warrant?

A We definitely talked about the search warrant and reviewed it, yeah.

Q You were aware of the search warrant?

A Uh-huh, yes.

Q Do you recall reading in the search warrant the predication that is in the search warrant for obtaining this particular server?

A I did not get a chance to re-read the predication today, but I had read it before, yes.

Q So if you are using 793F as predication to obtain the particular server, you had indicated that you were told by the Department of Justice that there were some Constitutional concerns.

Did you take into consideration the Constitutional concerns with regard to 793F when authorizing -- I am sorry, I know you don't approve -- when providing legal guidance on the predication

in this particular search warrant?

A I don't remember bringing that up as an issue.

Q Do you know why you wouldn't have been bringing up the Department of Justice guidance that 793F may have been unconstitutionally vague?

A Well, they didn't provide any specific -- I've never been given any specific opinion by the Department that it was unconstitutional.

And secondly, this is the standard, statutory language in a search warrant, and it includes multiple provisions for which there's -- may be probable cause that we -- that --

Q But 793F is one of those multiple provisions?

A Right. But it also includes 793F2.

Q Sure. So, in reviewing this, are you concerned at all that there was a statute that you had been told was unconstitutionally vague being used as predication to obtain the very server that was under investigation by the FBI?

A First, I was not told that it was unconstitutionally vague. I was told that the Department has Constitutional concerns. So I don't know if it's vagueness over --

Q Who were you told that by?

A I don't remember. It was in relation to a different case, previously. So it didn't raise any concerns when I saw it in this search warrant. There are other provisions as well that we could rely on.

Q Knowing what you know now concerning -- or did you know at the time, do you recall -- and this is dated -- date of issue was August of 2015.

A Uh-huh.

Q Did you know at the time -- you had mentioned that you learned that there were Departmental concerns concerning the constitutionality of "gross negligence." Did you know at the time that this was issued about those concerns?

A Like I said, it was about a previous case. So, yes, I did know that.

Mr. Pittard. I'll just say that I think there's a little bit of conflating in the back-and-forth of the apparent DOJ constitutional concern being with 793F versus with 793F1, which -- and my understanding is, their concern was with F1, the "gross negligence" provision, which was part of your questions. Though sometimes I think the questions referred to 793F more broadly, so just to try to clarify that point.

BY MR. BREITENBACH:

Q Well, let's go to 793F2 then, which pertains to knowledge.

A Uh-huh.

Q Did you look at that particular provision in recommending against filing charges on Secretary Clinton?

A I don't recall specifically. Like I said, we didn't go statute by statute. But I do remember reading the Espionage Act

before making any recommendations.

Q So with regard to knowledge and gross negligence and intent, did you ever -- were you ever aware whether any of Secretary Clinton's emails were accessed by a foreign actor?

A I don't know anything that would indicate that they were.

Q If they had been, was that a component in the FBI's review of whether Secretary Clinton had any scienter? Whether it's knowledge, whether it's intent, or, at the end of the day whether there was gross negligence, the fact that some of her emails were accessed by a foreign actor, was that a vector in the FBI's decision?

A It's hard to say, because I don't think we had any evidence that they were. So we didn't consider it specifically as if they were.

Q If you did have evidence, would that have, in any way, affected your advice concerning steps or even the eventual decision on the Clinton investigation?

A So, based on my review of the case law, relating to 793 F1, that may have been something I would have looked at a little harder, but I don't think it changes my overall -- I still don't think we would have gotten there on 793 F1. But it would have certainly been another factor to consider.

Q Would it have been a factor elsewhere within the espionage section or elsewhere within your understanding of the

mishandling statutes?

Mr. Pittard. Again --

Mr. Breitenbach. Or the unauthorized disclosure statute?

Mr. Pittard. The hypothetical nature of it, again, makes me nervous in that -- right? It's like if --

Mr. Breitenbach. Well, let me make it less hypothetical. I'm going to introduce another exhibit here. And this is a letter -- I'll give you some time to look at it, but in particular, there's a highlighted section on the second page.

This is an email from Mr. Priestap to Mr. Strzok, but the one that I want to focus on is an email sent earlier from Mr. Strzok to Mr. Rybicki, copying Mr. McCabe, Mr. Priestap, Mr. Moffa, and then a redacted individual from OGC.

Firstly, do you know whether you are the redacted individual from OGC?

A I don't know. This doesn't look familiar to me.

Q Okay. If you turn to the second page on No. 4 -- and I'll read it out loud -- the statement that, quote, we assess it is reasonably likely that hostile actors gained access to Secretary Clinton's private email account is too strong. It is more accurate to say, we know foreign actors obtained access to some of her emails, including at least one secret one, via compromises of the private email accounts of some of her staffers.

Again, this is an email from Pete Strzok to other individuals inside the FBI, it appears mostly management team, including an

OGCer and Mr. Moffa. Seeing this, is this the first time that you have heard that foreign actors obtained access to Hillary Clinton's emails?

A So I think you're conflating two things. My understanding is that foreign actors got access to emails from some of her staffers, not access to the private email server. That's not what this says.

Q Okay. So, were you aware whether Hillary Clinton's emails, through some avenue, were obtained by foreign actors?

Mr. Pittard. What do you mean by "Hillary Clinton emails"?

BY MR. BREITENBACH:

Q Well, just going -- I'm just going to the wording of this email. It says, it is more accurate to say we know foreign actors obtained access to some of her emails including at least one secret one.

To me, this appears to be indication that at least Mr. Strzok knows, and is informing the individuals on this email chain, that Mrs. Clinton's emails were obtained and accessed by a foreign actor, including a class -- at least, he says. Excuse me. At least one secret one. And "secret" is capitalized there, so I presume that he is referencing something that is classified.

So, again, were you aware, or do you know whether others beyond this email chain were aware, whether Mrs. Clinton's emails were, in fact, obtained and accessed by a foreign actor?

A So I don't know what others beyond this email chain

knew. I was aware that there were other hacks of staffers' email addresses. I don't know to what extent that included emails to or from Secretary Clinton.

Q Seeing this now, would you agree with me that the FBI had knowledge that Secretary Clinton's emails were, in fact, accessed by a foreign actor, including classified emails?

A I wouldn't go that far on this, because I don't know exactly what emails she -- which of her emails they had access to.

Q Does it --

A Make a difference because I --

Q I'm just wondering --

A -- because often the emails in which she was -- the part that she was a party to, had very little information in them.

Q I'm not trying to parse words here.

A Okay.

Q I'm just trying to look at what this particular email states, which seems to indicate that her emails, at least one secret one, was, in fact, obtained or accessed. I think the word that's used here is "obtained access" -- to some of her emails. So we presume they're talking about Secretary Clinton here.

A Right. I think that that's what this email says, yeah.

Q So seeing this in the moment, I'm not asking you to go back in time and try to determine now whether seeing this changes your mind. But if you had seen this at that moment before a decision was finally made by the FBI, would that have been a

vector in your decision as to whether the seriousness of Secretary Clinton's handling of classified information might have been worthy of an additional look?

A I actually don't think so. Because like I said, I don't think this -- this is referring to her email server, or classified information. I mean, I can't say what emails they're talking about here.

Q Okay. You had not, previous to seeing this document, known that Secretary Clinton's emails were, in fact, accessed by a foreign actor, including her classified -- at least one classified email?

A I don't --

Q Correct?

A I knew that some of the email accounts, private email accounts of her staffers had been accessed. I did not remember that there were any emails with her email address on them.

Q That's a big thing not to remember. So I'm just wondering, is it, you don't remember because you never saw this or heard about whether Secretary Clinton's emails had, in fact, been accessed by a foreign actor?

A So, no, I -- I just -- I don't remember. Like, I'm -- I don't think it is actually that significant because of the way that the emails came to Secretary Clinton.

Mr. Pittard. It strikes me, this is an email that somebody sent. It wasn't Ms. Moyer, that she doesn't remember receiving,

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and it sounds like we don't have any reason to think she did receive it. And so asking her to opine or speculate on what somebody meant when they wrote this, it seems to me, the right person to ask is whoever wrote it. And they can say what they meant by it and whatnot, but I don't know but -- she just doesn't know.

BY MR. BREITENBACH:

Q Do you -- do you know how Secretary Clinton's emails were accessed by a foreign actor?

A Like I said, I believe that these were hacks of individuals that worked for her.

Q Do you know whether the FBI investigated those particular individuals whose accounts were hacked?

A I don't think so.

Q So this is classified information that's being hacked by a foreign party, and you --

A I don't --

Q -- yourself, are not aware of whether or not the FBI investigated that?

A Right. Well, you're -- I don't know -- I did not remember that there was classified information on those emails from the staffers. I'm basing that on this email that you're presenting to me.

Q Does it surprise you, after having concluded the investigation, whatever avenue Mrs. Clinton's emails were obtained

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through, that, in fact, her classified emails were obtained by a foreign actor?

A I did not remember that, so -- yeah, I didn't remember that -- that.

Q Okay. Let me just go into one more avenue. Were you involved at all in the culling -- in -- I'm sorry -- in the discussions concerning the culling of the -- Secretary Clinton's emails by her staff?

A I was not involved in discussions about culling.

Q Are you aware of the discussions concerning the culling of Secretary Clinton's laptop to determine whether there was -- to differentiate, according to the staffers doing the culling, between official emails that she might have sent during her time as Secretary of State and personal emails?

A So I was not involved in any discussions about how they would do the culling. I was involved in discussions about our ability to get information about their culling process.

Q Can you go into some of that, those discussions?

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[1:57 p.m.]

BY MR. BREITENBACH:

A I do have particular areas of concern.

Q What was the debate inside the FBI concerning the culling of Secretary Clinton's laptops?

Mr. Pittard. If there was a debate.

Mr. Breitenbach. If there was a debate, thank you.

Ms. Moyer. There wasn't a debate. The FBI believed, and the investigators believed, that they needed to see the laptops that were used for Secretary Clinton's attorneys to sort and cull the emails, and they believed they had to have access to questioning Secretary Clinton's attorneys about it.

BY MR. BREITENBACH:

Q And who made the decision to permit Secretary Clinton's staff to cull the laptops, rather than obtaining through those laptops through lawful process, like a search warrant?

A I think the laptops had been culled before -- or the emails had been culled into two piles before we had the investigation.

Q Oh, okay. So this was even before you were even aware of the investigation --

A -- were made by Secretary Clinton and her attorneys, and I have no knowledge of how those decisions were made.

Q Okay.

A I'm sure that the investigators asked some questions,

but I don't have any --

Q Are you aware what laptops -- the brand name of the laptops that were used to perform this culling?

A I knew it at one point but I don't remember.

Q If I told you it was Lenovo, does that -- do you recall that as the brand of the laptops used to perform the culling?

A That sounds familiar.

Q Okay. I want to introduce another exhibit. And this is an article from June 6th entitled Facebook and Lenovo from The Washington Times.

Mr. Baker. Does that brand call into any concerns?

Ms. Moyer. I have a vague recollection that there was a security warning about it.

Mr. Breitenbach. You know what, I think we're going to have to start off on this next round because we are out of time.

[Recess.]

Ms. Hariharan. Okay. We're back on the record.

It is 2:17.

BY MS. HARIHARAN:

Q So I just wanted to ask a couple questions before I turn it back over to my colleagues.

A Okay.

Q With regards to the discussion on the DAG --

A Yes.

Q -- and wearing a wire. So I just want to be clear, up

were not in the room for this alleged discussion the DAG may have had?

A Correct.

Q And you conducted no follow-up research on the matter?

A Correct.

Q And you were not asked to conduct any follow-up?

A Correct.

Q And to the best of your knowledge, the FBI did not take any steps to record the President?

A To the best of my knowledge, correct.

Q And then so you were not under the impression at the time that the FBI took the DAG's alleged statement regarding recording the President seriously?

Mr. Pittard. You say the --

Ms. Hariharan. Sorry.

BY MS. HARIHARAN:

Q At the time, were you under the impression that the FBI was taking that statement by the DAG to record the President? Was the FBI taking that seriously? Was a serious request?

Mr. Pittard. I guess my concern there would be asking her to opine on what the FBI was or wasn't doing. She can speak, obviously, to what she knows and --

Ms. Hariharan. Yeah, please.

Ms. Moyer. I was unaware of any steps that were taken as if that was direction.

BY MS. HARIHARAN:

Q If steps -- if the FBI was asked, would that have gone through your office?

A I don't know.

Q You don't know. Okay.

A It's an unusual request.

Ms. Hariharan. All right.

BY MR. MORGAN:

Q So returning to a couple of the questions raised by our colleagues in the previous round. You were kind of asked to give answers on couple of hypothetical situations based on legal research conducted by the majority, not legal research that you conducted, that you were asked questions about emails that you were not privy to at the time.

And in the previous -- sorry -- in the previous minority round, which I think you broadly agreed with the decision Director Comey made to decline to prosecute Secretary Clinton. Is that correct?

A I agreed with his recommendation.

Q His recommendation -- pardon me.

A Yes.

Q Recommendation, yes. Not to -- is there anything that you discussed in the previous round change that assessment?

A No.

Q Are you aware of any direct evidence that Secretary

Clinton's server -- I believe there's a discussion about staffers' email account -- but Secretary Clinton's server was accessed by a foreign power?

A I'm unaware of any information about that.

Q I want to turn to some -- pardon me -- I want to turn to a couple questions about morale at the FBI and the Department of Justice.

I'm sure you're aware there have been a litany of attacks from the highest levels of the government accusing the FBI and the Department of Justice of conducting investigations driven by political bias instead of just the facts and the rule of law. Would you say that's correct? Are you aware of some of these attacks?

A I've seen some newspaper articles, et cetera.

Q During your tenure at the FBI and DOJ, have you been aware of any FBI investigation motivated by political bias?

A No.

Q During your time at the FBI and DOJ are you aware of any Justice Department's investigations motivated by political bias?

A I'm unaware of anything like that.

Q Returning to House Resolution 907. We discussed that earlier. I don't know if you still have your copy.

We discussed that during our earlier round. That resolution alleged, and I quote, "Whereas, there's an urgent need for the appointment of a second special counsel in light of the evidence

that raises critical concerns about decisions, activities, and inherent bias displayed at the highest levels of Department of Justice and Federal Bureau of Investigation regarding FISA abuse, how and why the Hillary Clinton email probe ended, and how and why the Donald Trump-Russia probe began."

Are you aware of any inherent bias at the highest levels of DOJ and FBI regarding FISA abuse?

A No.

Q Is there any evidence of inherent bias or are you aware of any evidence of inherent bias displayed at the highest levels of the DOJ and the FBI regarding how and why the Hillary Clinton email probe ended?

A No.

Q Is there -- are you aware of any evidence of inherent bias displayed at the highest levels of DOJ and FBI against Donald Trump as part of the Trump-Russia probe?

A No.

Q Are you aware of any actions ever taken to damage the Trump campaign at the highest levels of the Department of Justice or the FBI?

A No.

Q Are you aware of any actions ever taken to personally target Donald Trump at the highest levels of the Department of Justice or the FBI?

A No.

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Q Is there any evidence that any -- or are you aware of any evidence that any FBI or Department of Justice official took any actions biased in favor of Secretary Clinton or biased against President Trump?

A No.

Q Are you aware of any evidence -- are you aware of any evidence that Director Comey took any actions biased in favor of Director Clinton or biased against President Trump?

A No.

Q Mr. McCabe?

A No.

Q Ms. Page?

A No.

Q How about Attorney General Lynch?

A No.

Q Sally Yates?

A No.

Q Deputy Attorney General Rosenstein?

A No.

Q How about Special Counsel Robert Mueller?

A No.

Q Are you aware of any evidence that President Obama ordered any investigative activity that was biased in favor of Secretary Clinton or biased against President Trump?

A No.

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Mr. Wellons. Sorry, I remind the witness to speak up. We're having a little trouble hearing.

Ms. Moyer. Oh sorry. No. That was the answer.

I mean the answer was no before the question, not to you.

BY MR. MORGAN:

Q Are you aware of any evidence that President Obama ordered a wiretap of Donald Trump or the Trump campaign?

A No.

Q Are you aware of any conspiracy against Donald Trump or the Trump campaign involving anyone from the FBI or the Department of Justice or President Obama?

A No.

Q So many of us have been troubled by the escalating attacks against the Department of Justice and the FBI, the attacks against the independence of institutions, the integrity of its employees or their employees and the legitimacy of DOJ and FBI investigations.

And so I want to ask you about some of these statements just to get your reaction. On December 3rd, 2017, the President tweeted "After years of Comey with the phony and dishonest Clinton investigation and more, running the FBI, its reputation is in tatters, worst in history. But fear not, we will bring it back to greatness."

Do you agree with the President's statement that the FBI's reputation is in, quote, "tatters," and is in, quote, "the worst

in history"?

A I don't know what the President means by that. I did not feel like the FBI was in tatters.

Q Do you agree with the President's characterization that the Clinton investigation was quote, "phony and dishonest"?

A Again, I don't know what the President means in his tweets. I did not think that the investigation was phony.

Q In your opinion, what kind of impact do statements like these have on the morale of rank and file of FBI agents?

A It's hard for me to say about the morale generally. I can't opine about that.

Q Okay. I want to turn now -- switching gears a little bit. I want to turn now to another matter involving you personally.

At a public hearing held on June 19, 2018, by the Committee on the Judiciary and the Committee on Oversight and Government Reform entitled "Oversight of the FBI and DOJ Actions in Advance of the 2016 Election." And just to be clear, this is the hearing at which Inspector General Horowitz appeared to discuss the inspector general's report --

A Okay.

Q -- of the Clinton email investigation.

Representative Meadows identified you by name.

Mr. Morgan. And I want to introduce the following documents. And I believe we're on exhibit 10. I don't think we really marked

some of the other items that were introduced.

Mr. Pittard. No, I don't think they have been.

BY MR. MORGAN:

Q This an article from The New York Post, and it's entitled "Sally Moyer, not agent 5 in IG report on FBI."

Do you want to take a moment just to read it briefly?

A Yes.

Mr. Sinton. I'm sorry, what's this from?

Mr. Morgan. That's a New York Post article.

BY MR. MORGAN:

Q So following Representative Meadows' identification of you and as alluded to in the article, dozens of media outlets, quote, unquote, falsely identified you as the other person referred to as agent 5 in that same report -- the IG report.

"Agent 5 was cited in the IG report for exchanging several politically charged text messages with the person referred to as Agent 1. The IG report noted that these two Midyear Exam agents were not later assigned to the Russia investigation and were in a personal relationship at the time and are now married."

My question to you is are you the person referred to as Agent 5 in the IG report?

A No, I'm not.

Q Were you reprimanded or further investigated for any text messages reviewed by the inspector general as part of this report?

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Mr. Pittard. We're not going to take about -- we're not going to talk about ongoing personnel actions or potential ones. There have been some in the media that -- and honestly, some of them involve people that Ms. Moyer works with, and so questions about the underlying, you know, facts and things that went on during the Midyear investigation, obviously, we're happy to address those, but not personnel actions.

BY MS. SHEN:

Q Just to be clear, you just said that you weren't the person referred to as Agent 5 in the IG report, correct?

A That's correct.

Q And I believe the article indicates that you were, in fact, FBI attorney 1 in the IG report, is that accurate?

A Yes, that's true.

Q Okay. So to the extent that the IG report contained, you know, bias text messages from Agent 5, none of those text messages would have been yours?

A Correct.

Q Okay. Thank you.

BY MR. MORGAN:

Q So I guess my next question is what was the impact on your personal life from having been personally identified by name in this public hearing?

A Well, it was pretty upsetting. I didn't expect to be named. And then there were reporters outside my door shortly

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thereafter.

Q So there were reporters, like paparazzi, I suppose you could say, or reporters who were camped out outside your home. Is that correct?

A I don't, I don't know if they're -- what paparazzi is, but there were reporters, and they apparently took pictures of me a couple of days and published them.

Q And how did that make you feel and what was the emotional impact of that?

A I was upset about that, I will say. I did not expect that to happen.

Q Did it affect kind of any of your relationships with loved ones or your personal life in that regard or your family?

A [REDACTED]

Q Did this cause like any tumult in your life or?

A After we were able to straighten it out, it died down.

BY MS. SHEN:

Q Have you seen many of the comments made about you in the press since then as, you know, Agent 5? Essentially, were you able -- did you read all those things on the Internet?

A No, I tried to avoid that.

Q You tried to avoid that. Did you ever receive any threats related to that incident?

A I did receive one threat, threatening email on my work email.

Q And what did that threat entail?

A What did it do or what did it --

Q What was the threat?

A You know, it was -- I can't remember exactly. It was just one line. I think he used the C word, so I tried to, again, not pay attention to it.

Q Okay. Thank you.

Did you ever receive an apology for being misidentified?

A Not that I'm aware of.

Q Okay. Thank you.

Ms. Shen. Okay. I think we're just going to end our round early then.

Ms. Moyer.

Ms. Shen. Thank you.

[Recess.]

Mr. Breitenbach. Okay. I think we're going to go back on the record here. It's 2:42 P.M.

BY MR. BREITENBACH:

Q Okay. Ms. Moyer, I think in the prior round of ours, we ended in bringing up this article from The Washington Times

entitled FBI and Lenovo dated June 6, 2018. And I believe I heard, very faintly at the very end, from a question from my colleague, Mr. Baker, when he asked whether you were aware of any concerns or counterintelligence concerns concerning Lenovo, you answered yes. Is that accurate?

A I think I've seen a security bulletin or something on Lenovo.

Q Can you describe the security bulletin?

A No. I mean, I don't know anything more than that. I just remember that Lenovo was a potential security risk.

Q Security risk for what, in your understanding?

A That we shouldn't be using Lenovo products.

Q Okay. I'll go to the second page of that article where it states, and I'll read it, "Lenovo equipment in the past has been detected by U.S. intelligence agencies engaged in 'beaconing' covert communication with remote users as part of a cyber spying operation."

And then the article goes on to state, "in 2014" --

Mr. Pittard. I'm sorry, we were just having trouble finding it.

Mr. Breitenbach. Sure.

BY MR. BREITENBACH:

Q And then it goes on on the third page --

A Can you --

Mr. Pittard. Yeah, give us just a minute, sorry.

Ms. Moyer. Oh, here we go.

BY MR. BREITENBACH:

Q And then if you turn the page, on the third paragraph, full paragraph, that begins "In 2014."

"In 2014, the Navy was forced to replace IBM servers in all Aegis Battle Management equipped warships after Lenovo purchased IBMs blade center line of servers. The Navy was concerned that China could hack its most advance warships through the servers in wartime."

And then the next paragraph states, "The Department of Homeland Security also warned that Lenovo computers built since 2014 come loaded with adware called Superfish that could allow hackers to thwart encrypted security controls."

So in the last round of questioning, we discussed the use of Lenovo computers for the culling, the initial culling by Secretary Clinton's staff of her emails. Were you aware during your time on this case that Secretary Clinton's staff used Lenovo computers to perform the culling?

Mr. Pittard. I think, if I recall correctly, the questioning was that you had asked, or someone had asked, if Ms. Moyer knew whether Lenovo computers was used for the culling?

Mr. Breitenbach. Yes.

Mr. Pittard. And if I recall correctly, her testimony was that she didn't know. She can tell better than me, but she didn't know one way or the other whether it was used.

Ms. Moyer. Right. I think the question was did I know what kind of computers were used. And I said I didn't remember. And then somebody said, well, could it have been Lenovo, and I said that sounded familiar.

BY MR. BREITENBACH:

Q Okay. Knowing now after the fact that Lenovo computers were in fact used for the culling, based on information, at least from this article, and, as you state, potential security review indicating not that the government should not use Lenovo computers, is it possible that the Lenovo computers that were used for the culling of Secretary Clinton's emails in any way gave access to the Chinese Government to those particular emails?

Mr. Pittard. And again, just to be clear, your postulating or offering that Lenovo computers were used. I certainly have no basis to dispute that, but Ms. Moyer is not confirming that -- or she doesn't -- her testimony is she doesn't know.

You're saying if Lenovo computers were used and given that you've read a couple paragraphs from this article, could it be that the particular Lenovo computers used by Secretary Clinton or her people engaged in beaconing?

Mr. Breitenbach. You rephrased that very well, yes.

Mr. Pittard. Which, of course, sounds awfully hypothetical, right? If this, if that could possibly have happened.

Mr. Breitenbach. Well, let's go slightly less hypothetical.

BY MR. BREITENBACH:

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Q Based on you are a counterintelligence lawyer, is that accurate to state?

A I'm a lawyer in the counterintelligence law unit. I'm not sure there is a counterintelligence lawyer.

Q Okay. Is your expertise as a lawyer within the FBI with regard to counterintelligence?

A National security and counterintelligence, yeah.

Q So in your understanding, based on counterintelligence, without getting into classified discussion, because we're not in a location for that, is it your understanding that there are foreign actors that have the ability to hack into United States computer systems, yes?

A Generally?

Q Generally.

A Yes, that's my understanding.

Q Is it your understanding, generally, that China is one of those actors?

A Yes.

Q So, again, knowing that there are concerns with regard to purchasing Lenovo equipment for the United States Government, are you -- do you believe that it was a possibility that there was the availability for China to access Secretary Clinton's emails because they were culled through Lenovo laptops?

A I don't --

Mr. Pittard. Again, there's just so many -- I don't mean to

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be difficult, but there are so many -- it makes me uncomfortable because there's so many layers of hypotheticalness. About were the Lenovo computers used. It sounds like you have information that they were. Ms. Moyer has no idea.

You said, or could it be that Lenovo computers have been a source for compromising information. She say, yeah, I might have heard that. You show her an article that in a couple paragraphs seems to say that. So maybe that's true. And then --

Mr. Breitenbach. Okay.

BY MR. BREITENBACH:

Q Did anyone at the FBI ever bring up any concerns that Lenovo computers were used to perform the culling of Secretary Clinton's emails?

A Not that I remember.

Q Okay. Thank you.

BY MR. SOMERS:

Q If we could switch tracks here a little bit. I don't think we've talked much about the investigation into the Trump campaign and possible ties between the Trump campaign and Russia.

Could you tell us when you became aware that the FBI was -- had opened or was opening an investigation into ties between the Trump campaign and Russia?

Mr. Pittard. I'm just going to caution the witness that as we talked about the Russia stuff, my understanding is some of that -- some of that the FBI is fine with you talking about, and

some is not.

Mr. Somers. I'm sure the FBI will let us know.

Mr. Pittard. Try to delay a couple seconds to give them a chance to --

Ms. Moyer. Yeah, so I just want to make sure we're all speaking in the same way about the Russia investigation. I'm thinking about that as the investigation into the Russian attempts to influence the 2016 election and possibly coordinated or colluding with members of the Trump campaign.

BY MR. BREITENBACH:

Q Yeah.

A That's the investigation you're talking about?

Q That's the investigation, although we're more interested in the second aspect of that for this purpose of this interview, the possible ties between, or the possible collusion between the Trump campaign and Russia?

A Okay. And your question, I'm sorry?

Q When did you become aware that either a case had been opened or was going to be opened?

A I -- late July.

Q And was it opened at that point in time or was it contemplated being open?

A Contemplated.

Q And how did you learn of the case?

A Someone brought me a communication from one of our

foreign LEGAT offices that described some information that would use to predicate the case.

Q Who is that someone?

A It's another GS-15 attorney.

Q It wasn't Pete Strzok?

A No, he did not actually bring it to me.

Q And do you know who authorized the initiation of the Russia investigation?

A So I know that there were discussions of it up to and including the Director, but he doesn't usually have to authorize a case, and so the case was opened after those discussions by Pete Strzok.

Q Was Pete Strzok the lead or in charge of the investigation when it was open?

A I wouldn't say that actually in this case.

Q Do you know who was in charge? Who would you characterize as being in charge?

A I would say that was the supervisory special agent, again, not a GS-15 -- I mean, not an SES employee. Not a GS-15 either.

Q And do you have knowledge of alleged Trump ties between the Trump campaign and Russia prior to the investigation being formally opened?

A No.

Mr. Breitenbach. Is it that SSA that's unnamed just now who

actually opened the investigation? Because I understand there are opening documents when the FBI begins to investigate a subject. Was it the SSA who actually opened that investigation?

Ms. Moyer. No. My understanding is that Pete opened the investigation.

Mr. Breitenbach. Okay.

BY MR. SOMERS:

Q Okay. And did you work on the investigation?

A Yes.

Q And when did you start working on the investigation?

A The day I saw the original predicated information.

Q And that's late July?

A Late July.

Q And what was your role in the investigation?

A I was one of the attorneys assigned. By that time, by then I had become a unit chief.

Q So what did that entail?

A What did that -- being the unit chief?

Q No, I'm sorry, your role in the investigation. What type of --

A So I think there was another -- there was a line attorney assigned as well, and that person probably took more of the lead on the line attorney questions. I supervised that person.

Q And that was FBI line attorney?

A Yes.

Q I'm assuming, again, not SES?

A Correct.

Mr. Breitenbach. Had that line attorney been involved in the Midyear Exam -- I mean, investigation?

Ms. Moyer. Yes.

BY MR. SOMERS:

Q And then why were you chosen to be involved in the Trump-Russia investigation.

Mr. Pittard. If you know.

Ms. Moyer. Right. The investigation was being run out of [REDACTED], and that was one of the sections that my unit advises.

BY MR. SOMERS:

Q So you weren't really assigned to the case, it just fell to you because of where you worked?

A Yeah.

BY MR. BAKER:

Q Why would that case have been opened at headquarters instead of Washington field office?

A I don't know.

Q Well, is it normal that a case would be opened at headquarters as opposed to a field office?

A It's not normal. Most cases are opened in the field, but there are cases that are handled out of headquarters. They have the authority to open cases.

Q Is there any commonality amongst the cases that are handled out of headquarters?

A I'm only aware of three cases. And usually they're ones that they want to keep more of a close -- make sure that information about the cases don't get out into the public.

Q So you're aware of three cases total in recent times or ever in your whole tenure?

A In my career, I'm aware of three cases that I've worked on that have been handled at headquarters.

Q And this is one of them?

A Yeah.

Q That include Midyear and one of the three?

A Yes.

Q So Midyear and this Russia case are two of the three --

A Yeah.

Q -- during your 13-year career at the FBI?

A Right. But I --

Q I'm sorry.

A I was only handling counterintelligence cases, so there may have been others from other divisions.

Q From other violations or classifications?

A Um-hmm.

Q The third one, is it related to these two in any way?

A No.

Mr. Breitenbach. Do you recall what the third one is?

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Ms. Moyer. Yeah.

Mr. Breitenbach. Can you --

Ms. Beesee. If we're going into any other investigative -- investigations the FBI is working on, we're going to instruct her not to answer those questions.

Mr. Sinton. I believe she has answered that it is not related.

Mr. Breitenbach. Is this an ongoing case?

Ms. Beesee. She can't -- we will instruct her not to answer that. If it's ongoing or not ongoing. If it involves an FBI investigation --

Mr. Sinton. Or we can take a break and talk to the witness for a second.

[Discussion off the record.]

Ms. Beesee. So we will instruct the witness not to answer any questions related to any unrelated investigations. Just given the fact of the area that she works in, we will not allow her to answer.

Mr. Breitenbach. I think one of our concerns has been during our investigation is how this, these two particular investigations, the Clinton investigation as well as the Russia investigation, have been handled differently from one another.

But I think it's a legitimate line of inquiry to determine whether the one particular case other than those two on which she, Ms. Moyer, has any historical knowledge about concerning opening

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at headquarters, I think that's an important line of inquiry because it indicates how different the cases that are at hand are from normal cases handled by the FBI.

Ms. Beesee. I understand your line of questioning, but if you ask anything other than was this handled differently, you will probably need to ask more questions that goes into details or more facts about an investigation that we will not allow you to ask. So we just don't--

Mr. Breitenbach. Can we --

Ms. Beesee. -- I'm sorry.

Mr. Somers. I think we're fine with your objection. I'll just ask one question.

BY MR. SOMERS:

Q You said in your 13 years at headquarters you were aware of three cases, or you were involved in three cases that were opened at the headquarters level. This third case that we're not able to discuss, when did that fall in your 13-year tenure?

A Earlier.

Q Now earlier, we discussed --

A And there may have been another case, too, so again --

Q Would that have been earlier as well, in the 13-year -- in your 13-year tenure?

A You're giving me too much time to think about this. There may have been -- no, it's going on now, I think, but unrelated.

BY MR. BAKER:

Q But it's fair to say few and far between are the cases that have as their office of origin FBI headquarters. It's normally a field office?

A Based on my experience, that's true. I don't know what other divisions do.

Q So you were in two big investigations, two of three or four that are unique in your 13-year tenure in that they're opened at headquarters, and you've got other matters that are coming across your desk unrelated to these two big cases. Are these a significant drain on you, or are they a drain on the bigger FBI?

A I don't know that I'd characterize it as a drain, but I was certainly very busy with these two investigations.

Q Okay. Not characterizing it as a drain, would it be fair to say that one case became a priority over the other case, at least in some aspects?

A I don't think of them as going on at the same time, for the most part. As you know, at some point in October, we were busy on both cases, but for the most part, they did not overlap.

Q I don't want to go too far back into Clinton email questions, but we've heard testimony and, I believe, reviewed documents and, I think, maybe the IG report alludes to it, that at least in regards to the Weiner laptop, and what was or wasn't done in a timely manner by commentators, that the reason given for that was that the Russia case had become a priority.

A That's not how I looked at it.

Q So you did not see one being more of a priority than the other? Russia being the priority at the expense of the Weiner laptop?

A No.

Q Okay.

BY MR. SOMERS:

Q We discussed earlier a little bit who you reported to on the Midyear Exam investigation. Who did you report to on the Trump-Russia investigation?

A It was the same, that my section chief, I think she was back by then, but I was still working directly with Trisha and Jim Baker.

Q So your section chief was not involved in the Trump-Russia investigation?

A Correct.

Q Okay. Who else was involved, let's just for names, the SES employees, who else, to your knowledge, was involved in the Trump-Russia investigation at its early stages?

A Executive? You mean the executives?

Q Well, obviously the only names you're able to recall are SES names, so that's what I'm asking.

A Basically the same executives, all the executives. Pete Strzok, as you know, Bill Priestap, I think the EAD at that time, the assistant executive director was Mike

Steinbach -- yeah -- Dave Bowdich, Andrew McCabe, and Director Comey.

Q What about --

A I'm sorry?

Q I was going to say what about Lisa Page?

A Oh, I don't consider her an executive, but she was involved.

Q Okay.

A And Jon Moffa.

Q And what about at the Department?

A The Department, we worked with, I think, the same attorneys. I'm trying to remember.

This case was more of a national security investigation. We were concerned about the Russian efforts, and so we did bring in some attorneys from OI, Office of Intelligence, we had not worked with on the Midyear team.

Q Did you work with Stu Evans?

A Yes, he is the DAG in charge of OI.

Q George Toscas was -- did he have involvement?

A He was made aware of the case, and became more involved as it went on.

Q What about the two, Stu Evans was -- had a larger role than Toscas?

A It depended on the timing. They were both of equal rank and had different objectives, different roles and

responsibilities.

Q All right. And were you involved in the FISA process on the Trump-Russia investigation?

A I was.

Q Just in general, what's your involvement in FISA applications at the Bureau?

A So as a unit chief, I don't always have much involvement. The line attorney essentially receives a FISA request that's approved by the field. That is a request from the FBI agent, who writes up what they believe is the probable cause that meets the standard for FISA. And NSCLB attorney will approve that review for probable cause and approve it, and the request goes over to the Office of Intelligence, OI, at the Department and they draft the FISA application in coordination with the case agent.

Q And I'm not familiar with all those --

A Sorry.

Q -- all those sub components.

A It's a complicated process.

Q Yeah. The general counsel's office, at what point in that process you described is the general counsel's office?

A Oh, that's NSCLB, is my branch, the National Security and Cyber Law Branch, so that's the general counsel's office.

The case agent in the field drafts up a request and it goes -- we have a FISA management system that the request goes

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through and gets various approvals from operators, from the case agent supervisors, and then it comes into the OGC-NSCLB.

Q But is that request, is that a formal -- does it look like a FISA application or is it something less formal than that?

A No, it's more of a -- it's a different document and it gives prompts. Like so it has questions so the field agent knows what information would be beneficial to helping the OI attorneys officially draft the document.

Q When you say a field agent, it could be a field agent from Texas, and they would come to you or your office with that request?

A Yes, it would come to NSCLB
I would not see the ones that are related to counterterrorism or cyber or, you know, they are divvied up, depending on the subject matter to different attorneys.

Q And what was your role in the Carter Page FISA application?

A So for that one, it was unusual, as I mentioned, that the team that was working on that investigation was at headquarters. So we talked to that team, the other attorney and I, about drafting up a FISA request and provided them guidance on what OI would be looking for to meet probable cause.

Q Did you get that initial sort of less formal document that we just discussed in this or was this more of an oral?

A I think we had discussions but I'm pretty sure

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eventually we got a FISA request form.

Q Okay. So you get the FISA request form and then that has to be turned into a FISA application, is that correct?

A Right. So the FISA request form, once we approve it, and then the section chief is an SESer, and the counterintelligence division approves it, and then it goes to OI and gets turned into an actual FISA application.

Q Okay. But in this -- in the case of the Carter Page FISA application, did the section chief -- I'm just going back to -- I think you said your section chief was not involved in the Trump-Russia --

A It wouldn't be our section chief. It's the operational division section chief.

Q Okay.

A So we approve it, the NSCLB attorney would say that they agree that there is probable cause. And then the operational section chief at headquarters decides that this is something worthwhile to spend the resources -- you know, it's a worthwhile investigation. That's the SES level approval before it goes across the street to DOJ.

Q So you're not actually approving it, you're just --

A Well, we're approving that we believe it meets the probable cause standard.

Q And you could stop it before it gets to that?

A Yes, and I have on some.

Q Okay. And you mentioned probable cause would be the factor that would stop it from moving forward?

A Yep.

Q What did you review in terms of probable cause in the Carter Page --

A So like other cases, I both knew what was in the FISA request as well as other information, because I had worked on the case and we had had meetings about it. I believe I reviewed the FISA request. I was not -- I was a unit chief at this point, and that, you know, the person that reviews it and approves it for NSCLB is generally a line attorney, so I think I just reviewed it in support of the line attorney.

Q But you, I just want to be clear, you're reviewing the application, not what's behind the application. Is that correct? Or are you reviewing both?

A We are reviewing the request. So that is what the case agent -- the facts and circumstances that the case agent believes lead to probable cause.

Q So you don't -- do you review the Woods' file?

A No.

Q Did you review the Woods' file in the Carter Page application?

A No.

Q Did you ever review a Woods' file?

A When OI goes out to the field and does accuracy reviews

on FISAs, I'm usually there with them when they're going through the Woods' file. And sometimes I will help the case agents organize the Woods' file in a way to make that process a little easier.

Q Only on the -- what did you say, audit, was that --

A It's an accuracy review.

Q Accuracy review. That's when you would help them organize a Woods' file? I just want to be clear.

A Well, yes, that's when I would be involved. The case agents all have their own way of organizing their Woods' files before then, but some of them are better at it than others. So sometimes before the accuracy review, I will help them.

Q Okay. So beyond the case agent, who looks at a Woods' file?

A The supervisory special agent in the field.

Q In the field. But no one else out of the field of that chain looks at a Woods' file in general?

A That is correct, except both of those individuals sign the Woods' form indicating that the facts are true and accurate and that they have documents to support those facts.

Q And that's something you do look at?

A We see the Woods' form, yes.

Q So what does the Department or the FBI need to demonstrate to the FISC in order to get permission to conduct surveillance pursuant to FISA?

A Probable cause that the target is an agent, is a foreign power and an agent of a foreign power.

Q Is there any different requirement when the target is a United States citizen?

A It's a different provision in the statute. It's still probable cause, but the language is a little different so you're kind of proving different things.

So for a U.S. person, you have to show probable cause. In our cases, there's, I think, five different provisions you could plead them under. And ours we are usually pleading it under that they're aiding and abetting -- knowingly aiding and abetting someone who is engaged in clandestine intelligence gathering on behalf of a foreign power, which may violate the U.S. Code.

Q Beyond the --

Mr. Breitenbach. Real quick. The U.S. Code, the U.S. Criminal Code?

Ms. Moyer. Yeah.

Mr. Breitenbach. Okay.

Ms. Moyer. I don't think it says U.S. Code, actually. I think it says may be a violation of criminal laws. If you have the statute, I can point out to you where I'm talking about.

Mr. Breitenbach. So it differentiates between getting a FISA on a non-U.S. person, and a U.S. person based on the fact that the U.S. person also has be shown to have violated some criminal law?

Ms. Moyer. That's not the only differentiation but it

definitely does --

Mr. Breitenbach. That's one?

Ms. Moyer. That is a, yeah, difference between the two.

Mr. Breitenbach. Okay. Thank you.

BY MR. SOMERS:

Q And so who signs the actual FISA application?

A So now we're talking application as opposed to request, right?

Q Yes.

A Okay. So the application is drafted by the Department of Justice. And after all of the process and the Woods and everything has been verified, it is signed by the OI attorney who drafted it. The actual application is signed by the OI attorney who drafted it; a supervisory special agent from headquarters, who is the affiant; and then it is signed by one of, I think, eight executives, but it's usually the Director of the FBI, as well as the AG or his or her designee, and that can be either the AG, the DAG, or the AAG for National Security Division.

In addition, we have a memo that is like an executive summary that's also signed by the OI supervisor, our NSCLB line attorney and one of our SES attorneys in NSCLB.

Q What duties do you owe to the court in terms of what goes into the FISA application?

A So I think it's like any other pleading that you make to a court. The FISA court is made up of Federal judges from other

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district courts so we owe the duty of candor, honesty, full and complete, accurate statements.

Q And if there's exculpatory evidence, is that part of the duty of candor if you're aware of exculpatory evidence?

A Yes, it definitely would be in the FISA court, because it's an ex-parte proceeding. So I think that we at the FBI -- and I know I have, I think of that as a little bit of a heightened standard even than you would have in a normal criminal case.

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[3:13 p.m.]

Mr. Somers. Okay. What about information regarding the reliability of human sources within the -- that are relied on for the application.

Ms. Moyer. I think you have to include the information that would allow the judge to know, kind of make an accurate assessment about the reliability and credibility of the source.

BY MR. BAKER:

Q I want to clarify something you said about the SSA affiant. As opposed or compared to a criminal case in the field where an SSA or an SA might be going before the court, would it be fair to say that oftentimes the affiant is actually the case agent and could answer questions from the judge on the spot?

A In the field?

Q In the field, in a criminal matter.

A That's my understanding that --

Q But because of the central nature of the FISA court, the affiant may not really know anything about the case having not worked on it. They might know as the package is being put together, and they may become familiar before they go and swear to it, but they're generally not the person that worked on it. Is that true?

A So the SSA is not the case agent, so not -- probably doesn't have as much firsthand knowledge as a case agent would, but they are supervising the case. So I would not say that they

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don't have any understanding of the case. They are the headquarters supervisor of the case and --

Q So they're involved in the substantive unit that's --

A Correct.

Q -- monitoring the case or investigating the case?

A Yes, that's program managing the case.

Q Okay. You also mentioned these accuracy reviews. I'm guessing if the FBI sees fit to send a team to inspect the Woods files they take the accuracy of the Woods files seriously?

A Yes.

Q It's my understanding, correct me if this is wrong, that a deficient Woods file can actually lead to disciplinary action against the case agent?

A I don't know exactly what the procedures are for that. I do know that part of the reasons we have the Woods file is because there were questions about the accuracy of a FISA application before I -- you know, long before I got to FBI.

Q So the Woods -- and you touched on this a little bit. The purpose of the Woods file is to be a check on the accuracy of facts and statements made? It's a repository for where the facts came from?

A Right, yeah. I was going to say, I don't know that it is a check. It is just like -- it is like if you had a paper you were writing and all the footnotes that you had in your paper and you had all the documents for those footnotes, that's what the

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Woods file is. It's just -- and we have it in a file so that people can go back and review it.

Q Thank you.

BY MR. SOMERS:

Q But there's no -- I mean, you talk about the duty of candor owed to the court, but no one that owes that duty to the court is necessarily reviewing the Woods file. Is that correct?

A I think that that's why we have a Woods form because the person that's signing the application is relying on the individuals who have signed the Woods form that they have the Woods file. And I will say, there are some cases in which the SSA who signs -- the headquarters SSA will go out and review the Woods file before they sign the FISA.

Q Do you know if that happened in the case of the Carter Page?

A I don't think it did in this case.

Q I'm sorry?

A I don't think it did in this case.

Q So in terms of the -- I mean, you don't review the Woods file, but what's required? What type of investigation is required to create the Woods file?

A We don't really investigate to create a Woods file. You use the Woods file to correlate the investigative documents that would support probable cause. So they're already out in the file. Now we just move them to the Woods file to support every fact.

Q But if there's an allegation in the FISA application, it's supposed to have something backed up in the Woods file?

A Correct. For every factual assertion in the FBI -- in the FISA application the case agents are required to have a document in the Woods file to support it.

Q So I guess my question is, what counts as a document? Does a news article count as a document?

A I guess it could, but that's not really generally used in FISAs. I mean, it would be a 302, a source reporting, analysis that someone did on phone records or the phone records themselves or an intel product that was drafted by either us or other agencies.

Q So the source report could appear in the FISA application, like source A said X, and what could be in the Woods file to back that up is just the report of the source. There doesn't have to be something corroborating that?

A Right.

BY MR. BREITENBACH:

Q You didn't read -- you said you didn't read the Woods file at the time of the request or at the time of the application. Is that accurate?

A Right.

Q Have you ever read the Woods file or seen the documents located in the Woods file?

A I've seen parts of them, and I think the whole file has

been emailed to me at one point, but I've not had the opportunity to review the whole thing.

Q The parts that you have reviewed, have you in any way questioned the accuracy? Because I think you mentioned that it goes through a verification. So are you questioning whether any parts of the Woods file were accurately verified?

A No.

Q And you're only -- you only personally have reviewed parts of the Woods file?

A Yes.

Q Did you ever have a heightened sense of importance concerning the Carter Page FISA?

A I think that given the sensitivity of the case, I think everybody wanted to make sure that everything was complete and accurate.

Q Are you aware whether there were any other FISAs obtained in connection with this case?

Mr. Wellons. I believe the question asked is if she's aware. Is that the question?

Mr. Breitenbach. Correct.

Ms. Bessee. May we confer with the witness?

[Discussion off the record.]

Mr. Breitenbach. Okay. We're back.

Ms. Bessee. The question goes into equities that may relate to the special counsel investigation, so I will instruct the

witness not to answer. It's an ongoing investigation, and she will not be able to answer that question.

BY MR. BREITENBACH:

Q Okay. Previously you had mentioned, I think, that to your knowledge an audit or a Woods review has not been performed on the Carter Page FISA.

A Correct.

Q Who would have the power to authorize that review?

A Really anyone.

Q Could you?

A That's not really -- that's normally not how it happens, but it's not like they're secret Woods files. So if someone wanted to -- like I said, if there was an SSA that wanted to review the Woods file before signing, they can go and look at it.

Q Are you aware of news reports in the past year indicating that there are questions about the sufficiency of the Carter Page FISA? The sufficiency -- I'm sorry, the sufficiency concerning the evidence that was used to obtain the FISA.

A I am aware of news reports that, yeah, that -- I'm not sure exactly if it's the sufficiency of the evidence or what exactly the concerns are about the FISA.

Q Is there a reason why a Woods review has not been authorized?

Mr. Pittard. That you're aware of.

Ms. Moyer. Not that I'm aware of.

BY MR. BREITENBACH:

Q Would you advise that a Woods review be conducted to ensure that the documents that were used to verify the facts or the alleged facts established in the probable cause determination in the FISA were accurate? Would you advise that that review now be conducted?

A I'm not sure it hasn't been conducted. I don't think I'd advise -- I wouldn't advise it out of the blue, but --

Q So it's possible that one has been conducted?

A Yeah, it's possible. I am not aware of one.

Q You wouldn't necessarily have to know --

A No.

Q -- that a Woods review is occurring on this particular FISA?

A Not on this particular FISA.

Q Is that something you would want to know?

A Do I personally want to know, no.

Q Yes.

A No.

Q Okay.

Mr. Somers. Prior to receiving the pre-document for the FISA application, the document from the agent that wanted the application, had you heard the name Carter Page before?

Mr. Pittard. Is it okay to answer to that?

Ms. Bessee. We may need to confer.

[Discussion off the record.]

Ms. Bessee. Ms. Moyer will not be able to answer the question as it may impact not only special counsel's equities but it may also impact any other FBI equity.

Mr. Somers. She can't even answer the first question yes or no and then --

Ms. Bessee. No, she cannot.

Mr. Baker. Do you know if the FISC had any concerns of -- my understanding as the FISA moves through the FISA process there's back and forth with attorneys to add things that bolster it or whatever. Were there any concerns, either when initially presented or subsequent to all the reporting on this FISA, did the FISC have any concerns that they were not provided everything they needed to or that they were deceived in some way?

Mr. Pittard. That you're aware of.

BY MR. BAKER:

Q That you're aware of.

A I was just going to say, I was not made aware of any concerns with the FISC.

Q Even now you haven't heard?

A Even now, no.

Q Okay. Thank you.

BY MR. BREITENBACH:

Q Are you aware of whether anyone inside the FBI is being tasked by Special Counsel Mueller's office?

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A Tasked in what way?

Q In any way, to investigate whatsoever this -- the particular investigation concerning President Trump's supposed collusion with Russia?

Ms. Bessee. To the extent that that question goes into what the special counsel is doing related to their investigation, she cannot answer that question.

Mr. Breitenbach. No. I'm not asking about the substance whatsoever. I'm just asking --

Ms. Bessee. But you're asking about a method, if they are using or talking to anyone in the FBI. So that goes into their investigative methods, so she will not be able to answer that question.

Mr. Breitenbach. I'm really not asking anything about the substance or the investigative methods. I'm just wondering is there any -- asked another way, she -- Ms. Moyer is still with the FBI.

Are you still engaged at all with respect to the Russia/Trump investigation?

Ms. Bessee. To the extent she may be engaged as it relates to an ongoing investigation, I will not have her answer that question. So her engagement as an FBI employee is also related to the fact that the FBI is still involved or may be working with the special counsel. So that still goes to special counsel's ongoing investigative efforts. I don't think she can answer that question

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as separate from the special counsel because it relates to the investigation itself.

Mr. Breitenbach. I think the concern here, once again, with our investigation, is trying to understand the origins of the investigation and if the -- the Russia investigation, that is. And if the origins of the Russia investigation are no longer the origins with respect to FBI involvement, then I think it's important for us to understand whether the FBI is still involved with reviewing in any way the facts that are being reviewed by the special counsel.

Ms. Bessee. So the investigation that the FBI opened was what was being continued by the special counsel. The FBI is still involved because there are still FBI investigators that are involved with working with the special counsel. To the extent that that impacts other FBI employees, that is still a part of the ongoing overall investigation.

I don't think she can answer that question sort of separate as Sally Moyer, an FBI employee, because if it's any way related to the ongoing investigation, she really cannot answer that question.

Mr. Breitenbach. So can you answer -- you just mentioned that FBI investigators are assigned to the special counsel's investigation. Are those the only FBI officials assigned to the special counsel's investigation?

Ms. Bessee. I cannot answer that question. That's

a -- that's a question for the special counsel.

Mr. Breitenbach. Okay.

Mr. Brebbia. Going back to the Carter Page FISA application, at the time of your review, you are aware that Christopher Steele is a source for the -- for some of the -- at least some of the information contained in the application. Is that true? Is that accurate?

Ms. Moyer. The timing of that, I don't remember if we had the request form done before we got the Steele information.

Mr. Wellons. Excuse me, if I may, just because I don't want us to have to break this up. We'll remind Ms. Moyer we're in an unclassified setting. For questions along this line about the Carter Page FISA, if you can respond by giving unclassified or declassified information, please feel free to do so. We won't object. If you're not sure, please do ask to confer with the FBI counsel.

Ms. Moyer. Okay.

Mr. Wellons. Thank you.

BY MR. BREBBIA:

Q So at the time of your review, are you aware that Christopher Steele is the source?

A So I reviewed it over the course of its, you know, life cycle, so before the -- it was finalized and when it included the Christopher Steele information, yes, I was aware of that.

Q Okay. And had it also been communicated to you prior to

it being finalized that Christopher Steele had expressed to others that he did not want then-candidate Trump to be elected?

A No.

Q Did -- was it communicated to you sometime after the election that Christopher Steele had communicated to others that he did not want President Trump to stay as President?

A No.

Q Do you recall any conversations with other people at the FBI around the FISA Page warrant before or after it's authorized initially that Christopher Steele had expressed to -- I'm going to use specific names here -- Bruce Ohr that he did not want Trump to be elected?

A So I recall a conversation with Bruce Ohr where he said something about Steele's position on Trump, but I don't know that it was that he did not want Trump to be elected. I don't remember those words.

Q Did it -- the conversation with Bruce Ohr, did it reflect that Christopher Steele had a bias one way or the other towards either candidate or President Trump?

A No. I didn't think that there was -- that it reflected any sort of bias because I think that the explanation that Bruce Ohr gave of Christopher Steele was more -- it was more fulsome. It wasn't just that he made this statement. There was other information that led me to believe that it was not particularly biased.

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Q So I just want to back up. I apologize if you already gave this answer. During the point -- at any point after the FISA has been approved, at no time before had you heard this, but anytime after had you learned that Christopher Steele had communicated to others generally a bias against either candidate or President Trump?

A Again, I'm not sure I took it as a bias. Bruce Ohr made a statement that Christopher Steele was -- had some view about President Trump. I don't remember the words exactly.

Q At the time -- at the time you had this conversation with Bruce Ohr, where are we in relation to the Carter Page FISA?

A After it was initiated.

Q Has it been approved by the court yet?

A Oh, yeah. When I say initiated, I mean approved by the court.

Q What was the -- can you describe the setting of this conversation with Bruce Ohr?

A It was a meeting at FBI headquarters between Bruce Ohr and some of the investigators on what I would deem the Russian influence investigation, and I was a party. I was at the meeting.

Q When was this meeting?

A November 2016, late November.

Q Post election?

A Yes.

Q Post presidential election?

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A Yes.

Q Why were you meeting with Bruce Ohr?

A My understanding is that Bruce reached out to the FBI and that he was told to meet with the investigative team.

BY MR. BAKER:

Q To the extent you can, that they're not below SES, who were the investigators present?

A I just remember that the SSA was present, John Moffa, I believe Lisa Page was there, and Peter Strzok, myself, I think one of the other analysts.

Q Thank you.

BY MR. BREBBIA:

Q And at this -- it was communicated to you that Bruce Ohr had initiated this meeting?

A I think he had reached out to the FBI, is my understanding.

Q And this is the same Bruce Ohr who works for the Department of Justice?

A Yes.

Q At the time of this meeting were you aware of Christopher Steele's status as a confidential source, as a source for the FBI?

A At the time of the meeting he was no longer a source of the -- for the FBI.

Q He had been closed?

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A Correct.

Q Do you know why he had been closed?

A Yes.

Q Why had he been closed?

A For disclosing his relationship to the media.

Q During this discussion with Bruce Ohr did Mr. Ohr relate to you conversations he had had with Christopher Steele?

A I think he may have talked about that. I don't remember the specifics. Like I said, there was --

Q Well, what did he talk about?

A I think --

Q Or what did Bruce Ohr talk about?

A We were meeting -- one of the reasons that the investigators were talking to Bruce Ohr was to try to get further clarity about Christopher Steele and his reliability. After we had -- after the FBI closed him, the investigative team was making efforts to try to figure out if there were other issues or trying to verify the information he had provided.

So they wanted to talk to Bruce Ohr because they knew that he had had a relationship with him, so they were trying to get a better sense of his background, his reputation, the sorts of questions that you would ask others to try to verify your source reliability.

Q And so I assume that one of those things, if it had been communicated to the FBI agents that Christopher Steele had

expressed strong desire that candidate Trump not be elected President, that would have been information that the FBI agents would have been -- and the FBI personnel would have been interested in receiving, right?

A If that's how it had been communicated, yes.

Q And if it had been communicated that way, it would have been documented?

A So, I would expect so, but I don't write the documents.

Q You would expect so?

A Uh-huh.

Q In a normal -- in a regular course of business, if you find that a source of yours has a bias against a target, potential target of yours, you would document that somewhere?

A I think you're assuming that that is what was said in this meeting, and I don't remember that being said in this meeting.

Q Okay. Let's -- I know we sometimes bounce back between general policies and specific, so I'm going to jump out of the specific meeting, talk generally. If you had a meeting where you learned that a confidential source was biased against a potential target of an investigation, that's something that you would document as part of your investigation?

Mr. Pittard. Is the -- the question is whether it's something that Ms. Moyer would document?

Mr. Brebbia. Say the FBI writ large would document as part

of its investigation.

Mr. Pittard. To the extent you know.

Ms. Moyer. To the extent I know, but I think that that's a -- I don't think we document people's biases. We document facts that might make people -- might make someone make an assessment about people's credibility and biases. So I don't know that we would say our source is biased or the FBI would say our source is biased. It would be these are additional facts you need to know about our -- the source.

Mr. Brebbia. Okay. Because it could be potential Brady information, right?

Ms. Moyer. This is --

Mr. Pittard. If you know.

Ms. Moyer. I mean, the hypothetical, of course, anything could be potential Brady information.

Mr. Brebbia. Okay. Well, let's pull it back to the --

Mr. Breitenbach. Actually, do you believe Brady applies to FISA?

Ms. Moyer. Yes.

Mr. Breitenbach. Yes.

Ms. Moyer. I mean, I haven't thought about it legally, but the way the FBI operates is if -- exculpatory information would have to be included in a FISA.

BY MR. BREBBIA:

Q This interaction with Bruce Ohr, how was it documented?

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A It was documented in a 302.

Q Who was the author of the 302?

A I think the SSA authored the 302.

Q Would you have documented it anywhere?

A No.

BY MR. SOMERS:

Q Would that 302 then go into the Woods file?

A No. The Woods file relates to specific facts in the application, so it would have gone to the file, the case file, and then if we -- if the FBI referenced that conversation in the next application, then it would go into the Woods file too.

Q But if the source is in the FISA, does information about the credibility of the source go in the Woods file?

A So part of the FISA includes a statement about credibility and that's -- there could be documents in the Woods file that would verify that statement. So if that statement includes something from this 302, it would include that 302. It could include other information.

The other thing to keep in mind is that source information is closely guarded because it could reveal the identity of a source, which is something the FBI is very careful about. And so there are times when there's just references in the Woods file to go to the source file.

BY MR. BAKER:

Q You say there might be something in the Woods file about

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credibility of the source? Could be?

A There could be, yeah.

Q And would that -- would that likely be the past history track record of the source?

A Correct. Usually in a FISA it will say that source number one has been credible and reliable in the past, and that statement has to be Woods'd, and it can be Woods'd in various different ways.

Q Okay.

A And by Woods'd I mean have an underlying document to support it.

Q Okay. Is it unusual -- and you may not know this. This may be more of an investigator question. Is it unusual for sources -- during the course of their useful lifetime to an investigative agency, is it unusual for a source to be closed and reopened?

Mr. Pittard. In your experience.

Ms. Moyer. In my -- I have seen -- I don't have sources, so -- but I have seen cases in which sources are closed and reopened, yes.

Mr. Baker. Thank you.

BY MR. BREBBIA:

Q How many -- is that the only meeting you had with Bruce Ohr?

A Yes.

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Q Are you aware of any other meetings that Bruce Ohr had with the FBI?

A I believe that he continued to meet with the -- either the case agent or SSA.

Q Are you aware, was this the first meeting Bruce Ohr had had with the FBI?

A I believe he had met with the deputy director before he met with the investigative team.

Q Had you had any previous interactions with Bruce Ohr?

A No.

BY MR. BREITENBACH:

Q I'm sorry, which deputy director?

A Deputy Director McCabe.

Q Thank you. And real quick, going back, we had already mentioned biases. You mentioned that you're friends with Ms. Page. Were you aware at any point during the pendency of this investigation at the FBI that Ms. Page or Mr. Strzok were in any way biased, as we've now seen in the text messages that have been revealed, against President Trump?

A So I saw no actions that led me to believe that they were biased. I have not reviewed the text messages, so I would not characterize them as biased. I don't know.

Q In your discussions with Ms. Page or Mr. Strzok, did you ever hear anything from them that indicated any bias against President Trump?

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A No.

BY MR. BAKER:

Q In your opinion, why do you think the investigative team would want to engage Bruce Ohr rather than Christopher Steele or somebody that Mr. Ohr was the conduit for? Why wouldn't the investigative team want to engage Steele directly?

A With regard to the meeting that we had?

Q Yeah, or other meetings.

A I wasn't a party to other meetings.

Q Okay.

A The meeting we had, like I said, part of that meeting was to try to get some further information about Christopher Steele. We wouldn't ask him. We'd ask other people about his, you know, history, reliability, things like that. So that --

Q And Mr. Ohr would be the logical source for that based on the relationship he already had?

A He is a source for that, and he had already offered to talk to the FBI.

Q Okay. And are there -- were there other sources for the credibility of Steele as well?

A The investigators talked to other people, yes.

Q Do you know who the other people were?

A I don't know their names.

Mr. Breitenbach. Are you aware whether any other country was attempting to influence the 2016 election? Are you aware whether

any other country was attempting to influence the 2016 election?

Mr. Wellons. I think we better confer before she responds.

[Discussion off the record.]

Mr. Wellons. Could we just have the question either read back or asked again, please?

Mr. Breitenbach. Sure. Are you aware whether any other country was attempt -- other than what we now believe to have been Russia -- was attempting to influence the 2016 election?

Mr. Pittard. So are you aware of any country other than Russia that was trying to influence the 2016 election. And is the question at the time of the election were you aware of any country other than Russia or is it as of now?

Mr. Breitenbach. I'm only --

Mr. Pittard. I think that would matter to these guys.

Mr. Breitenbach. Sure. I'm only referencing the 2016 election, presidential election.

Mr. Pittard. And what she knew at the time of the election?

Mr. Breitenbach. Yes.

Mr. Pittard. So I think you guys are fine with her answering that, right?

Mr. Wellons. She can answer the question.

Mr. Sinton. Just to be clear, because you're asking her about her state of knowledge and understanding about the 2016 election back at the time of the 2016 election.

Mr. Breitenbach. Correct.

Ms. Moyer. No.

BY MR. BREITENBACH:

Q Would you have been aware in your position of another country attempting to influence the 2016 election?

A I don't know. I mean --

Q I'm just asking as a unit chief. I'm just wondering, as a unit chief, is that kind of -- we now understand that there was an investigation of Russia that came to your unit for legal advice. So was -- would another country who was attempting to influence the election, would that also have been proceeding through your unit, or was there another unit within the General Counsel's Office that would have handled that kind of investigation?

A I really don't know. There were two -- by that point there are two counterintelligence law units, so I don't -- I don't know if it would have come to me or not.

Q Okay. No, that's helpful. So it would -- it's possible then if another country was attempting to influence the 2016 election that you may not have necessarily known because that legal guidance on that particular case had gone through a different unit?

A It's possible, yeah.

Q Okay. Are -- slightly related, but are you aware whether any other country was attempting to influence Hillary Clinton or her campaign?

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Mr. Pittard. As --

Mr. Breitenbach. During the 2016 election.

[Discussion off the record.]

Mr. Wellons. Could we have the question read back or re-asked, in part because no one remembers precisely what the question was.

Mr. Breitenbach. So are you aware whether there were any efforts during the 2016 election to influence Hillary Clinton or her presidential campaign?

Ms. Moyer. By a foreign power?

Mr. Somers. Yes, by a foreign power.

Mr. Pittard. And so the question would allow for things that were in the public sphere at the time?

Mr. Breitenbach. I am not asking Ms. Moyer to reveal anything classified in this room.

Mr. Pittard. Right. And you're -- sorry to belabor it, but you're asking if she's aware of efforts by Russia or any other foreign power to impact Secretary Clinton's campaign for presidency in 2016?

Mr. Breitenbach. Yes, I think that's accurate to rephrase. I think we have been -- we have understood that there has been an investigation for nearly 2 years of President Trump's -- or accusations that President Trump and his campaign may have had connections with Russia.

What we have not heard -- and I'm trying to understand

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whether there was any indication inside the FBI whether there were similar efforts potentially -- we can say it by Russia or by another country. And what I'm asking is, is Ms. Moyer aware of any -- and I'll just ask you directly, are you aware of any efforts to influence Hillary Clinton or her campaign during -- by a foreign power during the 2016 election?

Ms. Moyer. I'm having a hard time just because of what you mean by influence. Are you --

Mr. Pittard. I'll just posit one thing that I think will help. It might not clear it up. But one thing that I think was in the public sphere at the time of the 2016 election was the effort or apparent effort of Russia to hack the DNC and influence Clinton in that regard or influence her chances of winning in that regard.

You probably aren't asking about that. You might want to exclude that or -- I think that was in the public sphere already, and so she probably knew about it because it was in the public sphere. That's what I want you to try to clarify.

Mr. Breitenbach. I'm not referencing anything. I am referencing only whether Ms. Moyer is aware whether there were any efforts to influence Hillary Clinton or Hillary Clinton's campaign during the 2016 election.

If you believe that the efforts to hack into DNC computers -- and I'm not stipulating to that fact, but if you believe that the public reporting on that is an attempt to

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influence Hillary Clinton or her campaign, I think that would be included in my question.

Ms. Moyer. Okay. Then yes.

Mr. Somers. Let me ask this question again then. How about positively influence or impact the Clinton campaign? I take it that the Russians were not, at least from the reporting, trying to positively impact her campaign. Are you aware of a foreign government trying to positively influence, impact, help, the Clinton campaign?

Ms. Moyer. No.

Mr. Breitenbach. And do you believe that that type of effort, if it was reality, you would have known about?

Ms. Moyer. Oh, I don't know if I would have known about it or not.

BY MR. SOMERS:

Q Are you familiar with defensive briefings?

A [Inaudible response.]

Q Are you involved at all in the process of whether a defensive briefing is given to a --

A No. That's generally an operational decision.

Q So you have no involvement in that?

A Occasionally I'll hear that they want to do a defensive briefing, but there's no legal issues that I need to resolve about that.

Q Was there any discussion about -- that you were aware of

about doing a defensive briefing as it relates to Carter Page?

A Defensive briefing to Carter Page?

Q No, to Donald Trump as it relates to Carter Page.

A I was involved in a discussion in which they talked about doing a defensive briefing for Donald Trump generally.

Q Generally, but not with regard to Carter Page specifically?

A I don't remember specifically talking about Carter Page.

Mr. Brebbia. Sorry. I just want to pivot back to the Bruce Ohr meeting and Bruce Ohr generally. There's some specific verbiage that may help refresh your recollection.

Mr. Pittard. And before you -- I think we've been going for about an hour and ten. If this is about to wrap up then, yeah.

Mr. Brebbia. Two questions. I think maybe three. I think two.

Mr. Somers. I think what we're trying to do is we're running slightly over on this hour so that we don't have to do another round, so we're going to run 15, 20 -- I think we should be within about five more minutes.

BY MR. BREBBIA:

Q Was it ever communicated to you that Christopher Steele was desperate to prevent Donald Trump from winning? Was it ever communicated to you in any fashion that Christopher Steele was desperate to prevent Donald Trump from winning?

A That might be the word I remember being used. Is that

what you asked me before? I apologize if I --

Q No. No, I did not have the word "desperate," but I guess you never know what will refresh someone's recollection.

How about was it ever communicated to you in any form that Christopher Steele was willing to do anything to keep Donald Trump from winning?

A I don't remember that.

Q Okay. But you do recall that he -- that Christopher Steele was desperate to prevent Donald Trump from winning?

Mr. Pittard. Or more precisely that you heard somebody say that?

BY MR. BREBBIA:

Q That it was communicated to you.

A Yes, that -- that was communicated to me.

Q What actions, if any, did you take as a result of receiving that information?

A I didn't take any actions.

Q How did you perceive that statement?

A In combination with the rest of the discussion, I think that we already knew that Christopher Steele had his opinions because he had spoken out about them to both our -- the source handler when the source handler called him about his discussion with Mother Jones, I think. So it was just an additional fact point of information that I thought we had already known.

Q Just so we're clear, what were those opinions? What was

Christopher Steele's opinions that he had expressed both to Mother Jones, and his source agent, and Bruce Ohr?

A So I think he was concerned -- well, I don't know exactly what his thoughts were. I've never met Christopher Steele. The way I interpreted the discussion we had with Bruce Ohr is that Christopher Steele was a long time Russia expert and he had truly believed that the Russians were attempting to influence U.S. democracy, and so he was very concerned about the efforts that they were taking.

And because of that he was upset with the actions that the FBI director took that he thought had an impact on the election, and therefore he talked to Mother Jones, which was not something we would have wanted a source to do.

BY MR. BREITENBACH:

Q Are his views concerning his desperation that President Trump not win, are those views that you believe should have been communicated to the FISC?

A I think they were communicated to the FISC. Maybe they didn't use that exact word, but I think that the fact that he want -- he was concerned about the actions of the FBI and that's why he disclosed his relationship to Mother Jones, that was explained and that's why we closed him. And I think that was explained in the next packet -- the next renewal for the FISA.

Q I thought I understood --

Mr. Wellons. I'm sorry, it's perhaps because I'm looking

forward to getting out of here and I know you're wrapping up. I think I'm going to beat you to it, but I don't think that was precisely the question asked.

So we can wrap this up, please listen carefully to the question that was asked and respond to the question. I think there was a question about were you concerned, so -- if you could just please focus on the question that's actually being proposed.

BY MR. BREITENBACH:

Q Do you believe that bias that was expressed by Christopher Steele concerning his desperation that President Trump not become President, is that a fact that should have been communicated to the FISC?

A I think it was communicated to the FISC.

Q And how, in your understanding, was it communicated to the FISC?

A It was explained in the renewal for the FISA application.

Q The fact that he had a desperation that Trump not become President?

A I don't remember exactly what the words of the FISA application. If you have it --

Q I don't. I'm just trying to narrow down the idea that you had expressed previously is that Christopher Steele was released as a source by the FBI because he spoke to the press.

A Right.

Q Is it that that you believe should be communicated to the FISC, or is it the fact that the source who had been released also had biases against President Trump or both?

A So I've not ever described this as a bias, just this is a fact that I'm aware of. I'm not sure I would assess it as a bias. I believe that the reason that Christopher Steele was disclosed as a source needs to be described to the FISC, and that was described, is my understanding, my recollection.

Q It was described in your sense that -- in your understanding that he had been released as a source for revealing information to the press?

A I think it was -- I think it was described more fully than that.

Mr. Pittard. And maybe, if we're going to continue down this, we really should show her --

Ms. Moyer. Right.

Mr. Pittard. -- the application.

Mr. Baker. I'm going to jump around just to try to clean up a couple of things.

In one of the more infamous texts between Mr. Strzok and Ms. Page, and this came out in a public hearing that --

Mr. Sinton. Please keep your voice up.

BY MR. BAKER:

Q -- that these two committees held, Mr. Strzok said: Just went to a southern Virginia Wal-Mart. I could smell the

Trump support. And Ms. Page says: Yep, out to lunch with Sally. We both hate everyone and everything.

Do you believe that Sally is you? I'll rephrase it. Do you hate everyone and everything?

A Some days.

Q But generally?

A I don't know what that's referring to. I've never seen their text messages.

Q But you don't hate everyone and everything all the time?

A Not all the time, no.

Q Rewinding back several hours ago, you said you had a role in changing or assisting in the revision of Mr. Comey's draft statement at his press conference where the negligence issue was removed. Did you also have a role in changing the word "President" to "senior government official"?

A I remember that discussion, yes, but I did not have a role in changing it.

Q Do you know who did?

A Oh, I don't know who did actually.

Q But there was a discussion about changing it?

A Yes, for security reasons.

Q Okay. And that was the underlying issue for security reasons?

A That's my understanding, yeah.

Q Do you remember what the concern about saying President

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was?

A I think that that would have highlighted -- and given the foreign power an opportunity to go back and look through information to see if they could find communications with the President. I think there was something like that.

Q Okay.

BY MR. BREITENBACH:

Q But does that indicate that the FBI was aware that President Obama was communicating with Hillary Clinton through her private server?

A That is true, I believe.

Q Did you have any indication ever whether those communications were accessed by a foreign power?

A No, not that I'm aware of.

BY MR. BAKER:

Q In addition to Bruce Ohr being a conduit of some information to the FBI, were you aware that former General Counsel Jim Baker also received information from individuals and that was the gateway of that information into the FBI?

A I was aware that Jim Baker had received some information, yes.

Q Do you know who he got the information from?

A Yes.

Q And who was that?

A He received -- my understanding is that he received some

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copies of the Steele reporting from David Corn and that he received some other information from Michael Sussman.

Q And who is Michael Sussman?

A A former DOJ attorney.

Q Okay. And what did Mr. Baker do with the information?

A He provided it to the investigators.

Q Did you know what the information was you said some of the Steele reporting?

A So I think that David Corn provided copies of the Steele reporting, not -- the copies of things we already had. From Sussman it was not related to the Steele reporting. It was related to the Trump server communication.

Ms. Bessee. To the extent that the answer to that question goes into the ongoing special counsel investigation, she will not be able to go into details of what that information is.

Ms. Moyer. Okay.

BY MR. BAKER:

Q I believe you said earlier in your role as the unit chief or the line attorney, one or the other, you did read the probable cause part of the Carter Page FISA?

A Yes.

Q And was the probable cause segmented out as to where it came from when you were reading it, or that's somewhere else in the process?

A I'm not sure what you mean by that.

Q Would you have known while you're reading the probable cause what parts of it came from Steele versus other sources?

A Yeah.

Q If it -- and you signed off that it was legally sufficient?

A Yeah.

Q It did meet the probable cause standard that's required. And I know --

A Let me clarify that. I didn't sign off on it. I --

Q You advanced it to the next step?

A Well, actually the line attorney approved it to go to OI, but I agreed with that decision.

Q If it did not have the Christopher Steele information in it, would it still have been sufficient from a probable cause standard?

A So I think it's a close call, like 50/50, 51/49. I really think it's a close call. There were others that I believed felt more strongly about it. I do think --

Q More strongly about --

A That there was probable cause without the Steele information, including the line attorney that signed off on it, but --

Q So even without the people that felt it was sufficient without it, it was still a close call?

A Right.

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Q It sounds like --

A With it I don't think it's a close call. With it I think that clearly meets the probable cause standard.

Q Right. But without it there are those that felt it did meet a probable cause standard?

A Yes.

Q And those that didn't, it was still a close call or --

A Yes.

Q Okay. So it was a close call by those that looked at it or had a discussion about it and maybe some that felt it was sufficient without it?

A Correct.

Q Thank you.

Mr. Somers. I think we're done.

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[4:25 p.m.]

BY MS. SHEN:

Q Okay, the time is 4:25.

So, Ms. Moyer, I just want to follow-up on something. The last thing we talked about in the previous round about the Carter Page FISA and whether it was a close call when the reviewing attorneys looked at the application and the evidence.

So I believe that last round you said that the line attorney in charge of approving the Carter Page FISA application did not believe it was a close call. Is that accurate?

A Yes, that is accurate.

Q Okay. And I also believe you said that even without the Christopher Steele dossier, that line attorney believed that there was probable cause to support the Page FISA application. Is that correct?

A Yes, that's correct.

Q And you share that opinion?

A I think so. Like I said, it's a close call. It's probable cause. And so I think it would have -- the Steele dossier -- the Steele reporting made it clear to me. I think we would have gotten there on probable cause even without the Steele reporting.

Q Okay.

A But I'm not sure. It would have been a little more -- teasing out more information.

Q Sure, sure. And earlier today, I think we also discussed how when the FBI's preparing FISA applications, they don't necessarily indicate whether they believe a source is biased, so much as provide additional facts that might speak to the credibility of the source. Is that fair?

A So I think I was talking about when the FBI's documenting the source, the file, that's when they don't talk about whether someone's biased or not. They just document the facts to the file.

In a FISA application, there's like an assessment about the credibility, and I would think that if there's -- we would explain facts that support that assessment.

Q Okay. And then just to -- I'm jumping around a little bit, but there was also some discussion about -- I believe you said that there was a requirement for the FBI to provide any exculpatory information that they did have in a FISA application. Is that correct?

A I believe I said that. I can't point to a requirement. I think we just have a duty to the court --

Q Okay.

A -- because it's a Federal court.

Q Sure. In the case of the Carter Page FISA application, are you aware of any exculpatory information that the FBI did not provide to the FISA court?

A No.

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Q Okay. So I'm going to introduce now an exhibit that is Pages 15 through 17 of the Carter Page FISA application that was released under the Freedom of Information Act and, thus, heavily redacted. And on Page 15, the first page of the exhibit, there's a section entitled "Page's coordination with Russian government officials on 2016 U.S. Presidential election influence activities." And I'll give you a moment to review.

Okay. So on the first page of the exhibit, Page 15, there's a sentence that reads, first according to information provided by an FBI conventional human source, Source No. 1, and then comma, and there's a footnote, Footnote 8. And then on the bottom of the page Footnote 8 begins, and I'll actually ask you to turn the page to Page 16 where the footnote continues. And one of the sentences on that page reads, the FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate 1's campaign.

So, Ms. Moyer, there have been allegations, and we've discussed some of them today, that the FBI and the Department of Justice may have abused the FISA process because they failed to disclose a possible bias or political motivation from Christopher Steele to the FISA court judges. My question to you is, do you believe that the FBI or Department of Justice abused the FISA process because they did not provide more information to the Foreign Intelligence Surveillance Court on Christopher Steele in Carter Page's FISA application?

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A No.

Q And can you explain why?

A So, I believe that this information in this footnote, particularly the sentence you pointed out, highlights for the court that this could have been opposition research, that that's what the source was conducting. And I don't think that -- I mean, we use sources all the time in applications for FISAs, as well as other affidavits, and we don't -- you know, as long as we fully describe the source and what the source's reliability, credibility, reasons, motivations, I think that we have accurately informed the court.

Q So that sentence that I read about, you know, likely looking for information to discredit the candidate's campaign, you believe that is sufficiently transparent to the FISA court?

A I think so, yes.

Q Okay. And do you believe that the FISA court judges may have overlooked this information because it was contained in a footnote?

A Oh, no.

Q Okay. So FISA courts do tend to read footnotes?

A That's where this information tends to be.

Q Okay. So further down on the same page, Page 16, it reads, notwithstanding Source No. 1's reason for conducting the research into Candidate No. 1's ties to Russia, based on Source No. 1's previous reporting history with the FBI, whereby Source 1

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provided reliable information to the FBI, the FBI believes Source 1's reporting herein to be credible. Ms. Moyer, do you agree with that assessment?

A Yes. To the extent, I don't usually run sources, so I can't say, you know -- I was not directly participating in the source handling, but I believe that that sentence is accurate.

Q So you have no reason to doubt that Christopher Steele provided credible information to the FBI?

A Correct.

Q Okay. Thank you. I think we're done.

A Oh, that's it?

Mr. Pittard. If I could just say before we break, to reiterate that Ms. Moyer is not a political official at the FBI, she is not an SES person, she is a line person, and, therefore, we would very much appreciate what I think the committee has done -- or committees have done over the last couple days, which is to keep her presence here out of the media. You know, there was some discussion earlier about her name getting released inaccurately, you know, a couple months ago in this process. That was a -- that was a very unfortunate event. And we would just sort of reiterate our ask that the committees respect her privacy, particularly given her role here, and that her name remain confidential and not in the public sphere. And I think the committees have done that today. I haven't been looking at the news, but I certainly hope so.

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I appreciate that and would ask that that respect continue to be shown to her.

Mr. Wellons. If I may just add one point to that, despite some mischaracterizations in some of the reporting, as you've heard today, Ms. Moyer does work on intelligence investigations and operations at the FBI. Her role is very sensitive, and that's one that the FBI takes very seriously. So for that reason as well, the FBI would just remind the committee of exactly what it stated at the outset, its perspective on the confidentiality of these hearings is, and we would just ask the committee to abide by its own policies.

Mr. Pittard. Thank you.

[Whereupon, at 4:35 p.m., the interview was concluded.]

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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