



**Federal Bureau of Investigation**  
Washington, D.C. 20535

June 28, 2019

MR. WILLIAM F MARSHALL  
JUDICIAL WATCH  
SUITE 800  
425 THIRD STREET, SOUTHWEST  
WASHINGTON, DC 20024

FOIPA Request No.: 1391365-000  
Civil Action No.: 18-cv-154  
Subject: Communications between Peter Strzok and  
Lisa Page (February 1, 2015 – Present)

Dear Mr. Marshall:

The enclosed documents were reviewed under the Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. Below you will find check boxes under the appropriate statute headings with indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemption boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

**Section 552**

- |  |   |
|--|---|
| <input type="checkbox"/> (b)(1)            | <input type="checkbox"/> (b)(7)(A)            |
| <input type="checkbox"/> (b)(2)            | <input type="checkbox"/> (b)(7)(B)            |
| <input type="checkbox"/> (b)(3)            | <input checked="" type="checkbox"/> (b)(7)(C) |
| _____                                      | <input type="checkbox"/> (b)(7)(D)            |
| _____                                      | <input checked="" type="checkbox"/> (b)(7)(E) |
| _____                                      | <input type="checkbox"/> (b)(7)(F)            |
| <input type="checkbox"/> (b)(4)            | <input type="checkbox"/> (b)(8)               |
| <input checked="" type="checkbox"/> (b)(5) | <input type="checkbox"/> (b)(9)               |
| <input checked="" type="checkbox"/> (b)(6) |   |

**Section 552a**

- |                                 |
|---------------------------------|
| <input type="checkbox"/> (d)(5) |
| <input type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (k)(1) |
| <input type="checkbox"/> (k)(2) |
| <input type="checkbox"/> (k)(3) |
| <input type="checkbox"/> (k)(4) |
| <input type="checkbox"/> (k)(5) |
| <input type="checkbox"/> (k)(6) |
| <input type="checkbox"/> (k)(7) |

500 pages of potentially responsive records were reviewed.  
35 pages are being released in whole or in part.  
0 pages are being withheld in full per exemptions.  
57 pages are being withheld duplicate.  
6 pages are being withheld referral/consult.  
402 pages were determined to be non-records/non-responsive to the FOIA request.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☒ Document(s) were located which originated with, or contained information concerning, other Government Agency (ies) [OGA].
- ☐ This information has been referred to the OGA(s) for review and direct response to you.

☒ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.

☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

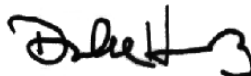
For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

Please direct any further inquiries about this case to the Assistant United States Attorney representing the Government in this matter. Please use the FOIPA Request Number and/or Civil Action Number in all correspondence or inquiries concerning your request.

You may direct any further inquiries to the attorney representing the Government in this matter.

☒ See additional information which follows.

Sincerely,



David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Information Management Division

Enclosure(s)

In response to your Freedom of Information Act (FOIA) request, enclosed is a processed copy of Bates Stamped documents, FBI(18-cv-154)-5536 through FBI(18-cv-154)-6035. The enclosed documents represent the thirteenth interim release of information responsive to your request.

The FBI conducted email searches for any email communication between Peter Strzok and Lisa Page. This search located both official government records and non-record personal communications between these two individuals.

The FBI reviewed 500 pages of these emails. While conducting this review, the FBI individually analyzed the emails to determine whether they pertained to official government business constituting records under the FOIA or whether they consisted of purely personal communications between the two individuals. As a result of the FBI's review, it determined 402 pages were non-record, personal communications not subject to the FOIA; and 98 pages consisted of responsive FBI records.

As previously indicated, document(s) were located which originated with, or contained information concerning another agency (ies). We are consulting with the other agency (ies) and are awaiting their response. Our office has processed all other information currently in our possession. The FBI will correspond with you regarding those documents when the consultation is completed.

To minimize costs to both you and the FBI, duplicate copies of the same document were not processed.

## **EXPLANATION OF EXEMPTIONS**

### **SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552**

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ( A ) could reasonably be expected to interfere with enforcement proceedings, ( B ) would deprive a person of a right to a fair trial or an impartial adjudication, ( C ) could reasonably be expected to constitute an unwarranted invasion of personal privacy, ( D ) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, ( E ) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or ( F ) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

### **SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a**

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

**FEDERAL BUREAU OF INVESTIGATION  
FREEDOM OF INFORMATION ACT (FOIA)  
DELETED PAGE INFORMATION SHEET  
FOIA Request No.:1391365-000 Civil  
Action No.: 18-cv-154**

**Total Withheld Page(s) = 465**

<b>Bates Page Reference</b>	<b>Reason for Withholding</b> (i.e., exemptions with coded rationale, duplicate, sealed by order of court, etc.)
FBI(18-cv-154)-5536 thru FBI(18-cv-154)-5560	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5562 thru FBI(18-cv-154)-5590	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5591	Duplicate to FBI(18-cv-154)-758
FBI(18-cv-154)-5592	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5594	Duplicate to FBI(18-cv-154)-761
FBI(18-cv-154)-5595 thru FBI(18-cv-154)-5659	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5660 thru FBI(18-cv-154)-5661	Duplicate to FBI(18-cv-154)-921
FBI(18-cv-154)-5662 thru FBI(18-cv-154)-5677	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5678 thru FBI(18-cv-154)-5680	Duplicate to FBI(18-cv-154)-943 thru FBI(18-cv-154)-946
FBI(18-cv-154)-5681 thru FBI(18-cv-154)-5684	Duplicate to FBI(18-cv-154)-957 thru FBI(18-cv-154)-958
FBI(18-cv-154)-5685 thru FBI(18-cv-154)-5770	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5771	Duplicate to FBI(18-cv-154)-1124
FBI(18-cv-154)-5772 thru FBI(18-cv-154)-5847	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5849	Duplicate to FBI(18-cv-154)-1176
FBI(18-cv-154)-5850 thru FBI(18-cv-154)-5858	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5859 thru FBI(18-cv-154)-5866	Duplicate to FBI(18-cv-154)-1219 thru FBI(18-cv-154)-1222
FBI(18-cv-154)-5871 thru FBI(18-cv-154)-5874	Duplicate to FBI(18-cv-154)-5867 thru FBI(18-cv-154)-5870
FBI(18-cv-154)-5875 thru FBI(18-cv-154)-5881	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5882 thru FBI(18-cv-154)-5883	Duplicate to FBI(18-cv-154)-1256 thru FBI(18-cv-154)-1259
FBI(18-cv-154)-5884 thru FBI(18-cv-154)-5897	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5898 thru FBI(18-cv-154)-5899	Referral/Consult
FBI(18-cv-154)-5900 thru FBI(18-cv-154)-5901	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5902 thru FBI(18-cv-154)-5904	Duplicate to FBI(18-cv-154)-1354 thru FBI(18-cv-154)-1355
FBI(18-cv-154)-5905 thru FBI(18-cv-154)-5909	Duplicate to FBI(18-cv-154)-1359 thru FBI(18-cv-154)-1361

FBI(18-cv-154)-5910 thru FBI(18-cv-154)-5913	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5914	Referral/Consult
FBI(18-cv-154)-5916 thru FBI(18-cv-154)-5920	Duplicate to FBI(18-cv-154)-1372
FBI(18-cv-154)-5923	Duplicate to FBI(18-cv-154)-1377
FBI(18-cv-154)-5924 thru FBI(18-cv-154)-5931	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5934 thru FBI(18-cv-154)-5947	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5948	Duplicate to FBI(18-cv-154)-1397 thru FBI(18-cv-154)-1398
FBI(18-cv-154)-5954 thru FBI(18-cv-154)-5966	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5967 thru FBI(18-cv-154)-5968	Duplicate to FBI(18-cv-154)-1437 thru FBI(18-cv-154)-1438
FBI(18-cv-154)-5969 thru FBI(18-cv-154)-5973	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-5977 thru FBI(18-cv-154)-5997	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-6000 thru FBI(18-cv-154)-6002	Referral/Consult
FBI(18-cv-154)-6004 thru FBI(18-cv-154)-6012	Duplicate to FBI(18-cv-154)-6013 thru FBI(18-cv-154)-6021
FBI(18-cv-154)-6022	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-6024 thru FBI(18-cv-154)-6025	Duplicate to FBI(18-cv-154)-1451 thru FBI(18-cv-154)-1452
FBI(18-cv-154)-6028 thru FBI(18-cv-154)-6033	Other - Non-records/Non-responsive to the FOIA request
FBI(18-cv-154)-6034 thru FBI(18-cv-154)-6035	Duplicate to FBI(18-cv-154)-4885 thru FBI(18-cv-154)-4887

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X Deleted Page(s) X

X No Duplication Fee X

X For this Page X

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**Strzok, Peter P. (WF) (FBI)**

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**From:** Strzok, Peter P. (WF) (FBI)  
**Sent:** Wednesday, October 21, 2015 12:18 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** FW: CCL list

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**From:** [REDACTED] (WF) (FBI)  
**Sent:** Wednesday, October 21, 2015 12:15 PM  
**To:** Strzok, Peter P. (WF) (FBI)  
**Subject:** CCL list

b6 -1  
b7C -1

Pete, attached is the link to Commerce Controlled List, if needed.

<http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>



b6 -1  
b7C -1

**Strzok, Peter P. (WF) (FBI)**

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**From:** Strzok, Peter P. (WF) (FBI)  
**Sent:** Monday, November 02, 2015 11:43 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Yay!

Yes. And good; I think blue could work. Of course want to hear about it. I promise to hide my little blech mouth-vomits while you do.

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**From:** Page, Lisa C. (OGC) (FBI)  
**Sent:** Monday, November 02, 2015 11:42 AM  
**To:** Strzok, Peter P. (WF) (FBI)  
**Subject:** RE: Yay!

No way! On fbi net? And this whole project is going to be awesome. I'm even getting excited (possibly) about the blue!

----- Original message -----

**From:** "Strzok, Peter P. (WF) (FBI)" [redacted]  
**Date:** 11/02/2015 11:07 AM (GMT-05:00)  
**To:** "Page, Lisa C. (OGC) (FBI)" [redacted]  
**Subject:** Yay!

b6 -1  
b7C -1  
b7E -6

Just sent you an actual CPC-related legal work question!

*Peter P. Strzok II*  
*Assistant Special Agent in Charge*  
*Washington Field Office*

b6 -1  
b7C -1

**Strzok, Peter P. (WF) (FBI)**

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**From:** Strzok, Peter P. (WF) (FBI)  
**Sent:** Tuesday, January 26, 2016 2:53 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** Fwd: National Security Letters and Leak Investigations | Just Security

----- Original message -----

**From:** Peter [REDACTED]  
**Date:** 01/26/2016 2:22 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (WF) (FBI)" [REDACTED]  
**Subject:** National Security Letters and Leak Investigations | Just Security

<https://www.justsecurity.org/28903/nsis-leak-investigations/>

b6 -1  
b7C -1  
b7E -6



**Strzok, Peter P. (WF) (FBI)**

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**From:** Strzok, Peter P. (WF) (FBI)  
**Sent:** Sunday, January 31, 2016 9:05 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

b6 -2  
b7C -2

I have no idea. It's not clear what account [redacted] iPad used. [redacted] at DNI is the one with the Yahoo! account.

b6 -2  
b7C -2

Maybe tell [redacted] with the IC IG investigating use of private servers and webmail, perhaps it's not an opportune time for he/DNI staff to be doing the same? I don't know.

----- Original message -----

**From:** "Page, Lisa C. (OGC) (FBI)" [redacted]  
**Date:** 01/31/2016 9:01 AM (GMT-05:00)  
**To:** "Strzok, Peter P. (WF) (FBI)" [redacted]  
**Subject:** RE: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

b6 -1, 2  
b7C -1, 2  
b7E -6

What do you want me to do?!

----- Original message -----

**From:** "Strzok, Peter P. (WF) (FBI)" [redacted]  
**Date:** 01/31/2016 8:53 AM (GMT-05:00)  
**To:** "Page, Lisa C. (OGC) (FBI)" [redacted]  
**Subject:** RE: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

b6 -1, 2  
b7C -1, 2  
b7E -6

AND GODDAMMIT GIVEN EVERYTHING GOING ON WHY IS [redacted] USING A YAHOO! ACCOUNT FOR THIS?  
(Actually, apparently a Yahoo! account from [redacted] iPad)

b6 -2  
b7C -2

Make him stop!!!!!!

----- Original message -----

**From:** "Page, Lisa C. (OGC) (FBI)" [redacted]  
**Date:** 01/31/2016 8:42 AM (GMT-05:00)  
**To:** "Strzok, Peter P. (WF) (FBI)" [redacted]  
**Subject:** Fwd: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

b6 -1, 2  
b7C -1, 2  
b7E -6

The latest. Will send the document as well. We have to respond by noon. Of course I offered to collect comments.

----- Original message -----

**From:** "Baker, James A. (OGC) (FBI)" [redacted]  
**Date:** 01/30/2016 8:27 PM (GMT-05:00)  
**To:** "McCabe, Andrew G. (DO) (FBI)" [redacted] (DO) (FBI)"  
[redacted] "Baker, James A. (OGC) (FBI)" [redacted]

b6 -1  
b7C -1  
b7E -6

Page, Lisa C. (OGC) (FBI)

(DO) (FBI)

(OGC) (FBI)

Anderson, Trisha B. (OGC) (FBI)

(OGC) (FBI)

Subject: Fwd: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

NSA comments below.

----- Original message -----

From: "Gerstell, Glenn S" [redacted]

Date: 01/30/2016 8:14 PM (GMT-05:00)

To: [redacted]

b6 -1, 2  
b7C -1, 2  
b7E -6

"Baker, James A. (OGC) (FBI)"

"Anderson, Trisha B. (OGC) (FBI)"

(NSD) (JMD)

(NSD) (JMD)

Subject: Re: Revised IC Safe Harbor Letter (from [redacted] using [redacted] iPad)

At the risk of duplication for some of you, since there seem to be two email chains, here's the text of our response just sent to [redacted] original email below:

b6 -2  
b7C -2

\*\*\*\*\*

The NSA team has reviewed the email from [redacted] below and the attached Summary of Information and has the following comments:

b6 -2  
b7C -2

1. [redacted]

2. [redacted]

b5 -1  
b7E -11

3. [redacted]

b5 -1  
b7E -11

We appreciate everyone's efforts here. Thanks.

Glenn

GLENN S. GERSTELL  
NSA General Counsel

From: [REDACTED]  
Sent: Saturday, January 30, 2016 05:48 PM  
To: [REDACTED]

b6 -1, 2  
b7C -1, 2  
b7E -6

Gerstell, Glenn S.; [REDACTED]  
Subject: Fw: Revised IC Safe Harbor Letter (from [REDACTED] using [REDACTED] Pad)

All -- please see below from [REDACTED] requesting your immediate (i.e., by tomorrow) review of the EC's proposed changes to [REDACTED] letter discussing US surveillance law and policy. [REDACTED] will be in transit back to DC tomorrow and I think will land around 3 or so. Please reply to all. Many thanks.

b6 -2  
b7C -2

Regards,

On Saturday, January 30, 2016 5:21 PM, [REDACTED] wrote:

b6 -2  
b7C -2  
b7E -6

Team -

This requires essentially immediate clearance, given the time frame [REDACTED] can you please send to CIA and FBI, and make sure that NSA has it (I think I included them but am not sure it went through). [REDACTED] please provide to others in DOJ as appropriate.

b6 -2  
b7C -2

Attached is a redline version of changes to the IC letter. We had several hours of discussion about this with the EC team today. In my view, the changes in this document are all acceptable, or could be acceptable with slight modifications. Many of the changes they proposed were intended to soften the presentation (e.g. eliminating explicit references to the [REDACTED] [REDACTED] and while I like the original phrases I don't think they are necessary. Others are a bit more substantive but I think are acceptable; a couple are questionable. Please review closely, and [REDACTED] and [REDACTED] note some questions that need answers.

b6 -2  
b7C -2  
b7E -4, 11

b6 -2  
b7C -2

There is one more issue [redacted] is continuing to push on the issue of collection from transatlantic cables. He and his lawyers, as well as [redacted] who is the political representative here and the most reasonable, believe that they need some sort of metrics that they can point to [redacted]

b6 -2  
b7C -2  
b7E -11

[redacted] has proposed that as part of the annual review, [redacted]

b5 -1  
b6 -2  
b7C -2  
b7E -11

I told [redacted]

b5 -1  
b6 -2  
b7C -2  
b7E -11

Thanks in advance. I will be in flight landing around 3 PM. Please collect comments and circulate to this distro asap.

b6 -2  
b7C -2

**Strzok, Peter P. (CD) (FBI)**

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**Subject:** Mtg with [REDACTED] and Lisa Page  
**Location:** 4869

b6 -1  
b7C -1

**Start:** Monday, February 29, 2016 4:30 PM  
**End:** Monday, February 29, 2016 5:00 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Strzok, Peter P. (CD) (FBI)

**Required Attendees:** Page, Lisa C. (OGC) (FBI) [REDACTED] (CYD) (FBI)

b6 -1  
b7C -1

**When:** Monday, February 29, 2016 4:30 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).  
**Where:** 4869

**Note:** The GMT offset above does not reflect daylight saving time adjustments.

\*~\*~\*~\*~\*~\*~\*~\*~\*

Reschedule per DD Special Counsel request



**Strzok, Peter P. (CD) (FBI)**

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**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Monday, February 29, 2016 9:29 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Wilkinson call

It's necessary to have a chain of command and gatekeepers. Otherwise you'd have 790 idiots calling the GC, EADs, and DD every day

----- Original message -----

From: "Page, Lisa C. (OGC) (FBI)" [redacted]  
Date: 02/29/2016 9:26 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [redacted]  
Subject: RE: Wilkinson call

b6 -1  
b7C -1  
b7E -6

I totally get it. I completely hate this about our organization, but it is what it is. Np.

----- Original message -----

From: "Strzok, Peter P. (CD) (FBI)" [redacted]  
Date: 02/29/2016 9:26 PM (GMT-05:00)  
To: "Page, Lisa C. (OGC) (FBI)" [redacted]  
Subject: RE: Wilkinson call

b6 -1  
b7C -1  
b7E -6

Sorry. I'm just in a different position.

----- Original message -----

From: "Page, Lisa C. (OGC) (FBI)" [redacted]  
Date: 02/29/2016 9:24 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [redacted]  
Subject: RE: Wilkinson call

b6 -1  
b7C -1  
b7E -6

Okay.

----- Original message -----

From: "Strzok, Peter P. (CD) (FBI)" [redacted]  
Date: 02/29/2016 9:23 PM (GMT-05:00)  
To: "Page, Lisa C. (OGC) (FBI)" [redacted]  
Subject: RE: Wilkinson call

b6 -1  
b7C -1  
b7E -6

I can't. This isn't life or death and I need to give the chain of command a few minutes to work.

----- Original message -----

From: "Page, Lisa C. (OGC) (FBI)" [redacted]  
Date: 02/29/2016 9:21 PM (GMT-05:00)  
To: "Strzok, Peter P. (CD) (FBI)" [redacted]  
Subject: RE: Wilkinson call

b6 -1  
b7C -1  
b7E -6

Just call him.

[REDACTED]

b6 -1  
b7C -1

----- Original message -----

From: "Strzok, Peter P. (CD) (FBI)" [REDACTED]

Date: 02/29/2016 9:18 PM (GMT-05:00)

To: "Page, Lisa C. (OGC) (FBI)" [REDACTED]

Subject: Fwd: Wilkinson call

b6 -1  
b7C -1  
b7E -6

Fyi below, couldn't reach Bill. Bill will probably call me back later.

----- Original message -----

From: "Strzok, Peter P. (CD) (FBI)" [REDACTED]

Date: 02/29/2016 9:17 PM (GMT-05:00)

To: "Baker, James A. (OGC) (FBI)" [REDACTED]

Subject: Wilkinson call

b6 -1  
b7C -1  
b7E -6

Jim, if you have not yet called Beth back, please hold off until Bill can get some information to you.

Thanks,

Pete

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Wednesday, March 02, 2016 6:59 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** Fwd: Beth W

Fyi

----- Original message -----

**From:** [REDACTED] (OGC) (FBI) [REDACTED]  
**Date:** 03/02/2016 6:50 AM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Subject:** Fwd: Beth W

b6 -1  
b7C -1  
b7E -6

See below from Jim.

----- Original message -----

**From:** "Baker, James A. (OGC) (FBI)" [REDACTED]  
**Date:** 03/01/2016 10:15 PM (GMT-05:00)  
**To:** [REDACTED] (OGC) (FBI) [REDACTED] "Anderson, Trisha B.(OGC) (FBI)"  
[REDACTED]  
**Subject:** RE: Beth W

b6 -1  
b7C -1  
b7E -6

Just did. She starts a trial tomorrow and wants to think about it so we should not reach out about scheduling yet. She appreciated the heads up about the pending press articles. She wants to meet with the DD but can only meet on the weekends right now. I will check his availability tomorrow. Thanks.

----- Original message -----

**From:** [REDACTED] (OGC) (FBI) [REDACTED]  
**Date:** 03/01/2016 8:02 PM (GMT-05:00)  
**To:** "Baker, James A. (OGC) (FBI)" [REDACTED] "Anderson, Trisha B.(OGC) (FBI)"  
[REDACTED]  
**Subject:** Beth W

b6 -1  
b7C -1  
b7E -6

Jim -

Did you get a chance to speak to Beth Wilkinson? CES wants to reach out to discuss scheduling additional interviews, but wanted some feedback from you first.



Thanks,



b6 -1  
b7C -1

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 04, 2016 11:32 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Following up

Also you need to know what [redacted] and she discussed. I can tell you over lunch...

b6 -3  
b7C -3

---

**From:** Page, Lisa C. (OGC) (FBI)  
**Sent:** Friday, March 04, 2016 11:30 AM  
**To:** Strzok, Peter P. (CD) (FBI)  
**Subject:** RE: Following up

He's not calling. Don't worry about it.

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 04, 2016 11:29 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Following up

Talking to DOJ, they (Toscas and CES) have strong opinions about it. Call me

---

**From:** Page, Lisa C. (OGC) (FBI)  
**Sent:** Friday, March 04, 2016 11:10 AM  
**To:** Strzok, Peter P. (CD) (FBI)  
**Subject:** FW: Following up

FVSA

---

**From:** Baker, James A. (OGC) (FBI)  
**Sent:** Friday, March 04, 2016 10:08 AM  
**To:** McCabe, Andrew G. (DO) (FBI); Page, Lisa C. (OGC) (FBI)  
**Cc:** Steinbach, Michael B. (DO) (FBI); Priestap, E W. (CD) (FBI); Anderson, Trisha B. (OGC) (FBI) [redacted]  
**Subject:** FW: Following up

b6 -1  
b7C -1

Andy:

Do you want to try to do this today?

Jim

---

**From:** Beth Wilkinson [mailto:[bwilkinson@wilkinsonwalsh.com](mailto:bwilkinson@wilkinsonwalsh.com)]  
**Sent:** Friday, March 04, 2016 9:55 AM  
**To:** Baker, James A. (OGC) (FBI)  
**Subject:** Following up

Any chance we can schedule the meeting we discussed? I actually came back to DC for 24 hours and I could

FBI (18-cv-154)-5949

meet today if it's closer on your side. Sorry for the last minute notice.

Beth A. Wilkinson | Founding Partner  
[bwilkinson@wilkinsonwalsh.com](mailto:bwilkinson@wilkinsonwalsh.com)

Wilkinson Walsh + Eskovitz PLLC  
Office: (202) 847-4010 | Fax: (202) 847-4005  
1900 M Street, N.W.  
Suite 800  
Washington, DC 20036  
[www.wilkinsonwalsh.com](http://www.wilkinsonwalsh.com)

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 04, 2016 5:20 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** FW: Interview

---

**From:** Baker, James A. (OGC) (FBI)  
**Sent:** Friday, March 04, 2016 5:19 PM  
**To:** Steinbach, Michael B. (DO) (FBI); Priestap, E W. (CD) (FBI); Strzok, Peter P. (CD) (FBI); Toscas, George (NSD) (JMD); Laufman, David (NSD) (JMD); [REDACTED] (NSD) (JMD); Anderson, Trisha B. (OGC) (FBI); [REDACTED] (OGC) (FBI)  
**Subject:** Interview

b6 -1, 2  
b7C -1, 2

I just spoke with Beth. I think we are now back on track. She is going to call [REDACTED] today or tomorrow about scheduling the next interview. Given the witness's personal schedule, Beth said that it may not happen for a few weeks but she will work that out with [REDACTED]

b6 -2  
b7C -2

We also discussed making sure that this is done at a secure location in a discreet way; she will work with [REDACTED] and the FBI team on that as well but I said that we will make sure that it happens in a high quality way.

Thanks.

Jim

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 04, 2016 7:20 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** Fwd: Interview

Fysa. He made me laugh.

----- Original message -----

**From:** "Baker, James A. (OGC) (FBI)" [REDACTED]  
**Date:** 03/04/2016 6:08 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Subject:** RE: Interview

b6 -1  
b7C -1  
b7E -6

She understands it needs to be in a SCIF. She seems more comfortable with NYFO, but I think would be open to WFO again if she can get in and out in a discreet manner (i.e., no chance of a press stakeout or too many people in the office seeing them and having awareness of what is going on).

Is there an offsite somewhere in the DC area that might be better? If so, don't tell me where it is.

Thanks.

Jim

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 04, 2016 5:23 PM  
**To:** Baker, James A. (OGC) (FBI)  
**Subject:** RE: Interview

Thanks Jim. [REDACTED]

b5 -3

---

**From:** Baker, James A. (OGC) (FBI)  
**Sent:** Friday, March 04, 2016 5:19 PM  
**To:** Steinbach, Michael B. (DO) (FBI); Priestap, E W. (CD) (FBI); Strzok, Peter P. (CD) (FBI); Toscas, George (NSD) (JMD); Laufman, David (NSD) (JMD); [REDACTED] (NSD) (JMD); Anderson, Trisha B. (OGC) (FBI); [REDACTED] (OGC) (FBI)  
**Subject:** Interview

b6 -1, 2  
b7C -1, 2

I just spoke with Beth. I think we are now back on track. She is going to call [REDACTED] today or tomorrow about scheduling the next interview. Given the witness's personal schedule, Beth said that it may not happen for a few weeks but she will work that out with [REDACTED]

b6 -2  
b7C -2

We also discussed making sure that this is done at a secure location in a discreet way; she will work with [REDACTED] and the FBI team on that as well but I said that we will make sure that it happens in a high quality way.

Thanks.

Jim

1



**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Tuesday, March 15, 2016 10:58 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: Chairman Grassley correspondence re Clinton email

Let's talk, I have thoughts. We need to get it out.

----- Original message -----

**From:** "Page, Lisa C. (OGC) (FBI)" [REDACTED]  
**Date:** 03/15/2016 10:57 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Subject:** RE: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1  
b7E -6

Trisha asked me today if I would be willing to look at this tomorrow since [REDACTED] will be gone. I haven't mentioned to [REDACTED] just wanted to let you know.

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Tuesday, March 15, 2016 10:54 PM  
**To:** [REDACTED] (OGC) (FBI)  
**Subject:** RE: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1

Your metro system can only be fed up for so long. Thurs and Fri will be fine.

Leave your Samsung turned off until Sun, we'll be fine.

And go home.

You hitting boot camp tomorrow morning before you fly out?

----- Original message -----

**From:** [REDACTED] (OGC) (FBI) [REDACTED]  
**Date:** 03/15/2016 10:51 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Subject:** RE: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1  
b7E -6

Scary, yes. We've been working together for too long.

Yes, I'm still at work, but I'm wrapping up. The extra hours are payback for the 3 days off. [REDACTED] will be at work tomorrow, and he expects to be really busy like he always is when I'm out. I will have my Samsung with me, if you need anything over the next few days.

Hopefully, you will not spend the entire week in traffic!

---

From: Strzok, Peter P. (CD) (FBI)

FBI (18-cv-154)-5974

FROM: STRZOK, Peter P. (CD) (FBI)

Sent: Tuesday, March 15, 2016 10:20 PM

To: [REDACTED] (OGC) (FBI)

Subject: RE: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1

Thanks. At least our timing is scarily on sync on the issue. Are you STILL at work?

----- Original message -----

From: [REDACTED] (OGC) (FBI)

Date: 03/15/2016 10:16 PM (GMT-05:00)

To: "Strzok, Peter P. (CD) (FBI)"

Subject: RE: Chairman Grassley correspondence re Clinton email

b5 -1  
b6 -1  
b7C -1  
b7E -6

I'm still working on it. [REDACTED]

I just sent an email to Beth Beers about the status.

From: Strzok, Peter P. (CD) (FBI)

Sent: Tuesday, March 15, 2016 9:56 PM

To: [REDACTED] (OGC) (FBI)

Subject: Fwd: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1

Fyi below. How's the Grassley whistle-blower protection response?

----- Original message -----

From: "Priestap, E W. (CD) (FBI)"

Date: 03/15/2016 9:53 PM (GMT-05:00)

To: "Strzok, Peter P. (CD) (FBI)"

Cc: "Moffa, Jonathan C. (CD) (FBI)" [REDACTED] (OGC) (FBI)

Subject: RE: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1  
b7E -6

Pete: OCA advised that they don't need a response until COB tomorrow. Thx, Bill

----- Original message -----

From: "Priestap, E W. (CD) (FBI)"

Date: 03/15/2016 5:49 PM (GMT-05:00)

To: "Strzok, Peter P. (CD) (FBI)"

Cc: "Moffa, Jonathan C. (CD) (FBI)" [REDACTED] (OGC) (FBI)

Subject: FW: Chairman Grassley correspondence re Clinton email

b6 -1  
b7C -1  
b7E -6

Pete: In case you haven't yet seen the below. Please let me know your thoughts tomorrow AM. (I'm having dinner with the Brits tonight.) Thanks, Bill



**From:** Beers, Elizabeth R. (DO) (FBI)

**Sent:** Tuesday, March 15, 2016 1:43 PM

**To:** Priestap, E.W. (CD) (FBI); Anderson, Trisha B. (OGC) (FBI)

**Cc:** [REDACTED] (DO) (FBI); [REDACTED] (OGC) (FBI); [REDACTED] (OGC) (FBI); Sabol, Sherry E. (OGC) (FBI)

**Subject:** Chairman Grassley correspondence re Clinton email

b5 -1  
b6 -1  
b7C -1

All -- please see attached and two requests -- [REDACTED]

[REDACTED] Please let me know if you've got any concerns. From OCA's perspective, this approach is consistent with the position taken in similar situations in the past. Secondly, we need the status of the FBI's draft response to the letter to the FBI concerning the non-disclosure issue (incoming attached). My understanding is that a response has been drafted and is being reviewed, but it hasn't made it to OCA yet -- please update and let me know how we can assist.

Thanks,

Elizabeth Beers

Acting Chief of Communications Affairs

b6 -1  
b7C -1

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Wednesday, March 16, 2016 10:04 AM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** Two things

Actual work! :)

Have something to show you

Want to talk about the Grassley response

**Strzok, Peter P. (CD) (FBI)**

---

**Subject:** Discuss reporting

**Start:** Thursday, March 17, 2016 3:15 PM

**End:** Thursday, March 17, 2016 4:00 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Organizer:** Strzok, Peter P. (CD) (FBI)

**Required Attendees:** Page, Lisa C. (OGC) (FBI)

When: Thursday, March 17, 2016 3:15 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Note: The GMT offset above does not reflect daylight saving time adjustments.

\*~\*~\*~\*~\*~\*~\*~\*~\*~\*

Placeholder because if we don't schedule it, time will collapse, and this is the only common open time today...but get it if you need to reschedule this

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Thursday, March 17, 2016 6:40 PM  
**To:** Moffa, Jonathan C. (CD) (FBI); Page, Lisa C. (OGC) (FBI)  
**Subject:** RE: 11 in Bills office tomorrow

Rgr [REDACTED] and another CyD guy will also attend.

b6 -1  
b7C -1

----- Original message -----

**From:** "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Date:** 03/17/2016 6:39 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]; "Page, Lisa C. (OGC) (FBI)" [REDACTED]  
**Subject:** RE: 11 in Bills office tomorrow

b6 -1  
b7C -1  
b7E -6

I think so. We are both in with EAD Steinbach in Rm. 4017 from 10am-11am tomorrow, but we can just walk across the hall and go in with the AD right afterward.

----- Original message -----

**From:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Date:** 03/17/2016 4:48 PM (GMT-05:00)  
**To:** "Page, Lisa C. (OGC) (FBI)" [REDACTED]; "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Subject:** 11 in Bills office tomorrow

b6 -1  
b7C -1  
b7E -6

Jon can you get your guy (who will be the briefer) there?

**Strzok, Peter P. (CD) (FBI)**

---

**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Thursday, March 17, 2016 8:49 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Attachments:** R43112.pdf

Peter P. Strzok II  
Section Chief  
Counterespionage Section (CD4)  
FBIHQ

 (S)  
(C)

b6 -1  
b7C -1



# Independent Counsels, Special Prosecutors, Special Counsels, and the Role of Congress

Jack Maskell  
Legislative Attorney

June 20, 2013

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

R43112

CRS Report for Congress  
*Prepared for Members and Committees of Congress*

FBI (18-cv-154)-6014



## Summary

This report provides information on the procedure for the appointment of an “independent counsel,” a “special prosecutor,” or a “special counsel” to investigate and prosecute potential or possible violations of federal criminal law by officials in the executive branch of the federal government and in federal agencies. Specifically examined is the role or authority of Congress in requiring an independent or special counsel investigation of executive branch officials.

Under the Constitution and its separation of powers principles and structure, Congress has no direct role in federal law enforcement, nor in triggering or initiating the appointment of any prosecutor for any particular matter (other than the advice and consent role of the Senate regarding certain nominations made by the President). Congress, however, has recognized inherent authority to conduct oversight hearings and legislative investigations by its committees into misconduct, mismanagement, or any other malfeasance relating to the officers and agencies of the executive branch of government to assure the government’s proper functioning, to assure the proper expenditure of funds that Congress appropriates, and to explore the need for remedial legislation. Revelations from such investigations and oversight, in addition to providing information for remedial legislation, may contribute to the public pressure on the Administration or Department of Justice to appoint an “independent” counsel or prosecutor to investigate uncovered evidence or allegations of wrongdoing by persons in the Administration.

Congress may also have a legislative role in designing a statutory mechanism for the appointment of “independent counsels” or “special prosecutors,” as it did in title VI of the Ethics in Government Act of 1978. Under the provisions of that law relating to the appointment of “independent counsels” (called “special prosecutors” until 1983), the Attorney General was directed to petition a special three-judge panel of the U.S. Court of Appeals to name an independent counsel upon the receipt of credible allegations of criminal misconduct by certain high-level personnel in the executive branch of the federal government whose prosecution by the Administration might give rise to an appearance of a conflict of interest. In 1999, Congress allowed the “independent counsel” provisions of law to expire. Upon the expiration of the law in June of 1999, no new “independent counsels” or “special prosecutors” may be appointed by a three-judge panel upon the application of the Attorney General.

The Attorney General retains the general authority to designate or name individuals as “special counsels” to conduct investigations or prosecutions of particular matters or individuals on behalf of the United States. Under regulations issued by the Attorney General in 1999, the Attorney General may appoint a “special counsel” from outside of the Department of Justice who acts as a special employee of the Department of Justice under the direction of the Attorney General. The Attorney General, however, may also appoint an individual as a special counsel, and may invest that individual with a greater degree of independence and autonomy to conduct investigations and prosecutions, regardless of any “special counsel” regulations, as Attorneys General did in 1973, 1994, and 2003. In 1973, Attorney General Elliot Richardson named Archibald Cox to be the “special prosecutor” for the “Watergate” investigation; in 1994, during an earlier expiration of the independent counsel provisions of law, Attorney General Janet Reno named a “regulatory” independent counsel Robert Fisk to investigate allegations concerning the matter known as “Whitewater”; and in 2003, Attorney General Ashcroft recused himself from the investigation of the leak of the identity of a CIA agent, and Deputy Attorney General Comey named U.S. Attorney Patrick Fitzgerald to be special counsel “with all the authority of the Attorney General” to pursue that matter.

## Contents

Role of Congress; Investigations and Legislation .....	1
“Independent Counsel” or “Special Prosecutor” Legislation .....	2
“Special Counsels” and Department of Justice Regulations .....	3
Other “Special Counsels” .....	4

## Contacts

Author Contact Information.....	5
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Allegations of misconduct by federal officials in the executive branch of the federal government often lead to a renewed interest in the mechanisms of the appointment of a “special prosecutor,” an “independent counsel,” or a “special counsel” to investigate and possibly to prosecute cases of perceived or potential criminal misconduct against government officials. Specifically, in the context of the appointment of a special prosecutor, an independent counsel, or a special counsel, questions have arisen concerning the particular role of Congress in this process.

## Role of Congress; Investigations and Legislation

Congress may initiate and conduct congressional investigations and hearings through various committees—including standing committees, select committees, or joint committees—into a wide range of the details, scope, authority, and impact of programs, policies, and conduct of executive branch officials and agencies of the federal government. Congress has a recognized inherent authority for oversight of the executive agencies and departments of government to ensure their efficient and proper functioning according to the laws that Congress has passed, to assure the proper expenditure of funds that Congress appropriates, and to explore and consider the need for possible remedial legislation.<sup>1</sup>

Under separation of powers principles provided structurally within the Constitution, however, any *criminal* prosecutions on behalf of the United States relating to liability of any officer or employee of the government, or concerning the conduct of any other persons who may violate federal law, are considered to be executive functions under Article II of the U.S. Constitution, and ultimately under the authority of the President to “take Care that the laws be faithfully executed.”<sup>2</sup> Within the structure of the U.S. Government and the executive branch, all law enforcement functions involving criminal prosecutions on behalf of the United States are to be conducted by the Department of Justice, under the direction of the Attorney General of the United States, or his or her designee.<sup>3</sup>

Congressional hearings and investigations, in addition to providing general oversight and information for possible remedial legislation, may bring to light information and facts which may contribute to the public pressure on the Administration or the Attorney General to appoint an “independent” counsel or prosecutor to investigate matters in which high-level officials of the Administration might be implicated. In 1973, during the press and congressional revelations in the “Watergate” matter, the nomination of then-Defense Secretary Elliot Richardson to be Attorney General was pending before the Senate for advice and consent. The Senate Committee reviewing the nomination obtained from Mr. Richardson an agreement that he would name an “independent” special prosecutor to pursue the “Watergate” allegations,<sup>4</sup> and Mr. Richardson, as

<sup>1</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927); *Watkins v. United States*, 354 U.S. 178, 200 (1957); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 509 (1975); *Nixon v. Administrator of General Services*, 433 U.S. 435 (1977), concerning Congress’ implied oversight and investigative authority incident to its Article I, legislative powers. See, generally, CRS Report RL30240, *Congressional Oversight Manual*, by Todd Garvey et al.; CRS Report R41079, *Congressional Oversight: An Overview*, by Walter J. Oleszek.

<sup>2</sup> U.S. CONST., art. II, §3. *Morrison v. Olson*, 487 U.S. 654, 685 - 697 (1988), holding that federal law enforcement is an Article II, executive function.

<sup>3</sup> See 28 U.S.C. §§516, 519, 547.

<sup>4</sup> Hearings, Senate Committee on the Judiciary, *Nomination of Elliot L. Richardson to be Attorney General*, 93<sup>rd</sup> Cong., at 5-7, 18-20 (May 9, 1973).

Attorney General, then appointed under his own authority former federal judge Archibald Cox as “special prosecutor.”<sup>5</sup> In 2003, responding to public pressure and congressional calls for independent scrutiny of the allegations concerning possible White House connections to the leaking of the identity of a covert CIA employee, the Justice Department in the Bush Administration named a current U.S. Attorney, Patrick Fitzgerald, as a “special counsel” with full independent authority and autonomy to pursue the matter.<sup>6</sup>

## **“Independent Counsel” or “Special Prosecutor” Legislation**

In addition to congressional investigation and informational functions, Congress may have a legislative role in creating in law a mechanism for the appointment of independent counsels or special prosecutors in certain circumstances, as was done in 1978 largely in response to the incidents collectively known as “Watergate.”<sup>7</sup> Originally enacted as title VI of the “Ethics in Government Act of 1978,”<sup>8</sup> these provisions of law had authorized the appointment of “independent counsels” (or “special prosecutors,” as they were known before 1983) by a special three-judge panel of the U.S. Court of Appeals for the District of Columbia upon the application of the Attorney General.

Those parts of the Ethics in Government Act relating to independent counsels regularly had five-year “sunset” provisions, and were eventually allowed by Congress to expire after June 30, 1999.<sup>9</sup> Since the law’s expiration no “independent counsel” or “special prosecutor,” as those terms have been used since 1978, may now be appointed by an independent judicial panel upon the request of the Attorney General to investigate or prosecute a matter on behalf of the United States.

Under the former independent counsel law, *only* the Attorney General of the United States was authorized to request an appointment of an “independent counsel,”<sup>10</sup> and that mechanism was one of the reasons that the Supreme Court had found the former provisions of law constitutional against separation of powers and Appointment Clause challenges.<sup>11</sup> Although the former independent counsel statute had been phrased in mandatory terms (the Attorney General “shall apply” for an independent counsel in certain specified circumstances), the decision to seek the

<sup>5</sup> 38 Fed. Reg. 14688 (June 4, 1973).

<sup>6</sup> See transcript of the Department of Justice Press Conference, Deputy Attorney General James Comey, December 30, 2003, at [http://www.justice.gov/archive/osc/documents/2006\\_03\\_17\\_exhibits\\_a\\_d.pdf](http://www.justice.gov/archive/osc/documents/2006_03_17_exhibits_a_d.pdf) (Appendix D), and letters from Deputy Attorney General James B. Comey, to Patrick J. Fitzgerald, United States Attorney, December 30, 2003, and February 6, 2004.

<sup>7</sup> For background information, see, for example, Maskell, *The Independent Counsel Law*, FEDERAL BAR JOURNAL, Vol. 45, No. 6, at 29-30 (July 1998).

<sup>8</sup> P.L. 95-521, title VI, 92 Stat. 1867 (October 26, 1978). Appointees of the special judicial panel had originally been called “special prosecutors,” but were re-named “independent counsels” in the provisions’ reauthorization and amendment in 1983. P.L. 97-409, §2(a)(1), 96 Stat. 2039-41 (Jan. 3, 1983).

<sup>9</sup> The law was reauthorized for the last time on June 30, 1994, P.L. 103-270, 108 Stat. 732, and expired under the five-year “sunset” provision on June 30, 1999.

<sup>10</sup> 28 U.S.C. §592.

<sup>11</sup> *Morrison v. Olson*, *supra* at 694-695, noting Congress’ limited role in the statutory scheme and the fact that the judicial branch entity “has no power to appoint an independent counsel *sua sponte*; it may only do so upon the specific request of the Attorney General....”



appointment of an independent counsel was always a matter within the Attorney General's discretion, and was *not* reviewable in court.<sup>12</sup>

The role of Congress under the former independent counsel law was very limited. Under the former provisions of law, Congress could not "order" or "trigger" the appointment of a prosecutor or independent counsel, because of constitutional separation of powers principles, but majorities of either party within the House or Senate Judiciary Committees could have requested action by the Attorney General.<sup>13</sup> The Attorney General was not required to apply for the appointment of an independent counsel in response to such congressional request; and if the Attorney General did not make such application, he or she was directed merely to respond to Congress with the reasons an independent counsel was not appointed.<sup>14</sup>

The mechanisms for appointing counsels under the former law were "triggered" when the Attorney General received "specific" and "credible" information alleging that certain high-level officials in the Administration had committed serious federal offenses, or when the Attorney General determined that an investigation of allegations of a violation of a federal criminal statute by any person would create "a personal, financial, or political conflict of interest" for the Department of Justice to investigate or prosecute.<sup>15</sup> Thus, while addressing the conflict of interest inherent in an administration's investigation of one of its own members was the principal purpose of the statute, the law also provided a so-called "catch-all" provision, added in 1983, to allow the Attorney General to request an independent counsel for anyone, whether or not the person was in the President's Administration, when the Attorney General perceived a conflict of interest for the Department of Justice to investigate or prosecute the matter.

It is possible, in theory, that Congress could reauthorize the independent counsel law, or provisions of law somewhat similar to the former independent counsel law, to instruct the Attorney General to seek the appointment of an "independent counsel" under certain circumstances. It may be noted in this regard that the independent counsel law had, in fact, been allowed to expire previously for a period of time: in 1992 the law expired under its five-year "sunset" provision when it was not reauthorized in the 102<sup>nd</sup> Congress. It was not until the publicity in the so-called "Whitewater" matter that Congress eventually reauthorized the law again in 1994.<sup>16</sup>

## **"Special Counsels" and Department of Justice Regulations**

When the independent counsel law expired after June 30, 1999, the Attorney General promulgated specific regulations concerning the appointment of outside, temporary counsels in certain circumstances.<sup>17</sup> Such personnel appointed by the Attorney General from outside of the Department of Justice to conduct investigations and possible prosecutions of certain sensitive matters, or matters which may raise a conflict of interest for Justice Department personnel, are called "special counsels." These special counsels are appointed by, are answerable to, and may

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<sup>12</sup> 28 U.S.C. §592(f). *Morrison v. Olson*, *supra* at 695.

<sup>13</sup> 28 U.S.C. §592(g)(1).

<sup>14</sup> 28 U.S.C. §592(g)(2) and (3).

<sup>15</sup> 28 U.S.C. §591(a), (b), and (c).

<sup>16</sup> P.L. 103-270, 108 Stat. 732, June 30, 1994.

<sup>17</sup> 28 C.F.R. Part 600, §§600.1 to 600.10; 64 Fed. Reg. 37038-37044, July 9, 1999.

have their prosecutorial or investigative decisions countermanded by, the Attorney General. The “special counsels” under these regulations have, therefore, by express design, less “independence” from the Attorney General and the Department of Justice than did the “independent counsels” under the Ethics in Government Act of 1978, or the “special prosecutors” appointed by the Attorney General for the Watergate matter. One special counsel that was appointed under the new regulations, former Senator John Danforth, was appointed by Attorney General Reno on September 9, 1999, to be special counsel to investigate the “Branch Davidian incident” near Waco, Texas, to determine if there had been any misconduct on the part of federal law enforcement personnel.

Under the Justice Department regulations, the appointment of a “special counsel” is completely discretionary with the Attorney General. The criteria for the Attorney General’s decision is whether a prosecution or investigation of a “matter” or of a person may raise a conflict of interest for the Department of Justice, or whether there exist “other extraordinary circumstances,” and when, in light of these conflicts or circumstances, the Attorney General finds that it is in the “public interest” to appoint such counsel.<sup>18</sup> The most significant departures in the “special counsel” regulations from the former statutory “independent counsel” schemes are that (1) the Attorney General, and not an independent body such as the three-judge panel, actually names the person who is to be the special counsel; (2) the Attorney General, and not an outside panel, establishes and defines the prosecutorial jurisdiction of the special counsel; (3) the general jurisdiction of the special counsel is limited to the specific matter referred to him or her (and not also to “related” matters), as well as collateral offenses arising out of the investigation which “interfere” with the investigation; (4) the special counsel is subject to all the notification, and “review and approval” provisions of the internal Department of Justice procedures, policies, and practices (but may circumvent certain review and approval procedures by consulting directly with the Attorney General); (5) the Attorney General must be notified concerning significant actions that the special counsel is to take, and may countermand any proposed action by the special counsel; (6) appeals of cases by the special counsel must be approved by the Solicitor General of the United States, a presidential political appointee; and (7) Justice Department regulations provide that a special counsel may be removed by the Attorney General for “misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Department policies,” while the statute provided that independent counsels could be removed by the Attorney General for “good cause, physical or mental disability.”

## Other “Special Counsels”

In addition to the specific special counsel regulations promulgated in 1999, the Attorney General of the United States, under the general statutory authority of the Attorney General to hire staff and oversee the conduct of federal criminal investigations and prosecutions, may appoint staff to the Department of Justice on a part-time or intermittent basis, or may re-assign current prosecutorial personnel already employed by the Department, to conduct and coordinate particular criminal investigations and possible criminal prosecutions.<sup>19</sup>

<sup>18</sup> 28 C.F.R. §600.1, also §600.2. If the Attorney General is recused from a matter, then the Acting Attorney General will appoint when deemed warranted. For a broader discussion of the “special counsel” regulations, see CRS Report RL31246, *Independent Counsel Law Expiration and the Appointment of “Special Counsels”*, by Jack Maskell.

<sup>19</sup> 28 U.S.C. §§509, 510, and 515.

With the increased public attention in 1993-1994 to allegations concerning the President and First Lady in what became known as the “Whitewater” matter, the Attorney General of the United States, not having a statute under which to request the appointment of an independent counsel by a court, named on her own authority a “special counsel” or “regulatory independent counsel,” with authority and powers nearly identical to those of statutory independent counsels to investigate and potentially to prosecute any wrongdoing involved in the “Whitewater” and related matters.<sup>20</sup>

On December 30, 2003, Deputy Attorney General James B. Comey, in his capacity as Acting Attorney General (upon recusal of Attorney General Ashcroft), designated Patrick Fitzgerald, U.S. Attorney for the Northern District of Illinois, as the “special counsel” to investigate the alleged unauthorized disclosure of a CIA employee’s identity. Special Counsel Fitzgerald was delegated significantly more independence in his authority and operations than a special counsel would have under the existing regulations promulgated in 1999.<sup>21</sup> It may be noted that the Government Accountability Office ruled that the expenses for the investigation by Special Counsel Fitzgerald, although he was not appointed under the standing “special counsel” regulations promulgated by the Department of Justice, and was a current and existing U.S. Attorney, could be paid from the permanent, indefinite appropriation for independent counsels in the Department of Justice.<sup>22</sup>

## Author Contact Information

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<sup>20</sup> 59 Federal Register 5321-5322, February 4, 1994. After the reauthorization of the independent counsel statute in 1994, the special three-judge panel appointed a new, statutory independent counsel.

<sup>21</sup> See letters from James B. Comey, Acting Attorney General, to Patrick J. Fitzgerald, United States Attorney, December 30, 2003, and February 6, 2004, setting out the broad delegation of authority of Fitzgerald and distinguishing his designation from the appointment of a special counsel under the existing DOJ regulations at 28 C.F.R. Part 600.

<sup>22</sup> United States Government Accountability Office, B-302582, *Special Counsel and Permanent Indefinite Appropriation*, September 30, 2004.



**Strzok, Peter P. (CD) (FBI)**

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**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Thursday, March 17, 2016 10:00 PM  
**To:** Priestap, E W. (CD) (FBI); Moffa, Jonathan C. (CD) (FBI); Page, Lisa C. (OGC) (FBI)  
**Cc:** [REDACTED] (CD) (FBI)  
**Subject:** Mye brief

b6 -1  
b7C -1

Bill,  
Per our earlier discussion, cyber folks are able to brief at 9:30, they will meet us in your office.  
Pete

**Strzok, Peter P. (CD) (FBI)**

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**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Friday, March 18, 2016 7:44 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** flight info

19 March

[REDACTED]

b6 -1

Thurs. 24 March

[REDACTED]

b6 -1

Friday 25 March

[REDACTED]

b6 -1, 3

**Strzok, Peter P. (CD) (FBI)**

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**From:** Strzok, Peter P. (CD) (FBI)  
**Sent:** Sunday, March 20, 2016 6:34 PM  
**To:** Page, Lisa C. (OGC) (FBI)  
**Subject:** Fwd: You available to talk?

My frustration

----- Original message -----

**From:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Date:** 03/20/2016 6:33 PM (GMT-05:00)  
**To:** "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Subject:** RE: You available to talk?

b6 -1  
b7C -1  
b7E -6

Sure, probably around 930-10 your time?

Big news of the day? Beth said none of the laptops we have had the original 60k. The two that did were - and are - the personal work laptops of Cheryl and Heather. [REDACTED]

b6 -2  
b7C -2  
b7E -4

[REDACTED] That they are still using now. Funny that never came up before now.

[REDACTED] Because that issue hasn't come up in this or other cases. ?

----- Original message -----

**From:** "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Date:** 03/20/2016 6:26 PM (GMT-05:00)  
**To:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Subject:** RE: You available to talk?

b6 -1  
b7C -1  
b7E -6

Mid-flights/traveling. Later tonight maybe?

----- Original message -----

**From:** "Strzok, Peter P. (CD) (FBI)" [REDACTED]  
**Date:** 03/20/2016 4:03 PM (GMT-06:00)  
**To:** "Moffa, Jonathan C. (CD) (FBI)" [REDACTED]  
**Subject:** You available to talk?

b6 -1  
b7C -1  
b7E -6