**A Judicial Watch Special Report** 



# **Exposing the Deep State**

September 2017

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# **Executive Summary**

#### "They pride themselves on operating below the radar – and above the law"

We face a crisis of the Deep State – "Alt-government," I sometimes call it. The actions of the Deep State constitute a direct challenge to our republican form of government. Working primarily through the intelligence and law-enforcement agencies, the Deep State is actively engaged in subversive measures designed to delegitimize Donald Trump, cause the American people to lose faith in their president, destroy the Trump presidency and eventually impeach him or put him in jail.

~ Judicial Watch President, Tom Fitton

This Judicial Watch Special Report analyzes the Deep State, which comprises legions of political appointees, career civil servants and powerful private contractors who run the government no matter who sits in the Oval Office. No matter which political party controls Congress. And, no matter what is the will of the American people. No matter who's in power, they exert control. Oftentimes, the liberal media effectively operates as the propaganda arm of the Deep State.

The shadowy world in which Deep State actors maneuver is characterized by three disturbing proclivities: Secrecy, surveillance and subterfuge.

The operatives manning and manipulating the Deep State demand an activist, interventionist government, both domestically and internationally. Importantly, their worldview often rejects the beliefs and values of a majority of patriotic Americans.

As time goes on, the disparity between the values and beliefs of the people and those of the Deep State becomes cumulative, and no matter whom the people elect to public office, the Deep State takes the nation in a direction that increasingly diverges from where the people desire to go.

Sometimes, as it has with the Trump presidency, the Deep State rises to the surface in rebellion, taking aggressive, seditious measures against a president whose election it opposed and who it perceives to be a threat to its own agenda and, perhaps, its very survival. As already is clear with the Trump presidency, the Deep State can turn on any president that threatens its interests and survival. And left unchecked, it may illegally destroy him.

This Special Report explores the workings of the Deep State through four case studies, in each of which Judicial Watch is involved in investigative action and litigation:

• The Environmental Protection Agency (EPA), involving three JW Freedom of Information Act (FOIA) lawsuits. One lawsuit focuses on the efforts by agency political officials and civil servants to hide their communications and circumvent the Federal Records and Freedom of Information Acts. The second lawsuit demands to see documents surrounding the EPA's cost-benefit analysis of the Clean Power Plan, which Judicial Watch suspects to be "fake science" used to justify the Obama EPA's health claims in the Clean Power Plan, a scheme to end coal energy under the guise of combatting alleged global warming. The third lawsuit is aimed at EPA's efforts to propagandize the American People illegally to promote its power grab over a clean water rule it was attempting to promulgate at the time.

- The Internal Revenue Service (IRS), involving four JW FOIA lawsuits focusing on the political targeting of President Barack Obama's political enemies, including conservative non-profit organizations and individuals, and the unlawful collusion among the IRS and other agencies of government, such as the Justice Department, the FBI, the Department of Health and Human Services, to spy on innocent American citizens, propagandize them and bring criminal charges against political enemies of the Obama administration and/or the Deep State.
- United States Agency for International Development (USAID)/Soros Open Society Foundations, involving two JW FOIA lawsuits focusing on the Soros Open Society Foundations' use of U.S. taxpayer money channeled through USAID to destabilize and overthrow the democratically elected governments of Macedonia and Albania.
- The Intelligence/Law-Enforcement Community, involving six JW FOIA lawsuits, an additional FOIA request and an advisory/demand letter, all focused on the surveillance, unmasking and illegal targeting of President Trump and his associates during the government's investigation of purported Russian involvement in the 2016 presidential election and alleged collusion with the Russians by Trump and his team. The Special Report examines the flood of leaks and innuendos coming out of the government surrounding Trump and his associates, including the Gen. Michael Flynn episode; the Obama administration's misuse of the NSA database of surveillance intercepts to target and unmask the identities of Americans; the Trump Dossier and the FBI's involvement in it; along with James Comey's purloined memoranda and the appointment of a special counsel to investigate Trump and his associates, including unsubstantiated accusations of obstruction of justice by the president when he allegedly ask Comey to shut down the Flynn investigation. The Report assembles the evidence at hand and finds it supports the conclusion that the Deep State, working primarily through the intelligence and law-enforcement agencies, is actively engaged in subversive measures (a "soft coup") designed to delegitimize Donald Trump, cause the American people to lose faith in their president, destroy the Trump presidency and eventually impeach him or put him in jail.

At the beginning of this Special Report, it is observed that the Deep State is not monolithic but it shares a common mindset and worldview, and it is characterized by three disturbing proclivities: Secrecy, surveillance and subterfuge. Secrecy catalyzes and enables surveillance and subterfuge. The only way to observe and evaluate the workings of the Deep State is to penetrate the veil of Deep State secrecy that shields the actions of political appointees, career civil servants, private contractors and their relationship with the media and outside agents of influence that comprise the Deep State. This Special Report concludes that it is time to tear down the wall of secrecy surrounding the Deep State. President Trump should order federal agencies to stop the stalling and start obeying the nation's open-records laws. Until they do, the dangerously malignant Deep State will continue to grow and undermine American democracy.

# **Exposing the Deep State**

"They pride themselves on operating below the radar – and above the law"

We face a crisis of the Deep State – "Alt-government," I sometimes call it. The actions of the Deep State constitute a direct challenge to our republican form of government. Working primarily through the intelligence and lawenforcement agencies, the Deep State is actively engaged in subversive measures designed to delegitimize Donald Trump, cause the American people to lose faith in their president, destroy the Trump presidency and eventually impeach him or put him in jail.

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## I. Introduction and Background

There is a deeply embedded shadow government in the United States running the affairs of state – The Deep State or Alt Government, as Judicial Watch President, Tom Fitton describes it. This shadow government is not monolithic. But, it does not have to be. Its operatives share a common mindset and worldview. They travel in the same social circles. And, they walk the same corridors of power.

No matter who's in power, they're in control.

They pride themselves on operating below the radar – and above the law. And, the shadowy world in which they maneuver is characterized by three disturbing proclivities: Secrecy, surveillance and subterfuge.

In the words of Judicial Watch Director of Investigations Chris Farrell, the decidedly left-leaning Deep State is "quite comfortable exercising all of the levers of the organs of the state." Farrell explains:

They come from a Franco-Germanic political philosophy that, historically, has always placed the state over the citizenry. They derive their power and exercise it vigorously through the state.

As time goes on, this disparity between the values and beliefs of the people and those of the Deep State becomes cumulative, and no matter whom the people elect to public office, the Deep State takes the nation in a direction that increasingly diverges from where the people desire to go. Deep State operatives are ensconced in every agency of the government; they have their own agendas; and many of them think they don't have to answer to an elected president, the rule of law or the American people. They also are enmeshed in and interface with outside networks of organizations, media companies, universities, think tanks and corporations that share their views, help shape their views and exert enormous influence on policy and its day-to-day implementation. The "military-industrial complex." President Dwight Eisenhower warned about is a reality but it is not the only complex providing the architecture of the Deep State; there are several of them: the intelligence/security-industrial complex, the environmental/academic-industrial complex, to name but two.

The American media complex effectively operates as the propaganda arm and transmission belt of the Deep State. In a 2013 article (updated in 2016), former State Department foreign service officer and congressional policy adviser and analyst, James George Jatras, explains:

American media increasingly have operated uncritically in conjunction with the bipartisan Washington political establishment...Among the key features of such cooperation...are:

- Deficiency of geographic and historical knowledge as the American norm (the less people know the more likely they are to believe what they are told, with the least informed most persuaded of the need to "do something");
- Reliance on government sources, "ventriloquism," and "information incest" (unknown to the public, much media "information" comes from government sources);
- Centralized corporate ownership (official policy imperatives interface with ratings dollars for six giant corporate conglomerates);
- "Para-journalism," "infotainment," and "atrocity porn" as a war trigger (atrocities appear seemingly on cue and then receive saturation coverage);
- Demonization "Hitler" memes and "weaponization" of media (compromise and negotiation have no role in confronting absolute evil war is the default option);
- America and the "international community," the "Free World," and American "exceptionalism" and "leadership;" disregarding "alternative" media, American samizdat (accurate information is available in "alternative" media, but the major[s] still decide if it exists or not);
- "We never make mistakes," "stay the course," and "MoveOn-ism" (U.S. policy has no rearview mirror);
- Authors of past blunders are not discredited, while those who said "tolya so" are ignored).

- In turn, media themselves are an integral part of a multifaceted, hybrid public-private entity with broad range and depth. Variously known as the Establishment, the Oligarchy, or the Deep State, this entity includes elements within all three branches of the U.S. government (especially in the military, intelligence, and financial sectors), private business (the financial industry, government contractors, information technology), think tanks, NGOs, the "Demintern," both political parties and campaign operatives, and an army of lobbyists and PR professionals.
- Looking into the future in light of 2016 anti-Establishment challenges from Donald Trump and Bernie Sanders, the shortcomings of Barack Obama's policies in Libya, Syria, and Ukraine on top of those of George W. Bush in Iraq and Afghanistan, shrinkage of the American Middle Class, and increasing public skepticism of the "MSM" in favor of digital "alternative media," both the Washington-based oligarchy and its media component show signs of losing their grip.
- The possibility exists for a peaceful evolution to a less warlike posture (impacting media as well) that would refocus on America's domestic needs. Alternatively, the existing order could risk a major war in a desperate bid to save its wealth, power, and privileges – with unforeseeable consequences for America and the world.

The operation of the Deep State is not a meticulously organized conspiracy, masterminded and controlled by any central authority operating out of a fortified bunker. Nor does it need to be. The agendas of the politicians, bureaucrats and contractors that populate the Deep State are frequently the same, or complementary, and the huge sums of taxpayer money involved tie them together inextricably. And, they ineluctably travel in the same, invariably elitist circles. Rather, the Deep State is like a systemic disease of run-away cells, replicating and metastasizing to serve their own interests and survival. In short, a cancer.

The Deep State has a life of its own, independent of whoever is president or whichever political party controls the Congress. Though it prefers to operate through sleight of hand, with smoke and mirrors, at times it may rise to the surface and become the handmaiden of overzealous and overreaching presidents who serve its interests – as it did when Barack Obama weaponized the permanent bureaucracy inside the IRS, the FBI and other intelligence and regulatory agencies against the American people and his (and the Deep State's) political opponents.

Most frequently, the Deep State recedes back into the shadows where its agents quietly advance their own agenda and obstruct troublesome elected officials (and the public that supports them) in a million different ways, large and small, deliberate and devious. Sometimes, of course, it rises to the surface in rebellion – as it has with President Donald Trump, taking aggressive, seditious measures against a president whose election it opposed and who it perceives to be a threat to its own agenda and, perhaps, its very survival.

The Deep State is more insidious than mere partisanship, and it is more dangerous because

it is permanent. While presidents and Members of Congress come and go, the Deep State remains permanently, growing ever more powerful – and predatory. As already is clear with the Trump presidency, the Deep State can turn on any president that threatens its interests and survival. And left unchecked, it may destroy him.

## **II. Four Case Studies**

The Deep State comes in two flavors: domestic affairs and foreign affairs. Frequently, they overlap and reinforce each other. Four instances of the Deep State at work are illustrative.

## **Case Study # 1: The Environmental Protection Agency**

Undermining the Rule of Law. The particularly notorious fifth column inside the Environmental Protection Agency (EPA) is a prime example of the domestic arm of the administrative Deep State at work. Judicial Watch currently is seeking to uncover the truth about what the Deep State is up to inside the EPA and how it is working to undermine President Trump's agenda and the rule of law.

For example, Judicial Watch recently filed a Freedom of Information Act (FOIA) lawsuit on March 23, 2017 against the EPA to pry loose information that could expose the deepstate bureaucrats embedded in that agency. They are working to undermine the rule of law to further their own radical environmental agenda by using the cell-phone encryption application "*Signal*" to thwart government oversight and transparency. Judicial Watch filed the suit in the United States District Court for the District of Columbia (*Judicial Watch v. Environmental Protection Agency* (No. 1:17-cv-00533)) after the EPA failed to respond to a February FOIA request for:

- 1. Any and all work-related communications sent to or from the following EPA officials using the app known as "*Signal*," for the period February 3, 2016, to the present: Administrator (or Acting); Deputy Administrator (or Acting); Assistant Administrator (or Acting), Office of Air and Radiation; Assistant Administrator (or Acting), Office of Chemical Safety and Pollution Prevention; Assistant Administrator (or Acting), Office of Enforcement and Compliance Assurance; Assistant Administrator (or Acting), Office of Acting), Office of Land and Emergency Management; Assistant Administrator (or Acting), Office (or Acting), Office of International and Tribal Affairs; and Chief Financial Officer (or Acting).
- 2. Any and all records requesting or approving the use of the messaging app known as *"Signal"* by any EPA personnel for official business.

The use of *Signal* by EPA officials to thwart government oversight is illustrative of what is going on throughout the Deep State under the guise of foiling a "misguided" ("evil" to some in the Deep State) president. As reported in a February 2, 2017, *Politico* article entitled "Federal workers turn to encryption to thwart Trump:"

Whether inside the Environmental Protection Agency, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology ... to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

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Fearing for their jobs, the employees began communicating incognito using the app *Signal* shortly after Trump's inauguration.

[T]he goal is to "create a network across the agency" of people who will raise red flags if Trump's appointees do anything unlawful.

Judicial Watch President, Tom Fitton, had this to say about the lawsuit:

This new Judicial Watch lawsuit could expose how the anti-Trump "Deep State" embedded in EPA is working to undermine the rule of law. Let's hope the Trump administration enforces FOIA and turns over these records. Given EPA's checkered history on records retention and transparency, it is disturbing to see reports that career civil servants and appointed officials may now be attempting to use high-tech blocking devices to circumvent the Federal Records Act and the Freedom of Information Act altogether.

*Signal* has long been touted within the high-tech community as an encryption device particularly effective for blocking government access to smartphone messaging. In a 2015 article entitled "*Signal* Keeps your iPhone Calls and Texts Safe from Government Spies," TechCrunch.com advised:

Don't want someone else handing your text messages, pictures, video or phone conversations over to the government? There's an app for that. An iOS app called *Signal* is a project out of Open Whisper Systems, a not-forprofit collective of hackers dedicated to making it harder for prying government eyes to get a hold of your information.

The use of private encryption software such as *Signal* by federal officials and employees not only would make it difficult for their work to be overseen; it also would make it nearly impossible for federal agencies to fulfill their record-keeping and transparency obligations under the Federal Records and Freedom of Information Acts. The Federal Records Act requires federal employees to preserve all records of work-related communications on government servers, even if such communications occur over non-government emails, phones or text messages. The records must be forwarded on to the agency for preservation and archiving, and the records are subject to release under the Freedom of Information Act, unless specifically exempted.

The Environmental Protection Agency has a history of employees' failing to preserve records and using private emails to conduct agency business or conducting official business through non-official communications channels:

• According to a September 20, 2016, report put out by the Energy and Environment Legal Institute, which was based upon emails obtained under FOIA: "Moving select correspondence about EPA-related business to non-official email accounts was an understood, deliberate and widespread practice in the Obama EPA."

- According to a December 21, 2016, Inspector General Report, the EPA's "mobile device-management processes do not prevent employees from changing the device's configuration settings for retaining text messages on all government-issued mobile devices." Apparently, at least one EPA employee set his phone to delete messages automatically after 30 days.
- Although excluded from the body of the IG report, the Inspector General reportedly told the chairman of the House Committee on Science, Space and Technology, Lamar Smith, who requested the IG investigation, that EPA officials archived only 86 text messages out of 3.1 million messages sent and received by agency employees in 2015.
- Chairman Smith originally requested the IG report in November 2014 after it was revealed that high-ranking EPA officials, including then-EPA Administrator Gina McCarthy, may have deleted texts to hide official business.

If deep-state bureaucrats begin using cell phones encrypted against their supervisors and information-management personnel, matters will only get worse.

Sidestepping Congress. The Clean Power Plan, proposed by the EPA after Congress defeated cap-and-trade legislation to regulate green-house gas emissions in 2009, is another example of how the administrative Deep State operates and how it surfaces to make itself available to an overreaching president to sidestep Congress.

Judicial Watch has filed a FOIA lawsuit against the EPA for records concerning the agency's claim that the Clean Power Plan, announced by President Barack Obama in August 2015, would provide significant health benefits to the American People (*Judicial Watch, Inc. v. U.S. Environmental Protection Agency* (No. 1:17-cv-01217)). The suit was filed on June 21, 2017 in the U.S. District Court for the District of Columbia after the EPA failed to respond to a May 3 FOIA request seeking the following:

All internal emails or other records explaining, or requesting an explanation of, the EPA's decision to claim that the Clean Power Plan would prevent between 2,700 to 6,600 premature deaths by 2030.

The Clean Power Plan, aimed at cutting carbon emissions from existing power plants by 32 percent by 2030, was touted by the Obama administration not only as a way to forestall global warming but also as a means of providing large health benefits to the American public. The Plan, first floated by the EPA in June 2014, was implemented by Deep State operatives through regulatory interpretation of the Clean Air Act to sidestep Congress after it refused in 2009 to enact cap-and-trade legislation to regulate greenhouse-gas emissions.

On March 28, President Trump outraged the Deep State by signing an executive order directing the EPA to begin the legal process of withdrawing and rewriting the Clean Power Plan, which, if left in place, would have closed hundreds of coal-fired power plants, halted construction of new plants, increased reliance on natural-gas-fired plants and shifted power

#### generation to huge, new and problematic wind and solar farms.

On June 1, President Trump also announced the United States would cease participation in the 2015 Paris Agreement on climate change mitigation, which caused high anxiety among Deep State environmental bureaucrats inside the EPA and near hysteria among the outside agents of influence and some Members of Congress. California Governor Jerry Brown called the withdrawal "a misguided and insane course of action," while the Sierra Club described Trump's decision as "one of the most ignorant and dangerous actions ever taken by any President." Democratic Congresswoman Nancy Pelosi (D-CA) accused Trump of betraying his grandchildren and "dishonor[ing] the God who made us, and that is just what we're doing by walking away from the [Paris] accord."

By law, the EPA must conduct a cost-benefit analysis to accompany each new major regulation it promulgates. The cost-benefit analysis produced by Deep State partisans to justify the regulations underlying the Clean Power Plan claimed to prevent thousands of premature deaths each year as well as reducing serious health complications the agency associated with coal-fired generation plants. In an August 2015 press release announcing the Plan, then-EPA Administrator, Gina McCarthy claimed: "By 2030, the net public health and climate-related benefits from the Clean Power Plan are estimated to be worth \$45 billion every year." If deep-state bureaucrats begin using cell phones encrypted against their supervisors and informationmanagement personnel, Deep State lawlessness will only get worse.

According to the EPA cost-benefit analysis:

- From the soot and smog reductions alone, for every dollar invested through the Clean Power Plan—American families will see up to \$4 in health benefits in 2030.
- The Clean Power Plan will significantly improve health by avoiding each year:
  - 3,600 premature deaths
  - 1,700 heart attacks
  - 90,000 asthma attacks
  - 300,000 missed workdays and schooldays

#### Judicial Watch President, Tom Fitton, had this to say about the lawsuit:

This lawsuit is essential to the public debate over President Trump's decision to withdraw and rewrite the Clean Power Plan. Critics of Trump's executive order contend that it will forfeit wide-spread "life-saving benefits" EPA scientists determined would result from the plan. Given that permanent EPA bureaucrats have a long history of understating the detrimental economic costs and assuming unsubstantiated and extremely dubious health benefits from the agency's regulations, the public deserves to see the details of the EPA's cost-benefit analysis. **Propagandizing the American People.** Propaganda is a staple of the Deep State, notwithstanding the fact that it is patently illegal for government agencies to propagandize the American people. The Deep State actors inside EPA are masters at the propaganda game. That is why Judicial Watch sued the EPA for records on its use of the social media platform *Thunderclap* for alleged propaganda.

A December 2015 Government Accountability Office (GAO) report concluded the EPA's use of *Thunderclap* to send out messages boosting the "Waters of the United States" rule (also known as the Clean Water Rule) "constitutes covert propaganda" and violates the legal prohibition on propaganda by a federal agency. Subsequently, Judicial Watch filed a FOIA request for:

All internal emails or other records concerning project administration, management, or assignment of tasks related to the EPA's use of the Thunderclap social media platform.

When the EPA failed to respond to the FOIA request, Judicial Watch filed a FOIA lawsuit on June 21, 2017 against the agency for all the records. JW filed the suit in the U.S. District Court for the District of Columbia (Judicial Watch vs. U.S. Environmental Protection Agency (No. 1:17-cv-01218)).

The 2015 GAO report found that the EPA reached 1.8 million social media users through Thunderclap, which uses a synchronized social media blast to amplify a message on platforms such as Twitter:

The Environmental Protection Agency (EPA) violated publicity or propaganda and anti-lobbying provisions contained in appropriations acts with its use of certain social media platforms in association with its "Waters of the United States" (WOTUS) rulemaking in fiscal years 2014 and 2015. Specifically, EPA violated the publicity or propaganda prohibition though its use of a platform known as Thunderclap that allows a single message to be shared across multiple Facebook, Twitter, and Tumblr accounts at the same time. EPA engaged in covert propaganda when the agency did not identify EPA's role as the creator of the Thunderclap message to the target audience.

Federal agencies are permitted to promote polices, but are prohibited from engaging in propaganda, which is defined as covert activity intended to influence the American public. Agencies are also prohibited from using federal resources to conduct grass-roots lobbying to prod the American public to call on Congress to act on pending legislation.

Judicial Watch President Tom Fitton had this to say about EPA's illegal propagandizing and the JW lawsuit:

The Obama EPA has a checkered history on transparency and accountability. Judicial Watch wants the details on the Obama EPA's sketchy effort to secretly peddle propaganda to protect its regulatory power grab.

It was recently reported that the Trump administration is taking action to repeal the Waters

of the U.S. rule, an Obama-era regulation that gave Washington broad powers over streams and other small bodies of water across the country.

## Case Study # 2: The Internal Revenue Service

The IRS-Targeting Scandals. The Internal Revenue Service (IRS) is a domestic tax-collection agency but it also has morphed into a deep-state, domestic intelligence operation, which interfaces with other U.S. intelligence and law-enforcement agencies, both foreign and domestic. How this symbiosis between the domestic and foreign arms of the Deep State works is explored in both this case study and "Case Study # 4: The Intelligence Community."

The domestic political-intelligence operation spearheaded by the Obama IRS, in conjunction with the White House and other agencies, such as the Department of Justice, the FBI, the Labor Department and Health and Human Services, dwarfs and trivializes Nixon's Watergate.

The evidence is irrefutable that the Obama administration weaponized the IRS to obstruct and punish political opponents who had organized themselves as Tea Party groups. It's not an open question.

Through litigation, Judicial Watch obtained thousands of pages of material detailing the actions of IRS official Lois Lerner and other Obama administration officials in a concerted operation to thwart the free expression of political opposition and organizing guaranteed in the First Amendment.

Were there any criminal prosecutions for this outrageous abuse of power and corruption? No. Why? Because, the highly politicized FBI and Justice Department were complicit in the scheme. After all, in flagrant violation of federal law, the IRS transferred 1.25 million taxpayer files to the FBI so they could thumb through them and look for anything "interesting."

President Obama's politicization of the IRS as a weapon against his political opponents is now well known, thanks to Judicial Watch. But, IRS attacks on the First Amendment in stifling free speech and expression are just one example of the IRS Deep State at work. The tax agency also colludes with other agencies of the government to undermine the rule of law where the Fourth and Fifth Amendments are concerned.

**IRS Colludes with Main Justice Department Officials and the FBI.** Though the Deep State may not be monolithic, its operatives collude on a regular basis to further their subversive agenda. That's what Judicial Watch uncovered when it obtained Justice Department and IRS documents that include an official "DOJ Recap" report detailing an October 2010 meeting among Deep State zealot Lois Lerner, Justice Department officials and the FBI to plan for the possible criminal prosecution of targeted nonprofit conservative organizations for alleged illegal political activity. (See Appendix A1.)

The records also reveal that Obama's Main Justice Department Officials wanted IRS

employees who were going to testify to Congress to turn over documents to it before giving them to Congress. Records also detail how the Obama IRS gave the FBI 21 computer disks, containing 1.25 million pages of confidential IRS returns from 113,000 nonprofit, social 501(c)(4) welfare groups – or nearly every 501(c)(4) in the United States – as part of its prosecution effort. According to a letter from then-House Oversight Committee Chairman Darrell Issa (R-CA) to IRS Commissioner John Koskinen, "This revelation likely means that the IRS – including possibly Lois Lerner – violated federal tax law by transmitting this information to the Justice Department." (See Appendix A4.)

The documents were made public as a result of court orders in two Judicial Watch FOIA lawsuits: *Judicial Watch v. Internal Revenue Service* (No. 1:14-cv-01956) and *Judicial Watch v. Department of Justice* (No. 1:14-cv-01239). (See Appendix A3.)

The October 11, 2010 "DOJ Recap" memo included in the IRS documents released to Judicial Watch was sent to Lerner and other top IRS officials by IRS Exempt Organizations Tax Law Specialist Siri Buller. It explained what occurred at an October 8 meeting with representatives from the Department of Justice Criminal Division's Public Integrity Section and "one representative from the FBI" to discuss the possible criminal prosecution of nonprofit organizations for alleged political activity.

Just prior this meeting, Deep State operatives in the IRS began the process of providing the FBI confidential taxpayer information on nonprofit groups. One IRS document confirms the IRS supplied the FBI with 21 disks containing 1.25 million pages of taxpayer records (see Appendix A2.):

FROM: Hamilton David K SENT: Tuesday, October 5, 2010 2:49 PM TO: Whittaker Sherry [Director, GE Program Management], Blackwell Robert M SUBJECT: RE: Question

There are 113,000 C4 returns from January 1, 2007 to now. Assuming they want all pages including redacted ones, that's 1.25 million pages ... If we get started on it right away, before the 10<sup>th</sup> when the monthly extracts start, we can probably get it done in a week or so....

The DOJ documents also include a July 16, 2013, email from an undisclosed Justice Department official to a lawyer for IRS employees asking that the Obama administration get information from congressional witnesses before Congress does (see Appendix A5.):

One last issue. If any of your clients have documents they are providing to Congress that you can (or would like to) provide to us before their testimony, we would be pleased to receive them. We are 6103 authorized and I can connect you with TIGTA to confirm; we would like the unredacted documents.

Judicial Watch President, Tom Fitton had this to say about the IRS collusion with Main Justice Department Officials and the FBI revealed by these documents:

These new documents show that the Obama IRS scandal is also an Obama

DOJ and FBI scandal. The FBI and Justice Department worked with Lois Lerner and the IRS to concoct some reason to put President Obama's opponents in jail before his reelection. And, this abuse resulted in the FBI's illegally obtaining confidential taxpayer information. How can the Justice Department and FBI investigate the very scandal in which they are implicated?

On April 16, 2014, Judicial Watch forced the IRS to release documents revealing for the first time that Lerner communicated with the Justice Department in May 2013 about whether it was possible to launch criminal prosecutions against targeted tax-exempt entities. The documents were obtained under court order in an October 2013 Judicial Watch FOIA lawsuit filed against the IRS (*Judicial Watch, Inc. v. Internal Revenue Service* (No. 1:13-cv-01559)). Those documents contained an email exchange between Lerner and Nikole C. Flax, then-chief of staff to then-Acting IRS Commissioner Steven T. Miller discussing plans to work with the Justice Department to prosecute nonprofit groups that "lied" (Lerner's quotation marks) about political activities. The exchange included a May 8, 2013, email by Lerner (See Appendix A6.):

I got a call today from Richard Pilger Director Elections Crimes Branch at DOJ ... He wanted to know who at IRS the DOJ folk s [sic] could talk to about Sen. Whitehouse idea at the hearing that DOJ could piece together false statement cases about applicants who "lied" on their 1024s [forms] –saying they weren't planning on doing political activity, and then turning around and making large visible political expenditures. DOJ is feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are impediments from our side and what, if any damage this might do to IRS programs. I told him that sounded like we might need several folks from IRS...

The House Oversight Committee followed up on these Judicial Watch disclosures with hearings and interviews of Pilger and his boss, Justice Department Public Integrity Chief Jack Smith. Besides confirming the Justice Department's 2013 communications with Lerner, Pilger admitted to the committee that Justice officials met with Lerner in October 2010. Judicial Watch obtained new documents about these meetings in December 2014 showing the Obama Justice Department initiated outreach to the IRS about prosecuting tax-exempt entities. (See Appendix A7.)

Following Judicial Watch's lead, the House also found out about the IRS transmittal of the confidential taxpayer information to the FBI. Because of this public disclosure, the FBI was forced to return the 1.25 million pages to the IRS.

**IRS Colludes with Department of Health and Human Services.** On April 6, Judicial Watch uncovered additional Deep State collusion when it filed a FOIA lawsuit against the IRS and the Department of Health and Human Services (*Judicial Watch Inc. v. Internal Revenue Service and U.S. Department of Health and Human Services* (No. 1:17-cv-00615)) for records about the Deep State's patently illegal sharing of private taxpayer information under the Patient Protection and Affordable Care Act (Obamacare).

The enormity of this unlawful breach of taxpayer privacy is revealed in a September 21, 2016 letter to IRS Commissioner John Koskinen sent by Rep. Kevin McCarthy (R-CA),

majority leader of the U.S. House of Representatives, which stated in part:

We strongly object to any action by the Administration to improperly use sensitive taxpayer information to identify and harass individuals who have rejected the Patient Protection and Affordable Care Act (ACA) by choosing to pay a tax rather than be forced into a health care plan they don't need and don't want. One of the most important responsibilities of the Internal Revenue Service (IRS) is to protect sensitive taxpayer information. Recent reports have revealed that in order to prop up the failing health insurance exchanges created by the ACA, the Administration is planning to conduct outreach directly to taxpayers who paid a penalty under the law's individual mandate in previous years. In order to facilitate this reported outreach, access to confidential return information is needed, which raises legal and privacy concerns. It also demonstrates the extent to which the Administration is willing to use the power of the IRS to insert itself into the lives of individuals who have made a legal and personal choice not to purchase a health plan.

As you are aware, the confidentiality of tax returns and return information is protected by law in 26 § U.S.C. 6103. It is implausible that information on whether an individual paid a penalty is relevant for determining ACA subsidy eligibility – the sole permitted use of this confidential data under current law.

As reported in the Washington Times:

Administration officials want to use IRS files to identify and contact the millions of Americans who have refused to sign up for insurance and are instead paying the "individual mandate" tax for going without coverage.

Officials say it makes sense to harness the IRS because the tax agency knows who hasn't signed up and would be good candidates for outreach.

IRS officials insisted they wouldn't share any private information with other agencies but said they didn't see any problems in helping sell Obamacare by sending letters to holdouts.

"This particular mailing is consistent with our practices and the tax administration requirements set forth in the law," the IRS said in a statement about its plans.

Once again, there is unambiguous evidence that the Obama administration misused willing Deep State operatives within the IRS to commit unlawful acts, this time to promote its ill-fated health care scheme.

## **Case Study # 3: Outside Organizations, Inside Operations**

The Soros Army. Judicial Watch filed a Freedom of Information Act (FOIA) lawsuit against the U.S. Department of State and the U.S. Agency for International Development (USAID) for records relating to their funding of the political activities of the Soros Open Society Foundation–Albania (*Judicial Watch v. U.S. Department of State and the U.S. Agency for International Development* (No. 1:17-cv-01012)). The lawsuit was filed on May 26, 2017 in the U.S. District Court for the District of Columbia after both State and USAID failed to respond to identical March 31, 2017, FOIA requests seeking:

- All records relating to any contracts, grants or other allocations/ disbursements of funds by the State Department (USAID) to the Foundation Open Society—Albania (FOSA) and/or its personnel and/or any FOSA subsidiaries. Such records shall include, but is not be limited to proposals, contracts, requests for funding, payment authorizations, invoices, and similar budget records, as well as any and all related records of communication between State Department officials, employees, or representatives and officials, employees, or representative of the U.S. Agency for International Development.
- All records of communication between any officials, employees or representatives of the State Department (USAID), including but not limited to U.S. Ambassador Donald Lu, and any officials, employees or representatives of Foundation Open Society–Albania, its subsidiaries and/or affiliated organizations.

It is unambiguous that the Obama administration misused willing Deep State operatives within the IRS to commit unlawful acts, this time to promote its illfated health care scheme.

- All assessments, evaluations, reports or similar records relating to the work of Foundation Open Society–Albania and/or its subsidiaries or affiliated organizations.
- All records of communications transmitted via the State Department's SMART system sent to or from any employee of the U.S. Government operating under the authority of the Chief of Mission in Tirana that pertain to Foundation Open Society–Albania, its subsidiaries and/or affiliated organizations.

In a March 14, 2017 letter to Secretary of State Rex W. Tillerson, six U.S. Senators (Sens. Lee (R-UT), Inhofe (R-OK), Tillis (R-NC), Cruz (R-TX), Perdue (R-GA) and Cassidy (R-LA)) called on the secretary to investigate the relations between USAID and the Soros Foundations and how U.S. tax dollars are being used by the State Department and the USAID to support left-of-center political groups who seek to impose left-leaning policies in countries such as Macedonia and Albania.

In the letter, the senators reference USAID's funding of Soros activities in Macedonia and then cite similar activities in Albania:

Much of the concerning activity in Macedonia has been perpetuated through US-AID funds awarded to implement in entities such as George Soros' Open Society Foundations. As the recipient of multiple grant awards and serving as a USAID contractor implementing projects in this small nation of 2.1 million people, our taxpayer funded foreign aid goes far, allowing Foundation Open Society–Macedonia (FOSM) to push a progressive agenda and invigorate the political left... This problem is not limited to Macedonia, but appears to follow a pattern of alarming activity in this volatile region. Respected leaders from Albania have made similar claims of US diplomats and Soros-backed organizations pushing for certain political outcomes in their country. Foundation Open Society–Albania (FOSA) and its experts, with funding from USAID, have created the controversial Strategy Document for Albanian Judicial Reform. Some leaders believe that these 'reforms' are ultimately aimed to give the Prime Minister and left-of-center government full control over judiciary power.

Soros' association with the State Department in Albania goes back at least to 2011 when Soros urged Hillary Clinton to take action in Albania over recent demonstrations in the capital of Tirana. Fox News reported on August 17, 2016 that:

Newly leaked emails and other files from billionaire George Soros' web of organizations are shedding light on the liberal powerbroker's extensive influence in political and diplomatic affairs.

One email chain shows the Wall Street titan in 2011 personally wrote then-Secretary of State Hillary Clinton, urging intervention in Albania's political unrest. Within days, an envoy he recommended was dispatched to the region.

In May 2016, USAID announced that it was providing \$9 million for its "Justice for All" project in Albania "to improve the performance of Albanian courts by introducing comprehensive judicial standards for efficiency, transparency, accessibility, and accountability." According to the announcement, the project "will be implemented by USAID Contractor East-West Management Institute" (EWMI). According to EWMI's 2011 financial report, it has received funding from the Soros Economic Development Fund: "loans ... of up to \$1,000,000."

About Soros and the Judicial Watch Albania lawsuit, JW President, Tom Fitton said:

This is Judicial Watch's second FOIA lawsuit to uncover the truth about the scandal of Obama administration's siphoning tax dollars to the Soros operations in Europe. We hope and expect the Trump administration to finally let the sunlight in on this growing controversy.

Preceding the Albania lawsuit, on April 19, 2017, Judicial Watch filed the other FOIA lawsuit against the Department of State and USAID for records and communications relating to the funding and political activities of the Foundation Open Society–Macedonia ((*Judicial Watch v. U.S. Department of State and the U.S. Agency for International Development* (No. 1:17-cv-00729)).

In February, Judicial Watch reported:

The U.S. government has quietly spent millions of taxpayer dollars to destabilize the democratically elected, center-right government in Macedonia by colluding with leftwing billionaire philanthropist George Soros, records obtained by Judicial Watch show. Barack Obama's U.S. Ambassador to Macedonia, Jess L. Baily, has worked behind the scenes with Soros' Open Society Foundation to funnel large sums of American dollars for the cause, constituting an interference of the U.S. Ambassador in domestic political affairs in violation of the Vienna Convention on Diplomatic Relations.

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Here's how the clandestine operation functions, according to high-level sources in Macedonia and the U.S. that have provided Judicial Watch with records as part of an ongoing investigation. The Open Society Foundation has established and funded dozens of leftwing, nongovernmental organizations (NGOs) in Macedonia to overthrow the conservative government. One Macedonian government official interviewed by Judicial Watch in Washington D.C. recently, calls it the "Soros infantry." The groups organize youth movements, create influential media outlets and organize violent protests to undermine the institutions and policies implemented by the government. One of Soros' groups funded the translation and publication of Saul Alinsky's *Rules for Radicals* into Macedonian. The book is a tactical manual of subversion, provides direct advice for radical street protests and proclaims Lucifer to be the first radical. Thanks to Obama's ambassador, who has not been replaced by President Trump, Uncle Sam keeps the money flowing so the groups can continue operating and recruiting, sources in Macedonia and the U.S. confirm.

## **Case Study # 4: The Intelligence/Law-Enforcement Community**

**Overview.** The most chilling acts by the Deep State are occurring inside the intelligence and law-enforcement branches of the United States Government – the National Security Agency (NSA), Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI), in particular.

Data recently made available by the Office of the Director of National Intelligence (ODNI) in its 2016 Statistical Transparency Report, for example, reveal that during 2016, intelligence/law-enforcement agency bureaucrats significantly expanded efforts under Section 702 of the Foreign Intelligence Surveillance Act (FISA) to tap into NSA surveillance intercepts for information about Americans vacuumed up "incidentally" in the surveillance of foreigners.

The law requires that the names of Americans caught in the surveillance dragnet must be masked (e.g., identified as, say, "U.S. Person One" rather than by name) and that information acquired from the electronic surveillance of these Americans must be subject to strict "minimization" requirements regarding how that information may be used and disclosed by the government. ("Minimization" is the legal jargon for constraints placed upon the government's ability to retain, use and disclose non-relevant, private information collected legally. (See Appendix A8.1 – A8.6.)

Yet, intelligence and law-enforcement agents searched the NSA database for Americans by name tens of thousands of times and then unmasked thousands of the names and distributed them across government agencies, such as the IRS and FBI in 2016, in direct violation

#### of the law.

Circa.com reports:

In all, government officials conducted 30,355 searches in 2016 seeking information about Americans in NSA intercept metadata, which include telephone numbers and email addresses. The activity amounted to a 27.5 percent increase over the prior year and more than triple the 9,500 such searches that occurred in 2013, the first year such data was [sic] kept.

The searches ultimately resulted in 3,134 NSA intelligence reports with unredacted U.S. names being distributed across government in 2016, and another 3,354 reports in 2015. About half the time, U.S. identities were unredacted in the original reports while the other half were unmasked after the fact *by special request of Obama ad-ministration officials*. (Emphasis added.)

Table 1 reveals the dramatic spike in targeted agency searches of the NSA database for Americans who were "incidentally" caught up in the NSA surveillance dragnet and disclosures of their identities during Barack Obama's second term.

#### TABLE 1

NSA Activity	2013	2014	2015	2016
Number of US names searched in contents of actual intercepts	198	NA	4,672	5,288
Number of searhes on US names in intercept metadata	9,500	17,500	23,800	30,355
Number of NSA intel reports with names of Americans exposed	NA	NA	3,354	3,134

Source: Compiled by Circa.com from ODNI data

To make matters worse, the ODNI data are missing information from one of the largest consumers of NSA intelligence, the FBI, which has direct access to the NSA database. Officials acknowledge that the number of searches and unmaskings is likely to be much higher when the FBI's activity is included. The FBI has the ability not only to unmask the names of Americans collected under FISA, but also to distribute those names to other intelligence community professionals and policymakers although it has failed to provide data on the frequency of such unmaskings or to which agencies it is providing the identities.

The Obama-Comey FBI came in for particular criticism by a FISA judge in a March 2017 Memorandum and Order, declassified on April 26, 2017. (See Appendix **A8.3 and A8.6**.) According to the document, the FBI's searches of NSA surveillance intercepts are so wide-ranging and indiscriminate "there is no requirement that the matter be a serious one nor that it have any relation to national security."

The FISA court judge expressed particular concern about the heavily politicized FBI's flouting minimization rules, especially for giving government contractors "improper access" to "FISA-acquired" data, which, she said, "seems to have been the result of deliberate decisionmaking [sic]:"

The Court is...concerned about the FBI's apparent disregard of minimization rules and whether the FBI may be engaging in similar disclosures of raw Section 702 information that have not been reported.

ArsTechnica.com reports that:

Other statistics from the *Statistical Transparency Report Regarding Use of National Security Authority for 2016* – the third such report issued by the ODNI – reveal the ever-expanding nature of other surveillance by the NSA and other agencies under the provisions of the Foreign Intelligence Surveillance Act (FISA). The number of Foreign Intelligence Surveillance Court (FISC) "probable cause" orders issued per year has stayed relatively steady, with 1,559 orders issued by FISC applying to an estimated 1,687 targets—336 of whom are "US persons." However, the total number of "targets" tracked through Internet surveillance and other means under FISA's Section 702 has steadily climbed well beyond that, reaching *a total of 106,469 tracked individuals in 2016.* (Emphasis added)

Weaponizing Intelligence. Important elements on the political right inside the Republican Party establishment loathe Donald Trump; so much so that, as will be seen later in this Special Report, it was from Republicans within the so-called "Never Trump" faction of the GOP – not from the camps of any of his primary opponents – that money was raised to hire a former British spy to compile a dossier on Trump and his associates, complete with unsubstantiated, salacious personal and business accusations, tailor-made as extortion and blackmail material.

Of course, many people on the political left also loathe the new president, especially Hillary Clinton partisans who cannot accept her loss to Trump gracefully. Finally, both Republicans and Democrats within the foreign-policy *status-quo* camp oppose Trump as well.

Thus, without the need for conspiracy or coordination, there appears to be a particular type of *coup d'état* underway, what Judicial Watch Director of Investigations Chris Farrell calls a "soft coup:"

A "soft coup" is a coordinated effort to delegitimize or undermine a lawfully elected official.

Taken from the French phrase "*coup d'état*," which translates to "a strike at the State" – a coup may be violent or not. In the latter case, it is a "soft coup." Traditionally, soft coups are the stuff of Latin American political conspiracy theories and paperback novels.

Soft coups include actions of senior government officials refusing to carry out their roles in critical tasks, or otherwise acting in opposition to the letter or spirit of the law to diminish or remove *de facto* power from those who would otherwise legally wield it.

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In 2017, propaganda is a powerful tool for shaping public opinion. Politicized

news media can be complicit in the scheme of the soft coup by engaging in false and misleading reporting, or acting as the propaganda arm of the political opposition.

Suppose the news media advanced a false narrative to sensationalize and controversialize a government official. What about unsourced whispering campaigns?

Sound familiar? It should. It's time to ask yourself some questions:

- Have you seen a marked increase in supposed "news" stories attributed to anonymous sources? How about references to multiple, purportedly confirming anonymous sources? Anonymous sources can be important and used legitimately – but not exclusively. After all, one might think you're just making things up to advance your own agenda.
- Have you seen news reports corrected or follow-on reporting disclaiming earlier reports?
- What about claims of files, dossiers and secret meetings? Have they eventually been discredited or exposed as false?
- Have you detected a new and sudden fervor in aggressive interviewing styles from talking heads who otherwise were cheerfully complacent, or busy acting as stenographers?
- Do you see certain words and expressions repeated in reporting? How many times have you seen the words "chaos" or "chaotic" used by different reporters in any number of news stories?

As a presidential candidate, Donald Trump struck all the sensitive nerves of those operating in the Deep State and sent tremors through them. He called NATO obsolete. He criticized Europeans for freeloading on the United States for defense. He urged better relations with Russia and opposed risking a war over the countries of Georgia and Ukraine. He called the Iraq war a "mistake," said the Afghanistan war was a "complete waste," called both wars "dumb wars." And he said it was "time to come home."

He warned President Obama, "Do not attack Syria. There is no upside and tremendous downside," and he said "the U.S. should stay the hell out of Syria" and "let Russia fight ISIS" in Syria; he said "we cannot be the policeman of the world." He said "I love Wikileaks" while the CIA director calls Wikileaks "a foreign intelligence service." He suggested talking to North Korea's Kim Jong-un to lower tensions between the two countries and questioned the nature of the alliance with South Korea. He questioned America's defense commitments to and close alliance with the oil-rich Saudis, who foster terrorism in their pursuit of spreading Wahhabism. He rejected globalism, pledged to pull out of the Paris global warming agreement and advocated a return to America-first policies. He threatened to pull out of the World Trade Organization and called the North American Free Trade Agreement (NAFTA) "the single worst trade deal ever signed in this country." What better way, then, for those in the Deep State who fear and loathe President Trump to stoke fear and paranoia – both within the Trump inner circle and the American public – to the boiling point and whip up a perfect storm of public opposition to blow away a sitting president than to create a Russian "boogey bear" intent on undermining American democracy and restoring the Russian Empire by any means possible – and then accuse the president of colluding with the Russians in their sinister efforts? And, who better than the malcontents in the Deep-State intelligence community to use techniques the Soviets first labeled "active measures" during the Cold War to manufacture propaganda and manipulate the fear and loathing of Trump to orchestrate just such a perfect storm?

To ask the question, "Who is stoking the soft coup," is to answer it: Deep State actors working in concert with outside agents of influence and the media who fear and loathe what Trump professed to stand for during the presidential campaign. They have the means and methods and the proven techniques to delegitimize and destabilize regimes abroad; why not at home?

As Chris Farrell pointed out in Episode 12 – "Complicity & Negligence in Domestic Political Espionage" – of his weekly video-cast *On Watch*:

As a presidential candidate, Donald Trump struck all the sensitive nerves of those operating in the Deep State and sent tremors through them.

With great irony, the American Left keeps crying wolf over Russia. A few weeks back I dissected their false and misleading claims in a segment called "The So-called Hack" – I encourage you to go back and view that episode. Russia has run Active Measures Campaigns against the United States since 1917 – sometimes with the active, witting assistance of people like *New York Times* reporter Walter Duranty and Senator Ted Kennedy. To be frank – we've done the same thing – run various influence operations around the globe to encourage or assist various political factions. There is nothing new under the sun.

Through all of the smoke, deflections and distractions – keep your eye on the ball concerning the Deep State's criminal abuse of national intelligence collection platforms and systems to spy on their political opponents. There's been nothing even remotely like it in the history of our country.

It is not just an abuse of individual rights – it's an abuse of the power of the government and a crime against the Constitution. The story will be frustratingly slow to develop, because many in government were either complicit or negligent in allowing it to happen.

**The Case of General Flynn.** The first active measures to come to light taken to destabilize and delegitimize the new Trump administration began during the transition period, even before Mr. Trump was inaugurated.

On November 18, 2016, Trump announced he would appoint retired United States Army Lieutenant General Michael Flynn as his national security advisor. On January 23, 2017, just three days after Trump's inauguration, CNN reported that the Obama administration had been investigating Flynn's late-December communications with Russian Ambassador

Sergey Kislyak. Unnamed "intelligence and law enforcement officials" (i.e., Deep State leakers) told CNN that Flynn's calls were intercepted through "routine U.S. eavesdropping targeting the Russian diplomats" and "the officials all stressed that so far there has been no determination of any wrongdoing."

On February 13, Trump asked for Flynn's resignation on the grounds that, although the talks Flynn had with Ambassador Kislyak were perfectly legal and legitimate, he lied about them to Vice President Pence, and consequently Trump lost confidence in him. Read Politico's rendition of the firing -- and then compare it to Farrell's exposition above about how a soft coup works:

By Monday [Feb. 13] night, Trump had made his first big staff shake-up, causing chaos in a nascent presidency and raising further questions about the president's ability to handle national security matters in the first month of his tenure.

Trump became increasingly convinced that the question of Flynn's contact with Russia wasn't going away. His top aides and advisers distrusted Flynn, according to senior White House officials and others who spoke with Trump, and Trump was concerned that the intelligence and national security community would always oppose Flynn, sources said.

Two people close to Trump said that many in Trump's world had turned on Flynn and used the latest story to try and drive him out. Others in Trump's immediate circle wondered "why Trump kept defending him."

Immediately after CNN's revelation, Judicial Watch filed a FOIA request with the Central Intelligence Agency (CIA), the United States Department of Justice and the Department of Treasury regarding records related to the investigation of General Flynn's communications with Ambassador Kislyak, specifically:

Any and all records regarding, concerning, or related to the investigation of retired Gen. Michael Flynn's communications with Russian Ambassador to the United States Sergey Kislyak between October 1, 2016 and the present.

On March 16, Judicial Watch filed a FOIA lawsuit (*Judicial Watch v. Central Intelligence Agency et al.* (No.1:17-cv-00397)) against the three agencies because they failed to respond to the January 25 FOIA request. (The National Security Agency refused to confirm or deny the existence of intelligence records about communications between Gen. Flynn and Amb Kislyak.)

In a press release announcing the lawsuit, Judicial Watch President, Tom Fitton, cut through the distracting leaks and innuendo swirling in the media and in Washington salons when he said:

President Trump is on to something. The Obama-connected wiretapping and illegal leaks of classified material concerning President Trump and General Flynn are a scandal. Judicial Watch aims to get to the truth about these crimes and we hope the Trump administration stands with us in the fight for transparency.

**The Deep State Onslaught Continues.** Some five months after CNN acted as the Deep State's transmission belt in passing along to the public intelligence-community/law-enforcement leaks of the Flynn investigation, it is now confirmed that during the 2016 presidential campaign and afterwards, a substantial number of communications of Trump associates (and perhaps Trump himself) were swept up in the Section-702 surveillance conducted by U.S. intelligence agencies and perhaps more directly through at least one FISA court warrant allowing the FBI to monitor Trump and some of his associates directly.

Although there was widespread scorn heaped on Trump for suggesting the Obama White House was "wiretapping" him, it is now clear that Obama allies within the Deep State went to considerable trouble to obtain FISA warrants on "U.S. persons" that would clear away any legal hurdles to the government's conducting surveillance on Trump's communications directly, without the need to rely simply on scooping up "incidental" communications that might be caught up in the FISA-Section-702 dragnet.

On November 7, the day before the 2016 presidential election, *Heat Street* ran a story, little remarked upon elsewhere in the U.S. media except by the *Washington Times*, reporting that:

Two separate sources with links to the counter-intelligence community have confirmed to Heat Street that the FBI sought, and was granted, a FISA court warrant in October, giving counter-intelligence permission to examine the activities of 'U.S. persons' in Donald Trump's campaign with ties to Russia.

Contrary to earlier reporting in the *New York Times*, which cited FBI sources as saying that the agency did not believe that the private server in Donald Trump's Trump Tower, which was connected to a Russian bank, had any nefarious purpose, the FBI's counter-intelligence arm, sources say, re-drew an earlier FISA court request around possible financial and banking offenses related to the server. The first request, which, sources say, named Trump, was denied back in June, but the second was drawn more narrowly and was granted in October after evidence was presented of a server, possibly related to the Trump campaign, and its alleged links to two banks; SVB Bank and Russia's Alfa Bank. While the *Times* story speaks of metadata, sources suggest that a FISA warrant was granted to look at the full content of emails and other related documents that may concern US persons.

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The FISA warrant was granted in connection with the investigation of suspected activity between the server and two banks, SVB Bank and Alfa Bank. However, *it is thought in the intelligence community that the warrant covers any 'US person' connected to this investigation, and thus covers Donald Trump and at least three further men who have either formed part of his campaign or acted as his media surrogates.* The warrant was sought, they say, because actionable intelligence on the matter provided by friendly foreign agencies could not properly be examined without a warrant by US intelligence as it involves 'US Persons' who come under the remit of the FBI and not the CIA. Should a counter-intelligence investigation lead to criminal prosecutions, sources say, the Justice Department is concerned that the chain of evidence have a basis in a clear warrant. (Emphasis added.)

On March 22, House Intelligence Committee Chairman Devin Nunes (R-CA) confirmed in writing, and to the press, that the Obama Administration Deep State operatives conducted the following activities against President-Elect Trump and his team between November 2016 and January 2017:

- On numerous occasions, the Intelligence Community "incidentally" collected information about U.S. citizens involved in the Trump transition.
- Details about U.S. persons associated with the incoming Trump administration – details with little or no apparent foreign intelligence value – were widely disseminated throughout the government, and apparently leaked to Obama administration allies in the media. Those leaks are felonies.
- Names of Trump transition team members were "unmasked" their identities revealed and circulated again, more felonies.
- None of this surveillance was related to Russia or any investigation of Russian activities or of the Trump team.

Prior to Nunes' confirmation of active measures taken against Trump by the Obama administration, on March 2, former Obama Deputy Assistant Secretary of Defense, Evelyn Farkas, confirmed on MSNBC that not only was the previous administration collecting intelligence on the Trump team, it also was attempting to share that information (some of it classified) as far and wide as possible:

I was urging my former colleagues and, frankly speaking, the people on the Hill, it was more actually aimed at telling the Hill people, get as much information as you can, get as much intelligence as you can, before President Obama leaves the administration.

This raises the question: How was Farkas, a mere deputy assistant secretary of defense, able to see classified surveillance information on the Trump team? And, more importantly, were Obama Deep States agents illegally sharing this classified information around town?

The former question was answered when *CIRCA.com* reported that Obama signed an unprecedented executive order in the final days of his presidency, allowing 16 agencies, in addition to the CIA, NSA and FBI, to view classified material swept up in the 702 dragnet. This executive order resulted in top Obama aides "routinely" reviewing "intelligence reports gleaned from the National Security Agency's incidental intercepts of Americans abroad."

On March 1, the *New York Times* foreshadowed what Deputy Assistant Secretary of Defense Farkas would admit a day later on MSNBC, when it revealed the Obama Administration spread information about alleged Russian efforts to undermine the 2016 presidential election. The *Times* reported the State Department sent "a cache of documents marked 'secret' to Senator Benjamin Cardin (D-MD) just days before Trump's January 20 inauguration:"

There was also an effort to pass reports and other sensitive materials to Congress. In one instance, the State Department sent a cache of documents marked "secret" to Senator Benjamin Cardin of Maryland days before the Jan. 20 inauguration. The documents, detailing Russian efforts to intervene in elections worldwide, were sent in response to a request from Mr. Cardin, the top Democrat on the Foreign Relations Committee, and were shared with Republicans on the panel.

Subsequently, on May 9, Judicial Watch filed a FOIA lawsuit against the U.S. Department of State for all records provided by State to Senator Benjamin Cardin's office related to alleged Russian interference with the 2016 presidential election. The lawsuit was filed in the U.S. District Court for the District of Columbia (*Judicial Watch v. U.S. Department of State* (No. 1:17-cv-00852)).

Judicial Watch filed the suit after the State Department failed to respond to a March 2, 2017, FOIA request seeking:

All records provided by any official, employee, or representative of the Department of State to Senator Ben Cardin, any member of his staff, the Senate Foreign Relations Committee, and/or any Senate Foreign Relations Committee staff member regarding, concerning, or related to efforts by the Russian Government to affect, manipulate, or influence any election in the United States or any foreign country from November 8, 2016 to present.

About the Cardin episode and the Judicial Watch lawsuit, Judicial Watch President, Tom Fitton said:

Did the Obama State Department improperly share classified information with a Democrat Senator as part of an anti-Trump scheme? Needless to say, the Senate won't be investigating Senator Cardin's role in any potential violations of law but Judicial Watch is going to federal court to do just that.

Who Unmasked Whom? Here are the questions that must be answered about unmasking the identities of Americans caught up "incidentally" in surveillance of foreigners:

- Who was aware of what was going on?
- Why was it not disclosed to Congress?
- Who requested and authorized the unmasking?
- Who directed the intelligence community to focus on Trump associates?

With respect to the question of who unmasked/authorized the identities of Americans swept up in the NSA Section-702 dragnet, it is now apparent that former Obama National Security Advisor Susan Rice was at the center of the operation. On April 3, *Bloomberg* reported:

White House lawyers last month learned that the former national security adviser Susan Rice requested the identities of U.S. persons in raw intelligence reports on dozens of occasions that connect to the Donald Trump transition and campaign, according to U.S. officials familiar with the matter.

In February [White House Senior Director for Intelligence] Cohen-Watnick discovered Rice's multiple requests to unmask U.S. persons in intelligence reports that related to Trump transition activities. He brought this to the attention of the White House General Counsel's office, who reviewed more of Rice's requests and instructed him to end his own research into the unmasking policy.

To confirm Rice's role in the unmasking and dissemination of Americans' identities, on April 4, Judicial Watch submitted a FOIA request to the National Security Council (NSC) seeking:

- 1. Any and all requests for information, analyses, summaries, assessments, transcripts, or similar records submitted to any Intelligence Community member agency or any official, employee, or representative thereof by former National Security Advisor Susan Rice regarding, concerning, or related to the following:
  - Any actual or suspected effort by the Russian government or any individual acting on behalf of the Russian government to influence or otherwise interfere with the 2016 presidential election.
  - The alleged hacking of computer systems utilized by the Democratic National Committee and/or the Clinton presidential campaign.
  - Any actual or suspected communication between any member of the Trump presidential campaign or transition team and any official or employee of the Russian government or any individual acting on behalf of the Russian government.
  - The identities of U.S. citizens associated with the Trump presidential campaign or transition team who were identified pursuant to intelligence collection activities.
    - 1. Any and all records or responses received by former National Security Advisor Susan Rice and/or any member, employee, staff member, or representative of the National Security Council in response to any request described in part 1 of this request.
    - 2. Any and all records of communication between any official, employee, or representative of the Department of any Intelligence Community member agency and former National Security Advisor Susan Rice and/or any member, employee, staff member, or representative of the National Security Council regarding, concerning, or related to any request described in Part 1 of this request.

The NSC's response? The NSC will not fulfill the Judicial Watch request because all the responsive records have been removed to the Obama Presidential Library – and by law will remain locked up and unavailable to the public for five years. (See Appendix **A9**.)

Subsequently, on May 25, Judicial Watch sued the Department of Justice and the NSA for information about Rice's communications with the two agencies concerning the alleged Russian involvement in the 2016 presidential election, the hacking of DNC computers, the suspected communications between Russia and Trump campaign/transition officials and the Deep State unmasking of the identities of any U.S. citizens associated with the Trump presidential campaign or transition team who were identified pursuant to intelligence

collection activities (*Judicial Watch v. U.S. Department of Justice and National Security Administration* (No. 1:17-cv-01002)). This case is still pending.

About the unmasking scandal, Judicial Watch President, Tom Fitton, had this to say:

We want to know about the Obama White House involvement in the unprecedented spying on Donald Trump and other political opponents. This intelligence operation may have led to the illegal "unmasking" of Americans and the leaking of intelligence information to foment the story of Russian hacking of the DNC and sinister Russian influence on Trump and his associates. The Trump administration has an opportunity to expose what the Obama White House was up to.

**The Trump Dossier.** To comprehend the full scope, enormity and depravity of the Deep State's intelligence operations against Trump, it is instructive to dig into the allegations that the active measures taken against Trump and his team went well beyond merely the misuse of signals surveillance information gathered "incidentally" in spying on the communications of foreigners. The Trump dossier was funded initially by anti-Trump Republicans and later by unidentified Democrats.

The so-called "Trump dossier," for example, was written by former British MI6 intelligence officer, Christopher Steele, who allegedly was commissioned initially by anti-Trump Republicans as part of their "opposition research" during the Republican presidential primaries. According to the *Telegraph*:

Mr. Steele, the co-founder of London-based Orbis Business Intelligence Ltd, prepared a 35-page document that alleges the Kremlin colluded with Mr. Trump's presidential campaign and that the Russian security services have material that could be used to blackmail him, including an allegation that he paid prostitutes to defile a bed that had been slept in by Barack and Michelle Obama.

His research was initially funded by anti-Trump Republicans, and later by Democrats.

Although Steele's work reportedly was funded initially by anti-Trump Republicans, after it was clear Trump was going to be the Republican presidential nominee, the Republican money dried up – and Steele was hired by unidentified Democratic clients to continue opposition research on Trump.

Throughout Steele's involvement in building a dossier on Trump and his associates, Deep State leaks about the existence of the dossier and the nature of its contents percolated through political, intelligence and law-enforcement circles and in the media.

In January 2017, according to the New York Times:

James R. Clapper Jr., the director of national intelligence, issued a statement decrying leaks about the matter and saying of Mr. Steele's dossier that the intelligence agencies have "not made any judgment that the information in this document is reliable." Mr. Clapper suggested that *intelligence officials had nonetheless shared it to give policy makers "the fullest possible picture of any matters that might affect national security.*" (Emphasis added.)

A picture now emerges of how anti-Trump opposition research, consisting of unverified sources and unsubstantiated accusations – paid for by anti-Trump factions within both political parties – and the author of that material himself were used by at least one U.S. intelligence/law-enforcement agency (the FBI) to justify intelligence operations against Trump under the guise of "an investigation."

On April 28, 2017, the *Guardian* reported that memos written by Steele were passed to Senator John McCain (R-AZ) who then handed over a copy of them to then-FBI Director James Comey on December 9, 2016. *The Guardian* goes on:

The Steele dossier was referred to in an intelligence briefing provided by the FBI and US intelligence agencies to Obama and Trump in January. Comey has confirmed that counter-intelligence investigations are under way into possible links between Trump associates and Moscow, and CNN has reported that *the FBI used the dossier to bolster its investigations*. (Emphasis added.)

On January 10, 2017, the 35-page Trump dossier was made public by *BuzzFeed* following a report that day by CNN stating President Obama was presented classified documents alleging Russian Intelligence had "compromising personal and financial information" about Trump. Although the intelligence agencies in receipt of the dossier admit that sources and accusations in it have not been verified, the *Washington Post* reported on February 28, 2017 that:

The former British spy who authored a controversial dossier on behalf of Donald Trump's political opponents alleging ties between Trump and Russia *reached an agreement with the FBI a few weeks before the election for the bureau to pay him to continue his work, according to several people familiar with the arrangement.* (Emphasis added.)

Before the Steele/FBI money deal could be consummated, however, *BuzzFeed* published the material, and the FBI promptly ceased discussions with Steele.

But that did not end the FBI's entanglement with Steele and his dossier. On March 30, 2017, the BBC's Paul Wood reported:

The FBI is using the explosive but unverified collection of memos detailing allegations of collusion between President Donald Trump's campaign team and Russia as a "roadmap" for its investigation into Russia's interference in the 2016 presidential election.

The same day, Vanity Fair reported that in the summer of 2016, Steele had "settled on a

plan of covert action" involving the FBI:

The F.B.I.'s Eurasian Joint Organized Crime Squad – "Move Over, Mafia," the bureau's P.R. machine crowed after the unit had been created – was a particularly gung-ho team with whom Steele had done some heady things in the past. And *in the course of their successful collaboration, the hard-driving F.B.I. agents and the former frontline spy evolved into a chummy mutual-admiration society.* (Emphasis added.)

It was only natural, then, that when he began mulling whom to turn to, Steele thought about his tough-minded friends on the Eurasian [FBI] squad. And fortuitously, he discovered, as his scheme took on a solid operational commitment, that one of the agents was now assigned to the bureau office in Rome. By early August [2016], a copy of his first two memos were shared with the F.B.I.'s man in Rome.

So "chummy" were Steele and the FBI Deep State operatives that the Bureau was willing to pay him to continue his work, until, that is, the whole sordid affair became public.

In an effort to get to the bottom of the Trump dossier, Judicial Watch filed a FOIA lawsuit on May 16 against the U.S. Department of Justice for records of communications and payments between the FBI and former British intelligence officer Christopher Steele and his private firm, Orbis Business Intelligence (*Judicial Watch v. U.S. Department of Justice* (No. 1:17-cv-00916)).

The suit was filed after the Department of Justice failed to respond to a March 8, 2017, FOIA request seeking:

- All records of communications between any official, employee, or representative of the FBI and Mr. Christopher Steele, a former British intelligence officer and the owner of the private firm Orbis Business Intelligence.
- All records related to the proposed, planned, or actual payment of any funds to Mr. Steele and/or Orbis Business Intelligence.
- All records produced in preparation for, during, or pursuant to any meetings or telephonic conversations between any official, employee, or representative of the Federal Bureau of Investigation and Mr. Christopher Steele and/or any employee or representative of Orbis Business Intelligence.

CNN and many other news organizations refused to publish the Trump dossier because they had not "independently corroborated the specific allegations," and former Director of National Intelligence James Clapper reportedly said "we couldn't corroborate the sourcing, particularly the second and third order sources." According to Fox News, despite Clapper's disclaimer, former *FBI Director James Comey insisted that the dossier be included in January's intelligence report on alleged Russian meddling in the U.S. election*. (Emphasis added.)

#### Here's what Judicial Watch President, Tom Fitton, said about the Trump dossier:

The so-called Trump dossier is at the center of the anti-Trump Russian collusion and conspiracy theory. It is disconcerting that the Obama FBI and Justice Department trafficked this document and evidently used it to justify unprecedented surveillance of the Trump team. Our new lawsuit seeks to expose the truth about this dossier. Maybe with new leadership at the FBI, we'll finally get some answers.

**Comey's Involvement and Appointment of Robert Mueller as Special Counsel.** After months of active measures being taken against the Trump transition quietly from within the Obama White House, with the help of the intelligence/law-enforcement community, it all began breaking into the open on January 23. Three days after Trump's inauguration, CNN broke the story that the Obama Administration had been investigating Flynn's communications with Russian Ambassador Sergey Kislyak, going back as least as far as late December, 2016.

On January 26, 2017, Obama hold-over and then-Acting Attorney General Sally Yates informed the Trump White House that Flynn's public statements were at odds with intelligence intercepts of Flynn's private conversations with the Russian ambassador and suggested Flynn was a potential Kremin blackmail target. According to the *Washington Post*, Yates and other Obama officials had been digging into NSA intercepts of Flynn since at least December, 2016, after which the Obama administration, on December 29, announced sanctions to punish Russia for what it said was the Kremlin's interference in the election in an attempt to help Trump.

According to the *Post's* account, Yates, then-Director of National Intelligence James Clapper and then-CIA head John Brennan argued for briefing the incoming administration about results of the Obama administration's fishing expedition on Flynn so the new president could decide how to handle the matter. Then-FBI Director James B. Comey argued for withholding the information from the new president, citing concerns that it could complicate the Bureau's investigation.

As part of Judicial Watch's efforts to get to the bottom of the Obama administration targeting and unmasking scandal, JW filed a FOIA lawsuit against the U.S. Department of Justice for emails of former Acting Attorney General Sally Yates from her government account. The lawsuit was filed in the U.S. District Court for the District of Columbia (*Judicial Watch v. U.S. Department of Justice* (No. 1:17-cv-00832)).

The suit was filed after the Justice Department failed to respond to a February 1, 2017, FOIA request seeking access to Yates' emails between January 21, 2017, and January 31, 2017.

Ms. Yates was appointed by President Obama as U.S. Attorney in northern Georgia and was later confirmed as Deputy Attorney General under President Obama. In January 2017, she became acting Attorney General for President Trump.

On January 30, Yates, who remained an Obama holdover in the new Trump administration, ordered Deep State partisans within the Justice Department not to defend President Trump's January 27 executive order seeking a travel ban from seven Middle Eastern countries. That same day, President Trump fired her for refusing to defend the action. About Sally Yates and the Judicial Watch lawsuit, JW President Tom Fitton said:

Between her involvement in the Russian surveillance scandal and her lawless effort to thwart President Trump's immigration executive order, Sally Yates' short tenure as the acting Attorney General was remarkably troubling. Her email traffic might provide a window into how the anti-Trump Deep State abused the Justice Department.

On February 14, the day after Flynn resigned his job as national security advisor, President Trump met with then-FBI director James Comey. It was this meeting that Comey claims to have memorialized in a memo written that same day, in which he accused Trump of asking him during the meeting to shut down the Flynn investigation. Trump categorically denied he did, and the White House issued a statement stating, "the president has never asked Mr. Comey or anyone else to end any investigation, including any investigation involving General Flynn."

One news outlet, clearly working from information passed to it from someone inside Deep State FBI corridors, headlined a June 7 story, "3 senior FBI officials can vouch for Comey's story about Trump; Sources: McCabe, Rybicki, and Baker could corroborate the ex-director's claims that the president asked him to back off investigating Michael Flynn." The story recounts how:

One by one this winter, then-FBI Director James B. Comey pulled aside three of the bureau's top officials for private chats. In calm tones, he told each of them about a private Oval Office meeting with President Trump – during which, Comey alleged, the president pressed him to shut down the federal criminal investigation of Trump's then-national security adviser, Michael Flynn.

This story may be true, right down to the atmospheric flourishes, but it hardly "vouches" for or "corroborates the ex-director's claims;" it merely uses third parties, who have no first-hand knowledge, to transmit hear-say accusations passed on to them by the accuser himself.

Finally, on May 9, President Trump fired James Comey as head of the FBI. In Trump's letter of termination to Comey, the president explained that he reached the conclusion that Comey is "not able to effectively lead the bureau." He went on, "It is essential that we find new leadership for the FBI that restores public trust and confidence in its vital law enforcement mission."

Trump later elaborated in an interview with NBC's Lester Holt:

Look, he is a showboat. He's a grandstander. The FBI has been in turmoil. You know that, I know that, everybody knows that. You take a look at the FBI a year ago, it was in virtual turmoil – less than a year ago. It hasn't recovered from that.

A week after Comey's dismissal, on May 17 – with the Russia-Trump conspiracy narrative now planted firmly in the minds of the public and Members of Congress – the Justice Department suddenly felt compelled to appoint a special counsel to investigate the Russia tale. None other than Robert Mueller, the former FBI director under President George W. Bush and Barack Obama – and Comey's predecessor and ally at the FBI – was appointed special counsel to investigate alleged Russian interference in the 2016 presidential election and purported collusion between Trump's campaign and Moscow. Comey and Mueller were professionally close and became personal friends while Comey served as deputy attorney general under President Bush during Mueller's tenure as head of the FBI.

Comey admitted in testimony before the U.S. Senate Intelligence Committee on June 8 that he arranged for the memo about his February 14 meeting with Trump to be leaked to the media through a third party in the hope of prompting an independent investigation of Trump. Comey's old comrade in arms and friend Robert Mueller, by then settled in the role of special counsel, promptly seized the opportunity, using Comey's accusatory memo as justification to expand his investigation beyond the confines of the Russia probe to include obstruction of justice by the president. Less than a week after Comey's testimony, the *Washington Post* ran a story headlined, "Special counsel is investigating Trump for possible obstruction of justice, officials say."

And so, the Deep State swamp creatures in Washington, who fear and loathe Donald Trump have gamed the system through active measures and propaganda in an effort to sow discord among Trump's inner circle, shake the confidence of the American people in their president and to destabilize and delegitimize Trump's administration. This is illegal domestic political espionage on a scale never before imagined.

In a June 13 appearance on *NewsmaxTV's* "America Talks Live" Judicial Watch President Tom Fitton said:

Comey gamed the system and Mueller's whole appointment has now been tainted, and the president has an independent obligation, however politically uncomfortable, to make sure the Justice Department is actually acting in a just way.

The president, in my view, doesn't have much to worry about legally from any honest prosecutor, but there are other people who are subject to this investigation who now face a lot of legal jeopardy and time and expense as a result of a special prosecutor who shouldn't be there . . .

This isn't about law, this is a political investigation, and the reason Mueller was appointed was to appease the left who was attacking the Justice Department about its investigation of this Russia collusion scandal.

Fitton also told *Newsmax TV* host Bill Tucker that President Donald Trump may be justified in firing special counsel Robert Mueller if it turns out ex-FBI Director James Comey had a silent hand in getting him hired to probe Russia's interference in the 2016 presidential race. He added that firing Mueller may be "a necessary thing to do given the way [he] was appointed and the circumstances around it."

Here's how Fitton responded to a comment by Tucker:

**Tucker:** In testimony before the Senate Intelligence Committee, Comey admitted leaking information to the press in a bid to get a special prosecutor appointed to

look into possible links between the Trump campaign and Russia.

**Fitton:** That is a real question about what Comey did and whether what he did was appropriate in terms of taking documents from the FBI, and then leaking them with the express purpose of getting a special counsel who turned out to be Mueller appointed.

What was Comey's involvement in having Mueller appointed to special counsel and is Mueller going to have to investigate Comey, who, public reports suggest, is either a friend or a protégé of Mr. Mueller?

Given that close relationship, there has to be an honest evaluation of whether there's a conflict of interest between Mueller and his really [sic] charge now to investigate what Comey did.

**Judicial Watch Digs into Comey Affair.** As efforts to delegitimize and destabilize the Trump administration continue to leak out of the Deep State and bubble up to the surface of the Washington Swamp, there is an opportunity to hold accountable the people who are responsible. According to Judicial Watch President Tom Fitton, that's why Judicial Watch is now focusing on the actions of James Comey and trying to get the bottom of both the records removal and the leaks to the media and then hold accountable the persons who were involved.

Comey admitted he arranged for the memo about his meeting with Trump to be leaked to the media in the hope of prompting an independent investigation of Trump.

To that end, Judicial Watch sued the Justice Department, which oversees the FBI, for the key Comey memo. The lawsuit, filed on June 16, seeks access to a memorandum Comey wrote after his February 14 private meeting with President Trump regarding the pending investigation of Gen. Mike Flynn and potential Russian interference in the 2016 presidential election (Judicial Watch v. U.S. Department of Justice (No. 1:17-cv-01189). This is the sixth of six, to date, Judicial Watch Freedom of Information Act lawsuits related to the surveillance, unmasking and illegal targeting of President Trump and his associates during the FBI's investigation of purported Russian involvement in the 2016 presidential election and alleged collusion with the Russians by Trump and his team.

The suit was filed in U.S. District Court for the District of Columbia after the Department of Justice failed to respond to JW's May 16 FOIA request for:

The memorandum written by former Director James Comey memorializing his meeting and conversation with President Trump regarding the FBI's investigation of potential Russian interference in the 2016 United States presidential election. For purposes of clarification, this memorandum was reportedly written on or about February 13, 2017 and is the subject of a New York Times article ... dated May 16, 2017.

The memo purportedly recounts a conversation between President Trump and Comey about Flynn in which Trump allegedly pressured Comey to shut down the Flynn criminal investigation. About the lawsuit for Comey's memo, Judicial Watch President, Tom Fitton, had this to say:

Having to sue to get a document leaked to the *New York Times* is a scandal. The memo should be released forthwith, and, frankly, the president can and should order its immediate release.

This lawsuit was only one of several significant actions taken by Judicial Watch in the aftermath of Comey's absconding from the FBI with bureau records and then leaking them. Before filing the lawsuit, Judicial Watch sent a letter on June 14 to acting FBI Director Andrew G. McCabe reminding him about the FBI's legal obligation under the Federal Records Act (FRA) to recover records removed from the agency, including Comey's memos apparently taken by Comey when he left the FBI and subsequently leaked to the media. The letter to McCabe states:

Dear Acting Director McCabe:

As you are well aware, former FBI Director James Comey gave sworn testimony last week before the Senate Select Committee on Intelligence. Among other things, Mr. Comey confirmed that, while in office, he created various memoranda regarding his meetings with President Trump. Mr. Comey also confirmed that, after his departure from the FBI, he provided at least some of these memoranda to a third party, Columbia Law School Professor Daniel Richman, for the purpose of leaking them to the press. Various media outlets now have reported that Professor Richman has provided these memoranda to the FBI. It is unclear whether he still retains copies of the memoranda.

I am writing to you on behalf of Judicial Watch, Inc., a not-for-profit educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch regularly requests access to the records of the FBI through the Freedom of Information Act and disseminates its findings to the public. In fact, on May 16, 2017, Judicial Watch submitted a FOIA request seeking these specific memoranda removed from the FBI by Mr. Comey. Judicial Watch also has pending FOIA lawsuits in which the memoranda may be at issue.

These memoranda were created by Mr. Comey while serving as FBI director, were written on his FBI laptop, and concerned official government business. As such, they indisputably are records subject to the Federal Records Act. 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, and 3301-14. The fact that Mr. Comey removed these memoranda from the FBI upon his departure, apparently for the purpose of subsequently leaking them to the press, confirms the FBI's failure to retain and properly manage its records in accordance with the Federal Records Act. Even if Mr. Comey no longer has possession of these particular memoranda, as he now claims, some or all of these memoranda may still be in possession of a third party, such as Professor Richman, and must be recovered. Mr. Comey's removal of these memoranda also suggests that other records may have been removed by Mr. Comey and may remain in his possession or in the possession of others. If so, these records must be recovered by the FBI as well.

As you may be aware, the Federal Records Act imposes a direct responsibility on you to take steps to recover any records unlawfully removed from the FBI. Specifically, upon learning of "any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency," you must notify the Archivist of the United States. 44 U.S.C. § 3106. Upon learning that records have been unlawfully removed from the FBI, you then are required to initiate action through the Attorney General for the recovery of records. Id.

In the event you fail to take these steps, you should be aware that Judicial Watch is authorized under the law to file a lawsuit in federal district court seeking that you be compelled to comply with the law. Judicial Watch, Inc. v. Kerry, 844 F.3d 952, 955 (D.C. Cir. 2016); *Armstrong v. Bush*, 924 F.2d 282,296 (D.C. Cir. 1991). Please advise us no later than June 26, 2017 if you intend to take the action required under the law. If we do not hear from you by that date, we will assume that you do not intend to take any action. Thank you for your attention to this matter.

Sincerely, Thomas J. Fitton President

Mr. Comey left the FBI with government records, and the FBI and Justice Department are obligated to get them back. If they don't, Judicial Watch may sue to try to force them to do so.

## **III. Conclusion**

Professor Patrick H. O'Neil of the University of Puget Sound, in a January 2015 article, "The Deep State: An Emerging Concept in Comparative Politics," concisely elucidates the underlying foundation of the Deep State (p.4):

... as a foundational logic, the deep state justifies its existence through the necessity of *tutelage* over both state and society. The deep state views itself guardian of national values against internal and external foes. In short, the deep state does not necessarily trust the government, state (perhaps even military) or society to preserve the nation. Accordingly, *actors within the deep state can justify an array of actions against the government, society, and state as necessary to defend against "traitors"* to the nation and national ideology. The amorphousness of the deep state is accompanied by the belief that its members are the symbolic core of the nation. (Emphasis added.)

At the beginning of this Special Report, it was observed that the Deep State is not monolithic but it shares a common worldview and is characterized by three disturbing proclivities: Secrecy, surveillance and subterfuge. Secrecy catalyzes and enables surveillance and subterfuge. The only way to observe and evaluate the workings of the Deep State is to penetrate the veil of Deep State secrecy that shields the actions of political appointees, career civil servants, private contractors and their relationship with the media and outside agents of influence that comprise the Deep State.

That's why Judicial Watch is in court day after day shining the light on the activities of the Deep State. It is time to put an end to the obsessive, oppressive and destructive secrecy in government. If the rule of law is to survive, if America's constitutional protections are to endure, it is essential to roll back the sinister secrecy that allows, indeed encourages those operating in the Deep State to hold themselves above the law and beyond the Constitution.

There is a way to rein in the Deep State but it requires a commitment to extreme transparency by elected officials. It requires determined leadership from the White House and serious bi-partisan action on the part of a committed Congress to expose the goings on inside the permanent D.C. bureaucracy and the connections between the Deep Staters, the media and the outside agents of influence.

There is plenty of blame to go around for the transparency failures that foster the Deep State, most recently the Obama administration's executive over reach and the veil of secrecy President Obama pulled over his administration to hide it. And now, unbelievably, those same secrecy policies seem to be on auto-pilot in the Trump administration. Thankfully, though, when it comes to sunshine actions, the Trump White House has a solution at hand – if only it would use it – that is both elegantly simple and breathtakingly radical. The Freedom of Information Act allows for the executive branch to make "discretionary disclosures."

As Judicial Watch Director of Investigations, Chris Farrell has noted:

"In plain English, that means President Trump and his cabinet secretaries can release whatever they want—whenever they wish to do so. They can exercise their discretion to release records that are of broad general and news media interest concerning important policy issues and/or the operation of the federal government. *These discretionary disclosures take nothing more than the stroke of a pen.*"

Beyond the "discretionary disclosures" provision of the Freedom of Information Act, Executive Order 13526, signed by President Obama in 2009, and the Supreme Court ruling in *Department of the Navy v. Egan* (484 U.S. 518 (1988)) confirm that under the Constitution, as chief executive, the president has the legal power to declassify information immediately, on his say so alone. As the Court stated in *Egan*:

The President, after all, is the "Commander in Chief of the Army and Navy of the United States." U.S. Const., Art. II, 2. His authority to classify and control access to information bearing on national security...flows primarily from this constitutional investment of power in the President and exists quite apart from any explicit congressional grant.

During the presidential campaign, Candidate Trump pledged to drain the swamp. There is no better way to drain the swamp than to impose extreme transparency on the Deep State where the swamp festers and putrefies. Regrettably, however, instead of applying the transparency remedy, as JW's Chris Farrell reports, "The Department of Justice under Attorney General Sessions is currently making the exact same legal arguments as the Obama administration—and using all the double-talk and excuses from the Obama era, too."

Freedom of Information Act officers in the executive branch are overworked and under-appreciated, a situation that has severely restricted the effectiveness of the law. But it doesn't take congressional action or a spending increase to change that. President Trump could trigger a FOIA revolution simply by ordering a new era of extreme transparency and discretionary disclosure.

Micha Morrison said it perfectly in Judicial Watch's Investigative Bulletin:

"Extreme transparency could bring huge benefits. Swamp draining would get super-charged boosters. The president could seize the moral high ground in the Russia-connection case with the release of his tax returns and all relevant White House documents. On the Judicial Watch docket, among the records that could be quickly produced are: the Comey memo; records related to former National Security Adviser Susan Rice and the "unmasking" controversy; records related to the so-called "Russian dossier;" records relating to the controversial "tarmac meeting" in Arizona between former President Bill Clinton and then-Attorney General Loretta Lynch; FBI and intelligence community files on the Hillary Clinton email investigation; never-revealed draft indictments of Mrs. Clinton in the Whitewater investigation; and notes and reports to then-Secretary of State Clinton in the Benghazi affair."

Beyond the president's imposing extreme transparency through discretionary disclosures, immediate action also is needed to pave the way for activist citizens and outside watchdogs, such as Judicial Watch, to investigate and expose corruption and malfeasance within the government.

It's time to tear down the wall of secrecy surrounding the Deep State. **President Trump should** order federal agencies to stop the stalling and start obeying the nation's openrecords laws. Until they do, the dangerously malignant **Deep State will** continue to grow and undermine American democracy.

- President Trump not only should use the power of discretionary disclosures, he also should commit to a revolution of "extreme transparency" and set it in motion by issuing an executive order to break the logjam of FOIA requests he inherited from President Obama and which are now piling up under his own administration.
- Congress should join the revolution by reforming the Freedom of Information Act and giving private citizens, the press and watchdog groups stronger and better tools to hold the government to account.
- Congress and the president together should seize the opportunity when the Foreign Intelligence Surveillance Act comes up for reauthorization later this year and:

- 1. Provide for greater public access to government records inside the intelligence and law-enforcement agencies, and especially the proceedings in and opinions of the FISA Court; and
- 2. Place new limits on the NSAs authority to conduct warrantless searches and restrict other agencies' authority to use NSA intercepts to conduct domestic surveillance on Americans.

It's time to tear down the wall of secrecy surrounding the Deep State. President Trump should order federal agencies to stop the stalling and start obeying the nation's open-records laws. Until they do, the dangerously malignant Deep State will continue to grow and undermine American democracy.

### **IV.** Appendix

A1. Excerpt of official Department of Justice "Recap Memo" Judicial Watch dislodged from the Internal Revenue Service sent by IRS Exempt Organizations Tax Law Specialist Siri Buller to Lois Lerner and other top IRS officials explaining an October 8 meeting with representatives from the Department of Justice Criminal Division's Public Integrity Section and "one representative from the FBI" to discuss the possible criminal prosecution of nonprofit organizations for alleged political activity.

Obtained by Judicial Watch, Inc. via FDIA.

On October 6, 2010, Lois Lerner, Joe Urban, Judy Kindell, Justin Lowe, and Siri Buller met with the section chief and other attorneys from the Department of Justice Criminal Division's Public Integrity Section, and one representative from the FBI, to discuss recent attention to the political activity of exempt organizations.

The section's attorneys expressed concern that certain section 501(c) organizations are actually political committees "posing" as if they are not subject to FEC law, and therefore may be subject to criminal liability. The attorneys mentioned several possible theories to bring criminal charges under FEC law. In response, Lois and Judy eloquently explained the following points:

 Under section 7805(b), we may only revoke or modify an organization's exemption retroactively if it omitted or misstated a material fact or operated in a manner materially different from that originally represented.

- If we do not have these misrepresentations, the organization may rely on our determination that it is exempt. However, the likelihood of revocation is diminished by the fact that section 501(c)(4)-(c)(6) organizations are not required to apply for recognition of exemption.
- We discussed the hypothetical situation of a section 501(c)(4) organization that declares itself exempt as a social welfare organization, but at the end of the taxable year has in fact functioned as a political organization. Judy explained that such an organization, in order to be in compliance, would simply file Form 1120-POL and paying tax at the highest corporate rate.

Lois stated that although we do not believe that organizations which are subject to a civil audit subsequently receive any type of immunity from a criminal investigation, she will refer them to individuals from CI who can better answer that question. She explained that we are legally required to separate the civil and criminal aspects of any examination and that while we do not have EO taw experts in CI, our FIU agents are experienced in coordinating with CI.

The attorneys asked whether a change in the law is necessary, and whether a three -way partnership among DOJ, the FEC, and the IRS is possible to prevent prohibited activity by these organizations. Lois listed a number of obstacles to the attorneys' t heories:



. She pointed to Revenue Rui ng 2004-b, which was brane light of the electroneering communication rules before they were litigated.

## A2. IRS email uncovered by Judicial Watch discussing the preparation of 1.25 million pages of confidential taxpayer information to be turned over to FBI.

Sherry L. Whitaker, Director, GE Program Management Office - 801-620-5045 Cell -EE-Fax -TOD: Monday - Thursday 5:00 am - 3:30 pm (MT) Sherry.L.Whitaker@irs.gov Life is not measured by the number of breaths we take, but by the moments that take our breath away" - Maya Angelou ----Original Message-----From: Hamilton David K [mailto:David.K.Hamilton@irs.gov] Sent: Tuesday, October 05, 2010 2:49 PM To: Whitaker Sherry L; Blackwell Robert M Subject: RE: Question There are 113,000 C4 returns from January 1, 2007 to now. Assuming they want all pages including redacted ones, that's 1.25 million pages. I've got a special extract set up for cases like this so very little programming is involved. If we get started on it right away, before the 10th when the monthly extracts start, we can probably get it done in a week or so. If we can't get it started right away, we won't be able to get it done until after the monthly and quarterly extracts, so we are looking at early to mid November. Dave Hamilton < David.K.Hamilton@irs.gov> SOI Exempt Organization Returns Image Net (SEIN) From: Whitaker Sherry L Sent: Tuesday, October 05, 2010 2:13 PM To: Hamilton David K; Blackwell Robert M Subject: RE: Question

JW-FOIA-000070

IRSC0384

# A3. Court orders IRS to comply with FOIA and turn over documents on IRS targeting and conspiracy with Main Justice Department Officials and FBI to criminalize free speech and association.

#### **U.S. District Court**

#### **District of Columbia**

Notice of Electronic Filing

The following transaction was entered on 5/2/2014 at 10:37 AM and filed on 5/2/2014
Case Name: JUDICIAL WATCH, INC. v. INTERNAL REVENUE SERVICE
Case Number: 1:13-cv-01559-EGS
Filer:
Document Number: No document attached

#### Docket Text:

MINUTE ORDER adopting [15] the parties proposal for further proceedings. Defendant shall continue its monthly rolling production of documents to plaintiff, and the parties shall file a joint status report, including recommendations for further proceedings, by no later than August 29, 2014. SO ORDERED. Signed by Judge Emmet G. Sullivan on May 2, 2014. (Icegs4)

#### **U.S. District Court**

#### **District of Columbia**

#### Notice of Electronic Filing

 The following transaction was entered on 1/22/2015 at 6:43 PM EDT and filed on 1/22/2015

 Case Name:
 JUDICIAL WATCH, INC. v. INTERNAL REVENUE SERVICE

 Case Number:
 1:14-cv-01956-CRC

Filer:

Document Number: No document attached

#### Docket Text:

MINUTE ORDER: In light of the parties' [8] Joint Proposed Schedule, the Court hereby ORDERS the Internal Revenue Service to submit a status report on or before March 23, 2015 regarding how many potentially responsive documents it has located and an estimated date by which it will produce them. It is further ORDERED that the parties shall submit a joint proposal for future proceedings on or before March 30, 2015. Signed by Judge Christopher R. Cooper on 1/22/2015. (iccrc2.) A4. These emails uncovered by Congress confirm IRS/DOJ conspiracy to illegally turn over 1.25 million pages of confidential taxpayer information to FBI discussed in A3. above.

From: Sent:	Pilger, Richard Wednesday, October 06, 2010 2:05 PM	
To:	Lerner Lois G	- Aster
Cc:	Whitaker Sherry L. Simmons, Nancy:	(FBI)
Subject:	RE: DATA FORMAT ISSUE - TIME SENSITIVE	2.0

Thanks tois - FBI says Raw format is best because they can put it into their systems like excel.

From: Lerner Lois G [ Sent: Tuesday, October 05, 2010 5:52 PM To: Pilger, Richard Cc: Lerner Lois G; Whitaker Sherry L Subject: DATA FORMAT ISSUE - TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks **A5.** A July 16, 2013 email from an undisclosed Justice Department official to a lawyer for IRS employees asking that the Obama administration get information from congressional witnesses before Congress does.

	Dotained by Judicial Wetch, Inc. Via FDM
	From: coministrative group (lytitisch/23ipdit)/un-recipients/on-
(000), (79(5)	To:
	DC (CRT)
	e/orcm/ou=wach/on=recipients/on Boo: Subject: Re: Interviewe Date: Tue Jul 18 2013 17:22:45 EDT Attachmonts:
b)(6), (7)(C)	
	One last issue. If any of your clients have documents they are providing to Congress that you can (or would like to) provide to us before their testimony, we would be pleased to receive them. We are 6103 authorized and I can connect you with TIGTA to contine; we would like the unreducted documents. If you have none, that is ok. I just know that some employees have assembled their own set, in which instance it is helpful to obtain them.
	Thanks,
5)(6), (7)(C)	
6)(6), (7)(C)	From: Sent: Monday, July 15, 2013 08:51 PM Eastern Standard Time To: Col Subject: Interviews
b)(6), (7)(C)	-
(11)(11), (7)(12)	Per our obiversation today, i understand that the cliunts of yours liated below are testifying before. Congress on the data listed. We are available to slate interviews for each of these individuals on whatever day works for you – the day tellow, day of, or day after they histify. Please just let us know where and what time you would like to meet. If you decide it is entire for you to come to us, we can provide apace at officer near Judiciary Square or the White Houset. (As I told you over the phone, I are unavailable the week of 7/22, but the statement, who is co'd on this erreal, will be there for the phone interview.)
	Congressional Bohedula:
b)(61, (7)(C)	

A6. Email exchange between Lois Lerner and Nikole C. Flax, then-chief of staff to then-Acting IRS Commissioner Steven T. Miller discussing plans to work with the Justice Department to prosecute nonprofit groups that "lied" (Lerner's quotation marks) about political activities.

 From:
 Flax Nikole C

 Sent
 Thursday, May 09, 2013 8:04 AM

 To:
 Lemer Lois G

 Cc:
 Grant Joseph H; Marks Nancy J; Vozne Jennifer L

 Subject:
 RE: DOJ Call

I think we should do it - also need to include CI, which we can help coordinate. Also, we need to reach out to FEC. Does it make sense to consider including them in this or keep it separate?

From: Lerner Lois G Sent: Wednesday, May 08, 2013 5:30 PM. To: Flax Nikole C Cc: Grant Joseph H; Marks Nancy J Subject: DOJ Call Importance: High

I got a call today from Richard Pilger Director Elections Crimes Branch at DOJ. I know him from contacts from my days there. He wanted to know who at IRS the DOJ folk s could talk to about Sen. Whitehouse idea at the hearing that DOJ could piece together false statement cases about applicants who "lied" on their 1024s --saying they weren't planning on doing political activity, and then turning around and making large vis ible political expenditures. DOJ is feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are impediments from our side and what, if any damage this might do to IRS programs.

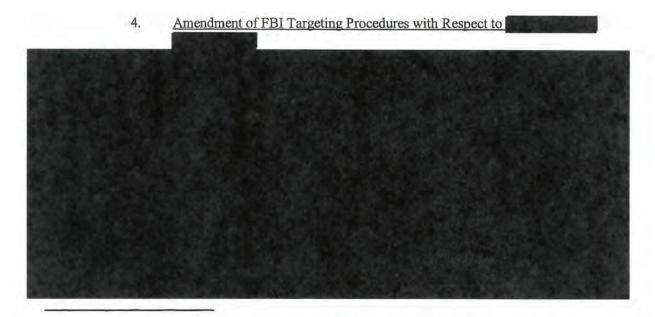
I told him that sounded like we might need several folks from IRS. I am out of town all next week, so wanted to reach out and see who you think would be right for such a meeting and also hand this off to Nan as contact person if things need to happen while I am gone --

Thanks

Lei G. Lean Director of Exempt Organizations A7. Invitation from undisclosed Department of Justice official to IRS official Sarah Hall Ingram to meet with officials in the Department of Justice Criminal Division to discuss "501(c)(4) issues." Ingram was unavailable to meet, and the invitation was passed on to Lois Lerner who later met with persons from the Criminal Division and FBI. (See A1. and A6. Above.)

(6), (7)(C)
(6), (7)(C)
(6), (7)(C)
(6), (7)(C)
@usdoj.gov] 9, 2010 4:20 PM
(b)(6), (7)(C)
; Hulser, Raymond (b)(6), (7)(C)
C) afternoon, we would like to invite Ms. Ingram to meet with us
propose next Friday at 10:00 a.m. We are located in the Bond venue, NW. Thank you for your assistance.
(b)(6), (7)(C)
_16

- **A8.** Excerpts from a March 2017 classified FISA Court Memorandum and Opinion declassified on April 26, 2017.
- **A8.1.** FISA Court judge notes that "NSA has made some otherwise-noncompliant queries of data acquired under Section 702 by means other than upstream Internet collection.



<sup>47</sup> The government has since orally notified the Court that, in order to respond to these requests and in reliance on this provision of its minimization procedures, NSA has made some otherwise-noncompliant queries of data acquired under Section 702 by means other than upstream Internet collection.

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**A8.2.** FISA Court judge arrives at problematical conclusion about the "extensive oversight" by the Justice Department and ODNI [Office of the Director of National Intelligence] of the agencies involved in the mass collection of surveillance data given Justice's and ODNI's well-known history of attempting to circumvent restrictions on surveillance:

Overall, the Court concludes that the targeting and minimization procedures satisfy

applicable statutory requirements and are reasonable under the Fourth Amendment, despite the

reported instances of non-compliance in prior implementation. The Court bases this conclusion

in large measure on the extensive oversight conducted within the implementing agencies and by

the DOJ and ODNI. Due to those efforts, it appears that compliance issues are generally

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identified and remedied in a timely and appropriate fashion.<sup>57</sup> Nonetheless, the Court believes it beneficial to discuss certain ongoing or recent compliance issues and, in some cases, direct the government to provide additional information. A8.3. In a heavily redacted section of the FISA Court's Memorandum and Opinion, the judge expresses concern over and criticizes FBI behavior where its use of "incidental" Sec. 702 surveillance is concerned.

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No. of the lot of the	allowed	users
access to Section 7	02-acquired information, id., when only	re cleared for
such access. Id. at	1, n.1. This resulted in violations of Sections III.A. and III.B of t	the FBI's
minimization proce	edures. <sup>58</sup> The government provided testimony on this issue at a h	earing on
the state	filed a Supplemental Notice on	1. 1. A.
indicating that		
FISA-acquired proc	ducts were "exported" users wh	o were not
authorized to access	s these products.	
On	the government filed what was styled as a Final Notice	on this issue
	Notice"). That notice indicated that the FBI	and the second
5/80 19:00	had not disseminated the FISA-acquired	products;
and all 📕 users had	d deleted from their systems the raw FISA-acquired information t	hey had
exported.	新生产的现在分词是新新好学校的新生产和新 <b>生</b> 的	1000
Case & State of		100
		Station 2

<sup>&</sup>lt;sup>58</sup> As then in effect and as now proposed, Section III.A of the FBI Minimization Procedures requires the FBI to "retain all FISA-acquired information under appropriately secure conditions that limit access to such information only to authorized users in accordance with [the FBI Minimization Procedures] and other applicable FBI procedures." FBI Minimization Procedures § III.A. Section III.B of the FBI Minimization Procedures further requires the FBI to grant access to raw Section 702-acquired information in a manner that is "consistent with the FBI's foreign intelligence information-gathering and information-sharing responsibilities, . . . [p]ermitting access . . . only by individuals who require access in order to perform their job duties[.]" <u>Id.</u> § III.B. It also requires users with access to FISA-acquired information to receive training on minimization requirements. <u>Id.</u> § III.B.4.

# A8.4. FISA Court notes NSA's past failure to comply with "minimization" rules to purge surveillance data.

#### 2. NSA Failures to Complete Required Purges

On July 13, 2015, the Government filed a notice regarding NSA's purge processes for

FISA-acquired information in its mission management systems ("July 13, 2015 Notice"). That

notice indicated that the NSA had not been removing records associated with Section 702 data

subject to purge from its database. July 13, 2015 Notice at 3.

#### A8.5. FISA Court examines "NSA improper querying [Redacted] Communications:"

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NSA Minimization Procedures, the results of upstream Internet collection during the relevant timeframe must be segregated and destroyed.

2. Improper Querying Communications

U.S. person identifiers may be used to query Section 702 data only if they are first "approved in accordance with [internal] NSA procedures, which must require a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to return foreign intelligence information." NSA Minimization Procedures § 3(b)(5).<sup>66</sup> In performing such queries, NSA analysts sometimes use a tool called "**Compliance** can be used to query data repositories, including one called **Compliance** September 30, 2016 Final Notice of Compliance Incidents Regarding Improper Queries ("September 30, 2016 Final Notice") at 1.

FISA authorities. Id.

In May and June 2016, NSA reported to oversight personnel in the ODNI and DOJ that, since approximately 2012, use of to query communications in the Maximum had resulted in inadvertent violations of the above-described querying rules for Section 702 information. Id. The violations resulted from analysts not recognizing the need to avoid querying datasets for which querying requirements were not satisfied or not understanding how to formulate queries to exclude such datasets. Id. at 1-2.

<sup>66</sup> As previously noted, NSA may not use U.S.-person identifiers to query the results of upstream Internet collection until the 2017 Amendments take effect, but will be able to run such queries of the narrower form of upstream Internet collection contemplated under the 2017 Amendments, subject to the approval process described above.

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NSA examined all queries using identifiers for "U.S. persons targeted pursuant to Sections 704 and 705(b) of FISA using the tool in ... from November 1, 2015 to May 1, 2016." Id. at 2-3 (footnote omitted). Based on that examination, "NSA estimates that approximately eighty-five percent of those queries, representing gueries conducted by approximately targeted offices, were not compliant with the applicable minimization procedures." Id, at 3. Many of these non-compliant queries involved use of the same identifiers over different date ranges. Id. Even so, a non-compliance rate of 85% raises substantial questions about the propriety of using of the government to query FISA data. While the government reports that it is unable to provide a reliable estimate of the number of non-compliant queries since 2012, id., there is no apparent reason to believe the November 2015-April 2016 period coincided with an unusually high error rate. The government reports that NSA "is unable to identify any reporting or other disseminations that may have been based on information returned by [these] non-compliant queries" because "NSA's disseminations are sourced to specific objects," not to the queries that may have presented those objects to the analyst. Id. at 6. Moreover, query results are Id. 67 generally retained for just The NSA has taken steps to educate analysts on the proper use of it has provided a "reminder" to all analysts about the need "to limit queries across authorities in with

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<sup>&</sup>lt;sup>67</sup> Information retrieved by an improper query might nonetheless satisfy the requirements for dissemination; indeed, absent a second violation of the minimization procedures, separate from the improper query, one would expect any disseminated information to have satisfied those requirements.

**A8.6.** FISA Court returns to improper behavior by the FBI but remains remarkably credulous of the FBI's "explanations," adopting a "no-harm-no-foul" standard and crediting much of the FBI's non-compliance ("lapses") with minimization procedures to "ignorance," "misunderstanding," "confusion" and a general lack of training and innocent error.

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provide technical or linguistic assistance to the FBI, but only if certain restrictions are followed.

See id. § V.D. Those restrictions were not in place with regard to the contractors: their

access was not limited to raw information for which the FBI sought assistance and access

continued even after they had completed work in response to an FBI request. See

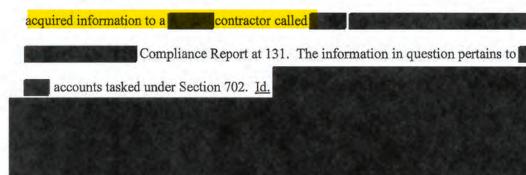
Compliance Report at 93. At the October 4, 2016 Hearing, the government represented that it

was investigating whether there have been similar cases in which the FBI improperly afforded

non-FBI personnel access to raw FISA-acquired information on FBI systems. October 4, 2016

Transcript at 64.

In a separate violation of its minimization procedures, the FBI delivered raw Section 702-



as a federal agency, could receive raw Section 702-acquired information in order to provide technical assistance to the FBI, subject to the requirements of Section V.D of the FBI Minimization Procedures. See FBI Minimization Procedures § V.D ("FBI is authorized to

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	disclose FISA-acquired information to assisting federal agencies for further processing and
	analysis," subject to specified restrictions) (emphasis added).
	agency and the personnel who worked with the information were "not directly supervised
	by or otherwise under the direction and control of Compliance
	Report at 132. For these reasons, the government concluded that the FBI had given the
•	information to the private entity not to an assisting federal agency. See id.68
	The assume with the set
1	The government has not
	explained why giving personnel access to the raw information during installation of the
	tool would not involve a separate violation of the FBI Minimization Procedures. Accordingly,
	the Court is ordering the government to provide additional information regarding this second
	grant of access to raw Section 702 information.
	These violations, when placed in the context of Section 702 acquisitions in their entirety,
	do not preclude a finding that the FBI Minimization Procedures meet the statutory definition of
	"minimization procedures" and are consistent with the requirements of the Fourth Amendment.
2	
	<sup>68</sup> In contrast, the above-described contractors worked in a federal facility under the
	supervision of Compliance
	Report at 93. It appears that the government views the above-described disclosures of information to the second contractors as disclosures to a federal agency, rather than to a private
	entity or private individuals. In any event, the government acknowledges that those disclosures were improper for other reasons, so the Court need not reach this question.
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The improper access previously afforded the **second** contractors has been discontinued, while the information disclosed to **second** pertains to just **second** tasked selectors.

The Court is nonetheless concerned about the FBI's apparent disregard of minimization

rules and whether the FBI may be engaging in similar disclosures of raw Section 702 information

that have not been reported.<sup>69</sup> Accordingly, the Court is directing the government to provide

additional as described below.

2. Potential Over-Retention of Section 702 Information

Last year, in the context of approving the standard minimization procedures employed by

the FBI for electronic surveillance and physical search conducted under Titles I and III of FISA, a

judge of the FISC observed:

FBI personnel who develop storage systems for FISA-acquired information and decide under what circumstances FISA-acquired information is placed on those systems are bound by applicable minimization procedures and FISC orders, no less so than an agent conducting a FISC-authorized physical search or an analyst preparing a report for dissemination.

Docket No. Docket No. Opinion and Order at 45 (FISA Ct. May 17, 2016). Recent disclosures

regarding

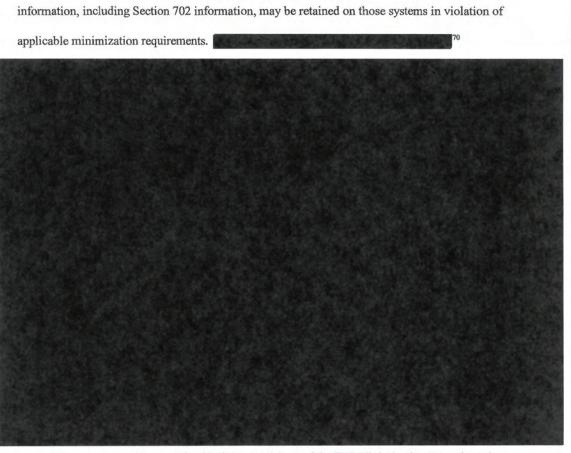
systems maintained by the FBI suggest that raw FISA

<sup>69</sup> The improper access granted to the contractors was apparently in place and seems to have been the result of deliberate decisionmaking. Compliance Report at 92-93 (consistence of BI systems was the subject of an interagency memorandum of understanding entered into the properties of the existence of an interagency memorandum of understanding (presumably prepared or reviewed by FBI lawyers), no notice of this practice was given to the FISC until 2016. Of course, such a memorandum of understanding could not override the restrictions of Section 702 minimization procedures.

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The government has not identified the provisions of the FBI Minimization Procedures it

believes are implicated by the above-described retention practices. Based on the information



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provided, however, those practices appear inconsistent with the provisions governing retention on electronic and data storage systems, <u>see</u> FBI Minimization Procedures § III.G.1, on ad hoc systems, <u>id.</u> § IV.A-B, and in connection with litigation, <u>id.</u> § III.G.4. Nearly four months ago, the government undertook to address this indefinite retention of information on the abovedescribed systems in a subsequent filing, <u>see</u> December 29, 2016 Report at 10-11, but has not done so. Accordingly, the Court is directing the government to provide pertinent information, as

described below.

3. Review Teams for Attorney-Client Communications

The Section 702 minimization procedures

have specific rules for handling attorney-client communications. Because the FBI has law enforcement responsibilities and often works closely with prosecutors in criminal cases, its procedures have detailed requirements for cases in which a target is known to be charged with a federal crime. Unless otherwise authorized by the [National Security Division of DOJ], the FBI must establish a separate review team whose members have no role in the prosecution of the charged criminal matter to conduct the initial review of such a target's communications. When that review team identifies a privileged communication concerning the charged criminal matter, the original record or portion thereof containing that privileged communication is sequestered with the FISC and other copies are destroyed (save only any electronic version retained as an archival backup, access to which is restricted).

November 6, 2015 Opinion at 47-48 (citations and internal quotation marks omitted).

Failures of the FBI to comply with this "review team" requirement for particular targets

have been a focus of the FISC's concern since 2014. See id. at 48-52; August 26, 2014 Opinion

at 35-36. The government generally ascribed those failures to misunderstanding or confusion on

the part of individuals - for example, when an agent is generally aware of the review team

requirement but mistakenly believes that it does not apply when the charging instrument is under

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seal. November 6, 2015 Opinion at 50. The government advised that it was emphasizing the review team requirement in ongoing training and oversight efforts, and that such emphasis had resulted in the identification and correction of additional cases in which review teams had not been properly established. <u>Id.</u> at 51.

targets who have been subject to criminal charges	there was a delay of over two
years in establishing review teams. See	Preliminary Notice of Compliance
Incident Regarding	Preliminary
Notice") at 2-3. The primary cause of this delay was that the	responsible case agent was unaware
of the review team requirement. That agent took the appropr	iate steps after reviewing an
advisory that reminded FBI personnel about the requirement	in Id. at 3. <sup>71</sup> The
government also reported a delay of approximately one mont	h during
before establishing a review team after a target was charged i	in a sealed complaint. The delay
appears to have been the result of lack of coordination among	g FBI field offices. According to the
government, the review teams have completed examination of	of communications acquired prior to

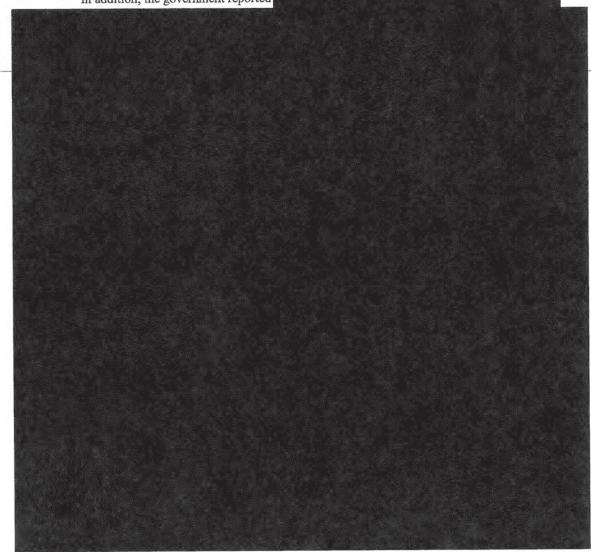


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their creation for both incidents and did not discover any privileged communications.

Compliance Report at 77, 105.

In addition, the government reported



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A separate source of under-inclusiveness is when personnel do not identify and segregate

communications for	
FBI examination of the erroneously-excluded	
communications is ongoing and, so far, has not identified any attorney-client privileged	
communications concerning a charged matter. Compliance Report at 119.	
A different problem affected accounts during November	
28-30, 2016. That problem has been solved prospectively. Although some communications for	
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those tasked accounts were accessed before being segregated for the review team, none of them contained privileged information. <u>Id.</u> at 83 n.58.

In order to addres	s some of the sources of such under-inclusiveness, the FBI has	
implemented a new	process for the second se	
CARLES DECK		_
and public the second states		
Contraction of the	In addition, the FBI and NSA have taken steps to address the	
difficulties encountered v	vith regard to Id. at 4.	

It seems clear that the review team requirement should continue to be a point of emphasis in the government's training and oversight efforts. The measures taken to improve processes for identifying and routing information subject to the review team requirement appear well-suited to address the described under-inclusiveness problems. In view of those efforts, and the fact that lapses to date appear to have resulted in few, if any, privileged communications concerning charged matters being reviewed by investigators other than review team members, errors in implementing the review team requirements do not preclude a finding that the FBI Minimization Procedures meet the statutory definition of "minimization procedures" and are consistent with the requirements of the Fourth Amendment.

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A9. Letter from NSC informing Judicial Watch it will not fulfill the FOIA request because all the responsive records have been removed to the Obama Presidential Library – and by law will remain locked up and unavailable to the public for five years.

1701.€

WAEHINGTON, D.C. 20504

May 23, 2017

Dear Mr. Dunagan:

This letter anknowledges receipt of your request of April 4. 2017.

Documents from the Obama administration have been transferred to the Barack Obama Presidential Library. You may send your request to the Obama Library. However, you should be aware that under the Presidential Records Act. Presidential records remain closed to the public for five years after an administration has left office.

The Barack Obama Presidential Library can be reached at:

Barack Obama Presidential Library 2500 W. Colf Road Hoffman Estates, IL Phone: (847) 252-5700 Email: chama.librarywnara.gov

Sincerely,

John Powers Director Access Management

Sean Dunagan Judicial Watch 425 Third St. NW, Suite 800 Washington, DC 20024

If you would like additional copies of the report please contact:

Judicial Watch 425 Third Street, SW, Suite 800 Washington, DC 20024

Member Services: 1 (888) 593-8442 FAX: (202) 646-5199

Email: info@JudicialWatch.org www.JudicialWatch.org





Because no one is above the law!