

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

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Case No. 1:19-cv-00573 (JEB)

**PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES  
IN OPPOSITION TO DEFENDANT’S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Judicial Watch, Inc., by counsel and pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, respectfully submits this memorandum of points and authorities in opposition to the Motion for Partial Summary Judgment of Defendant U.S. Department of Justice. As grounds thereof, Plaintiff states as follows:

**I. Factual Background.**

This lawsuit involves a FOIA request directed to the FBI for records of communications and meetings between former FBI general counsel James Baker and Perkins Coie partner Michael Sussmann. Compl. ¶ 5.<sup>1</sup> The FBI has asserted a privacy *Glomar* in conjunction with FOIA Exemptions 6 and 7(C) and has refused to confirm or deny the existence of any records. Plaintiff respectfully submits that a *Glomar* response is unwarranted and seeks an order requiring the FBI to process Plaintiff’s FOIA request.

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<sup>1</sup> The FBI asserted a privacy *Glomar* for parts 1 and 2 of the request but is currently processing responsive records in response to part 3 of the request.

The genesis of this FOIA request was a meeting held in September 2016 between Baker and Sussmann, a lawyer for the Hillary Clinton campaign and the Democratic National Committee. *See* Exh. A (Kimberly A. Strassel, “Who Is Michael Sussmann?,” *Wall Street Journal* (Oct. 11, 2018)). The meeting, occurring shortly before the 2016 election, drew scrutiny because Sussmann’s firm also had been retained by the Clinton campaign and the DNC to pay research firm Fusion GPS and Christopher Steele to compile a “dossier” alleging Donald Trump and the Russian government were colluding to hijack the presidential election. *Id.* At the meeting, Sussmann handed over to Baker documentation, including an electronic storage device, purportedly showing a link between a Russian bank and a computer server in Trump Tower. *See* Exh. B (Jeff Carlson, “Baker Testimony Reveals Perkins Coie Lawyer Provided FBI With Information on Alfa Bank Allegations,” *The Epoch Times* (Jan. 21, 2019). The meeting occurred shortly before Baker would review and approve the FBI’s application for a FISA warrant to surveil Carter Page. *See* Exhibit C (Andrew C. McCarthy, BALL OF COLLUSION at 263 (2019). *The New York Times* reported on Oct. 31, 2016, that “F.B.I. officials spent weeks examining computer data showing an odd stream of activity to a Trump Organization server and Alfa Bank” but “ultimately concluded that there could be an innocuous explanation, like a marketing email or spam, for the computer contacts.” Eric Lichtblau and Steven Lee Myers, “Investigating Donald Trump, F.B.I. Sees No Clear Link to Russia,” *N.Y. Times* (Oct. 31, 2016) (<https://www.nytimes.com/2016/11/01/us/politics/fbi-russia-election-donald-trump.html>).

The Baker/Sussmann meeting was the focus of subsequent testimony by Baker before the U.S. House Judiciary and Oversight committees in October 2018. *See* Exhs. D and E (Interview of James A. Baker, Oct. 3 and Oct. 18, 2018). Baker testified that Sussmann said “he had cyber

experts that had obtained some information that they thought they should get into the hands of the FBI.” The information provided by Sussmann appeared to be substantial:

Mr. Baker: It was like — my recollection was it was a stack of material I don’t know maybe a quarter inch half inch thick something like that clipped together, and then I believe there was some type of electronic media, as well, a disk or something.

Exh. D at 107. Baker also stated that the information from Sussmann was “unrelated to the [Steele] dossier, it’s another investigative matter.” *Id.* at 45. After some consultation with and approval from a lawyer from the FBI’s Office of General Counsel, Baker acknowledged that Sussmann’s information related to the FBI’s Trump–Russia investigation. *Id.* at 45-46.

Baker also testified that Sussmann had shared the same information with the media, stating that Sussmann had told him “some elements of the press had this information as well and were going to publish something about it.” *Id.* at 107. Baker stated that *The New York Times* had also been in possession of Sussmann’s information:

Mr. Baker: He was the source — he told me the New York Times was aware of this. We, the FBI, went to the *New York Times* and then started a series of conversations with them to try to get them to slow down

*Id.* at 116-17.

## **II. Procedural Background and Legal Standard.**

Plaintiff does not dispute Defendant’s recitation of the procedural background of this case. *See* Defendant’s Memorandum of Points and Authorities in Support of Its Motion for Summary Judgment (“Def’s Mem.”) at 2-3.

Summary judgment may be granted if “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine issue of material fact is one that would change the outcome of the litigation. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (Only disputes over facts that

might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.). FOIA cases typically and appropriately are decided on motions for summary judgment. *See Defenders of Wildlife v. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009); *Bigwood v. U.S. Agency for Int'l Dev.*, 484 F. Supp. 2d 68, 73 (D.D.C. 2007). In FOIA cases, the agency bears the ultimate burden of proof. *See DOJ v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989).

### **III. Defendant's Glomar Response is Unwarranted.**

Plaintiff does not dispute Defendant's recitation of case law (Def's Mem. at 6-11) setting forth the standards for a *Glomar* response under Exemption 6 and Exemption 7(C). Hence, the first issue is whether production of records in this case would "constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C).<sup>2</sup>

In this case, no cognizable privacy interest is apparent. Sussman, a lawyer who may or may not have been acting on behalf of an unspecified client, delivered documents to a top FBI official. There is no indication that this meeting was held with the intent of keeping Sussmann or his unspecified client's identity undisclosed. On the contrary, the sworn testimony of Baker, the former FBI general counsel, confirms that Sussmann was sharing the same documents with the media. *See* Exh. D at 106, 116-17. Rather than privacy, this confirms that Sussmann was seeking to obtain attention for his activities. Hence, this is far from typical case where a FOIA request "is made for FBI investigative records regarding a particular individual, the FBI's mere acknowledgment that it possesses responsive records associates the individual named in the request with suspected criminal activity." *Citizens for Responsibility and Ethics in Wash.*

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<sup>2</sup> Defendant's claim (Def's Mem. at 12) that Plaintiff should have somehow anticipated the *Glomar* response and submitted evidence in the FOIA request of the "public interest" supporting disclosure lacks any statutory or logical basis.

(*CREW*) v. *DOJ*, 746 F.3d 1082, 1091 (D.C. Cir. 2014). Sussmann had no expectation of “personal privacy,” as he was actively seeking publicity for himself and the information he wanted to share.

In any event, the public interest in disclosure of the existence of records is manifest. In contrast to any privacy interest, the public interest in disclosure is considerable and outweighs any such concern. The occurrence of the Baker/Sussmann meeting is undisputed and is a notable event in the Russia collusion narrative which has dominated the public discussion since 2016. The subsequent confirmation and description of the meeting by Mr. Baker (with the express permission of FBI counsel) diminishes any conceivable privacy interest and demonstrates the continuing and significant public interest. *See, e.g.*, Exhs. A-E; *Nation Magazine v. United States Customs Service*, 71 F.3d 885, 893 (D.C. Cir. 1995) (citing *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 779 (1989) and *Davis v. United States Department of Justice*, 968 F.2d 1276, 1281 (D.C. Cir. 1992)).

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant’s partial motion for summary judgment and order the FBI to process Plaintiff’s request.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson  
James F. Peterson  
DC Bar No. 450171  
JUDICIAL WATCH, INC.  
425 Third Street, S.W., Suite 800  
Washington, DC 20024  
Tel: (202) 646-5175  
Email: [jpeterson@judicialwatch.org](mailto:jpeterson@judicialwatch.org)  
*Counsel for Plaintiff*  
October 1, 2019

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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JUDICIAL WATCH, INC.,

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U.S. DEPARTMENT OF JUSTICE.

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Case No. 1:19-cv-00573 (JEB)

**PLAINTIFF’S RESPONSES TO DEFENDANT’S STATEMENT OF  
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE AND  
PLAINTIFF’S FURTHER STATEMENT OF MATERIAL FACTS**

Plaintiff, by counsel and pursuant to Local Civil Rule 7.1(h), respectfully submits this response to Defendants’ statement of material facts as to which there is no genuine dispute and statement of undisputed material facts in support of its cross-motion for summary judgment:

1. By letter dated October 5, 2018, Plaintiff Judicial Watch, Inc. (“Plaintiff”) submitted a three-part Freedom of Information Act (“FOIA”) request to the FBI seeking:

1. Any and all records of communication between former FBI General Counsel James Baker and former Department of Justice attorney and current Perkins Coie Partner Michael Sussman.
2. Any and all records created in preparation for, during, and/or pursuant to any meetings between Mr. Baker and Mr. Sussman.
3. Any and all calendars, agendas, or similar records, either in paper or electronic format, documenting the schedule and activities of Mr. Baker.

[Def’s Ex. 1-A at 1 (FOIA Request).] Plaintiff limited the request to records created between January 1, 2016, and December 31, 2016. [Id.]

**Response:**

Undisputed.

2. The FOIA request did not include a privacy waiver for Mr. Sussman nor did it include any other authorization for disclosure of information to a third party. [Seidel Decl. ¶ 5; see generally Def’s Ex. 1-A (FOIA Request).]

**Response:**

Undisputed.

3. The FOIA request did not include proof of death of Mr. Sussman. [Seidel Decl. ¶ 5; see generally Def's Ex. 1-A (FOIA Request).]

**Response:**

Undisputed.

4. Plaintiff requested a waiver of search and duplication fees as a member of the news media. [Seidel Decl. ¶ 5.]

**Response:**

Undisputed.

5. In support of its request for a fee waiver, Plaintiff asserted, without providing any factual in support, that "disclosure of the information is in the public interest." [Def's Ex. 1-A at 2 (FOIA Request).]

**Response:**

Disputed to the extent that any additional information was necessary to establish Plaintiff's entitlement to a fee waiver.

6. By letter dated October 16, 2018, the FBI acknowledged receipt of Plaintiff's FOIA request and assigned it FOIA Request No. 1418827-000. The FBI advised Plaintiff the request for a public interest fee waiver was under consideration and for purpose of assessing fees, Plaintiff would be considered news media. [Seidel Decl. ¶ 6.]

**Response:**

Undisputed.

7. On or about March 1, 2019, Plaintiff filed the present lawsuit in the U.S. District Court for the District of Columbia. [See ECF No. 1 (Complaint).]

**Response:**

Undisputed.

8. In the parties' June 4, 2019, and June 21, 2019, Joint Status Reports, the FBI advised the Court and Plaintiff of its intent to assert a privacy *Glomar* for parts one and two of the FOIA request and that it completed the search for records responsive to part three of the request. [See ECF No. 8 and 9 (Joint Status Report and Proposed Schedule).]

**Response:**

Undisputed.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ James F. Peterson

James F. Peterson

DC Bar No. 450171

JUDICIAL WATCH, INC.

425 Third Street, S.W., Suite 800

Washington, DC 20024

Tel: (202) 646-5175

Fax: (202) 646-5199

Email: [jpeterson@judicialwatch.org](mailto:jpeterson@judicialwatch.org)

*Counsel for Plaintiff*

October 1, 2019



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<https://www.wsj.com/articles/who-is-michael-sussman-1539299003>

OPINION | POTOMAC WATCH

# Who Is Michael Sussmann?

The FBI's general counsel met with a Clinton lawyer in September 2016.

By Kimberley A. Strassel

Oct. 11, 2018 7:03 pm ET



PHOTO: AL DRAGO/BLOOMBERG NEWS

When Fox News anchor Bret Baier asked about the origin of the infamous Trump dossier, James Comey brushed off most of the questions. The former Federal Bureau of Investigations director said someone on his “senior staff”—he couldn’t remember who—had “briefed” him on the dossier “sometime in the fall” of 2016. Mr. Comey had been told it came “from a reliable source.” He insisted he “never knew exactly which Democrats

had funded” it. He then continued on about his book, which meditated on the importance of “truth.”

That interview, in April 2018, is relevant in light of a recent report from the Hill’s John Solomon that James Baker, the FBI’s general counsel from 2014-17, met “weeks before the 2016 election” with a lawyer from Perkins Coie. That’s the firm that hired Fusion GPS to compile the dossier on behalf of the Hillary Clinton campaign and the Democratic National Committee.

My sources confirm that the Perkins partner who bent Mr. Baker’s ear and handed over documents was Michael Sussmann, point man for the firm’s DNC and Clinton campaign accounts. They also confirm the subject of the meeting was Russian interference in the election, including hacking and supposed ties to Donald Trump. Much of this comes from an interview House investigators conducted last week with Mr. Baker.

The significance of this revelation is enormous for everything from FBI investigatory malpractice, to its dishonesty, to its current fight with the White House over document disclosure. That the FBI's general counsel was even meeting with a top lawyer for the Clinton campaign shortly before the election is proof of that the bureau strayed beyond obvious guardrails.

It's alarming enough that the FBI felt free to open a counterintelligence investigation into an active presidential campaign. That it also felt free to gather information for that probe from the opposing campaign is mind-boggling. Team Clinton had the most powerful position on earth to gain from Mr. Trump's downfall. No conflict there, right?

It is unclear whether Mr. Sussmann supplied any dossier-related information to Mr. Baker. But we know from the House Intelligence Committee's February Russia memo that "senior DOJ and FBI officials" by this time knew the DNC and the Clinton campaign were behind the dossier. The Baker-Sussmann meeting raises the likelihood that those "senior officials" extended into Mr. Comey's inner circle and that quite a few people understood the bureau was moving against a campaign based on the rival campaign's opposition research.

Yet those officials marched into the Foreign Intelligence Surveillance Court and never revealed in any of their warrant applications that the dossier was a product of the Clinton campaign. It now appears the FBI also didn't tell the court that its investigation had been informed directly by a lawyer for Mrs. Clinton. Mr. Sussmann, as a former Justice Department employee, would presumably add credibility to any FISA application—unless the FBI was worried about revealing how much it was relying on the Clinton camp. By the way, Mr. Baker told congressional investigators that he personally reviewed the initial FISA application.

The news of this meeting also gives cause to doubt the FBI's stated reasons for refusing to release documents to Congress. For more than a year the bureau has argued that it would hurt national security and U.S. ties with foreign intelligence. It played the same card recently with Mr. Trump, persuading him to back down on his order for disclosure of redacted portions of the FISA warrants and related materials. It has heavily redacted other documents, again claiming national security.

Among the redactions are portions of footnote 43 in the House Intelligence Committee's Russia report. That footnote states that Mr. Baker met in September 2016 with a person who provided information about supposed Russian links to the Trump campaign. It noted this same person was also communicating with the press. The person's name is blacked out. We now know it is Mr. Sussmann.

National security? No, this was redacted to save the FBI the embarrassment of having to admit it was cooperating with the Clinton campaign. This is the same FBI that blacked out of a key text message the detail that former Deputy Director Andrew McCabe's office sported a \$70,000

Case 1:19-cv-00573-JEB Document 14-1 Filed 10/01/19 Page 3 of 3  
conference table. And the same FBI that claimed it would be a national-security nightmare if House Republicans divulged the name of the FBI's spy against the Trump campaign ( Stefan Halper ), only to leak the name itself to friendly media.

The Baker-Sussmann revelation underscores that we will never get the truth about the FBI's behavior until those documents are made public. Mr. Trump: Disclose.

*Write to kim@wsj.com.*

*Appeared in the October 12, 2018, print edition as 'Who Is Michael Sussman?.'*

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## THE EPOCH TIMES



The Trump Tower in Manhattan, New York City, on Dec. 10, 2018. (Spencer Platt/Getty Images)

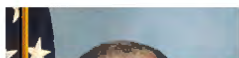
### SPYGATE SPECIAL COVERAGE

## Baker Testimony Reveals Perkins Coie Lawyer Provided FBI With Information on Alfa Bank Allegations

BY JEFF CARLSON

January 21, 2019 Updated: March 8, 2019

Closed-door testimony by former top FBI lawyer [James Baker](#) revealed that a lawyer at Perkins Coie gave him information alleging that a Russian bank had been communicating with a server in Trump Tower—an allegation later proven false.



Perkins Coie partner Michael Sussmann, whose firm had been retained by the

Department of Justice, told Baker in 2013 that Alfa Bank had been communicating with a server in Trump Tower.



Former FBI General Counsel James Baker.

Democratic National Committee (DNC) and Hillary Clinton's 2016 presidential campaign, provided information to Baker and at least one journalist ahead of the FBI's application for a FISA warrant to spy on Trump campaign foreign policy adviser, Carter Page.

Perkins Coie also was the law firm that had hired Fusion GPS—on behalf of the DNC and the Clinton campaign—which in turn hired former British MI6 agent Christopher Steele to produce the dossier that has become known as the Steele dossier.

Sussmann's identity as an outside source to Baker had

[previously been reported](#)

. But new details regarding the specific information that Sussman provided to Baker, as well as their interactions and timing, and the FBI's response, were revealed in Baker's testimonies.

Baker's testimonies before the House Judiciary and Oversight committees were conducted on Oct. 3 and Oct. 18 in an unclassified setting with legal counsel present. The transcripts have not been publicly released, but were obtained for this article. (Note: Sussmann's name is spelled incorrectly as "Sussman" in the transcript from Day One. The transcript from Day Two contains the correct spelling.)



Sussmann's name came up during the first day of Baker's testimony when he was asked whether it was "normal practice for general counsel to talk to confidential human sources."

**Mr. Baker:**

There is another occasion that I can think of where somebody brought material to me, based on a preexisting relationship. They gave the material to me. Same situation [as Corn]. I was quite concerned about it. I gave it to the investigator —

**Rep. Meadows:**

And who was that?

**Mr. Baker:**

Who was that?

**Rep. Meadows:**

Yeah.

**Mr. Baker:**

Michael Sussman.

Baker acknowledged that he had a "personal relationship" with Sussmann, as they had previously "both worked in the criminal division together at the Department of Justice."







Michael Sussmann, partner at Perkins Cole, the law firm hired by the DNC and the Clinton campaign during the 2016 elections. (Courtesy Perkins Cole)

Sussmann had sought out Baker directly, going so far as to make an appointment in advance. As the FBI's general counsel, Baker advised senior FBI leaders, including FBI Director James Comey and Deputy FBI Director Andrew McCabe, on the legal aspects of key investigations, and he served as the liaison with the Department of Justice (DOJ).

The significance and importance of Baker's position within the FBI was noted by the lawmakers. At one point during testimony, Rep. Jim Jordan (R-Ohio) asked Baker: "Is it fair to say that any materials passed by the FBI general counsel automatically have a reliability and a level of credibility attached to them? You're the FBI's general counsel, if you're getting information from an outside source and passing it, [sic] on that means something." Baker responded, "I suppose so, Congressman."

By using his personal relationship with Baker, Sussmann was able to ensure that the information he was bringing to the FBI would immediately receive investigative attention. Which is precisely what happened:

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**Rep. Jordan:**

And people are going to take seriously when the FBI general counsel has some source giving them information related to a pretty darn important investigation, they're going to take that pretty seriously and follow up on it.

**Mr. Baker:**

Within the organization, the Bureau?

**Rep. Jordan:**

Yes.

**Mr. Baker:**

Yes, I would say so.

During their initial meeting, Sussmann told Baker "he had cyber experts that had obtained some information that they thought they should get into the hands of the FBI." Who these "cyber experts" were and where they got their information was not disclosed.

According to Baker's testimony, the information provided by Sussmann appeared to be substantial:

**Mr. Baker:**

It was like — my recollection was it was a stack of material I don't know maybe a quarter inch half inch thick something like that clipped together, and then I believe there was some type of electronic media, as well, a disk or something.

Sussmann, whose

[Perkins Coie bio](#)

describes him as "a nationally-recognized privacy, cybersecurity and national security lawyer," was also the lawyer the DNC turned to on April 28, 2016, after discovering the alleged hack of their servers. Immediately following the alleged discovery, DNC CEO Amy Dacey

[called Sussmann](#)

at Perkins Coie. After speaking with Dacey, Sussmann contacted Shawn Henry,

[CSO](#)

and president of cybersecurity technology firm CrowdStrike.

Sussmann was never interviewed by the FBI, which Baker found surprising, noting, "It is logical to me that we would go back and interview [Sussmann]." Sussmann was interviewed

by the House Permanent Select Committee on Intelligence on Dec. 18, 2017.

Under questioning, Baker revealed that the information from Sussmann was "unrelated to the [Steele] dossier, it's another investigative matter." Baker was then asked if the information pertained to the "Trump-Russia matter."

After some interjection by the FBI lawyer from Baker's old division, the Office of General Counsel, Baker acknowledged the information Sussmann brought to him did indeed relate to the FBI's Trump-Russia investigation.

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Collection  
Traditional Fit  
Long Sleeve Pique  
Polo Shirt

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\$12

Reserve Collection  
Traditional Fit  
Stripe Pima  
Cotton Short  
Sleeve Polo

~~\$99.50~~

\$9

Reserve Collection  
Traditional Fit Dot  
Pique Short  
Sleeve Polo  
CLEARANCE

~~\$99.50~~

\$9

Reserve Collection  
Traditional Fit  
Woven Pattern  
Short Sleeve Polo  
CLEARANCE

~~\$99.50~~

\$9

Baker was asked whether this meeting with Sussmann occurred “before the election or after the election?” Baker noted that he thought it occurred before the election. From there, his memory became less clear.

During Baker’s second day of testimony, lawmakers came to the interview with Baker’s calendar in their possession and provided an initial meeting date between Baker and Sussmann of Sept. 19, 2016. This date would later prove to be significant.

According to Baker’s testimony, there appears to have been at least three meetings—the first in person and at least two subsequent meetings by phone.

Baker was asked if this type of interaction with an outside counsel had ever occurred before. In response, Baker admitted that his interaction with Sussmann was singularly unique:

**Rep. Jordan:**

[This] is the first time and to your recollection the only time an outside counsel had information and was wanting to make sure it got to the general counsel of the FBI, and it happened to deal with the Russia investigation.

**Mr. Baker:**

I think that’s correct. Sitting here today, that’s the only one I can remember.

## **Sussmann’s Leak to the Media**

During the second day of Baker’s testimony, he said that during a subsequent “follow-up” conversation he understood that Sussmann was also talking to the media, noting that Sussmann had told him “some elements of the press had this information as well and were going to publish something about it.”

In either the second or third conversation, Baker came to understand The New York Times was also in possession of Sussmann’s information. As would become clear later, other members of the media also had this same information.

## **Comey and McCabe Appear to Have Been Involved**

According to Baker, this created a problem for the FBI, which had already begun to investigate the information provided by Sussmann. After FBI leadership realized that Sussmann was speaking with the media, Baker was asked, possibly by Comey himself, to go back to Sussmann and see if he would be willing to get The New York Times to delay publishing:

**Rep. Jordan:**

[And] the people who asked you to make that call back to Mr. Sussman and ask him, you know, to delay, who were those people?

**Mr. Baker:**

I don’t specifically recall, but I believe it was the —

**Rep. Jordan:**

Priestap.

**Baker:**

I think it was Priestap, and I think it might be —

**Rep. Jordan:**

Strzok? Peter Strzok?

**Baker:**

It may have been, but I am also thinking it was the director and/or the deputy director.

As Sussmann was actually the source for The New York Times, he had the ability to force the paper to hold off on publishing, which they apparently did:

**Mr. Baker:**

He was the source — he told me the New York Times was aware of this. We, the FBI, went to the New York Times and then started a series of conversations with them to try to get them to slow down

Baker testified there were a number of high-level FBI officials involved in the investigation of Sussmann’s information:



**Rep. Jordan:**

But McCabe, Comey, Priestap, and Strzok you believe were involved, that is the “we” who came to you and said call Mr. Sussman back and —

**Mr. Baker:**

Some combination of those people in a set of conversations over some period of time, yes. I know that is vague. I apologize, but that is what I recall.

Baker made several mentions of McCabe but also noted Comey’s involvement during his testimony, telling lawmakers that “we briefed him on it.” Notably, Baker said he didn’t “remember Lisa [Page] being involved in this part.” Interestingly, the texts between Lisa Page, who served as McCabe’s personal counsel, and FBI agent Peter Strzok make it appear as if they were jointly involved in most facets of the various investigations.

Baker had avoided discussing exactly what information Sussmann had provided, but late on the second day of his testimony, he was asked some specific questions about an article published in Slate Magazine:

**Rep. Jordan:**

It talks about some bank in Russia, Alfa-Bank, communicating with some Trump financial institutions in the server there. None of that kind of conversation was related to you by Mr. Sussmann when you met?

**Baker:**

Oh, yes. I mean, that is what he told me about. Yeah, absolutely.

After consultation with FBI legal counsel, Baker said he would describe the information he received from Sussmann in a general sense:

“He was describing a — what appeared to be a surreptitious channel of communications — communication between some part of President Trump’s, I’ll say organization but it could be his businesses. I don’t mean like The Trump Organization, per se. I mean his enterprises with which he was associated. Some part of that and a — an organization associated with — a Russian organization associated with the Russian Government.”

Baker was describing alleged communications between Alfa Bank and a server in the Trump Tower. These allegations, later proven to be false, became the subject of much media speculation.

## **Sussmann Meeting Followed New Steele Memos**

Baker’s initial meeting with Sussmann took place on Sept. 19, 2016. The timing is particularly notable as Steele had just produced a series of

[three new memos](#)

dated Sept. 14, 2016. One of these memos directly referenced Alfa Bank—misspelled in Steele’s memo as “Alpha.”

On Sept. 23, Michael Isikoff of Yahoo News published his article on Carter Page, “

[U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin](#)

.” His article, which came from information provided by Steele, would later be cited by the FBI in the Page FISA application.

The same day, Hillary for America released a

[statement](#)

touting Isikoff’s “bombshell report” with the full article attached.

At exactly the same time, on Sept. 23, Politico published the lengthy article “

[Who Is Carter Page? The Mystery of Trump’s Man in Moscow](#)

” by Julia Ioffe. Within the article were a number of intriguing hints as to what was transpiring behind the scenes:

“As I started looking into Page, I began getting calls from two separate ‘corporate investigators’ digging into what they claim are all kinds of shady connections Page has to all kinds of shady Russians. One is working on behalf of various unnamed Democratic donors; the other won’t say who turned him on to Page’s scent.”

Ioffe noted that “seemingly everyone I talked to had also talked to the Washington Post, and then there were these corporate investigators who drew a dark and complex web of Page’s connections.”

Ioffe had also been told of rumors regarding Alfa Bank:

“In the interest of due diligence, I also tried to run down the rumors being handed me by the corporate investigators: that Russia’s Alfa Bank paid for the trip as a favor to the Kremlin; that Page met with Sechin and Ivanov in Moscow; that he is now being investigated by the FBI for those meetings because Sechin and Ivanov were both sanctioned for Russia’s invasion of Ukraine.”

## The Alfa Bank Allegations

The information that Sussmann provided to Baker on Alfa Bank’s alleged communications with a Trump Tower server was later detailed in a since-debunked article by Slate, “

### [Was a Trump Server Communicating With Russia?](#)

” The article, which was published on Oct. 31, 2016, concerned allegations regarding a server in the Trump Tower that had allegedly been communicating with a server at Alfa Bank in Russia. Both the FBI and The New York Times found the allegations to be unfounded. Nevertheless, the article was used to promote the Trump–Russia collusion narrative.

On the very same day, Oct. 31, 2016, two other related articles were also published. The first, “

### [Investigating](#)

### [Donald Trump](#)

, F.B.I. Sees No Clear Link to Russia

” by The New York Times, appeared to be an updated version of the article they had intended to publish before the FBI asked them to delay their reporting. It stated:

“In classified sessions in August and September, intelligence officials also briefed congressional leaders on the possibility of financial ties between Russians and people connected to Mr. Trump. They focused particular attention on what cyberexperts said appeared to be a mysterious computer back channel between the Trump Organization and the Alfa Bank, which is one of Russia’s biggest banks and whose owners have longstanding ties to Mr. Putin.

“F.B.I. officials spent weeks examining computer data showing an odd stream of activity to a Trump Organization server and Alfa Bank. Computer logs obtained by The New York Times show that two servers at Alfa Bank sent more than 2,700 ‘look-up’ messages—a first step for one system’s computers to talk to another—to a Trump-connected server beginning in the spring. But the F.B.I. ultimately concluded that there could be an innocuous explanation, like a marketing email or spam, for the computer contacts.”

The other article published on Oct. 31, “

### [A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump](#)

” by Mother Jones reporter David Corn, provided the first public reporting on the existence of the Steele dossier:

“A former senior intelligence officer for a Western country who specialized in Russian counterintelligence tells Mother Jones that in recent months he provided the bureau with memos, based on his recent interactions with Russian sources, contending the Russian government has for years tried to co-opt and assist Trump—and that the FBI requested more information from him.”

Notably, Corn’s article also mentioned Alfa Bank:

“(In recent weeks, reporters in Washington have pursued anonymous

### [online reports](#)

that a computer server related to the Trump Organization engaged in a high level of activity with servers connected to Alfa Bank, the largest private bank in Russia. On Monday, a Slate

### [investigation](#)

detailed the pattern of unusual server activity but concluded, ‘We don’t yet know what this [Trump] server was for, but it deserves further explanation.’ In an email to Mother Jones

,

Hope Hicks, a Trump campaign spokeswoman, maintains

.

“The Trump Organization is not sending or receiving any communications from this email server. The Trump Organization has no communication or relationship with this entity or any Russian entity.”)

All three articles came out on Oct. 31, 2016, including The New York Times article. Recall, the The New York Times had been asked to refrain from publishing while the FBI was investigating the matter. Which begs the question, were the authors of these other two, highly coincidentally timed articles also asked to delay their publication? It certainly seems as if all three were given the green light at the same time.

This raises the question of whether Sussmann was also leaking to Franklin Foer of Slate and David Corn of Mother Jones. Or whether Fusion GPS co-founder Glenn Simpson, whose firm had hired Steele, was acting as a conduit to these individuals.

It’s possible another explanation exists for the same-day publication of all three articles, but the concurrent timing, along with details from Baker’s testimony, appears to suggest otherwise.

On the same day, Oct. 31, Hillary Clinton

[sent a tweet](#)

that included a statement from Jake Sullivan, a senior policy adviser:

“Computer scientists have apparently uncovered a covert server linking the Trump Organization to a Russian-based bank.”

Sullivan’s statement referenced the Slate article and included the following:

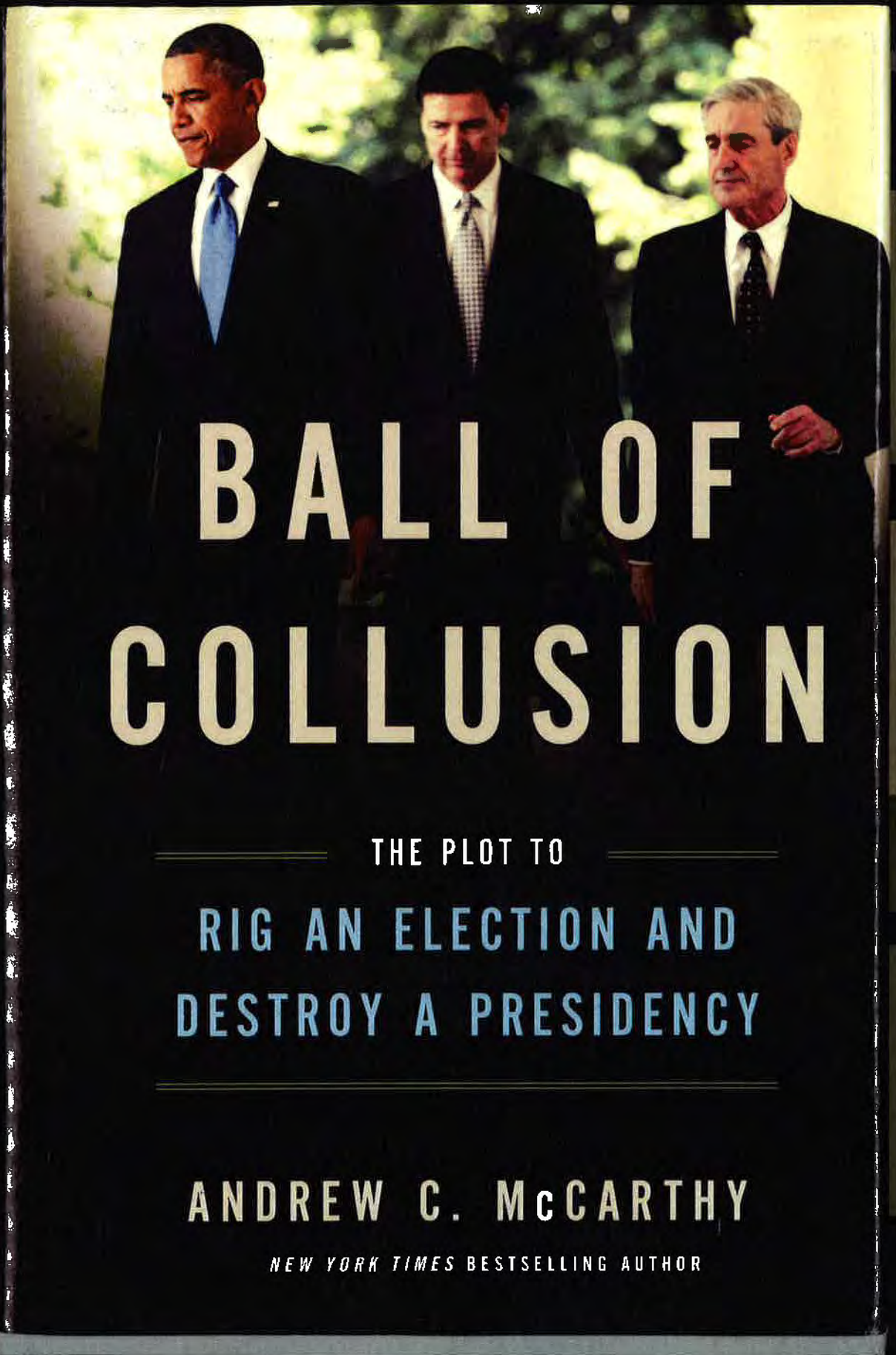
“This could be the most direct link yet between Donald Trump and Moscow. Computer scientists have apparently uncovered a covert server linking the Trump Organization to a Russian-based bank.

“This secret hotline may be the key to unlocking the mystery of Trump’s ties to Russia. It certainly seems the Trump Organization felt it had something to hide, given that it apparently took steps to conceal the link when it was discovered by journalists.”

With this statement from the Clinton campaign, combined with the Slate article and the Mother Jones article, the Alfa Bank story took off—despite the same-day story from The New York Times that specifically noted the FBI had investigated that matter and found nothing untoward.

Sussmann’s decision to choose Baker as his FBI contact proved highly effective.

*Jeff Carlson is a regular contributor to The Epoch Times. He also runs the website TheMarketsWork.com and can be followed on Twitter @themarketswork.*





ANDREW C. McCARTHY

**BALL OF COLLUSION**

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THE PLOT TO RIG AN ELECTION AND  
DESTROY A PRESIDENCY

ENCOUNTER BOOKS



NEW YORK • LONDON

though now in search of income, not truth. Plainly, if Steele hadn't been a former agent who seemed like a current agent, no one would have given him the time of day. Normally, a good investigator puts little or no stock in an informant whose sources are far away, sometimes anonymous, multiple hearsay layers removed, and unverifiable.

In Rome, the Bureau shared details of their investigation as if Steele were another FBI agent. Investigators told him about George Papadopoulos, whom Steele did not know. And they held out the possibility of paying him \$50,000 if he could corroborate his claims. (*Hint: That means they knew his claims were not corroborated, and that this was a big problem—Steele's own personal credibility was irrelevant if the sources, who had purportedly made the pertinent observations, could not be verified.*) As things worked out, his dossier was soon made public; according to Steele, he not only wasn't paid for his information, he didn't even get reimbursed for traveling Rome for the meeting.<sup>26</sup>

The FBI's inability to verify Steele's information remains a sticking point to this day. Rather than admit failure, top Bureau officials expatiate about corroboration as an organic process that never really ends unless information is outright refuted... conveniently flipping the constitutional burden of proof, under which the government must prove its suspicions, not treat them as proven until disproved.<sup>27</sup> To take the position, *years after information has been acted on*, that although not yet verified it may someday be is an appalling abuse of investigative power. That, however, is Russia-gate in a nutshell: no rumor is ever dismissed because, when it comes to Trump, it is no longer the FBI's obligation to verify information; it is somehow the suspect's burden to show that the suspicions are wrong. And no one is ever exonerated because, when it comes to Trump, it is no longer the prosecution's burden to prove guilt; the accused must establish his innocence.

Despite the pining about how asking questions about the conduct of this investigation imperils the very foundations of the republic, I am going to go out on a limb and say: that's not very American.

## CHAPTER FIFTEEN

### FISA Warrants: Targeting Trump, Not Page

**I**n the eight years between the 1993 World Trade Center bombing and 9/11, al-Qaeda repeatedly attacked the United States. The government struggled to decide whether international terrorism was strictly a criminal matter, to be investigated with such techniques as criminal wiretaps, or a national-security matter, to be investigated under FISA and other intelligence-gathering procedures. Obviously, it was both. But that caused the Clinton Justice Department sleepless nights over what seemed—to me, among other terrorism prosecutors and investigators—to be overwrought fears of hypothetical abuses, remote from real-world experience.

I guess I owe Jamie Gorelick an apology.<sup>1</sup>

The then-deputy attorney general and other Clinton DOJ officials were worried about FISA. What if you had rogue agents who were predisposed to believe a group of suspects was guilty, but couldn't prove it? The rogues did not have enough evidence to seek a regular wiretap or search warrant. Mightn't they be tempted to use FISA? They'd just need to claim that there was some vague national-security aspect to the case; to pretend that their investigation was connected to a broader counterintelligence investigation of a foreign power. The rogues could then seek FISA warrants to surveil the suspects. The agents would call it "counterintelligence," but in reality they'd be conducting a criminal investigation—eavesdropping and conducting other surreptitious searches—even though they did not have probable cause to believe a crime had been committed.

See, if the government is conducting a criminal investigation, it is supposed to proceed under criminal-law authorities. In the statutes and rules governing those authorities, Congress has incorporated significant due process protections for those under suspicion. Criminal investiga-

tions implicate our fundamental rights to liberty and property—sometimes, even life. The Constitution thus safeguards us with presumptions of innocence and privacy. The government can overcome them only by proving to a court, and ultimately a jury, that we have committed serious offenses. Counterintelligence law circumvents these protections. We indulge that circumvention for three reasons: (1) national security is potentially threatened, (2) the main target of suspicion is a foreign power with no constitutional rights, not an American citizen; and (3) the objective of the investigation is to collect intelligence to protect our nation from the foreign power, not to build a criminal case in which the liberty and property of American citizens are imperiled.

But what if counterintelligence were invoked pretextually? What if the foreign power were just a guise for investigators, in effect, to end-run our constitutional protections—to conduct a criminal investigation without a predicate crime, without just cause?

Based on this fear that FISA could be used pretextually to conduct criminal investigations, the Clinton Justice Department imposed “the Wall.” Unlike the Wall of President Trump’s imagining, President Clinton’s was metaphorical. To prevent investigators from exploiting FISA to steer criminal investigations, a regulatory barrier was imposed between the FBI’s counterintelligence agents, on one side, and criminal investigators and prosecutors, on the other. It became practically impossible for the two sides to cooperate and share information.

One result was the desired clamping down on potential FISA abuse. But the cure proved worse than the disease. With counterintelligence and criminal investigators unable to compare notes and build an intelligence mosaic, the left hand no longer knew what the right hand was doing. This enabled terrorists to escape detection. Inevitably, catastrophes would occur, such as 9/11.

After 9/11, the Wall was razed. Your humble correspondent was among the loudest celebrants, but that celebration seems unbecoming now. Back then, it seemed ridiculous to believe the FBI and the Justice Department would resort to FISA pretextually. I posited that, even if we assume a rogue agent who was determined to conduct a criminal investigation despite the absence of a factual predicate (i.e., evidence connecting the suspect to a crime), it would be far easier for the rogue

to fabricate the evidence needed to get a criminal wiretap than to fabricate a national-security angle so he could use FISA. I insisted that if the rogue tried to go the FISA route, he’d never get away with it. FISA is a whole different FBI/DOJ chain of command. It has too many levels of scrutiny in the upper ranks of the bureaucracy—responsible superiors who would stop the rogue agent in his tracks before that agent ever got near FISA’s specialized court.

I was wrong.

What I didn’t factor in was the possibility that, for political reasons, the upper ranks of the FBI and Justice Department might decide to do an investigation by themselves. That should never happen. The Justice Department and the FBI generally ensure that each investigation is conducted by the Bureau’s field office located in the district where the crime occurred or the threat emanates. As a matter of law, this satisfies constitutional requirements.<sup>2</sup> As a matter of prudence, it insulates investigations from the intense political pressure of Washington, home to Main Justice and FBI headquarters. Moreover, it clarifies the role of headquarters, improving its capacity to supervise and enforce policy in a detached, effective manner.

In almost every investigation, and particularly in high-profile, high-stakes investigations, investigators are motivated to be aggressive, to press the margins of their authority. It happens to the best prosecutors and agents. You become convinced that your bad guys are the worst bad guys in the history of bad guys. You rationalize the expedience of corner-cutting and rule-bending as promoting what seems to you to be the higher public interest of neutralizing bad actors. After all, the bad actors are *your* problem, the *immediate* problem. You understandably see your main job as stopping them. Somewhere in the back of your mind, you know you should be mindful of lofty concerns about the system of justice, the presumption of innocence, and the Bill of Rights. But right now, they are not your focus—someone above your pay-grade worries about that stuff.

Well, that someone is headquarters. The bosses are supposed to be the cooler heads, elevated from on-the-ground investigation. They are there to protect the system, to prevent abuse—to police the police, not conduct the investigations.



Nevertheless, in Russia-gate, headquarters became the investigator. And headquarters may be headquarters, but when it is handling an investigation, its prestige and wealth of experience does not make it any more immune from the temptation to run roughshod over the rules than any other set of aggressive investigators. The only difference is that when headquarters starts to run roughshod, there is no one there to say, "No, we don't do that."

Just as ordinary field office investigators are tempted to keep their supervisors in the dark when they are ignoring a norm or blowing out a guideline, top rungs of the Obama Justice Department and FBI convinced themselves that they needed to work outside the system in order to safeguard the system. They decided that one presidential candidate posed a grave threat. They forgot who the sovereign is. They persuaded themselves that they were not engaging in politics but instead shielding vital institutions. They decided that because their hearts were pure, the rules needn't hold them back. They withheld information from Congress—declining to brief the Gang of Eight, rationalizing that the "sensitivity" of investigating the incumbent administration's political opponents in a presidential campaign justified a defiance of oversight—concealing what they were doing from those sure to object. They withheld essential information from the FISC about the source of their information (the Clinton campaign), and about the apparent unreliability and deep bias of their main witness (Christopher Steele), even as their presentation of unverified allegations flouted FBI guidelines.

Headquarters exists to prevent investigators from such abuses. But here, headquarters became its own supervisor. Such arrangements tend not to end well.

### Final FISA Warrant Preparations

As Election Day neared, the Clinton campaign stepped up efforts to call voters' attention to the Trump–Russia narrative, which Steele—simultaneously the campaign's agent and the Obama administration's informant—was vigorously thrusting on the FBI and the State Department.

On September 19, James Baker, the Bureau's general counsel, rendezvoused with Michael Sussmann, the lawyer for Perkins Coie—the firm

representing the Clinton campaign and DNC, which were then pushing the anti-Trump dossier on FBI investigators, through Steele.<sup>3</sup> It was an extraordinary meeting in the campaign stretch-run. Sussmann, a former prosecutor, was obviously well aware that FBI counsel are advisers who avoid becoming entangled in the physical handling of evidence. Yet, he initiated contact with Baker and supplied him with documentation, including some on computer storage devices—transparently calculating that evidence passed on to agents by the Bureau's general counsel would get prompt attention. The information related to, among other things, the purported Alfa Bank scheme—the claim that Donald Trump had established a communications back-channel with the Kremlin.<sup>4</sup> Recall that the Alfa Bank claim was also pressed by Glenn Simpson on the Justice Department's Bruce Ohr, and Clinton campaign adviser Jake Sullivan touted it as potentially "the most direct link yet between Donald Trump and Moscow." Baker knew that Sussmann was peddling the same information to *The New York Times*.<sup>5</sup>

Baker, who would soon review and green-light the FBI's application for a FISA warrant to surveil Carter Page, accepted the documentation, even though he later told Congress, "I was very uncomfortable handling evidence." He got over his discomfort, though, not only taking Sussmann's submission (and follow-up calls), but also accepting Steele's dossier reports from his longtime friend, David Corn, the reporter from left-leaning *Mother Jones*.<sup>6</sup> It was through Corn that Steele went public with his role in the FBI's Trump–Russia investigation, a week before the 2016 election (in a fit of pique that the FBI had publicly reopened the Hillary Clinton emails investigation while it was remaining mum about the Trump–Russia investigation that depended on Steele's corruption allegations).<sup>7</sup> Baker's meetings, like Justice Department official Bruce Ohr's earlier meeting with FBI Deputy Director McCabe and his counsel Lisa Page, illustrate what the House Intelligence Committee later found: senior Justice Department and FBI officials were aware that the political origins of the Steele dossier traced to the Clinton campaign and the DNC.<sup>8</sup>

Meanwhile, Michael Isikoff's September 23 *Yahoo News* article was followed like clockwork by a Clinton campaign statement bemoaning Trump adviser Carter Page's "chilling" ties to the Kremlin. Echoing



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

INTERVIEW OF: JAMES A. BAKER

Wednesday, October 3, 2018

Washington, D.C.

The interview in the above matter was held in Room 2141, Rayburn House Office Building, commencing at 10:02 a.m.

Present: Representatives Meadows, Jordan, and Raskin.

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Mr. Somers. Good morning. This is a transcribed interview of Jim Baker. Chairman Goodlatte and Chairman Gowdy requested this interview as part of a joint investigation by the House Committee on the Judiciary and the House Committee on Oversight and Government Reform into decisions made and not made by the Department of Justice and the Federal Bureau of Investigation regarding the 2016 Presidential election.

Would the witness please state his name and last position held at the Federal Bureau of Investigation for the record?

Mr. Baker. My name is James A. Baker. The last position I held at the Bureau was senior strategic adviser.

Mr. Somers. On behalf of the chairman, I want to thank you for appearing today, and we appreciate your willingness to appear voluntarily.

My name Zachary Somers, and I am the majority general counsel for the Judiciary Committee. I will now ask everyone else in the room to introduce themselves for the record, starting to my right with Art Baker.

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

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

Mr. Castor. Steve Castor with the Committee on Government Reform, majority staff.

Mr. Meadows. And Congressman Mark Meadows.

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

Ms. Kim. Janet Kim, Oversight, the minority.

Ms. Shen. Valerie Shen, Oversight, minority.

Mr. Hiller. Aaron Hiller, counsel for House Judiciary, minority.

Ms. Sachsman Grooms. Susanne Sachsman Grooms, Oversight, Minority Chief Counsel.

Mr. [REDACTED], FBI, Congressional Affairs.

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

Mr. Ventura. Christopher Ventura, law clerk, House Judiciary, majority.

Ms. Doocy. Mary Doocy, legislative counsel, Mr. Meadows' office.

Ms. [REDACTED], Office of General Counsel, Federal Bureau of Investigation.

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

Ms. [REDACTED], FBI OGC.

Mr. Levin. Dan Levin, counsel for Mr. Baker.

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

Our questioning will proceed in rounds. The majority will ask questions for an hour, and then the minority will have the opportunity to ask questions for an equal period of time. We will go back and forth

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in this manner until there are no more questions and the interview is over.

Typically, we take a short break at the end of each hour of questioning. But if you would like to take a break apart from that, please let us know. We also may take a break for lunch at the appropriate point in time.

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

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

Mr. Baker. Yes.

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

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

Would counsel you please state your name and current position for the record?

Mr. Levin. Dan Levin at White & Case.

Mr. Somers. We want you to answer our questions in the most

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complete and truthful manner possible, so we will take our time. If you have any questions or if do not understand one of our questions, please let us know.

If you honestly don't know the answer to a question or do not remember it, it is best not to guess. Please give us your best recollection, and it is okay to tell us if you learned the information from someone else.

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

Mr. Baker, you should also understand that although this interview not under oath, you are required by law to answer the questions from Congress truthfully. Do you understand that?

Mr. Baker. Yes.

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

Mr. Baker. Yes.

Mr. Somers. Witnesses who knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statement. Do you understand this?

Mr. Baker. Yes.

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

Mr. Baker. No.

Mr. Somers. Finally, I'd like to note that, as Chairman

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Goodlatte stated at the outset of our first transcribed interview in this investigation, the content of what we discuss here today is confidential. Chairman Goodlatte and Chairman Gowdy ask that you not speak about what we discuss in this interview to anyone not present here today to preserve the integrity of our investigation. This confidentiality rule applies to everyone present in the room today.

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

Mr. Baker. No.

Mr. Levin. I just have one comment.

Jim is here voluntarily. I apologize that my schedule has a hard stop at about 2 o'clock. And I understand you may not be done by then. And he will come back another day if that is necessary. But I just apologize that my schedule would not allow it.

Mr. Somers. We'll see where we are at 2 o'clock and decide then.

I will now turn it over to Art Baker to begin our first round of questioning. It is about 10:08.

#### EXAMINATION

BY MR. ARTHUR BAKER:

Q Again, thank both of you for coming in today.

Mr. Baker, when we went around and did our opening introductions you mentioned your last position at the FBI was senior strategic adviser. How long did you occupy that position?

A From early January 2018 until, I think, the first week of May 2018?

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Q And the first week of May 2018, is that contemporaneous or around the time that you resigned from the FBI?

A Yes.

Q Prior to you assuming the duties of senior strategic adviser, what was your position at the FBI?

A General counsel.

Q And how long did you occupy that position?

A From January 2014 until January 2018.

Q What exactly does the general counsel at the FBI do? It's my understanding that you in that capacity would be the chief legal officer for the FBI. Is that correct?

A That's a fair way to say it, yes. And also the head of the Office of General Counsel?

Q And as head of Office of General Counsel, you supervise a cadre of lawyers and support staff?

A About 300 people altogether. About 200 lawyers and 100 other professionals.

Q And the general counsel's office is responsible for providing legal advice to the rest of the FBI?

A To the entire FBI on all of the matters that the FBI works on, in coordination with the chief division counsel who are FBI lawyers deployed in the various field offices around the country. There's around 130 of those deployed in all field offices.

Q Okay. So those chief division counsels that are deployed to the field offices, they would be the general counsel's office

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representatives for that particular field office?

A Sort of. I mean, they didn't report directly to me, they reported to the head of the field office, the SAC, for example, but there was sort of a dotted line to the Office of General Counsel?

Q So there's coordination and consultation between these chief division counsels in the field office and FBI headquarters?

A Yes.

Q Okay. For the headquarters entity, it's my understanding that the Office of the General Counsel has lawyers, representatives embedded in the various divisions at headquarters. Is that correct?

A For many of them, yeah. I don't think it's every one, but, yes, for many of them.

Q So would it be fair to say that the general counsel's office has a fairly active role in most of the FBI activities? They seem to be -- you've indicated they're out in the field offices, many of the divisions have them embedded. It sounds like the general counsel's office has a pretty broad representation of representatives, pretty wide and far in the Bureau. Is that true?

A I think that's right, yeah. I mean, we can't be everywhere all the time, and we would like to have more resources than we have. But we try to make sure that we are providing legal services to the entire Bureau as needed, in coordination with each other and then in coordination with the Justice Department as well.

Q And these lawyers that are embedded in the various divisions, they are the lawyer for that division and the division are the clients

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for that lawyer?

A Sort of. I mean, at the end of the day the Bureau, the FBI, is the client, the United States Government is the client. But those are the agency -- or those are the subcomponents of the FBI that they are trying to help achieve their mission.

Q So under this structure, you indicated, in the field the chief division counsels are answering to the SAC, but there is coordination and consultation with general counsel's office at headquarters. These embedded attorneys at headquarters and the units and divisions or sections that are in the general counsel's office, they all ultimately answer to you as the general counsel?

A The OGC people do, yes, not the chief division counsel, but --

Q They are answering to the field office entity?

A Correct.

Q But the basis of their legal decisions, I'm assuming, are bounced off of the attorneys that are back at headquarters and AUSAs that are in the field?

A Not always, but it's best -- it doesn't always happen, but it's best if they are coordinated with the appropriate folks at OGC and, when necessary, at the U.S. Attorney's Office or Main Justice.

Q Very briefly, could you describe how the general counsel's office is broken down? I assume there's broad divisions. Could you just elaborate on how it's very generally divided up?

A Sure. There's basically three branches, each headed by a deputy general counsel. One handles national security and cyber

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matters, one handles litigation, and then one handles basically everything else, forensic science, privacy and civil liberties, training, a whole range of different things. So three main branches in OGC.

Q And then these deputy general counsels, I'm assuming, are people you would interact with probably more frequently than, say, a line attorney or a unit chief or something of that nature?

A That's true.

Q Okay. Somewhere in your org chart I'm guessing you have some sort -- maybe not the org chart, but I'm guessing, as a component of the Department of Justice, the FBI's general counsel is somehow interfacing with the Department of Justice lawyers on matters, too?

A Yes, sure. Yes, absolutely.

Q So you indicated the National Security Law Branch, I think you called it, in cyber. Are you familiar with an investigation that the FBI called Midyear Exam?

A Yes?

Q Would that be the division where Midyear Exam was assigned?

A It was assigned to the National Security and Cyber Law Branch?

Q Okay. Who would the deputy general counsel for that branch have been?

A I think for the whole time it was Trisha Anderson?

Q So you and Ms. Anderson would have had fairly frequent contact in discussions about the case?

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A Yes, I would say fairly frequent.

Q I guess to back up a little bit, what would the general counsel's role be? I mean, we can specifically say for Midyear Exam. What does the general counsel bring to the table and at what part of an investigation is the general counsel brought in, and specifically for Midyear Exam?

A So I don't specifically remember how it started in terms of the OGC's involvement in it, but I think we were involved pretty much from the start, providing advice and counsel to the FBI agents, managers working the case.

So they are doing the investigation and we are working with them to provide them advice to make sure that they are following FBI policies and procedures, DOJ policies and procedures, that they are helping with any interactions that need to happen with the Department of Justice.

If there's a legal question and DOJ is asking that and our agents aren't lawyers and need help analyzing the legal framework, the legal questions in connection with DOJ, we will help them with that.

Q Who at DOJ would you have interfaced with in a national security matter, specifically Midyear Exam, a case that's opened under a classification that puts it into that Law Branch?

A So there were a number of different people. I'm not sure I can remember all of them off the top of my head. But it was essentially assigned to the National Security Division at Main Justice and then a couple folks from the U.S. Attorney's Office eventually in Eastern District of Virginia.

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Q Who were the names of the folks at Main Justice?

A I think John Carlin was the head of the National Security Division at the time. I think George Toscas worked on it. David Laufman, who was the head of the espionage section.

And I'm drawing a blank right now on the line attorneys, but there were line attorneys also within the espionage section who were working on it.

And then there were from time to time folks in the deputy attorney general's office that worked on it. Matt Axelrod worked on it a bit.

So that's what I'm remembering off the top of my head.

Q Sure. Prior to --

Mr. Breitenbach. Sorry.

BY MR. BREITENBACH:

Q Did Tashina Gauhar ever work on it, to your knowledge?

A Given her position in the DAG's office, she may have, but I don't remember specific --

Q You don't remember interacting with her?

A Not very much. I know Tosh very well, but I don't remember interacting with her very much on Midyear?

Q But some you had interacted with her or --

A Just sitting here right now, I can't remember.

BY MR. ARTHUR BAKER:

Q I understand prior to your appointment as general counsel you were in the private sector as counsel. Prior to that, you have worked at Main Justice before, correct?

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A Yes.

Q And what was your role there?

A Immediately prior to that, from 2009 to 2011, I was in the deputy attorney general's office. I was an associate deputy attorney general.

And then, from 1990 until 2007, I worked at Main Justice, first in the Criminal Division, and then in something called the Office of Intelligence Policy and Review, and then eventually in the National Security Division.

Q And what did you do in this OIPR office? What was your function there? And what did that office do?

A I started out as a line attorney and I moved up and eventually became the head of the office. And among things the -- well, the office provides advice to the Attorney General and other executive branch officials on national security law, intelligence law.

But a lot of what the work is and was is representing the United States in front of the Foreign Intelligence Surveillance Court. So I was responsible for that from, well, I guess you would say, probably from 1998 until 2007.

Q And that Foreign Intelligence Surveillance Court is what commonly is referred to as FISA?

A Yes.

Q And then this OIPR office morphed into or became the National Security Division?

A It was merged into the National Security Division.

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Q So would it be fair to say, prior to your appointment as general counsel of the FBI, you have significant experience and background in national security law?

A Yes.

Q And you are well versed in FISA?

A Yes.

Q Competent in the espionage statutes?

A To some degree, less so than the folks in the espionage section, but I have dealt with the espionage statutes in a variety of different ways over the years.

Q Would that be your main area of expertise coming to the FBI? I mean, it sounds like you are pretty well experienced in national security law?

A National security law, I would say generally, yeah. Probably more FISA than the espionage statutes for sure, if you are going to break it down that way. But national security in general, yes.

Q Going back to Midyear Exam, did you have any input as to the classification of that case when it was opened? For example, rather than having it open under a classification that would put it in the national security lane, was there any discussion, debate, dissent about why it should possibly be classified as a criminal matter and maybe end up in a different part of the FBI for investigating?

A I don't remember a significant debate or discussion about that. I don't think I played any role that I can recall sitting here

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today in terms of the classification of it.

And I guess the only other thing I would say was the fact that it was in the national security lane didn't mean that the FBI couldn't use all of its national security and law enforcement authorities to address it.

Q So based on the facts of the case as you initially understood them, you were comfortable with the espionage statutes, whatever related to handling classified information, you were comfortable that it was opened appropriately and that the national security apparatus of the FBI were where the resources should be to investigate it?

A Yes, I would say. The resources and the -- looking back on it now, I would say that's the case.

And it's not only the resources, it's the expertise in dealing with classified information, how to handle it, how to think about it, how to understand how other people should handle it and be able to ask good questions about that, that kind of thing.

Q And you've indicated that OGC would be providing legal guidance to the folks that would maybe be investigators, analysts, computer experts, whatever. Your national security branch would be providing legal guidance to them as they did whatever, decided what to interview, what to take out of the computer, what to look at, OGC would be the one giving legal advice on that?

A Yes, in coordination, as needed, with the U.S. Attorney's Office or other folks within the Bureau. If there was a particular question some other lawyer needed to answer, we could get help from

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them.

But, yes, it was mainly the national security branch. And there it was mainly the counterespionage unit, the counterespionage law unit.

Q And then some interaction with DOJ, I assume?

A Much -- a lot of interaction with DOJ.

Q Backing up just a minute, when you were appointed to the general counsel's office, you were appointed by then-Director Comey?

A Yes.

Q You had known Mr. Comey previously?

A Yes.

Q And how did you know Mr. Comey?

A He had been my boss twice before. When I was the head of the Office of Intelligence Policy and Review, that was a component head. So therefore it reported directly to the deputy attorney general.

So when Director Comey came in to take that position he was my boss for how -- I can't remember how long he was there, but for a year or 2 years, whatever it was. So he was my boss there.

And then when I was at Bridgewater Associates in Connecticut, a hedge fund in Connecticut, he was my boss there. He was the general counsel and I worked for him.

Q You have a professional relationship with him, obviously. Do you have a social relationship with him as well?

A He's my former boss, he's my colleague, he's my friend, I would say, yeah.

Q So what would your relationship have been as -- when he's

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the Director, again your boss, and you're really his chief lawyer, how willing was he to accept candid legal advice from you?

A He demanded it.

Q Demanded it.

What was your thought about giving him legal advice? Would he be a client that would take your legal advice and act on it? Would he be a client that would listen but do something completely different? I'm just curious what your perspective on the relationship was as the attorney?

A Well, the relationship was based on complete candor with each other and telling each other the truth. And if I disagreed with him or thought he was doing something wrong or bad or stupid, it was my obligation to tell him that. And that's the kind of relationship that we had. And if he disagreed with me and thought I was doing a bad job, he would tell me that, too. And that was across all the range of our interactions, not just the law or arguing about legal matters.

And, you know, he's an excellent lawyer, so it's kind of challenging sometimes to have an excellent lawyer as your client.

But it was across the range of everything having to do with Bureau, the leadership, strategic initiatives of the Bureau. So we had that type of relationship across the full range of the Bureau's activities. And I felt free to speak my mind about any topic that I thought I had to say something about.

Q So it sounds like, would it be fair to say, that you had a good attorney-client relationship with Mr. Comey?

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A Absolutely.

Q When he appointed you, in addition to the obvious requests or charges that you run a good general counsel's office, that you provide good, candid advice for all the FBI, were you given any charge to do anything specifically with the general counsel's office to improve morale or anything like that?

A Yes. There was an issue when I arrived with respect to morale and he told me absolutely to focus on that.

Q Could you elaborate on what the issue with morale was?

A There was an issue of morale with respect to some people had concerns about the prior general counsel as to how he ran the office and that had an impact on morale. And so I was asked to try to understand exactly what the problem was and address it.

Q Who was the previous general counsel?

A Andrew Weissman.

Q So was there any empirical data shown to you that reflected however you could map poor morale?

A There were. Yes, the FBI does an annual climate survey, and so I had that, and I think I may have had some other surveys that were provided to me as well. So I had some quantitative basis to try to understand what the issue was and discuss that with folks in the office at the time.

Q And what steps did you embark on to improve that morale?

A I tried to understand what the issues were. I tried to -- there was some concern about me coming to OGC because I had been

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at DOJ, And so I tried to address concerns that folks in that regard.

But then really just tried to understand what the problems were, understand the organizational structure, understand what the work was, not to rush into decisions with respect to the organization, but really get to know it as well as possible.

And then after that, we -- I can't remember exactly when it was, maybe like a year later -- we did a complete reorganization of the office that I think made sense at the time.

And then it was just day to day trying to make sure that I treated my folks -- it's an amazing group of people at OGC and I'm very proud of them and very proud to have been associated with them -- to try to treat them well and make sure I include -- I'm an inclusive leader who showed that I valued them.

Q How successful do you think you were?

A You've got to ask them. I don't know about that one. You can look at my climate survey and see what the result was?

Q Do you know what your climate survey was?

A It got better over the years. It was never perfect, but it got better over the years. And I don't know what it was after I left.

Q Better compared to when it came in?

A I think so, yeah.

BY MR. BREITENBACH:

Q Can you elaborate on some of the concerns that you had heard when first arriving at the Bureau as general counsel that had been experienced under the prior general counsel, Mr. Weissman?

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A Let's see. I think the concerns were that -- I mean, the assessment was Andrew is an excellent lawyer, but he had not had a lot of management experience running an organization of that size. And 300 people, it's a big organization. And so I tried to -- having the management experience that I had, I tried to focus on that side of things.

I think people had concerns about Andrew's interpersonal skills, I guess you would say. Some people objected to how he treated people. And so they expressed concerns to me about that.

Q Was any of that treatment ever involving any level of political -- politically tinged in any way?

A Not that I recall. I don't specifically recall anything like that.

Q So in terms of treatment, can you elaborate?

A Just dealing with people on an interpersonal basis. If Andrew thought, as I understood it -- and I was not present for the conversations that Andrew had with folks, so just put that as a caveat in what I'm saying -- but just in terms of he could be abrupt, I guess you would say, he could be brash, and sometimes people thought that he was dismissive of them, things like that.

Q And in terms of conversations that you had with Director Comey concerning the environment that you were coming into, was this something that was a directive from the Director in order to instill some more confidence in the general counsel's office with regard to the morale following General Counsel Weissman's tenure?

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A Well, yeah. I mean, Director Comey cares deeply about the people at the FBI, did and still does, and he wanted me to address this. This was a significant issue. It had come up in the climate surveys. He heard a lot about it when got there and specifically told me, yes, deal with that, focus on that, spend a lot of time on that. Make sure that you're being a leader for these folks. Focus on the leadership part of your job vis-a-vis OGC. So, yes.

And I think he spoke about it before I got there with the whole staff. I think he had like a townhall or something before I got to OGC and people responded to that, or at least we had some meetings with folks. And I heard it from other people on his staff as well, that you, Jim, should focus on morale when you get here.

Q Did you ever hear from Director Comey as to a lack of confidence that he might have had in the legal acumen of Mr. Weissman?

A I never heard about that. I don't recall that. I don't recall that.

Q Okay.

A It was on the management side.

BY MR. ARTHUR BAKER:

Q Going back to Midyear, how often would there be meetings about Midyear Exam? Obviously a very big case, a very sensitive case. How often would you be called into meetings?

A So I don't know the full scope of all the meetings that the team had on the case, so just be careful about that. But in terms of meetings that I attended, there were a series -- early on there were

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a series of regular briefings, I think, that the deputy director asked for. He would get updates. There would be oral briefings and then a short write-up, and I want to say it's every week or every 2 weeks. Something like that, I don't remember specifically. And so the case went on for a while.

And then as the case progressed and we got closer to an eventual decision, there were more briefings for the Director himself and the deputy director and the senior leaders by the case -- the leaders of the team. So Pete Strzok, Jon Moffa, Bill Priestap, those folks.

So the frequency increased over time and the participants changed over time as we got closer to a resolution of the case.

Q I know from previous interviews we have done and documents we have reviewed certain people that occupied certain positions, I think you've alluded to this, they sort of changed as the case went on. Some retired, some maybe promoted out.

A Yes.

Q You were the general counsel for the whole duration of Midyear?

A Yes.

Q Okay. And your deputy for national security law, Trisha Anderson was she the deputy for the whole time?

A She probably wasn't the deputy for the whole time. So when it started -- to be honest, I can't remember exactly when it started. But it might have been [REDACTED] was the acting deputy, I think, at the start of it.

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Q And they would also be involved in these meetings?

A Not -- as it progressed, yes. Early on it would be -- early on they would not be, at least the ones that I attended for the senior leaders. But as time progressed, Trisha came to most of those meetings along with the unit chief for the counterintelligence law unit.

Q Were there, for lack of a better term, sub --

Mr. Meadows. Excuse me.

Who was the counterintelligence lawyer that you're referring to?

Mr. Baker. It's a GS-15 name and the FBI has told me not to say that. So I can answer that question, but I'd defer to the FBI on that one.

Mr. Meadows. Well, we need to know the name. I mean, obviously, if we're looking at witnesses, I understand from a privacy standpoint, but we need to know the name.

I mean, if we are going to go back through this, we have done this over and over again, if we are going to have witnesses come in, whether they're of a certain level or not, if they were important enough to be in this meeting, then they're important enough for us to know the name.

Ms. [REDACTED] We can take that back to our management.

Mr. Meadows. Here's what I would recommend that you do. Get one of you on the phone, get permission right now, so that while we have him here we get that. That's a reasonable request. You've got three attorneys. One of you can get on the phone and get permission.

Ms. [REDACTED] Sure, we can do that, Congressman.

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Mr. Arthur Baker. My next question involves a 15 name, but I think it's one we've been able to discuss before, Lisa Page? Is that okay?

Mr. Baker. That one's okay?

Ms. [REDACTED] Yes.

BY MR. ARTHUR BAKER:

Q Lisa Page was an attorney in OGC at some point?

A I think all along her official position was that her slot, if you will, was as an attorney in OGC, that is correct.

Q And then at some point she was assigned where?

A So at various points she was assigned to work for Andy McCabe when he was the executive assistant director for national security. She was in that position when I got to OGC. I'm not sure when she started, maybe 2013 until he left, and I can't remember when he left that job.

And then when Andy came back as the deputy director, Lisa then held a special adviser kind of position for him as well. So she was technically still in OGC, but she was on assignment to work for Andy McCabe.

Q Was there -- are you aware of any tension with Ms. Page and maybe you or someone in general counsel's office about what her title would or should be in Mr. McCabe's office?

A I had discussions with Lisa about that at various points in time. We came to an agreement about what she would be doing without regard to what the title was, and I felt comfortable that she understood

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the scope of her job and how she was supposed to interact with OGC. And so to me it mattered less what the title was then that she understood what her job was supposed to be?

Q So would she be allowed to give Mr. McCabe legal advice in whatever her title was while assigned to his office? Was she still an OGC person for purposes of being a lawyer and allowed to give advice? Or was she something different but carried on the OGC org chart?

A There's not a crisp answer to that question, I'm sorry. Of course I knew she would be talking to Andy about legal matters throughout that time. But the point was she was supposed to include OGC -- she wasn't supposed to be the definitive giver of legal advice for the FBI to the deputy director, that she was supposed to coordinate back with me, or other folks on my staff, Trisha Anderson, or if she knew that the question involved some other part of OGC she was supposed to coordinate back with them, steer folks back to that part of OGC. That was the understanding that we had, at least that I understood.

Q Are you aware of --

BY MR. SOMERS:

Q And did she? I mean, you say she was supposed to.

A I'm not going to swear that she did it every single time.

Q But as a general --

A As a general matter that was our -- that was my understanding, that was what I told her, that's what she agreed with, and that's what she was supposed to do.

Of course I knew that in the moment if a decision had to be made

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quickly that she and Andy might have a conversation, but I expected them to report back to me about important things. And I had leave it to both of their discretion to figure out that -- what important was, I know it's kind of vague. But that was how we were supposed to try to work it out.

Q Who did she report to, to Deputy Director -- I mean, what --

A Yeah, I mean, she essentially reported to the deputy director?

Mr. Arthur Baker. Who did her performance appraisal?

Mr. Baker. Hmm, good question. I don't know the answer to that.

Mr. Arthur Baker. You don't have --

Mr. Baker. I may have. I may have. I may have had input to it, but I don't remember, like, who signed the various performance evaluations. I'm sure the OGC can figure that out.

BY MR. BREITENBACH:

Q Were you aware whether there was ever an attorney that had been assigned directly to a deputy director in prior history?

A Prior history, I don't know. [REDACTED] was a DOJ person who worked for Mark Giuliano. So she was a lawyer, not really serving in a -- so a DOJ lawyer over at the FBI, not really serving in a lawyer capacity. Again, she wasn't really supposed to be giving legal advice, she was -- I think she was actually chief of staff. So she was supposed to help him run the office as opposed to dispense legal advice.

Q Is there a rule or a -- a written rule as to providing legal

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guidance inside the FBI?

A There are legal rules. I will be frank, I think they're a bit messy. They're not as clean as I would have hoped to have cleaned them up before I left, but I didn't. It's not as clean, I think, the regs are not as clean as you would hope, if you want to be technical about it.

Q But we know that there are lawyers outside of the general counsel's office, correct?

A Yes.

Q And many of those lawyers are agents as well?

A There's agents who are lawyers, there's agents who are in legal roles, there's agents who are not in legal roles but who are nevertheless lawyers. And then agents from the Bureau talk to assistant U.S. attorneys across the country all the time. This is a standard practice.

Q But in terms of lawyers within the general counsel's office, if you're in the general counsel's office you are authorized within the FBI to provide legal guidance, but if you are a lawyer outside of the general counsel's office and outside of the chief division counsel offices in the field, are you authorized to provide definitive legal guidance for your client, so to speak, inside the FBI?

A Generally no, but there are a few exceptions, like folks that deal with employment law, discrimination, that kind of thing. There's a few little pockets of offices around the Bureau, it's confusing, but there are pockets within the Bureau who are allowed to give legal advice

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that don't remember to general counsel.

It's not perfect. I admit that that is not the best way to manage everything. But that's how it grew up over time.

Q What pockets are those?

A I think it's the EEO folks that have the authority to give some legal advice in certain circumstances. And I'm trying to think. There are a few other pockets of offices and I just -- I'm drawing a blank right now off the top of my head. That's what I remember. That was just kind of an issue throughout my tenure as general counsel and one that I was unable to fix.

BY MR. ARTHUR BAKER:

Q My colleague reminded me of an issue, going back to the climate in OGC. Was there an issue with EEO complaints filed in OGC? Specifically, were there a high number?

A There were EEO complaints that I was aware of when I arrived. There were ones that were filed while I was there. We have a whole group of people that work for Ms. [REDACTED] that are responsible for representing the FBI in that.

I don't remember hearing any -- I don't remember information about a quantitative blip up or something like that.

Q What about a theme? Was there any particular issue that came up in these complaints?

A Like a recurring theme? I don't remember that. I think there were -- there were several that I was aware of. I'm not sure they were all of the same type. I think there were a variety of

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different types that I can recall.

Q Have they been resolved or any of them resolved prior to your resignation?

A I think most of them were resolved, yeah.

Q How were they adjudicated?

A I think a lot of them -- there's a mediation process within the FBI and I think a lot of them are settled through that process. Some, I think, went to the EEOC, but I think -- I would guess the majority of them were settled.

Q Okay. Was there any indication from the Department of Justice, whoever their EEO folks would be, that there were a very high number of EEO matters in the FBI's general counsel's office and that there needed to be some resolution of some of them at the Bureau level? And maybe it's the mediation level that you talk about. Are familiar with any concerns at DOJ about a high number?

A I don't recall that.

Q Going back to Midyear, one of the themes, one of the big themes that we've looked, other entities have looked at, certainly the inspector general looked at, as to whether there was bias in the FBI involving the decisionmaking process in two of their big cases, Midyear and another one that we'll talk about a little later, I want to jump ahead a little bit because it's my understanding you played a very unique role early on with requesting that an inspection be done of the Midyear case once these texts became known.

A Uh-huh.

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Q And that there, on the face of it, appeared that there was some language that could be interpreted very pro one candidate, very anti another candidate, and that would be bias. That you took the initiative, it's my understanding, to request that the FBI's internal inspection mechanism take a look at the Midyear case to see what might be right with it, what might be wrong with it.

Could you elaborate on that? That's something we haven't heard a whole lot about?

A Yes. And I'm looking across the table at the inspector general report and I think there's some discussion of that in there.

So, yes, when I heard about these texts, I only read a few of them. They were described to me. And I immediately became quite alarmed. And so my thinking was, well, from a -- from the -- okay. I don't know what -- I know that -- I knew that the inspector general was looking at them. I knew that they would address them. And so I knew that there was a process in place.

So what I was concerned about is whether -- whether any decisions had been taken -- or not taken -- in the Midyear case that were driven by political bias of any sort. I was quite worried about that. And I wanted to make sure that we as an institution, the Bureau as an institution, got on top that extremely quickly.

And so I suggested to the leadership that we put together some type of team -- I didn't exactly know how to do that, but I consulted with other folks -- to basically do a review of the case and have an independent group of people come in and look at and assess whether any

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decisions were made that looked unusual, that looked like they were driven by bias, decisions made, actions taken, or things not done. That's what I was also worried about, the omissions, right?

So we talked about that, and there was an agreement to do that, and eventually it was set up and it was done.

At the outset I was also quite worried, knowing full well that the inspector general's office was doing an investigation, that I didn't want to mess up anything that they were doing.

And so we worked in coordination with the inspector general. I actually spoke to him and made sure that he knew what we were doing -- and his staff -- knew what we were doing, why we wanted to do it, to make sure that it was okay with him. And he approved it, his office approved it.

So we went forward with this review, sort of done quietly off to the side. But from my perspective it was incumbent upon us as good managers to actually be good managers and to do this.

Q And you became concerned when you became aware of the texts?

A Yes.

Q Do you remember specifically what texts? You indicated you didn't read all of them. Do you remember what specifically alarmed you?

A I only saw a few, and I think there was a derogatory reference to the President. I guess he was not the President at the time.

And then, I can't remember who exactly it was that described them to me, but they were described in their general character.

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So I only read like a couple, literally a couple. But that was enough for me to hear, that it freaked me out. And I was worried and I thought we need to get on top of this quickly.

Mr. Breitenbach. Do you recall when you actually learned about the texts?

Mr. Baker. It was around the time when -- so there was some event when Andy McCabe was called across the street to meet with the inspector general to be told about the texts, and it was like right in that time period. It was either that day or the next day. And I was told by --

Mr. Breitenbach. Can you approximate when that might have been?

Mr. Baker. I don't remember, I'm sorry, just off the top of my head. It's when -- I believe it was more or less contemporaneous when the Bureau found out about them. So when the Bureau management found out about them, that's when I found out about them. I'm drawing a complete blank.

Mr. Jordan. Was that in summer, last summer?

Mr. Levin. Is it in the IG report?

Mr. Baker. It might be in the IG report. I'm sorry, I just can't remember like the exact date sitting here today, or even the months. But it was -- whenever Andy McCabe was called across the street, it was like that day or the next day that I found out about them.

Mr. Jordan. Can I go guys? Do you mind?

Mr. Baker, I'm Jim Jordan, Fourth District of Ohio. Thanks for being here this morning.

So let me go back to be when you -- you were general counsel up

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until late December of last year.

Mr. Baker. Actually, it was the first week of January.

Mr. Jordan. The first week of January. Okay. And then your title became what?

Mr. Baker. Senior strategic adviser.

Mr. Jordan. And was that the position you remained in until you left the FBI in, I think, this past spring of this year?

Mr. Baker. Until May, first week of May, I think it was.

Mr. Jordan. So like May 4th, I think it was. Okay. And why did your position change?

Mr. Baker. The position changed -- I had a conversation with the Director in December and he said that he was interested in making a change. And I said, okay. And we had a conversation about what I would like to do in the Bureau, and we talked about that. And I also said that at some point in time I would likely leave the Bureau, and so he talked about putting me --

Mr. Jordan. Do you remember the date of that conversation?

Mr. Baker. It was early December, I think, of 2017.

Mr. Jordan. Okay. Early December.

So one of things that we were curious about is my understanding you accompanied Mr. McCabe when he was first deposed by House Intel in mid- to late December. A couple days later, he, Mr. McCabe, was in this very same room going through the same exercise you're going through today and you did not accompany him to that particular transcribed interview.

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Is there a reason you were at the first one and not at the second one?

Mr. Baker. The first one, which I think was in a different room than we are in today --

Mr. Jordan. It was. It was with the House Intel Committee. And then a couple of days later, maybe even the next day, I can't remember, but I believe it might have been the next day, you were not with Mr. McCabe at that particular one that we were at.

Mr. Baker. Yeah, the first one the deputy director of the FBI was going up to the Hill to testify. And I was the general counsel to the FBI, and I thought, given his rank, I should be the one that goes with him.

By the time the second one was either scheduled or whatever, I can't remember, Congressman, somebody objected. There were some complaints about me being there. And so --

Mr. Jordan. It was the very next day, I believe.

Mr. Baker. Was it the next day? So there was some -- it was maybe that evening or in the morning, I remember having a meeting with Andy and some others in his office and there was some level of complaints, I don't remember specifically by who, and we just decided: No, Jim, just don't go. You skip this one. I can't remember. We may have sent Trisha Anderson, I don't remember, but --

Mr. Jordan. Who made that decision for you not to come?

Mr. Baker. I'm sorry?

Mr. Jordan. Who made that decision for you not to come?

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Mr. Baker. I would say it was Andy.

Mr. Jordan. Andy --

Mr. Baker. Andy McCabe, yeah.

Mr. Jordan. Yeah. So the guy you were sort of representing and helping in that was the guy who told you not to come?

Mr. Baker. Yes.

Mr. Jordan. Okay. I'm going to move to another subject here. Tell me about your relationship with David Corn.

Mr. Baker. David Corn?

Mr. Jordan. Yeah.

Mr. Baker. David is a friend of mine.

Mr. Jordan. Tell me about that. A close friend? Long-time friend?

Mr. Baker. Long-time friend.

Mr. Jordan. Long-time friend. When did you first meet Mr. Corn?

Mr. Baker. I don't specifically remember. A long time ago, though.

Mr. Jordan. Years ago?

Mr. Baker. Years and years and years ago, yeah. Our kids carpooled together. We carpooled with them when our kids were little.

Mr. Jordan. You live in the same neighborhood?

Mr. Baker. Live in the same city, yeah.

Mr. Jordan. Okay. All right. How often do you talk with Mr. Corn?

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Mr. Baker. Every few months or so.

Mr. Jordan. How about in -- I think you probably know where I'm headed -- how about leading up to just prior to the election of -- Presidential election of 2016, how many times did you talk with David Corn in the weeks and months prior to election day?

Mr. Baker. I don't remember.

Mr. Jordan. Is it fair to say you did?

Mr. Baker. Yes, I did, but I just don't remember how many.

Mr. Jordan. And did -- so did you talk to Mr. Corn about anything that the FBI was working on, specifically the now infamous Steele dossier?

Mr. Levin. One second.

[Discussion off the record.]

Mr. Levin. I'm sorry, I'm going to cut -- not let him answer these questions right now. You may or may not know, he's been the subject of a leak investigation which is still -- a criminal leak investigation that's still active at the Justice Department. So I am cutting off --

Mr. Jordan. Can you speak more in the mike there?

Mr. Levin. I'm sorry. I'm cutting off any discussion about conversations with reporters.

Mr. Jordan. Based on --

Mr. Meadows. You're saying he's under criminal investigation? That's why you're not letting him answer?

Mr. Levin. Yes.

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Mr. Meadows. And so you're saying that you're going to take the Fifth.

Mr. Levin. No, I'm saying I'm not letting him answer the questions. This is a voluntary --

Mr. Meadows. That's not the prerogative.

Mr. Levin. Well, it's a voluntary interview now, so it is.

Mr. Meadows. So what you're saying is in order to answer Mr. Jordan's questions he's going to have to be subpoenaed?

Mr. Levin. I'm saying I'm not going to let him answer the question now. If you choose to subpoena him, that's obviously your right.

Mr. Jordan. Just to clarify for us, you're, counsel, advising Mr. Baker not to answer that question because of -- not because of it's classified, not because of any classification concerns, but because there is an ongoing investigation by whom?

Mr. Levin. The Justice Department.

Mr. Jordan. I mean, is the inspector general looking at this or is this --

Mr. Levin. No, it's Mr. John Durham, a prosecutor.

Mr. Jordan. Mr. Huber.

Mr. Levin. Durham, Durham.

Mr. Jordan. Oh. Say it again.

Mr. Levin. John Durham.

Mr. Jordan. All right.

Did you talk to Mr. Corn prior to the election about anything,

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anything related to FBI matters? Not -- so we're not going to ask about the Steele dossier. Anything about FBI business, FBI matters?

Mr. Baker. Yes.

Mr. Jordan. Yes. And do you know -- can you give me some dates or the number of times that you talked to Mr. Corn about FBI matters leading up to the 2016 Presidential election?

Mr. Baker. I don't remember, Congressman.

Mr. Jordan. Several times a week, several times a day?

Mr. Baker. Can I just consult with him for 1 second?

[Discussion off the record.]

Mr. Baker. If I could just focus. So what I remember most clearly is that at some point in time David had part of what is now referred to as the Steele dossier and he talked to me about that and wanted to provide that to the FBI.

And so, even though he was my friend, I was also an FBI official. He knew that. And so he wanted to somehow get that into the hands of the FBI because --

Mr. Jordan. David Corn wanted to give the FBI parts of the dossier?

Mr. Baker. That's correct. That's what he told me.

Mr. Jordan. Do you know where Mr. Corn got the dossier? Did he tell you that?

Mr. Baker. Sitting here today, I don't remember that. I know that I was interviewed by the FBI about this and there was a 302. I've never read the 302, but I understand there was a 302.

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And to the best of my recollection I told the -- whatever I knew at the time, which was closer in time to the event, I told the FBI at that point in time.

So in terms of how David got it, I don't specifically remember --

Mr. Jordan. But you think it's recorded in the 302? You think you told them then, but you don't remember now?

Mr. Baker. I don't remember now. I just don't remember now how he told me that he'd got it. Because there were various copies of the dossier floating around Washington, I guess you would say, and the FBI was getting it, you know --

Mr. Jordan. There were at least three different copies, in my understanding, and they were getting it from all kinds of sources, including the author of the dossier himself; and also including Bruce Ohr.

So you definitely had conversations with David Corn prior to the elections about the dossier?

Mr. Baker. I believe that's correct. I don't remember specifically the date of these conversations, but I know that David was anxious to get this into the hands of FBI. And being the person at the FBI that he knew the best, he wanted to give it to me.

Mr. Jordan. Okay. And go back again, tell me exactly what the investigation -- the reason you can't answer more specific questions about the dossier is because there's an investigation, an ongoing investigation, as we speak, looking into exactly what?

Mr. Levin. And I'm sorry. I didn't say he couldn't answer any

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questions about the dossier, and he just has answered some. I didn't want him talking about interactions with reporters because there is an ongoing leak investigation that the Department is having --

Mr. Jordan. He just talked to me about his interactions with a reporter.

Mr. Levin. Well, he's talked a little bit about it, but I don't want him talking about conversations he's had with reporters because I don't know what the questions are and I don't know what the answers are right now.

Given that there is an ongoing investigation of him for leaks which the Department has not closed, I'm not comfortable letting him answer questions.

So in terms of getting stuff from Mr. Corn, he told you what he remembers about it.

Mr. Jordan. So he talk to me only about what Mr. Corn may have gave him via information or actual documents or recordings or anything else, but he's not allowed to talk to me about information he may have given to Mr. Corn himself?

Mr. Levin. That's right. As a general matter, that's right. I mean, if you want to ask specific questions we can figure it out.

But as a general matter I'm not comfortable having him talk about things he has said to reporters while the Department still has an ongoing investigation.

Mr. Jordan. Mr. Baker, did you know about the dossier prior to Mr. Corn telling you he wanted to give the dossier to the FBI?

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Mr. Baker. Yes.

Mr. Jordan. You knew about it?

Mr. Baker. Yes.

Mr. Jordan. Had you read it, the installments or sections or all of it that you had -- that the FBI had in their possession?

Mr. Baker. I know that I read some version of it. I can't recall if I read every single piece that we got from all the difference sources.

Mr. Jordan. Uh-huh.

Mr. Baker. But I know that at some point in time I read a significant portion of the dossier.

Mr. Jordan. Some point in time prior to the election?

Mr. Baker. I would think so, yes.

Mr. Jordan. So you knew about the dossier prior to the election and you had reviewed it prior to the election. And also prior to the election Mr. Corn had a copy of the dossier and was talking to you about giving that to you so the FBI would have it. Is that all right? I mean all accurate.

Mr. Baker. My recollection is that he had part of the dossier, that we had other parts already, and that we got still other parts from other people, and that -- and nevertheless some of the parts that David Corn gave us were parts that we did not have from another source?

Mr. Jordan. Yeah. And you understand that Mr. Corn was the first guy to actually write in a public way about the dossier?

Mr. Baker. I have heard about that, yes?

Mr. Jordan. Okay.

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Mark, do you have any more questions on this section?

Mr. Meadows. So let me be clear. He wanted the FBI to have the dossier, David Corn did?

Mr. Baker. Yes, he told me that he had a piece of --

Mr. Meadows. So did he give you the dossier? Because obviously you got parts of the dossier from David Corn. So did he give that to you? Were you the intermediary?

Mr. Baker. He gave it to me, and then I immediately gave it to -- I think it was Bill Priestap, who was the head of our Counterintelligence Division?

Mr. Meadows. And when he gave it to you did you read it?

Mr. Baker. I don't think so. Not his part, no.

Mr. Meadows. So you lacked the curiosity to read something that significant? That seems strange. I mean, I would probably have read it.

Mr. Baker. I was very uncomfortable handling evidence, and I really wanted to --

Mr. Meadows. Well, and I guess that gets to -- theoretically, so we don't get into an issue here, theoretically, is it appropriate for SES-level employees, specifically those in the general counsel's office or the like, to have ongoing conversations with members of the media, whether it's David Corn or anyone else? Is that --

Mr. Levin. I'm not --

Mr. Meadows. And that's a theoretical question. I didn't say he was doing it. I'm just saying, theoretically, is that something

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that's approved by the FBI on a regular basis where you have ongoing conversation with the media?

Mr. Levin. And I'm not going to allow him to answer that question, sir.

Mr. Breitenbach. Actually, let's just not say even theoretically. Is it approved practice for attorneys within the general counsel's office to speak with the press?

Mr. Levin. I'm not going to let him answer that question.

Mr. Meadows. Well, let me go a different direction then in following up on Mr. Jordan.

Is it normal practice for the general counsel to talk to confidential human sources?

Mr. Baker. Is it normal practice? No, it's not normal practice.

Mr. Meadows. Did you talk to confidential human sources?

Mr. Baker. There is another occasion that I can think of where somebody brought material to me, based on a preexisting relationship. They gave the material to me. Same situation. I was quite concerned about it. I gave it to the investigator --

Mr. Meadows. And who was that?

Mr. Baker. Who was that?

Mr. Meadows. Yeah.

Mr. Baker. Michael Sussman.

Mr. Meadows. And why did they seek Jim Baker, the general counsel, out for the intermediary? When they had multiple contacts other than you, why would -- did you have a personal relationship with

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him, like you did with David Corn?

Mr. Baker. I had a personal relationship with Michael, and you'd have to ask him why he decided to pick me.

Mr. Jordan. Is Michael a member of the media?

Mr. Baker. I'm sorry. Say that again.

Mr. Jordan. Who is Michael Sussman?

Mr. Baker. He's an attorney in D.C.

Mr. Meadows. And who does he work for?

Mr. Baker. He works for Perkins Coie, a law firm.

Mr. Meadows. And so what you're saying is you were the intermediary between Perkins Coie and the FBI because of your personal relationship with that attorney?

Mr. Baker. I believe so. You'd have to ask Michael why he came to me.

Mr. Meadows. I get that. And so why would an attorney have this evidence at Perkins Coie?

Mr. Baker. He told -- he said that there had been -- I'm not sure exactly how they originally learned about that information, but what he told me was that there were cyber --

Mr. Meadows. I mean, is he a normal intel operative? How would he have come by this?

Mr. Baker. He told me that he had cyber experts that had obtained some information that they thought they should get into the hands of the FBI.

Mr. Meadows. So he -- go ahead.

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Mr. Jordan. What was the information? Was it the dossier as well or something different?

Mr. Baker. No, no, it was not the dossier. It was another -- it was another matter. I mean, I don't know if I can talk about it. But I don't know what the Bureau wants to do. But it's another matter.

Ms. [REDACTED] Can we --

Mr. Baker. I'll just stop.

Ms. [REDACTED] Can we confer, just to be clear?

[Discussion off the record.]

Mr. Jordan. Mr. Baker?

Mr. Baker. Yes, sir.

Mr. Jordan. You were telling us that Mr. Sussman handed you some information or gave you some information that you then took to the FBI. What was that information?

Mr. Baker. It's unrelated to the dossier, it's another investigative matter.

Mr. Jordan. Unrelated to the dossier, but is it related to the Trump-Russia matter?

Mr. Baker. I'm going to defer to the FBI on that one.

Ms. [REDACTED] Congressman, any questions that relate to any information or evidence that impacts the Russia investigation will be an area that we will not allow the witness to answer because --

Mr. Jordan. I'm just asking if it deals with that. I'm not asking you to tell me specifically it is. Obviously, you're not going to do that. He's told me it doesn't deal directly with the dossier.

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Does it deal with something else related to the Russia investigation?

Ms. [REDACTED] I will let him answer that question, but not go into anything related to what that information may be.

Mr. Baker. Yes.

Mr. Jordan. So the Perkins Coie directly -- a lawyer with Perkins Coie directly hands you information dealing with the Russia investigation, not with the dossier but with the Russia investigation, and this is Michael Sussman, who is the lawyer for the Democrat National Committee and Secretary Clinton's Presidential campaign, he's giving you information.

When did this take place again?

Mr. Baker. I can't remember specifically. Again, I believe there's a -- I referred this to the investigators, and I believe they made a record of it and put the -- there's evidence -- you know, they took information. There is an evidence record of what it is. I can't specifically remember when it was.

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

Mr. Baker. I think it was before.

Mr. Jordan. You think it was before?

Mr. Baker. Yes, sir.

Mr. Jordan. So about the same timeframe. Are we talking October 2016? September 2016?

Mr. Baker. No, it was sometime earlier than that. I don't specifically remember. It was earlier than the David Corn conversation.

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Mr. Jordan. Was it between July 31st, 2016, and election day 2016?

Mr. Baker. I don't specifically remember. It could have been.

Mr. Meadows. You don't specifically remember. But obviously July 31st is a date that you know very well in terms of what happened on that particular date.

So was it before that date or after? Not specific. I mean, had you opened up the investigation or not when you got that information?

Mr. Baker. So I apologize, I, sitting here today, I don't specifically remember the --

Mr. Meadows. So do you have a calendar that would indicate this?

Mr. Baker. When Sussman came in? Probably.

Mr. Meadows. Can you get that to us? We need the time.

And, counselor, if you're going to go there, I would encourage you to get Dana Boente. Because, listen, we've gone through this before. We need timeframes. We need to understand it.

And this is a reasonable request of when this particular attorney obtained information from a contact that was actually the attorney for the Democrat National Committee. It is a critical timeframe. Was it a predicate or not to the investigation?

Ms. [REDACTED] Congressman Meadows, what I was going to say was we will look to see if there is a calendar. But if it is involved in any way as evidence with the special counsel investigation, you're right, Dana or the DAG will have to make that decision. But we will look to see if we have that.

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Mr. Meadows. And so we will get one of two things. We will either get a calendar, if it exists, of this day.

Ms. [REDACTED] Yes.

Mr. Meadows. Or we will get some kind of written response from the DAG on why we can't have this. Is this correct?

Mr. [REDACTED] That's correct.

Mr. Jordan. Mr. Baker, is it fair to say that any materials passed by the FBI general counsel automatically have a reliability and a level of credibility attached to them? You're the FBI's general counsel, if you're getting information from an outside source and passing it, on that means something.

Mr. Baker. I suppose so, Congressman.

Mr. Jordan. And people are going to take seriously when the FBI general counsel has some source giving them information related to a pretty darn important investigation, they're going to take that pretty seriously and follow up on it.

Mr. Baker. Within the organization, the Bureau?

Mr. Jordan. Yes.

Mr. Baker. Yes, I would say so.

Mr. Jordan. Okay. Is anyone else giving you information? So we know about Mr. Corn giving you some of the dossier. We know about Mr. Sussman giving you material not directly related to the dossier, but related to the Russia investigation. Anyone else give you information in the course of the Russia investigation?

Mr. Baker. I don't specifically recall sitting here today.

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Mr. Jordan. No one else?

Mr. Baker. Not that I can recall.

Mr. Jordan. Okay.

You have anything more on this, Mark?

BY MR. BREITENBACH:

Q Sir, you had mentioned that there was a 302 that you know to exist with regard to an interview that the FBI conducted with you?

A With respect to David Corn. That I'm fairly confident about. I can't remember if they did a 302 on the Sussman thing because they may have just recorded it, put the material into evidence, and have records with respect to that. He gave me material and that was put into evidence.

Q Do you recall the reason why the FBI was asking you any questions at all in the first place? Did they articulate what their investigation was about?

A I knew what the investigation was about, sure.

Q And what was the investigation?

A What did I just say, Russia, I think? Yeah.

Q With regard to the 302 that they are interviewing you, are they interviewing you based off of the general Russia case or is this a separate case?

A A person gave me what I believed to be evidence. I provided that to the FBI. So the FBI wanted to have a record of the chain of custody of how that material came to the FBI so that it would be clear down the road where the evidence came from.

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Mr. Jordan. Mr. Baker, was this the first time you had ever had this arrangement? Was this the first time Mr. Sussman ever gave you information that you passed on to proper people at the FBI?

Mr. Baker. Well, he had litigated against the FBI, so I had had conversations with him about that.

Mr. Jordan. I'm talking this kind of -- he's not in litigation with the FBI on this situation.

Mr. Baker. No.

Mr. Jordan. He's just giving you information because he's doing it out of the goodness of his heart as a great American citizen, it sounds like. So he's giving you that information and you're passing it on. Is this the first and only time that's ever happened?

Mr. Baker. In that context, yes. I mean, again, I think he told me things in the course of litigation, so he's informing me about things.

Mr. Jordan. Of course, that's normal.

Mr. Baker. So he's providing me with quote, unquote, information. But where he provided me something that I would regard as evidence this was the only time.

Mr. Jordan. Okay. Has anyone else ever done that, any other lawyer just call you up out of the goodness of their heart and tell you they're going to give you information that's going to help you with some ongoing investigation?

Mr. Baker. Not that I can recall. But I guess I would say lawyers would call me from time to time for the same kind of reason

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you were talking about, if they could get to the general counsel and you could get the general counsel engaged on an issue --

Mr. Jordan. I get that.

Mr. Baker. -- then it's more likely to have something happened.

Mr. Jordan. Yeah, we get that. But this is the first time and to your recollection the only time an outside counsel had information and was wanting to make sure it got to the general counsel of the FBI, and it happened to deal with the Russia investigation.

Mr. Baker. I think that's correct. Sitting here today, that's the only one I can remember.

Mr. Jordan. Okay.

How much time?

Thank you, Mr. Baker.

[Recess.]

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[11:22 a.m.]

## EXAMINATION

BY MS. SHEN:

Q Good morning, Mr. Baker.

A Good morning.

Q My name is Valerie Shen. I am the chief national security counsel. Thank you very much for coming. National security counsel for the House Oversight and Government Reform Committee, and I will be helping lead some of the democratic staff questioning today.

And I have with me Congressman Raskin, who will do some lines of questioning. But first I just wanted to revisit something that was discussed in the last round. And I forgot to mention it, but I believe the time was 11:21 when we began.

So in the last round, the majority discussed evidence that Michael Sussen from Perkins Coie.

A Sussman.

Q Sussman.

A S-u-s-s-m-a-n.

Q And Mr. Sussman was an -- or still is, I think -- an attorney at Perkins Coie, is that correct?

A That is correct.

Q And how do you know Mr. Sussman?

A I can't remember when I first met Michael, but he and I both worked in the criminal division together at the Department of Justice, and we knew each other there and then had mutual friends. And so we

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have just, our paths have crossed repeatedly over the years.

Q And what kinds of issues did he work on at the Department of Justice?

A I think he worked in the computer crime area.

Q Okay. And I believe last round it was mentioned that Perkins Coie, his firm, had represented the DNC and the Hillary Clinton campaign, is that your understanding as well?

A That is what they said. I have never confirmed that. I think I read that in the press.

Q Okay. So when Mr. Sussman came to you to provide some evidence, you were not specifically aware that he was representing the DNC or the Hillary Clinton campaign at the time?

A I don't recall, I don't recall him specifically saying that at that time.

Q Okay. When Mr. Sussman did provide you this evidence, did you react in any -- in any way with concern. Were you alarmed? Were you -- did you believe that it was inappropriate for him to come to you with this information?

A No, I did not believe it was inappropriate. It was a citizen providing information to the FBI about a matter that they thought had either to do with a crime or some national security threat. And so it did not seem inappropriate to me.

Q Okay. So I guess it is just my interpretation, but I believe last round it was somewhat implied that if he did have an association to the Democratic National Committee and the Hillary Clinton campaign

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that that might lead someone to believe that something improper was done. And I wonder if you could just explain to me, you know, why your view is that it was not improper because, just the mere notion that someone who is a Democrat or Republican, you know, comes to you with information, should that information somehow be discounted or considered less credible because of, you know, partisan affiliation?

A Well, the FBI is responsible for protecting everybody in this country. Period, full stop. And we do that, without regard to who they are or what their political background is or anything else. If they believe they have evidence of a crime or believe they have been a victim of a crime, we will do what we can within our lawful authorities to protect them.

And so when a citizen comes with evidence, we accept it. That is my, just general understanding over many, many years. We, the Bureau, we, the Department of Justice. And so that is how I construed what Michael was doing. It was, he believed he had evidence, again, either of a crime or of a national security threat, and he believed it was appropriate to provide it to us. When he did, I didn't think there was anything improper about it whatsoever.

As I said, I recognized that I was obtaining evidence and I wanted to get it out of my hands into the hands of agents as quickly as possible. And that is what I did.

Q Okay. Thank you.

Mr. Raskin. Thank you, Mr. Baker.

In March of 2017, Director Comey disclosed in public testimony

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that "the FBI had launched an investigation into the Russian Government's efforts to interfere into the 2016 presidential election, including the nature of any links between individuals associated with the Trump campaign and the Russian Government and whether there was any coordination between the campaign and Russia's efforts," unquote.

Did you work on that investigation?

Mr. Baker. Yes.

Mr. Raskin. What was your role?

Mr. Baker. I was the general counsel, so I was responsible for advising the Director and other leaders of the FBI with respect to that investigation, interacting with the Department of Justice and then interacting with other levels of the FBI and importantly making sure that the other folks in the FBI were getting the legal services they needed from my office to support them in the investigation.

Mr. Raskin. And when did you stop working on it?

Mr. Baker. I would say when I left, when I left the position of general counsel, the first week of January of 2018, so I was still -- I was significantly less involved in it once the special counsel was appointed, but I still played a role in it from time to time after that.

Mr. Raskin. I would like to ask you some questions about the FBI's investigative techniques generally.

On May 18, 2018, the President tweeted "apparently, the DOJ put a spy in the Trump campaign. This has never been done before. And by any means necessary, they are out to frame Donald Trump for crimes he did not commit."

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Are you aware of any information that would substantiate the President's claim that the Department of Justice, quote, "put a spy in the Trump campaign?"

Mr. Baker. So I just want to look at the FBI for a second here in terms of responding about these types of questions, recognizing that this is an unclassified and -- how do you want me to respond to that.

Mr. [REDACTED] Can you repeat the question?

Mr. Raskin. Are you aware of any information that would substantiate the President's claim that DOJ, quote, "put a spy in the Trump campaign."

Mr. [REDACTED] It is a yes or no question, and then when we get past that part, we can have a conversation, if necessary.

Mr. Baker. The answer is no, I am not aware of an effort to put a spy in the campaign.

Mr. Raskin. Does the FBI place spies in U.S. political campaigns?

Mr. Baker. Not to my knowledge.

Mr. Raskin. Are you aware of any information that would corroborate or substantiate the President's claim that DOJ is, quote, "out to frame Donald Trump?"

Mr. Baker. No.

Mr. Raskin. Have you ever been involved in any investigations where the FBI did not follow its established protocols on the use of human informants?

Mr. Baker. Not that I can specifically recall off the top of my

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head. The FBI makes mistakes but we have mechanisms to correct -- to unearth and correct those mistakes. I am not saying the FBI never makes a mistake, I am just saying I don't, off the top of my head, I can't think of anything specifically in response to that.

Mr. Raskin. Have you ever been involved in the DOJ or FBI investigation that was conducted or initiated for a political purpose?

Mr. Baker. No.

Mr. Raskin. Have you ever been involved in the DOJ or FBI investigation that tried to frame U.S. citizens for crimes they did not commit?

Mr. Baker. No.

Mr. Raskin. In your time at FBI, are you ever aware of the FBI conducting an investigation to frame a U.S. citizen for a crime he or she did not commit?

Mr. Baker. No.

Mr. Raskin. Okay. On May 20, 2018, President Trump tweeted, and I quote, "I hereby demand, and will do so officially tomorrow, that the Department of Justice look into whether or not the FBI, DOJ infiltrated or surveilled the Trump campaign for political purposes and if any such demands or requests were made by people within the Obama Administration!" exclamation point, unquote.

At a political rally on May 29th, 2018, the President again stated quote, "so how do you like the fact that they had people infiltrating our campaign?"

To your knowledge, did the FBI or DOJ ever investigate the Trump

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campaign, quote, "for political purposes?"

Mr. Baker. No.

Mr. Raskin. To your knowledge, did President Obama or anyone in his White House ever, quote, "demand or request" that the DOJ or FBI, quote, "infiltrate or surveil" the Trump campaign for, quote, "political purposes?"

Mr. Baker. No.

Mr. Raskin. And how would you or the FBI leadership have handled any requests of this nature to launch an inquiry for political purposes or to infiltrate for political purposes?

Mr. Baker. We would have rejected it out of hand and would have resigned, if compelled to do it.

Mr. Raskin. Okay. Good. I just have a few more questions here.

In March of 2017, Director Comey disclosed in public testimony that the FBI had begun an investigation into, quote, "the Russian Government's efforts to interfere in the 2016 presidential election," including, quote, "the nature of any links between individuals associated with the Trump campaign and the Russian Government and whether there was any coordination between the campaign and Russia's efforts," unquote.

When you first learned about a tip that the Russian Government could be coordinating with the Trump campaign, what was your reaction to that? Were you concerned or alarmed by it?

Mr. Baker. I was alarmed by that, yes.

Mr. Raskin. As the evidence developed to the point where the FBI

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began an official investigation, did your thinking change in any way?

Mr. Baker. I am sorry, say that again.

Mr. Raskin. As the evidence developed to the point where the FBI actually launched an official investigation, did your thinking change? Had you grown more alarmed and concerned or less so?

Mr. Baker. I guess I grew more alarmed over time.

Mr. Raskin. How often does the FBI investigate the potential coordination between a presidential campaign in our country and a foreign adversary? Is that a common thing?

Mr. Baker. I think this is the first instance that I am aware of.

Mr. Raskin. And what was your estimate of the national security risk involved in such potential coordination? How important was the case?

Mr. Baker. I viewed the case as very important.

Mr. Raskin. Was it important to keep the investigation secret before the election?

Mr. Baker. Yes.

Mr. Raskin. And what steps did the FBI undertake to maintain the secrecy of the investigation?

Mr. Baker. So it maintained the classification on a lot of the material. We limited the number of people that we talked about with it -- talked about the investigation internally at the Department of Justice.

So we classified information and we restricted access to

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information, and we treated it as a very sensitive matter.

Mr. Raskin. Did the investigation ever leak?

Mr. Baker. I don't think so.

Mr. Raskin. How would you articulate the importance of maintaining secrecy about that investigation?

Mr. Baker. It was critically important to give us enough time to be able to investigate without the Russians or anybody else understanding what it is that we were investigating -- understanding what we knew and what we were trying to do to collect information to ascertain whether these initial allegations that we received had any truth to them.

Mr. Raskin. Today, we know that the investigation began before the election in July of 2016, but no news of it leaked out to the press. You were aware of the investigation before the election?

Mr. Baker. Yes.

Mr. Raskin. And do you know whether Peter Strzok was aware of it?

Mr. Baker. Yes, he was.

Mr. Raskin. Lisa Page?

Mr. Baker. Yes.

Mr. Raskin. Andrew McCabe?

Mr. Baker. Yes.

Mr. Raskin. James Comey?

Mr. Baker. Yes.

Mr. Raskin. What about DOJ officials? Loretta Lynch?

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Mr. Baker. I think she was aware. I don't recall myself having a conversation with her about it, but I think she was aware.

Mr. Raskin. Do you know whether Sally Yates was aware of it?

Mr. Baker. Same thing. My assumption was that she was aware of it.

Mr. Raskin. And John Carlin?

Mr. Baker. Same. I didn't speak to him about it, but I think he was aware.

Mr. Raskin. How many officials would you estimate were aware of the investigation before the election?

Mr. Baker. That is a hard one to answer. I would say a small number. Again, because we were trying to keep it quiet.

Mr. Raskin. Okay. And did you make any disclosures about this investigation to the press or the public before election day?

Mr. Levin. Just to be consistent, I am not going to let him answer any question about leaks.

Mr. Raskin. Got you. Okay. And I don't know if you can answer this one, but are you aware of any evidence of a so-called deep state conspiracy at the FBI to stop Donald Trump from being elected?

Mr. Baker. No.

Mr. Raskin. And are you aware of any evidence of Peter Strzok and Lisa Page, James Comey, or Andrew McCabe working to stop Donald Trump from being elected?

Mr. Baker. No.

Mr. Raskin. Okay. I have got no further questions.

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Mr. Baker. Thank you.

BY MS. SHEN:

Q Just to circle back on the topic I left off of before, there were some discussion last round, again, that in Mr. Sussman providing you information in your capacity as general counsel that that was not the typical route for evidence. Is that about what you recall?

A Yes.

Q So regardless of not being the most typical route for evidence besides the FBI, when the evidence is provided to you, does the FBI have a process to evaluate the credibility of the evidence, to vet it as it would any other piece of evidence coming to the FBI?

A Yes.

Q Okay. So whatever evidence was provided to you would have been evaluated by the same individuals the FBI as through whatever typical challenges the FBI gets its evidence?

A Yes. Yes.

Q Okay. All right. So I would like to now just ask you a few more questions about your professional background, some detail. So I believe you mentioned that at the Department of Justice you worked in the Office of Intelligence Policy and Review from 1990 to 2007, does that sound right?

A 1996 to 2007, yep.

Q 1996 to 2007. Okay. And you mentioned this briefly before, but can you generally describe what the duties of the Office of Intelligence and Policy Review was?

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A It was to provide legal and policy advice to the attorney general and other high ranking Department of Justice officials as well as the intelligence community on U.S. intelligence law and national security matters, counterintelligence, a whole range of national security-related issues.

Among other things, we were responsible for representing the United States before the Foreign Intelligence Surveillance court, which meant we prepared all the FISA applications and brought them to court, working with the various intelligence agencies.

So that was a substantial part of our responsibility.

Q Okay. And so you have personal experience drafting, preparing and managing FISA warrant applications before the FISA court?

A Yes.

Q Okay. If you had to estimate, how many FISA warrant applications have you worked on?

A So I did figure this out once. If you include preparing, reviewing, or supervising, it is over 10,000.

Q And do you also have personal experience working directly with the FISA court judges?

A Yes.

Q Okay. And if you have to estimate, again, how many interactions did you have in person or otherwise?

A Well, when I was doing this full-time, there were countless. I can't remember. I don't know how many. Every day.

Q And so if math serves me right, you served in the Office of

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Intelligence Policy and Review for about 11 years?

A Yes.

Q Okay. And overall, how many years of FISA experience do you have?

A So I worked on -- well, working on FISA one way or the other, because I have also taught about FISA at law school as well, so if you include all that, it is, you know, roughly 20 years of experience.

Q Okay. And so FISA is one of your subject matter specialties?

A Yes.

Q And would it be fair to call you a FISA expert?

A Yes.

Q The name Office of Intelligence Policy and Review changed at some point. Or you mentioned it being merged into NSD, so is it the same functions but just merged in NSD?

A It is essentially the same functions. They reorganized it. But, for example, there is an Office of Intelligence within the National Security Division that handles all of the FISA matters today, which is a successor to OIPR. Other parts of OIPR have been broken up and put into different parts of NSD.

Q Okay. But the FISA component remains in --

A Remains. There is a core FISA component still at the National Security Division.

Q Okay. You served in OIPR which the Nation was attacked on September 11, 2001?

A That is correct.

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Q And what was your role in that office leading our Nation's counterterrorism and counterintelligence activities in the aftermath of those attacks?

A I was the head of the office.

Q Okay. And generally, were there significant changes in how the U.S. approached counterterrorism or intelligence activities in response to the 9/11 attacks?

A Substantial changes.

Q Can you describe a few examples?

A Well, there were legal changes, there were organizational changes, there were, you know, new agencies were created, likes DHS, for example. There were new ways of doing business with the FISA court, there were new ways of doing business in terms of how the agencies interacted with each other, there were new ways of sharing information, sharing intelligence information, there were substantially more resources devoted to counterterrorism after 9/11, obviously.

So it was, I think it is fair to say, it was revolutionary in terms of the volume and scope of the changes that occurred.

Q And what kind of changes involved the FISA court that you just mentioned. How was that done differently?

A The volume of FISA applications went up substantially, the number of emergency FISA authorizations went up astronomically.

We had to then build a whole infrastructure to deal with all of that. The types of targets changed, the techniques, the surveillance techniques changed, the technology changed, the Internet became much

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more prevalent, Internet-based communications became much more prevalent.

The demand for quick, rapid, information-sharing increased substantially. Then you had a whole other stream of things that was going on having to do with the Stellar Wind program that President Bush had authorized. And that changed a lot of the FISA practice in various ways.

It was -- the velocity and volume and variety of things was substantially different after 9/11.

Q So the FISA function significantly scaled up and became more aggressive after 9/11?

A Yes. Still within the law, but aggressive.

Q In December 2016, you received the George H.W. Bush Award For Excellence in Counterterrorism, the CA's highest award for counterterrorism achievements. Is that accurate?

A Yes.

Q Okay. And in January 2007, you received the NSA's Intelligence Under Law Award, the NSA Director's Distinguished Service Medal and the Department of Justice's highest award from attorney general Alberto Gonzalez. Is that accurate?

A Yes.

Q Where are you currently employed?

A I am currently employed at the Brookings Institution, I am a visiting fellow there. I am a visiting fellow at the Lawfare Institute. I am a lecturer on law at Harvard law School, and I also

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have my own consulting firm.

Q What subjects do you teach at Harvard Law School?

A National security law.

Q So Mr. Baker, there have been a number of serious repeatedly made allegations that the FBI and Department of Justice abused its FISA authority in pursuing a surveillance warrant for former Trump campaign official Carter Page in October 2016.

As a long-term expert on FISA, I think it would be helpful if you would help us review and understand how that process actually works. So first, just stepping way, way back. What is the purpose? What is the typical purpose of a FISA surveillance warrant?

A A FISA authorization is an investigative tool. It is just a tool to provide the FBI or the intelligence community, more broadly, with foreign intelligence information related to a valid foreign intelligence objective. And it is a highly intrusive, potentially, tool that is used by the FBI, by the other parts of the intelligence community, and it is overseen closely by various elements of the government to make sure that it is being done for the right purposes.

And, I mean, that is the basic idea. It is a surveillance tool to provide the FBI with foreign intelligence information.

Q Okay. And so the purpose of a FISA surveillance warrant isn't directly for a criminal investigation or criminal purpose?

A Well, this is complicated to go through all of that, but the FBI -- the FISA -- the statute requires that there be a certification from a high ranking national security official like the FBI Director

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that a significant purpose of the FISA application is to obtain foreign intelligence.

The line between what is criminal and what is intelligence sometimes becomes blurred and that was a big issue before 9/11 and even after 9/11, that has been sorted out basically now. But a significant purpose of the surveillance has to be for foreign intelligence purposes. And somebody high ranking has to sign their name to that purpose.

Q And so, generally, when does the FBI decide it should apply for a FISA warrant?

A It is one of the techniques that agents know about as part of their investigations. And they have to have probable cause in order to justify having a -- or seeking and obtaining a FISA authorization.

And so it is not typically the first things that is done in an investigation. You build up to that point. You collect other information, other evidence, if you will, and gather that and develop your probable cause. And then at some point in time, you seek the FISA when it makes sense in the investigation. There are a significant commitment of resources. FISA authorizations are significant commitment of resources by the Bureau, and so the managers, for no other reason, other than efficiency and appropriate use of resources need to think about the deployment of those resources in that way.

So they need to be serious about the investigation and do it at the right time when it makes sense for the investigation.

Q So if an FBI investigator thought they had, you know, clear,

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strong case for probable cause, it would be pretty typical to want to pursue a FISA application as an investigative tool if the resources, equation made sense?

A Yeah, I think so. It is a normal tool that they worked toward. They don't always get it in every case. In fact, they don't get it in most cases.

Q Okay. Can you walk us through the process from when -- for when the FBI wants to apply for FISA warrant to surveil a U.S. person. So, you know, who makes that initial decision, who approves it, who is involved in that process?

A So it is a complicated process, I am probably going to miss some of the steps exactly. But the basic idea is that if an FBI field office, for example, is investigating a particular subject, and they determine that they want to obtain a FISA, that will be reviewed within the field office. It will go through the management chain in the field office through a variety of different supervisors.

It will also get a legal scrub in the field office. And then there will be most likely, interactions with the Office of General Counsel, FBI headquarters, depending on what type of case it is, counterterrorism or counterintelligence. And then it will -- once the FBI has decided that it wants to pursue this, then a request will go across the street to the Department of Justice to the Office of Intelligence.

It is possible that there has been some interaction with an assistant United States attorney along the way, but then it will get

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a complete review at various levels within the Department of Justice.

Once everyone agrees that this is -- that we want to go forward, then there is a signature process that the agencies go through, and there are certain signatures that need to be obtained through the field office, through headquarters, up to and including the director or the deputy director of the FBI. They have to sign it. Then it goes across the street to the Department of Justice, and then has to go up to, either the assistant attorney general for national security, the deputy attorney general or the attorney general.

So there are a range of -- there are a lot of reviews with respect to this. And then once you are done with that, it goes to the FISA court, where the FISA court legal advisers typically look at all the applications, they scrub them. And then once they are satisfied, then it goes to a Federal judge, one of the judges on the FISA court who is a sitting Federal judge in a normal District Court in the United States.

And then that, the judge reviews it as well. So it goes through many reviews in the executive branch and in the judiciary.

Q How --

A Excuse me -- and all of this is subject to oversight by Congress.

Q How is the evidence usually collected to assemble and put into a FISA warrant application. Is there a specific investigation? Is it, you know, whatever you have from your previous investigation, is there a separate process for obtaining additional evidence?

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A Well, you have to have a full investigation opened in order to obtain a FISA. So full investigation just means you have to have sufficient probable cause -- sufficient factual predication within, or pursuant to the attorney general guidelines in order to use that technique, because it is such an intrusive technique.

So -- and the FBI can gain the information from any lawful source to establish probable cause. But typically, there will be witness interviews, there will be a collection of, I don't know, phone records, physical surveillance, you might have, confidential source information. You might have information from a foreign partner. You could have intercepts from some other intelligence agency that may have been provided to the FBI. You have a whole range of different information, different types of information that could go into a FISA application.

Q Okay. And you mentioned, you know, quite a number of people and different components at different levels, so I understand you can only give me a rough ballpark, but, you know, how many people overall will be involved in, you know, putting together a FISA application that the FBI or the Department of Justice?

A I would be worried about giving you a number, but I don't know, just a rough estimate, at least 20 people, something like that, maybe. Sometimes more.

Q And typically, how long might a process like this take to assemble the information, you know, check all the, boxes, go through the signature process. How long will it take to assemble a complete

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application?

A It depends. The cases are prioritized. And so the ones that are the most urgent -- so in a counterterrorism case where there is an imminent threat, the process can move extremely quickly, and it can be done all orally.

But typically, it takes much longer than that. It is hard to say. I don't know what the average number is right now. It can take days, weeks, sometimes months to move a FISA through, depending -- it depends on the nature of the threat and the strength of the probable cause. The bigger the threat, the stronger the probable cause, the faster it goes through the system.

Q And I believe you already listed, quite a few names off, but at the FBI who approves or signs off on a FISA application? I believe you mentioned the director, deputy director. Does it go all the way down to the field office?

A It would go through the Office of General Counsel. I, as general counsel, I didn't approve them all. There were a range of people in the national security law branch who could approve them, but there had to be some level of approval. There had to be approval at the headquarters level, in the field, in terms of the substantive agents. Yeah, I think that is it.

Q At what point, and is it based on evidence collection does the FISA warrant application go from the FBI to the Department of Justice for their review?

A Formally, there is a request that is sent across to the

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Department of Justice -- I am sorry -- yes, to the Department of Justice, but there could be informal interactions from a very early stage where the Department of Justice is aware of a particular case.

We could go over and brief them on it and say, you know, here is this case, we are worried about it. We are working on the FISA. You should expect that soon. And they might work with us directly. So it is hard to give a crisp answer to that. There is a formal way to do it, but most times there are informal interactions with people because, again, it is important to think of a FISA as part of a case that everybody is working on. This is only one tool that is used.

But if it is an important enough case, a lot of people know about it.

Q Does the Department of Justice review to ensure that the FISA application is supported by credible evidence?

A They review it to make sure it is supported by credible evidence, that the techniques are techniques that can be approved, and that the purpose is a lawful purpose.

Q And how does the Department of Justice conduct these reviews?

A They examine the written materials that we send over. They question our folks, they ask for additional documents, send emails back and forth. They have robust interactions with the FBI over time with respect to what is going on with the investigations to satisfy themselves that they understand what is happening and why.

Q Would you say the Department of Justice treats this process pretty seriously?

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A Very seriously, yes. Very seriously.

Q How rigorous would you describe their --

A Extremely rigorous, yeah.

Q How often would the Justice Department send an application back to the FBI for, you know, some additional review, asking for additional documentation, information?

A I think it is constantly, yeah.

Q Okay. And so, would the Department send a FISA application back to the FBI if they believed a factual assertion was not sufficiently substantiated?

A Yes, but they would have, they would ask questions about it. It is not a formalistic. I mean, it can be formalistic in terms of documents going back and forth, but more often, I would think they would have emails and conversations if the Department had a concern about a factual allegation, whether it was true or not, they would ask to see the underlying material. The FBI would provide that to them. They would either be satisfied or not. And we would have ongoing discussions. And sometimes, there would be an agreement to go collect more information. And the FBI would do that before the FISA would move forward.

Q So would it be more like a routine back and forth over a number of different issues between Department of Justice and the FBI?

A There is a -- routinely, there is extensive interaction between the Department of Justice and the FBI with respect to what goes into a FISA application.

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Q If the Department of Justice, informally or not, had flagged something they believed required additional substantiation, what might that look like? What would the FBI do to say, well, you know, here is another corroborating source, here is another -- like what kind of information would that require to address their concern?

A Whatever we might have. I mean, we would try to provide the Department with whatever they needed. Sometimes we would say, do you really need this, this might be really hard to get. We don't have it, or might not be able to get it in any circumstance. How important is it to the probable cause. You would have those kinds of discussions going back and forth. And maybe the -- sometimes, the Department would say, no, okay, we agree, we don't need that. It is too hard to get. Other times, they would push for it and we would get it. Sometimes we would be successful, sometimes not.

Q So I am trying to understand, just generally speaking, how the Department of Justice would -- and the FBI -- would evaluate the credibility of a factual assertion that came from a source or another right, because you have intelligence information coming from, I imagine, a spectrum of sources, different reliability, different motivations.

And so what is the process for looking at whatever factual assertion that source provided and then also evaluate the credibility of that underlying source to make a, you know, final determination?

A So, again, that is part of the standard review of FISA applications, to make sure that the FBI and the Department understand

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the credibility of any information that is going into, whether it is documentary evidence, information or information from a source.

So there is a, I guess you would say a scrubbing process of the sources to make sure that in this case, the Department, is satisfied that the source is reliable and that if there are any indications of -- or anything that might call the source's reliability into question, that that information is put forward in the application or is somehow otherwise made known to the court.

Q And can you provide me an example of what might call a source's credibility into question?

A Well, if the source had lied in the past, if the source had received substantial payments from the FBI or some other government agency. If the FBI investigation had revealed the source was involved in some type of illegal activity on the side, or things like that. The source was not complying with direction from the FBI, the handlers, that might be an issue that you would put into the application.

Q Does the FBI or --

A It might not even make it into the application because at the end of the day, the Department might assess that the source is not credible, and so you just don't even go forward.

Q Does the FBI or the Department of Justice provide an accounting or analysis of what the motivation was for the source to come forward with their information. And are there certain motivations that are, you know, deemed less credible, reliable?

A I mean, I guess it would be, if the motivation, if the

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motivation impacted the assessment of the credibility, then you might put that in there. So, for example, an estranged spouse. If that was the source, then you would have to have a conversation about how important that was. You might discuss whether that was too revealing about who the source was to put that in there. But I have been involved in those kinds of conversations in the past. But something that indicated some animus against the subject that therefore might call into question the credibility of the source.

You would have a conversation about that, assess whether the source was reliable or not and then endeavor to put the FISA court on notice about that.

Q So if in the Bureau's judgment, a source had a personal motive against the target of the surveillance or related, that would be something that you believed should be noted for the FISA --

A You should certainly have a conversation about that and figure out whether that, you should proceed with the application or not and whether you should -- how you are going to tell the FISA court about this. And there is a variety of ways to do that to protect the identity of the source, but, yeah, if there is animus against the subject, then that is something that you have to think about seriously.

Q Are there cases where a source is judged to have animus against a subject, and is nonetheless deemed credible as well?

A Is to what?

Q I will just rephrase.

Are there cases where a source is judged to have animus against

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the target of a surveillance but is nonetheless judged to be credible and reliable?

A I mean, I don't recall specifically a case from the past about that, but I would say in that kind of a circumstance, my recollection is we would put forward the reason that the source has the animus against the subject and explain that to the court. And then explain nevertheless, we believe the source is reliable for the following reasons.

So you are going to have to then focus on establishing why those -- establishing those reasons why you still believe the person to be credible even notwithstanding the animus.

Q So the animus is relevant to analysis but it is not a disqualifying in a vacuum?

A It is not disqualifying just automatically, I would say no.

Q How frequently would you say the FBI receives information from sources that are judged to have some personal motive in coming to the FBI?

A That is a hard question to answer. I am not sure I can answer that one. It is not infrequent.

Q So in the context of FISA warrant applications, can you explain what it means to verify information? I have heard that term used a lot, I guess more in the terms of, you know, unverified information, but I believe it is -- I believe it is a term of art, to some extent, in terms of there is a requirement to verify information. I was wondering if you can explain that to us?

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A I am not sure exactly what that means in this context. I mean, we have developed processes over time to make sure that any allegation that is put into a FISA application is backed up by some type of underlying document.

So for example, we were talking about 302s before, so that -- which is a report of an interview -- so if you put an application -- if you put a sentence in an application saying this happened on this date, then we have a process to make sure, okay, where does that come from? Oh, it comes from this 302 where this witness said this. Or if you have information from a national security letter, a telephone record, you want to make sure you have that.

So in terms of verifying the information, what I am thinking about is we make sure when we have procedures to make sure that all of the factual assertions in the application are backed up by some underlying document to support them.

Q So if you are verifying something, you are able to match it to the underlying source or documentation, but that is not the same thing as saying that factual assertion is already proven to be true?

A Correct.

Q Okay?

A It is just this is where it came from.

An important thing to remember is FISAs take place in the middle of an investigation. And so you are still learning about what is happening.

You put forward the information that you have at the particular

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time that you have it, but you could be wrong. It could be that you are completely wrong about what you have concluded with respect to this person.

But that is what you are trying to find out. And if you are wrong, then you will conclude the investigation and no further action follow. If you are right, you will keep going and then you will deal with whatever happens.

But that things turn out not to be the case that you put forward in the application so long as you believe them to be truthful at the time and had support for that, that happens.

Q So in a FISA application, the Bureau or the Department is often put together their best intelligence assessment at the time, but as you are saying some things might prove --

A To be wrong.

Q -- to be wrong later?

A Yes.

Q And if that were the case, it wouldn't really be fair to say the Bureau or the Department is trying to trick the FISA court?

A No.

Q So my current understanding is that under the FISA statute, a warrant can be obtained to conduct electronic surveillance on a U.S. person if they can show probable cause that the target is an agent of a foreign power. Does that sound --

A That is correct.

Q Okay. So how does the FBI determine whether there is

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probable cause that someone is an agent of a foreign power? What kinds of things would they look at?

A So you look at the statutory definitions of agent of a foreign power. And one of the important things there is it requires that when it pertains to U.S. persons that their activities are engaged in knowingly in support of that.

So you are going to look at everything we can collect short of a FISA about that person lawfully and assess whether the person fits within that definition, and then focus on whether or not there is evidence/information that the person knows that he or she is involved in these types of activities.

So you try to marshal all of the physical surveillance, documents, interview witnesses, sources, intelligence from other agencies, intelligence from foreign partners, everything you can possibly get to bring to bear on the question of whether this person is a legitimate target under FISA.

Q Could referring to one self as an informal adviser to a foreign government be considered evidence of someone knowing to be an agent of a foreign power?

A That would be relevant.

Q Can you explain briefly what minimization procedures are in the context of a FISA warrant application for a U.S. person?

A Minimization procedures are a critical protection that exists in the statute and have to be employed in each application in order to protect the privacy of Americans, which is the one of the most

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important points of FISA. And they are part of what make FISA applications reasonable under the -- FISA authorizations reasonable under the Fourth Amendment.

So they require the government to basically reduce the amount of information that it acquires, retains, and disseminates about a U.S. person consistent with the foreign intelligence needs of the United States.

Q So would that prohibit, you know, their names, you know, any kind of personal identifying information, what would the restrictions be in terms of describing a U.S. person in vague terms? How does that work in practice?

A It depends. So there are standard minimization procedures that exist that the government has to follow. There could be additional minimization procedures that the court employs in any particular case, but you have to -- it is contextual.

So it depends upon who you are disseminating information to, why they need that information, and that the information is foreign intelligence -- essentially, foreign intelligence or evidence of a crime.

So you are giving it to an authorized recipient, and the disclosure of the identity, let's say, makes sense in this context because it is part of what the foreign intelligence information is or the evidence of a crime, and you are giving it to somebody that you assess needs to know that information to execute their duties.

Q So it is on a need-to-know basis?

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A Well, any classified information is on a need-to-know basis but yeah, the minimization -- the dissemination is contextual so you don't willy-nilly give out U.S. person information. You try to restrict it whenever possible.

And agencies have adopted a variety of different policies and procedures in order to do that but, again, the key thing is whether the information is foreign intelligence, evidence of a crime or necessary to understand the foreign intelligence or its importance.

And if it fits within that and it is under U.S. person identity, then you could disclose it to somebody who needs to know that and who has the appropriate clearances.

Q Under what circumstances would it be appropriate to use the name of a U.S. person in a FISA application?

A If it was foreign intelligence, you needed to know that, you know, the spy for the foreign country we think is this person and, you know, two people are talking on the phone and they are plotting, I don't know a terrorist attack or they are plotting some espionage thing, and so you need to identify to somebody else in the government -- like these two guys and here is their names, they are U.S. persons, they just plotted to blow up something, some building somewhere right?

Q So U.S. persons, for example, that were, you know, part of a plot or the target of the surveillance, those would be the types of U.S. persons that --

A They certainly could be, yeah. And if they are plotting to blow something up in the United States, absolutely.

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Q Would it be appropriate to use the name of a U.S. person merely because they are running for political office in the United States?

A Well, again, you would not disclose that unless you assess that that person's identity was, itself, foreign intelligence information, evidence of a crime, or necessary to understand the foreign intelligence or its importance. It has to fit within one of those categories or you should not be disclosing that person's identity.

Q Okay. Can you describe what -- can you describe your understanding of what the term unmasking is and how that relates to minimization procedures. I obviously heard it used a lot and want to understand it more precisely.

A Yeah. It is a bit confusing, but the basic idea is as a standard practice certain governmental agencies have adopted this process with that when they produce a report that is widely distributed that goes to a lot of different people, that they will, instead of putting the U.S. person's name in the report, they will use a euphemism, like U.S. person number 1 said blah blah blah to U.S. person number 2.

And those two identities will be -- something else about the information is important, something else about the information constitutes foreign intelligence, but the agency that is disseminating it has assessed that the identity of the U.S. person itself is not foreign intelligence information or evidence of a crime as I have

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described.

So that gets disseminated. So that is quote-unquote "masked." Agencies that receive that, if they say, whoa, this is really important to us. We need to know what actually person's name is. They would go back to the originating agency, put in a request for that, ask them for that, and then the agency would follow its procedures.

If they assess yes, you know, the FBI needs to know that, so they will provide the FBI actually with the U.S. person identity. They will therefore, unmask it.

Q Okay. So unmasking is more in the context of disseminating information?

A Disseminating information and, in particular, from certain agencies that I will refrain from identifying here, but it is not the FBI. It is other intelligence agencies have a practice of, quote-unquote, "masking" U.S. persons' identities.

Q Circling back to minimization procedures, if the FBI and the Department of Justice were putting together a FISA application and they used the names of U.S. persons that, you know, contextually was not originally discussed, like evidence of a crime, or, you know, you really needed to know to understand the surveillance, would the -- I guess, the Department or the FISA court, would they request that that name not be used? Are there protections?

A Yes, I mean, you put the names in the FISA application if you think you need to because, again, it fits within the dissemination

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rules and you think the court needs to know that information.

But other times, you assess, when you are writing the application, that no, we don't need to put that in. It is just gratuitous. And so we will use the same kind of the thing, U.S. person number 1, or some other type of identifier.

Q Does the FISA court also make an analysis as to whether certain U.S. names are in accordance with the minimization procedures?

A It could with respect to the -- it could with respect to anything having to do with FISA. They can ask for anything. They can demand anything from any of the agencies.

Typically, though, what happens is that the -- under the procedures and under the protocol that the courts are well aware of -- the Department of Justice goes out to the FBI field offices and headquarters and conducts, quote-unquote, "minimization reviews" to make sure that we are following the procedures, generally speaking.

So they pull cases, they look at what we have disseminated, and so on, and go through that. And they make a report back to the attorney general, to the FBI and importantly, to the court.

Q I think you mentioned that as general counsel you did not personally sign off on FISA applications?

A That is correct.

Q Is that correct? Okay. Have you ever personally signed off on a FISA application before?

A As general counsel of the FBI? I don't know if I actually signed the memos. I think the answer is -- I don't recall ever actually

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signing the memos.

Q Did you sign off on any FISA applications in your capacity at the Department of Justice?

A Again, as a lawyer, I sign some of them and I approved other ones going to court. And when I was there, they were all of prepared under my supervision.

Q Okay. Just over the years with the different FISA applications you have worked on, are you aware of the Justice Department ever signing off on a FISA application that was not sufficiently substantiated by evidence?

A That was not supported by probable cause?

Well, there are some when -- so the obligation, I would think, of the Department of Justice is to believe that there is probable cause to support the application when the attorney general signs it, because the attorney general is signing that he or she has assessed that it meets all the requirements of the statute.

So therefore, the answer should be yes. There are cases where the probable cause is stronger and where it is weaker. And so my practice was if I thought that I was bringing a case that I thought was weak to the court, I would tell the court about that. And I would say, look, I think this meets the requirements of the statute, but I understand that it is weak and here is the reasons why. And I would inform the court fully about the application and explain it all to them.

So, but I would not -- I would not have allowed a FISA application

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to go to court that I did not think met the requirements of the statute, meaning that I thought there was probable cause.

Q And I believe you said earlier that most FISA applications do not get approved by the court, is that --

A No, most do get approved.

Q Most do get approved?

A Yeah, most do get approved by the court.

Q So we have already tread this ground a little bit, but why is it important that the Justice Department apply a rigorous level of scrutiny to the FISA application before it is sent to the FISA court? Why not just, you know, try anything?

A Because the officials of the Department of Justice have taken an oath to the Constitution and that includes their responsibilities as part of the executive branch to take care that the laws are faithfully executed. Congress has enacted this statute to regulate the government's use of a highly intrusive surveillance, a set of highly intrusive surveillance techniques. And so the government has an obligation to do its utmost to make sure that it complies with the statute.

Congress has constructed a statute that establishes an ex-parte relationship between the government and the court and under the standard rules of ethics with respect to attorneys, for example, attorneys have the highest ethical responsibilities in that kind of context, so they have an extremely high responsibility to make sure that the court is informed of all material matters with respect to the

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matter that you are presented to the FISA court.

It is important to maintain -- for the intelligence community to maintain the trust and confidence of the American people over the long-term, and so they all have a very, very important responsibility for their agencies to make sure that the public and Congress have confidence in what they are doing.

Q Have you ever been part of an investigation where the Department of Justice or FBI used politically biased unverified sources in order to obtain a FISA warrant?

A Politically biased un --

Q Verified sources.

A Not that I recall.

Q Are you aware of any instances where the Department of Justice or FBI manufactured evidence in order to obtain a FISA warrant?

A No, I don't believe that I have ever heard of such a thing. There are times in the past when inaccurate statements were made to the FISA court for a variety of reasons. And when the government found out about that, we took steps to correct the record and do what needed to be done.

Q But you are not aware of any attempts by the Department of Justice or the FBI to intentionally mislead the FISA court judges in an application by omitting or manufacturing evidence?

A The cases that I am talking about where inaccurate information was provided, off the top of my head, I can't recall any instances where it was later determined that it was intentional. It

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was maybe sloppy or somebody, for whatever reason, confused something or made a mistake or whatever, but I don't recall instances where somebody intentionally made a misrepresentation to the FISA court.

Q Okay. So I think earlier we already talked about how the Department has a, you know, pretty difficult and rigorous internal process for FISA warrant applications.

Are there a separate set of additional protections when the target is a U.S. person?

A U.S. persons get substantially more protection under the statute. Under the minimization procedures, the minimization procedures only apply to U.S. persons. You don't have to minimize information of non-U.S. persons. So there is some policy variance to that, but in any event, the statute doesn't require it. And so therefore all the way through the system, in attorney general guidelines, in internal FBI procedures, there are enhanced protections for U.S. persons.

Q Okay. And so the foreign intelligence surveillance court would apply a very strict level of scrutiny before approving a FISA warrant on a U.S. person?

A They apply -- yes is the answer.

Q Okay. And would it be difficult for the FBI or Department of Justice to intentionally try to trick the court into approving a FISA warrant that did not have sufficient evidence?

A Such a thing wouldn't make its way through the system because somebody would ferret that out in the process. And I seriously doubt

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that it would make its way to the FISA court. Because the FBI doesn't want to -- would not want to do that with respect to the director who is going to sign these things, nor to the Attorney General. And the Department of Justice would be very protective of the Attorney General and try to ferret out anything like that. And I think it would be kept away from the FISA court in the first instance.

Q So just by the nature of the process, number of people involved, the standards, it would be extremely unlikely for an intentionally misleading application to make it all the way through the process?

A That would be my assessment.

Q Okay. All right. I think we are close to the end of our session, so we will just stop there. The time is 12:18.

[Recess.]

Mr. Meadows. I want to follow up just briefly on some of the FISA questions that the minority were just asking, just for clarification.

So are there two parameters on how and if a FISA warrant gets issued or just one?

I mean, what are those two criteria that may exist in terms of actually issuing a FISA warrant?

One, obviously, is foreign intelligence. Is the second one criminal activity? I mean, is that part of it?

You are the expert, is what I understand. And --

Mr. Baker. So that line is difficult to ascertain, especially if you think about a terrorism case. I will take it out of the context

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we have been talking about.

A terrorism case. Well, somebody engaged in terrorist activity, us wanting to know about it so we can prevent the terrorist attack from taking place, that is clearly foreign intelligence information, but they are also engaged in crime at the same time.

And so what the court decided back in 2002, I guess it was, was that these lines are too fuzzy. And so under the Constitution, so long as a significant, a significant purpose -- not the only purpose, not the sole purpose, or not even a primary purpose -- so long as a significant purpose is to obtain foreign intelligence information, and that is something different than evidence of a crime, then the government, under the Fourth Amendment, can seek these authorizations pursuant to the FISA statute and therefore FISA is constitutional.

Mr. Meadows. And you would say that there is not a quantifiable number to say this is significant? I mean, how would a lay person like me say this is significant?

Mr. Baker. Yeah, I think it is the plain meaning of that term. I think you just --

Mr. Meadows. Well, that is the whole point. It doesn't have a plain meaning.

I mean, what is significant to you and significant to me may be two different things.

I think it is significant that you are here today.

Do you think it is significant that you are here today?

Mr. Baker. Yes, sir.

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Mr. Meadows. So we both can agree on that one. But there are different times when that term is ambiguous. Would you agree?

Mr. Baker. Yes.

Mr. Meadows. All right. So if we are looking at the FISA, and I guess, you know, the minority was asking, you know, in terms of political bias and if there is ever any time that you could recall, and you said no, is that correct?

Mr. Baker. Whatever their questions were, I think I responded no, yes.

Mr. Meadows. Well, I guess.

Mr. Baker. Or no to the most --

Mr. Meadows. I am looking at, I guess, the unclassified part of the FISA application, and on Page 17, it goes to great gyrations, in my words, to say source one owns a foreign business in financial intelligence. And it goes back and forth about, that candidate one might have, you know, source one might have been doing research into candidate one, and they were likely looking for information to discredit candidate one.

Why would you use those types of ambiguous terms in a FISA application?

Mr. Baker. You mean, like the reference to candidate one and that kind of thing?

Mr. Meadows. Yeah. And not be specific. Because obviously here today, we have talked about specifics. We talked about your getting information from Perkins Coie. We talked about you getting

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information from David Corn. But none of that seems to show up.

Would that not be relevant information that a FISA judge would want to see?

Mr. Baker. So if the application you are referring to, just for the record, is the Carter Page one, I assume.

Mr. Meadows. Right, yeah.

Mr. Baker. And so --

Mr. Meadows. And did you read the whole Carter Page FISA application?

Mr. Baker. I -- my recollection is that I read the factual part of the initiation of the Carter Page FISA. I am not going to say I read --

Mr. Meadows. So for a layman that doesn't understand, what is the factual part?

Mr. Baker. So the statute requires there be all kind of legal assertions, description of techniques, minimization procedures. There is orders that go along with that, and so on. That is pretty standard, quite frankly, and there is a mechanism to deal with that.

The thing that I was focused on is there is also, by statute, has to be a set of factual assertions under oath by, in this case, the FBI.

So it is basically what are the facts, what is the probable cause. And so the section that I was focused on is what is the probable cause with respect to --

Mr. Meadows. So you only read the probable cause part?

Mr. Baker. That is my recollection.

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Mr. Meadows. That is your recollection.

Mr. Baker. And only the initial --

Mr. Meadows. So how would you know that is the only relevant point in the FISA application that would need to be questioned? Because I understand, it has to go before you before it went to anybody else. So you are the one that every FISA application -- no?

Mr. Baker. No. I did not -- at that point in time when I was at the FBI, most of the FISA -- almost all the FISA applications did not go through me. They were --

Mr. Meadows. So why did this one go through you?

Mr. Baker. Because I was aware of it. I was aware of the investigation --

Mr. Meadows. How did you become aware of it?

Mr. Baker. I learned of -- so I was aware when the FBI first started to focus on Carter Page, I was aware of that because it was part of the broader investigation that we were conducting. So I was aware that we were investigating him. And then at some point in time --

Mr. Meadows. But that was many years ago. That was in 2014. Or are you talking about 2016?

Mr. Baker. I am talking about 2016 in the summer.

Mr. Meadows. Okay.

Mr. Baker. Yeah. And so I was aware of the investigation, and then at some point in time, as part of the regular briefings on the case, the briefers mentioned that they were going to pursue a FISA, and so as that progressed and as I was briefed on that as time went

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by, at some point in time, I asked -- I think it was my deputy, Trish Anderson -- when this thing is ready or when it is moving through the system, I don't want to see it at the end, like when it is about to go to the director of certification because then it is hard to make changes then.

So I wanted to see it when it was gelled enough but before it went through the process and before it went to the director, I wanted to see it and I wanted to read it, because I knew it was sensitive.

Mr. Meadows. So is that why you took the abnormal or unusual step in this particular situation, was because it was sensitive?

Mr. Baker. Yes.

Mr. Meadows. So you actually got involved because you wanted to make sure that, what?

Mr. Baker. I wanted to make sure that we were filing something that would adhere to the law and stand up over time.

Mr. Meadows. So you wanted to make sure that everything was the normal protocol and done properly?

Mr. Baker. The two things that I was focused on in this case were the probable cause and the description of the source. And I guess the third thing would be the foreign intelligence purpose. I wanted --

Mr. Meadows. So the probable cause -- and you said you were working on that in the summer of 2016 and that was part of a much broader investigation. So it had nothing to do with the Trump campaign at that point?

Mr. Baker. I am not sure I know what you mean. I am sorry.

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Mr. Meadows. Well you said a broader investigation. I mean if you are asking for a FISA warrant and you are talking about probably cause, you said it was a part of a broader investigation, obviously, that broader investigation could not -- may be mutually exclusive of the Trump campaign if it is dealing with Carter Page?

I mean, what broader -- those were your words not mine. So what broader investigation were you talking about?

Mr. Baker. So I thought about this as, to me, this was always about Russia. Everything we did had to do with Russia, and what were the Russians up to, what were the Russians doing, how were the Russians engaging with Americans, if at all, and what might some Americans be doing in support of -- knowingly, in support of Russian efforts, or being fooled and duped into dealing with the Russians in some way.

And so we were trying to figure out exactly what happened. So I was thinking about that. And then, so we had a very broad investigation of Russia and trying to identify and thwart their activities. And then certain Americans came to our attention for a variety of reasons -- I am happy to talk if you want to. Among them was Carter Page, and then among the various investigative techniques that were being used with respect to him was this FISA.

And so I wanted to review the FISA because I knew it was part of that larger --

Mr. Meadows. Yeah, but Jim, don't you see how that -- this unique situation where you actually took, according to your words, you took possession of evidence. Do you normally take possession of evidence?

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Mr. Baker. No.

Mr. Meadows. Why would you take possession of evidence here? Why would you not have said, You know what, Peter Strzok is lead investigator. Let me have him reach out to you?

Why would you take possession of that evidence?

Mr. Baker. Well, on the one -- so, on the one hand, I wasn't -- I don't remember -- I don't remember knowing why Michael Sussman, for example, was coming into the office. He came into --

Mr. Meadows. I am not asking about his motivations. I am asking why, why -- you know, this is not your first rodeo.

Mr. Baker. Yeah.

Mr. Meadows. You are an experienced -- in fact, when I read the stuff, I try to figure out whether you are a good guy or a bad guy, because there are times when I can make the case for both.

I mean, just bluntly, reading through this stuff, it sounds like at times you are telling him to be cautious and other times, you are telling him to go for it. And I am just trying to get to the truth there. And that is just being blunt, and I find that that is the best way to be in these situations.

But I am troubled by abnormal activity that a seasoned general counsel for the FBI takes possession of evidence from what is obviously a political -- has political connections.

Why would you take possession of that in this unique situation?

Mr. Baker. Sussman showed up and I didn't know what he was showing up with. He handed me materials. And so --

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Mr. Meadows. So he showed up unannounced without --

Mr. Baker. No, no. He did not show up -- he made an appointment.

Mr. Meadows. And he made an appointment. Did he tell you what he was coming over with?

Mr. Baker. I can't remember that. I don't think he did, because when he showed up with materials --

Mr. Meadows. Because I got something you need to see?

Mr. Baker. Yeah. I want to come in and talk to you about something. And I knew Michael, and it sounded serious. And so I am like, okay, I am not going to turn away somebody that wants to come and talk to me.

Mr. Meadows. But, again, the FBI headquarters is not a big place. Why didn't you just say, great, Michael, I will tell you what, let me call the lead investigator up and bring him in.

I mean, do you not see why it would be troubling to a guy like me to say this is abnormal, why would you do this uniquely?

Mr. Baker. All I can tell you, Congressman, is that he gave the material to me, and as soon as he left, I called the investigator -- I don't know if it was Pete Strzok or Bill Priestap -- I called one of those guys, to the best of my recollection, and said this just happened. What do you want to do this about? Please come and get this --

Mr. Meadows. And you described what was in the document?

Mr. Baker. Describe what happened. And I wanted -- I got rid of the material as quickly as I could and put it into their hands.

Mr. Meadows. Did you describe the document to them?

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Mr. Baker. I described what he had told me about the document, because I don't think I read through it. I just, based on what he told me, I knew that I had to alert other people promptly to what this was.

Mr. Meadows. And so within hours, not days.

Mr. Baker. Within minutes.

Mr. Meadows. Within minutes. And --

Mr. Baker. I at least reached out for him. I don't know if I literally --

Mr. Meadows. So you don't, so you don't recall whether it was Bill Priestap or Peter Strzok or whom else?

How many other people did you give it to?

Mr. Baker. No, no, it was -- I only had one set of the materials -- we will talk about the Sussman materials -- I only had one set of those materials. And I put them in the hands of somebody in the counterintelligence division.

Now, I think I talked to Priestap. He may have told me to get to it Agent X, or somebody. I mean, I may have walked it down there. I don't remember. Or he may have sent somebody to get it, but I quickly got it out of my hands and into the counterintelligence division.

Mr. Meadows. So was there a followup interview with the person that gave -- that you gave it to with the person that gave you the information with the attorney?

Mr. Baker. Did they interview the attorney?

Mr. Meadows. Yeah.

Mr. Baker. I don't recall that.

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Mr. Meadows. Do you not find that curious? I mean, here is the thing, is you are getting information that is coming from someone who is being paid, probably, by a political operative, and the veracity of that information should be, at least, acknowledged or tried to be verified, wouldn't you think?

Mr. Baker. Oh, absolutely. And we were --

Mr. Meadows. So why would they not have had an interview with that individual? Were you the go-between so that they didn't have to have that?

Mr. Baker. No, no. After the --

Mr. Meadows. How do you know that?

Mr. Baker. Well, they -- maybe I misunderstood your question.

I don't recall myself participating in an interview with Michael with the FBI present. I don't recall facilitating that.

Mr. Meadows. Yeah. Are you aware of any interview that they had with, you know --

Mr. Baker. I am not aware of that.

Mr. Meadows. I am not either. I mean, we have gone through it.

Wouldn't you find that finding the source of this evidence and the veracity of it and where it came from and how legitimate it is, would you not think that that would be a question that the FBI would normally want to ask and have answered?

Mr. Baker. My understanding was that the counterintelligence division did extensive investigation of that material with a --

Mr. Meadows. But not of the individual?

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So what if that individual actually engaged in an illegal act in order to get that information?

Mr. Baker. It is logical to me that we would go back and interview them --

Mr. Meadows. It is logical to me, too.

Mr. Baker. That it wasn't done --

Mr. Meadows. And it is troubling to me that it didn't happen.

Mr. Baker. I am not sure that I knew that it didn't happen until now.

Mr. Meadows. Okay.

Mr. Baker. Once I passed it off, it was --

Mr. Meadows. So let me ask you this. This unusual way that a couple of pieces of evidence from David Corn and from the attorney at Perkins Coie got into the FBI was unusual.

Were you aware of the unusual steps that the FBI was using with regards to Bruce Ohr and other information coming in after the November elections?

Were you aware that there was a back channel through Bruce Ohr who would interview with Christopher Steele and Glen Simpson and then communicate that information to Joe Pientka who would get it to Peter Strzok and Lisa Page.

Were you aware of that?

Mr. Baker. I don't remember the details as you just described them.

I was aware -- I heard in briefings, conversations, about the

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FBI's interactions with Bruce Ohr. But they weren't something that I focused on --

Mr. Meadows. What were the nature of those briefings?

Mr. Baker. I beg your pardon?

Mr. Meadows. What were the nature of those briefings.

Mr. Baker. These were the sort of the regular briefings that we would have for the Director, for the Deputy Director, the other leadership, by the team that would come and update us on what is going on with the case.

Mr. Meadows. So on a regular basis, you were being briefed that indeed Bruce Ohr was having contacts with these sources and bringing it into the FBI. And you thought that that was appropriate?

Mr. Baker. I don't remember the specifics of what you just said being discussed. I remember Bruce's name --

Mr. Meadows. I am not talking about specifics. I mean, I am talking about -- what I am saying is, you were aware of Bruce Ohr being involved in evidence collection. Is that correct?

Mr. Baker. I am not sure that I recall that. I don't recall that. What I --

Mr. Meadows. You are the general counsel, you had to sign off on stuff. So you are saying that you did not know that? Because either way is troubling.

But you are saying -- you are giving -- your testimony here today is that you did not know that Bruce Ohr was having regular contacts with sources and conveying that information to the FBI?

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Mr. Baker. I was aware that Bruce Ohr had some type of relationship with the source, and that somehow through that mechanism, the details of which I did not know, information was flowing to the FBI. From the source through Bruce to the FBI.

Mr. Meadows. So what you are saying is --

Mr. Baker. -- or directly from the source.

Mr. Meadows. I am sorry. I didn't mean to interrupt. Go ahead.

Mr. Baker. Sorry. At some point in time, it became -- my understanding was it kind of came in both ways.

Bruce and -- was providing information from the source and the source eventually was providing it directly to the FBI or something like that. I didn't, myself, understand the specifics of how that was exactly working.

Mr. Meadows. But as general counsel, would that not be under your purview to oversee?

I mean, would you not have a concern with protocol, and all of a sudden, you have got the DOJ doing the investigation? I mean, why would the DOJ be doing the investigation and not the FBI?

Mr. Baker. It was my understanding that some -- Bruce had some type of pre-existing relationship with the source. That is what I understood at the time.

Mr. Meadows. And so because of a personal contact, the FBI made a conscious decision to allow that to happen?

Mr. Baker. I guess you would say, I guess the answer is yes. The FBI leadership was aware of the relationship between --

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[12:48 p.m.]

Mr. Meadows. So who at DOJ was aware of that?

Mr. Baker. I don't know.

Mr. Meadows. So you are using DOJ officials without the knowledge of the hierarchy at DOJ? That seems strange. Why would you do that? Is that the normal way that you would conduct an investigation?

Mr. Baker. No, it is not normal, but I did not know --

Mr. Meadows. Have you ever known it to happen before?

Mr. Baker. Not that I can think of.

Mr. Meadows. And so let me ask you this, Christopher Steele's relationship was closed by the FBI, was it not?

Mr. Baker. That is my understanding.

Mr. Meadows. And why was it closed?

Mr. Baker. I think it was because he was not following direction.

Mr. Meadows. All right. And so so it was closed for cause?

Mr. Baker. Yes, I guess you would say that.

Mr. Meadows. So you are saying that you used an informant, and they were closed for cause, and yet, now you are aware that they were now using another way to use that same informant after they have been closed for cause?

Mr. Baker. I am saying that I don't know exactly what the nature and scope of the interactions between Bruce Ohr, Christopher Steele, and the FBI were. I just don't know all the details of that. I am sorry.

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Mr. Meadows. I understand you don't know the details, but we have got your name on emails where honestly where you were copied on information, so to say that you didn't have any knowledge it is not supported by the facts. So you are saying today that you actually had some knowledge, you just didn't know the details?

Mr. Baker. That is what I am -- that is what I recall right now.

Mr. Meadows. Okay. So as general counsel you have a source that has been closed for cause, and all the sudden that source gets to be -- continues to be used not once, not twice, but multiple times after that. Does that not break FBI-DOJ protocol for how you handle a confidential human source?

Mr. Baker. I would have to look at the guidelines for --

Mr. Meadows. I have looked at the guidelines. So what would it surprise you to know that that would be breaking protocol, your own protocol within the FBI and DOJ? Would it surprise you?

Mr. Baker. It wouldn't surprise me.

Mr. Meadows. Okay. So I said I was going to yield to the gentleman from Ohio. I am going to let him follow up and then I will ask a few others. Thank you for your candor.

Mr. Baker. Okay.

Mr. Jordan. Thank you, Mr. Baker. So just so I understand, Mr. Sussman contacted you, he reached out to you first, that was the direction, Mr. Sussman?

Mr. Baker. Yes.

Mr. Jordan. Okay. And then how then many meetings did you have

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with Mr. Sussman?

Mr. Baker. So there was one meeting when he handed me information, told me what it was about, and then I passed it off as I just described.

There may have been a follow-up meeting or a conversation because he told us that some elements of the press had this information as well and were going to publish something about it.

Mr. Jordan. So there were two meetings with Mr. Sussman?

Mr. Baker. At least a meeting -- there was one meeting in person for sure, and I can't recall whether --

Mr. Jordan. One meeting when he handed you a document or documents?

Mr. Baker. Yes. And then the next interaction --

Mr. Jordan. Was it plural? Was it several documents or one documents?

Mr. Baker. It was like -- my recollection was it was a stack of material I don't know maybe a quarter inch half inch thick something like that clipped together, and then I believe there was some type of electronic media, as well, a disk or something.

Mr. Jordan. Documents and some kind of thumb drive or some kind of --

Mr. Baker. I think that is right.

Mr. Jordan. Okay. You get that at the first meeting. There's a subsequent meeting where you tells you, hey, the press has some of this information, they are going to print it?

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Mr. Baker. Yes, there is some subsequent conversation like that.

Mr. Jordan. And did he tell you who in the press was going to print it?

Mr. Baker. He did not initially, and so there must have been a third conversation. So initially he did not tell us that. Later on he did.

Mr. Jordan. And can you tell me who that was?

Mr. Baker. Yes, I can.

Mr. Jordan. Was it David Corn? Who printed it?

Mr. Baker. No, it was not David Corn.

Mr. Jordan. Who did print it? Isikoff?

Mr. Baker. No. I am looking at the FBI. Can I go down this road or not, I mean, in terms of explaining?

Mr. Meadows. I don't think they need to protect the media. I think that would be the last thing that they would want to protect here, but --

Mr. Baker. Okay. I just don't want to get in trouble.

Mr. Meadows. I mean, it is open source. Obviously we will be able to figure it out, but who printed it?

Mr. Baker. So they didn't print it initially. It was the New York Times.

Mr. Jordan. Okay. So the second meeting with Mr. Sussman, he tells you, hey, Jim, the stuff I gave you, the New York Times has this information, and they print some of it?

Mr. Baker. That is my recollection.

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Mr. Jordan. Okay. All right. And --

Mr. Baker. Congressman, I am sorry, either in the first meeting or a second conversation, I don't remember the specifics, he tells us -- he tells me that the media has this, okay, he just tells us the media without specifying it, and they are going publish something about it. So we take it back, we look at it. The assessment is we need more time to investigate this before the media publishes it.

Mr. Jordan. Okay. Stop one second, if I can just -- thank you. That is very helpful. The second meeting when he comes to tell you this, who was in that meeting, just you and him or you and someone else and him? Who was in the meeting?

Mr. Levin. I don't think he said it was a meeting. I think he said he wasn't sure.

Mr. Baker. It could have been a phone call. It might have been that I called Michael and said --

Mr. Jordan. You called him this time?

Mr. Baker. I don't specifically remember.

Mr. Jordan. Okay. Just -- I just want to be clear. So you have a meeting, you get the information. Documents and some kind of electronic device. There is a subsequent conversation that you initiate or he initiated, but it comes after that.

Mr. Baker. Yes.

Mr. Jordan. How long after, a week after, a couple days after?

Mr. Baker. Soon, yes. A couple days or a week.

Mr. Jordan. Okay. Then you have been using the plural pronoun.

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You said "we" then looked at it all. Who was the "we" then who expected what you talked about on the conversation and the material you had?

Mr. Baker. I handled the material to the counterintelligence division, and they looked at it, scrubbed it, and look at the electric media. They assessed that my recollection is it was difficult to assess exactly what this was all about and how significant it was, but that they needed more time to evaluate it before the media started publishing stuff about this. So the request was, Jim, can you go back to Sussman and find out who in the media is going to publish this because we might want to ask them to delay.

Mr. Jordan. Okay. And the people who asked you to make that call back to Mr. Sussman and ask him, you know, to delay, who were those people?

Mr. Baker. I don't specifically recall, but I believe it was the --

Mr. Jordan. Priestap.

Mr. Baker. I think it was Priestap, and I think it might be --

Mr. Jordan. Strzok? Peter Strzok?

Mr. Baker. It may have been, but I am also thinking it was the director and/or the deputy director.

Mr. Jordan. So Mr. Comey got involved in this?

Mr. Baker. He may have. I don't specifically recall sitting here today. It is likely, given what this was all about that we briefed him on it.

Mr. Jordan. And Mr. McCabe?

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Mr. Baker. Yes, sir.

Mr. Jordan. And Lisa Page?

Mr. Baker. I don't remember Lisa being involved in this part.

Mr. Jordan. But McCabe, Comey, Priestap, and Strzok you believe were involved, that is the "we" who came to you and said call Mr. Sussman back and --

Mr. Baker. Some combination of those people in a set of conversations over some period of time, yes. I know that is vague. I apologize, but that is what I recall.

Mr. Jordan. Okay. Do you know how Sussman got this material?

Mr. Baker. What I recall is he told me that there were some cyber experts that somehow would come across this information and brought it somehow to his attention, and that they were alarmed at what it showed, and that, therefore, they wanted to bring it to the attention of the FBI.

Mr. Jordan. Did he --

Mr. Baker. They and Sussman.

Mr. Jordan. They. Any names?

Mr. Baker. I don't think I ever found out who these experts were.

Mr. Jordan. Did he indicate that he got this -- may have got some of this information from the Democratic National Committee?

Mr. Baker. I don't recall him saying that.

Mr. Jordan. Did you know when he was giving this information did you know he was working for -- that he did extensive work for the DNC and the Clinton campaign?

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Mr. Baker. I am not sure what I knew about that at the time. I remember hearing about him in connection -- when the bureau was trying to deal with the hack and investigating the hack, that my recollection is that Michael was involved in that process to some degree. I didn't interact with him on that, so I am not sure if I knew that before this meeting or after, but I don't recall him specifically saying --

Mr. Meadows. But you said you were friends with him, right?

Mr. Baker. Yes, sir.

Mr. Meadows. So, I mean, you knew what his career was.

Mr. Baker. Generally speaking.

Mr. Meadows. And you knew generally speaking that he had some involvement with the Democratic National Committee.

Mr. Baker. Yes.

Mr. Meadows. Okay.

Mr. Jordan. Okay. Did you interact with any other attorneys at the law firm of Perkins Coie?

Mr. Baker. I have known them over the years, yes, I have known various people there.

Mr. Jordan. How about in the context we are talking about here relative the Russia investigation.

Mr. Baker. Just Michael.

Mr. Jordan. Just Michael?

Mr. Baker. I think so.

Mr. Jordan. Okay. And did you have any conversations with Mr. Sussman about certain individuals like Mr. Manafort? Did you talk

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about Mr. Manafort at all in this conversation?

Mr. Baker. I don't recall that, no.

Mr. Jordan. Did you talk about Carter Page?

Mr. Baker. No, I don't think so.

Mr. Jordan. Did you talk about anyone else associated with the Trump campaign that comes to mind?

Mr. Baker. I don't think so.

Mr. Jordan. All right. And this all again tell me the timeframe again, this was after the investigation into Russia had begun at the FBI, this was all post.

Mr. Baker. To the best of my recollection I think that is right. So I would say late summer, early fall is kind of roughly what I think.

Mr. Jordan. Okay. Good. Mark, do you have any more on this subject?

Mr. Meadows. So let me ask, so we are now up to potentially three meetings/phone calls.

Mr. Baker. Congressman, I can't say. Something like that.

Mr. Meadows. Listen, I know how memory -- I have a hard time remembering what I had for breakfast, I get that. And yet, it is critically important because if they gave you evidence why was it so important to Andy McCabe and Director Comey that the New York Times hold off on publishing this information?

Mr. Baker. Well, it was more important to Priestap. Priestap was the driving force on that. What I am telling you is --

Mr. Meadows. You said you went back to we, and the we with Jim

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Jordan was all those other people, so -- and we have interviewed Mr. Priestap, and with all due respect he was not the decision maker on a whole lot of this information just to be blunt. I mean, there were other people calling the shots, and I think even he would admit that under a, you know, transcribed interview tapes and so as we look at this I guess the question I have for you is why would -- why would you go back to the New York Times and say not publish it, and if that is the case was the source of the New York Times getting it the very person that gave you the information because why would they have influence with the New York Times?

Mr. Baker. My assessment was that, yes, I don't know if Sussman said this, but my belief was that they had given it to the New York Times as well.

Mr. Meadows. So they give it to the New York Times, they give it to you, and does your bias alarm go off anywhere?

Mr. Baker. I was concerned about the nature of this material from the first instance.

Mr. Meadows. Thank you, and I agree, and there have been times where in the things that I have read I am now getting a face with the name because I have read your name a lot more. You are much more, you know, distinguished than the name would indicate, you know, because Jim Baker has all kinds of different connotations.

Mr. Baker. This is true.

Mr. Meadows. So I say that because here is the concern that I have, everything about this investigation seems to have been done in

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an abnormal way, the way that you have gotten the information, the way that Peter Strzok got information, the way that Bruce Ohr was used, the way that Perkins Coie actually came in and gave you information, the way that the media has been --

It seems like everything is abnormal, and yet, one thing is consistent is that when we look at that there are alarms that would suggest that there is bias, inherent bias at each and every place that fails to get documented. It doesn't show up in the FISA applications that really any at stake. I mean, all of this stuff that we are talking about you would say, well, you ought to look at this with a jaundiced eye, would you agree? And it sounds like you did at times.

Mr. Baker. I had a jaundiced eye about everything, yes. I had skepticism about all this stuff. I was concerned about all of this. This whole situation was horrible, and it was novel and we were trying to figure out what to do, and it was highly unusual. I agree with you completely, but I will tell you when you were asking these questions before, my thinking was then and always in my career, I am following my oath to the constitution. I am going to do my damndest to follow that oath at every single turn, and whether that means that -- whatever that means, I am going to just do that, and without regard to politics quite frankly, and I just -- I am not good enough to sort out the political implications of a lot of things, so --

Mr. Jordan. That first meeting with Mr. Sussman, Mr. Baker, you meet with him, I want to make sure I understand you. He told you at that meeting he was going to give this information to the press, as

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well?

Mr. Baker. This is what I can't remember. I think he said -- it was either in a first conversation or the -- so let me back up. Logically, A, I don't remember, so now I am just using logic to try to figure out. I think he may have said at the first meeting that here is this material, we got it from these cyber people, they're experts, they are worried about it.

Mr. Jordan. And didn't tell you who these cyber people were?

Mr. Baker. He never told me that that I recall.

Mr. Jordan. Okay.

Mr. Baker. And then he said -- sorry.

Mr. Levin. I think the question was did he tell you he was giving it to the press or is that something you surmised he might be doing?

Mr. Baker. I guess I surmised it. I guess I surmised that he had given it to them.

Mr. Jordan. At some point you knew because you went --

Mr. Baker. At some point I knew he had given it to the press. I assumed perhaps, and I think probably accurately that it was him or his firm or somebody.

Mr. Meadows. But our back and forth just a few minutes ago you did acknowledge the fact that he mentioned his connection with the New York Times because that is the only way that he could get them to hold up on the story. If he is the source of the story he can say don't print it because it can't go on the record.

Mr. Baker. He was the source -- he told me the New York Times

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was aware of this. We, the FBI, went to the New York Times and then started a series of conversations with them to try to get them to slow down, and I am --

Mr. Meadows. So when the reporting came out who did it say the source was? You obviously read it. You are intellectually curious enough to have read the report.

Mr. Baker. The New York Times report?

Mr. Meadows. Yes. Listen, we have emails back and forth. You all read more New York Times than the New Yorkers do, so go ahead.

Mr. Baker. So sitting here today I don't specifically remember that article. I may be intellectually curious, but I was also pretty damn busy, and so I just don't remember the details of that.

Mr. Meadows. You don't know who the source was?

Mr. Baker. The source for?

Mr. Meadows. The source for the New York Times article, you don't know who the source is today.

Mr. Baker. Sitting here today I don't recall having that information. It may be in the article, I just don't remember. I assume it was Sussman or somebody connected to him.

Mr. Jordan. Okay. Mr. Baker, are you an expert on the FISA process and FISA applications?

Mr. Baker. I would say generally yes.

Mr. Jordan. And when did you first learn of the Carter Page FISA application?

Mr. Baker. I think it was in a briefing about the Russia

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investigation in general. We were going through the different targets of the investigation, what was happening with each one, and somebody said, yes, we are seeking a FISA on Carter Page.

Mr. Jordan. And do you know about the timeframe when that took place?

Mr. Baker. Late summer, early fall sometime in there.

Mr. Jordan. Same time we are talking about?

Mr. Baker. Yes.

Mr. Jordan. Did you read the FISA before it went to the court?

Mr. Baker. I eventually read the factual section of the initiation. That is the best of my recollection.

Mr. Jordan. And that is the normal course of business at the FBI? Not?

Mr. Baker. No. I hardly read any FISAs when I was there. We had --

Mr. Jordan. Why did you read this one?

Mr. Baker. Because I knew how sensitive it was.

Mr. Jordan. So you felt this -- how many FISAs have you read --

Mr. Baker. I anticipated being sitting here in rooms like this down the road, I seriously did, and I knew that it was -- I knew that it was sensitive. I knew that it would be controversial.

Mr. Jordan. Sensitive or what is another word?

Mr. Baker. It was connected to a candidate -- this person had connections to a candidate for the office of President of the United States. That alone was enough to make me worried about it and made

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me focus on it. And I thought that it would be worth my spending time reading this thing to make sure that given my experience in FISA I could add whatever value I was able to add.

Mr. Jordan. How many other FISAs have you read in your time as general counsel?

Mr. Baker. My time as general counsel, a handful.

Mr. Jordan. So this was exceptionally --

Mr. Baker. This was exceptional, yes.

Mr. Jordan. Okay. What are the requirements to obtain a FISA warrant on a U.S. person? You have asked that.

All right. Did you advise -- what advice did you provide to Director Comey in obtaining this FISA order on someone as you have described associated with a major party's Presidential candidate?

Mr. Baker. I think at some point I spoke to him about that and said that I had read it and thought that it was legally sufficient. And I believe I was also focused on I wanted to make sure that everybody through the system was focused on making sure that there is a legitimate foreign intelligence purpose for this surveillance and highlighting -- because when the director signs a certification one of the things he is signing is that there's a significant purpose of the application is to obtain foreign intelligence, and I wanted to make sure that people were crisp about that and making sure that they were all comfortable, whoever is signing this, that that was legitimate foreign intelligence purpose for this surveillance.

Mr. Meadows. So you read the Woods file?

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Mr. Baker. No, I didn't read the Woods file.

Mr. Meadows. I mean, from what I understand, and I am a novice, maybe you can help me understand this how would you know the veracity of -- the full legitimacy of the FISA application without reading the Woods file?

Mr. Baker. I was reading the -- so I know about the Woods file very well and the existence of it and the purpose of it. So I was aware that there would be a Woods file supporting the allegations in the application. I read the application. I made comments on it. I asked questions.

Mr. Meadows. Yeah but --

Mr. Baker. But I didn't read the Woods file.

Mr. Meadows. -- you didn't read the Woods file. So how can you give advice on whether it is legitimate or not without reading the underlying documents that support the very application that you are making a recommendation on?

Mr. Baker. Well, the Woods file would go to the accuracy of the information in the FISA, not --

Mr. Meadows. That's correct.

Mr. Baker. Correct, but not to the foreign intelligence purpose necessarily.

Mr. Meadows. Well, but here is the -- it gets back to probable cause. You know, you said that whole reason up front as an expert was the probable cause. How could you understand that without reading the Woods file?

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Mr. Baker. As I said earlier I think to the minority, I have participated in one way or another in the review of 10,000 FISA applications, and I don't think I ever read the Woods file contemporaneously with reading the application as it was on --

Mr. Meadows. So would you say your recommendation -- would you say your recommendation then on whether to sign off on it or not was based on incomplete review?

Mr. Baker. No, I would not say that. I would say based on the normal review that I would do at my level --

Mr. Meadows. So let me ask you this, so this is a hard question because some have suggested, and I don't want to make any suggestion, did you ever caution anyone on what may or may not have been included in the FISA application in the absence of other evidence that may have been appropriate to include?

Mr. Baker. I am not sure I understand your question.

Mr. Meadows. All right. So let me rephrase it as good attorneys would say.

There have been some who suggested that there were other compelling pieces of evidence that might have given us a better, more full flavor of the reason for this FISA application, and those documents or information were excluded from the FISA application. Are you aware of any information being excluded from the FISA application?

For example, Bruce Ohr said that he told the FBI that there was bias, there was the potential for bias, that there was potential for conflict in terms of the information he was getting from Nellie Ohr

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sat right where you are sitting and said that he communicated that to the FBI, and yet we can't find that anywhere in a FISA application. Did you caution them on not including that in there? Were you aware that Bruce Ohr said that there might be bias?

Mr. Baker. I don't recall ever hearing that before just right now.

Mr. Jordan. Did you review the three renewals on the FISA?

Mr. Baker. I don't specifically remember reviewing those renewals. I may have looked at one of them. I think there was some that went to court and I heard about it after the fact, and I was like oh, well, I probably should have known about that before, but, you know, the machinery was moving and the renewals they had expiration dates and so on.

So I think the one I focused on most closely was the initiation.

Mr. Jordan. When you review it what is the lag time between when you review it, give it then sign off and it actually goes to the court? Was it days, was it weeks? What was the timeframe?

Mr. Baker. So the way I thought about my review was my review was in parallel to everything else going on. So the applications moving forward other people are reviewing it within the FBI, DOJ is reviewing it. I asked to have a copy so I could look at it and then feed comments back into the stream of the flow of it, right? And so --

Mr. Jordan. You ultimately saw the final, you saw the final copy, final document before it went?

Mr. Baker. I am not sure that -- the final would not necessarily

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have to come to me for approval.

Mr. Jordan. Okay.

Mr. Baker. So there was no delay, and my objective was not to have any delay in processing the thing. What I believe is when I found out that the Carter Page application was ready to go at some point in time I recall having a conversation with the director and just highlighting to him this thing I said a few minutes ago about the foreign intelligence purpose.

Mr. Jordan. In this process were you looking at and reading the factual part of the FISA, this all happened after you had had your conversations with Mr. Corn and he had given you part of the dossier and after your conversations with Mr. Sussman and he had given you whatever he gave you?

Mr. Baker. I can't remember when the initiation was on the Carter Page. Do you guys -- I just don't remember that.

Mr. Meadows. October 21st.

Mr. Baker. So that would have been before. The Corn thing -- October 21st?

Mr. Meadows. 2016.

Mr. Baker. I think the Corn, the positive information with me was slightly after that.

Mr. Jordan. Okay. What about Sussman?

Mr. Baker. Sussman was before that.

Mr. Jordan. Sussman was before?

Mr. Baker. Yes.

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Mr. Meadows. Okay. So you are saying that David Corn gave it to you after you opened on Carter Page, that would be not consistent with a timeline that I have been led to believe.

Mr. Baker. So I am just going on my recollection today. Go with whatever is in the 302.

Mr. Meadows. No, no, no. I don't want to put words in your mouth, but let me just tell you that your conversations with David Corn appear to have happened earlier than October 21st. They appear to happen in September.

Mr. Baker. And he gave us the dossier information?

Mr. Meadows. Well, where did he get the dossier from?

Mr. Baker. Sitting here today I don't remember him telling me that, where he got it.

Mr. Meadows. So you have a personal relationship with this reporter, you continue that personal relationship today, and you are telling me that he has never told you where he got the dossier from?

Mr. Baker. I am not saying that. I am saying I don't remember sitting here today whether he told me where it came from.

Mr. Meadows. So you have no recollection of where he got it from? That is your sworn testimony -- well, it is not sworn.

Mr. Baker. I just can't remember it, Congressman. I know it seems ridiculous. But I just -- I can't remember it, and whatever I knew about it I told the FBI at the time that they interviewed me for the 302.

Mr. Meadows. And so you are just saying your memory -- I mean,

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one of the most unbelievable pieces of evidence and you are in the chain of that evidence, which you said is abnormal, and you can't remember where that came from?

Do you think the FBI would have a problem of you not knowing where that information came from?

Mr. Baker. I don't know. I am sure they asked me, and I told them whatever he told me. I assumed that he got it from the -- I think I assumed at the time or knew, he may have told me, that he got it from Simpson or somebody acting on Simpson's behalf. Which is my --

Mr. Meadows. So subsequent to that point -- obviously you have had multiple conversations with him. Has he told you since that point where he has gotten it?

Mr. Baker. I don't think so. But I believed -- my understanding at the time was that Simpson was going around Washington giving this out to a lot of different people and trying to elevate its profile. And so we had heard that it had been given to members of the media, and I assume David was there for one of the people who got it from Simpson.

Mr. Jordan. Okay. At what point did you know that the dossier was financed by the Clinton campaign and the DNC?

Mr. Baker. I don't remember exactly when, but I think I knew that -- I think I knew that at some point in this process.

Mr. Jordan. Before or after? Before the FISA application was taken to the Court or after?

Mr. Baker. I can't remember. I know that I didn't know all the

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facts with respect to the providence of this thing at the time of the FISA application. I think I was asking some questions in my notations about find out more information about it.

Mr. Jordan. Would you have been comfortable signing off on the FISA application without the dossier being part of it? In other words, was the dossier a central element to that in your mind?

Mr. Baker. The dossier was certainly an important part, and to the extent that we were going to include it then we were obligated to talk about Simpson and what the hell we knew about him -- I am sorry, what we knew about him. And but there were other things in that application that to me were alarming, as well. I am not going to sit here and say that there wouldn't have been probable cause or that there would have been probable cause without the dossier. I would have to go back and look at it again, but there were other activities of Mr. Page that were alarming to me that I thought certainly merited an investigation and --

Mr. Jordan. Do you think it is important that the judge in the FISA court know who paid for the dossier, that information should have been made clear to the judge of the FISA court?

Mr. Baker. So I remember that in the -- I am not able to give you a clean answer on that. I can -- the Court needs to be apprised, absolutely needs to be apprised of all the material facts. And so I believe that we put language -- again, I haven't read it in a long time, I believe we put language in the application to try to alert the Court to the fact that there were a range of issues with respect to the

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providence of this information and the relationship that we had with respect to Mr. Simpson and his credibility.

Mr. Jordan. Do you know if President Obama or anyone at the White House knew about the existence of the Carter Page FISA?

Mr. Baker. I don't recall sitting here. I don't recall ever hearing that before, but I don't remember.

Mr. Jordan. You don't remember or you don't know?

Mr. Baker. I don't remember ever having heard that.

Mr. Jordan. Okay.

Mr. Breitenbach. I am sorry, would the White House ever have knowledge of an ongoing FISA?

Mr. Baker. Sometimes, especially like in a counterterrorism area.

Mr. Breitenbach. Would they have knowledge as to the -- would the Woods file or anything related to the Woods file ever be presented to the White House?

Mr. Baker. I would highly suspect that it would not be. I would be quite surprised if it were.

Mr. Meadows. So did you review the Comey memos?

Mr. Baker. Yes.

Mr. Meadows. And why did you review the Comey memos?

Mr. Baker. I reviewed them for a couple different purposes. One, he gave some of them to me contemporaneously, so I reviewed them. He asked me to take a look at them and so I read them then. And then eventually I also read all of them in connection with a classification

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review that we did of all the memos as a complete set.

Mr. Jordan. How about the McCabe memos, any of those?

Mr. Baker. I was aware of the McCabe memos, but I don't recall ever reading them.

Mr. Meadows. Were you in the meeting when deputy AG Rod Rosenstein suggested to wire tap or record the President of the United States as has been recently reported allegedly in the McCabe memos?

Mr. Baker. I was not at those meetings, but I heard about those meetings.

Mr. Meadows. And how did you hear about those meetings?

Mr. Baker. I heard about them, I believe, from Andy and from Lisa.

Mr. Jordan. At the time?

Mr. Meadows. At the time?

Mr. Baker. Shortly thereafter.

Mr. Meadows. So Andy and Lisa came to you and said the DAG is suggesting that we tape the President of the United States?

Mr. Baker. What they told -- I can't remember specifically who told me. It was I believe to the best of my recollection it was some combination of them that they told me that there had been a conversation with the DAG about the idea of the DAG wearing a wire into a conversation or conversations with the President.

Mr. Meadows. Did they take that seriously?

Mr. Baker. Yes.

Mr. Jordan. When?

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Mr. Baker. I beg pardon?

Mr. Jordan. When did this happen?

Mr. Baker. I believe this happened in the immediate aftermath of the firing of Director Comey.

Mr. Jordan. So May 9 Mr. Rosenstein writes the memo outlining why it was appropriate to fire Director Comey. Before we get to the question we want to ask here I want to ask you this, were you involved in any way in drafting that memo or reviewing that memo that Mr. Rosenstein wrote?

Mr. Baker. No. I saw it later, but not at the time.

Mr. Jordan. So that happens on May 9, and then sometime shortly thereafter there is this meeting. You were not in the meeting?

Mr. Baker. I was not in the meeting.

Mr. Jordan. But shortly thereafter you heard about the meeting and you heard about it from Mr. McCabe and Ms. Page?

Mr. Baker. I think I heard it from Mr. McCabe. I am quite confident I heard it from Mr. McCabe. I think I may have also heard about it from Lisa, but I don't specifically remember that --

Mr. Meadows. And were they in that meeting?

Mr. Baker. My understanding was yes.

Mr. Meadows. Who else -- did they say who else was there?

Mr. Baker. People from the DAG staff, but I am not sure that they specifically told me who it was, but it wasn't just them and the DAG, it was the DAG and --

Mr. Jordan. Scott Schools?

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Mr. Baker. He could have been, but I don't specifically remember.

Mr. Jordan. Bruce Ohr?

Mr. Baker. No, I don't think so. There was the chief of staff to the DAG at the time whose name I am drawing a blank on.

Mr. Jordan. Becky? No, that is on your side.

Mr. Baker. I want to say Jim Crowell maybe.

Mr. Jordan. Yes. How about Peter Strzok, was he there?

Mr. Baker. I don't think so.

Mr. Jordan. Okay.

Mr. Baker. This was -- to the best of my recollection this was between the time Director Comey was fired and when the special counsel was appointed.

Mr. Jordan. Right. Between the 9th and 17th. So tell us about that conversation that you had with Mr. McCabe and/or Ms. Page.

Ms. [REDACTED] Congressman, I just want to be clear on something. To the extent that Mr. Baker goes into the substance of what may have been in the memo if these conversations go into what is in the memos the memos are evidence in the special counsel --

Mr. Meadows. We are talking about a conversation. We get that because it is part of that, but we are talking about a subsequent conversation that happened perhaps around a water cooler or a coffeepot, you know, whatever. I get where you are coming from, but we are talking about --

Ms. [REDACTED] Okay. Okay.

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Mr. Meadows. Mainly because I don't believe the memos any ways, and so this is actually helping me understand what was happening. I have my questions having interviewed Mr. McCabe on the veracity of those memos any ways, but go ahead.

Mr. Baker. So, I am sorry, what do you want me to answer?

Mr. Jordan. Describe the conversation you had with Mr. McCabe and/or Lisa Page regarding the meeting in the DAG's office where he said that he was thinking about recording the President.

Mr. Baker. So what I recall is that there were -- that they, not me, they were going to -- they were having a series of meetings and conversations with the DAG and his staff trying to figure out what to do in the immediate aftermath of the firing.

The DAG was having a hard time with the blow-back, I guess you would say, from the firing and the extent to which that he -- his recommendation to the President had been used to justify the firing. I understood that he thought that he had been used or misused with respect to the firing and that he was quite alarmed by this whole situation.

In the context of those conversations at some point in time I thought it was -- my understanding was it was the deputy attorney general who came up with the idea of wearing a wire into a conversation with the President and that my understanding from my conversations with at least with Andy and/or Lisa was that they took it as a serious statement, that it was a serious thing to think about.

Mr. Meadows. And the reason he was going to wear a wire was to --

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Mr. Baker. Well, that is a good question. It was not exactly clear.

Mr. Meadows. -- get what kind of evidence?

Mr. Baker. Evidence with respect -- so I guess -- okay. My understanding would be it would be evidence with respect to the President's obstruction of the FBI's investigation.

Mr. Meadows. Into what?

Mr. Baker. Into Russia.

Mr. Meadows. And how that played into the Comey firing?

Mr. Baker. Yes, yes, the extent to which the firing of Director Comey was part of an effort to obstruct the FBI's investigation into Russia. That is what I understood from the context and what --

Mr. Meadows. But you reviewed the Comey memo.

Mr. Baker. Yes, sir.

Mr. Meadows. And you actually apparently wrote some of the Comey memos, is that what you are saying or he just shared them with you, you helped with the drafting?

Mr. Baker. No, I never helped with the drafting.

Mr. Meadows. Okay. So you just reviewed them --

Mr. Baker. I reviewed them.

Mr. Meadows. -- for typos, or --

Mr. Baker. No.

Mr. Meadows. Why did you review them?

Mr. Baker. No, no. He had conversations with me -- so, there are a lot of memos, right? So --

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Mr. Meadows. Because if there are copious notes of his own he doesn't need your refreshing because you weren't in the meeting.

Mr. Baker. No, but he would tell me about -- you have to ask me why he told me exactly, but he was telling me about interactions he had had with the President, so he would give -- in some instances he would give me an oral description of what his interaction was with the President and then he would say, and I wrote a memo on this, get it from Rybicki, he has got it, take a look at it. Or sometimes he handed them to me.

Mr. Meadows. Because the whole obstruction case, Jim, I guess question is you have read the memos, you have heard Director Comey testify. I in reading the memos and hearing him testify it didn't sound like he felt intimidated by the President at all based on those memos. I mean, I would use the memos as a defense, wouldn't you agree with that?

Mr. Baker. Well, so there is two things. One, what did the President -- I am not going to be able to analyze this all here sitting here right now, but what did the President intend, what did he try to do, and what were we willing to do, and were we the type of people who were going to be obstructed and tolerate that.

So that we would not be obstructed was clear and what exactly the President was trying to achieve was difficult to ascertain.

Mr. Jordan. I understand. We have a limited amount of time. So, Mr. Baker, you said your understanding was based on what Mr. McCabe and Ms. Page told you that Mr. Rosenstein was contemplating recording

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the President because of the obstruction of justice issue?

Mr. Baker. That is what my understanding was. I may be surmising that.

Mr. Jordan. Was there anything talked about the 25th Amendment issue?

Mr. Baker. Yes.

Mr. Jordan. So both.

Mr. Baker. Yes.

Mr. Jordan. So both. And you took their conversation as completely serious that Mr. Rosenstein was serious about wearing a wire and recording the President for both of those reasons?

Mr. Baker. No, no. I didn't connect the 25th Amendment thing to the wire. Maybe it was my mistake mentally. I connected that more to the obstruction matter. The 25th Amendment conversation, my understanding was that there was a conversation in which it was said I believe by the DAG that there were -- that there were two members of the cabinet who were willing to go down this road already.

Mr. Meadows. And so they reached out to you because they were looking for legal advice, that is why they were sharing this with you?

Mr. Baker. No. They came back to me -- they would come back from these meetings, and we would have conversations --

Mr. Meadows. So you had little gossip sessions?

Mr. Baker. Beg pardon?

Mr. Meadows. You would have gossip sessions?

Mr. Baker. No. He was my boss. He would come, and I was the

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general counsel of the FBI, so he was seeking counsel, Jim --

Mr. Meadows. No, that is what I was asking. You --

Mr. Baker. Jim, help me figure out --

Mr. Meadows. So they came back to you from this meeting where Rod said let me wear a wire, tape the President, and they were asking you for legal advice.

Mr. Baker. Not legal advice, but counsel. How do I deal --

Mr. Meadows. Legal counsel. What is the difference?

Mr. Baker. I wouldn't even say it was necessarily legal counsel. It was just what do you think about this, how am I supposed to deal with this? I am now at that point Andy was the acting director. He needed help figuring out what to do, and I was there to help him.

Mr. Meadows. So why did you not blow the whistle? Because this would not just have I think ethical concerns, but it would also have national security concerns somebody going into an Oval Office wearing a wire, why would you not blow the whistle at that point, Jim?

Mr. Baker. Was it I would blow the whistle on some type of unlawful activity, and it was --

Mr. Meadows. So it was just contemplated unlawful activity?

Mr. Baker. I don't know that it was unlawful.

Mr. Meadows. Unethical.

Mr. Baker. I don't know that it was unethical.

Mr. Meadows. So you had never gone to your FBI agents that they would wear a wire and go into the Oval Office and tape the President of the United States? I find that hard to believe.

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Mr. Baker. I never did a legal analysis of this matter because after the conversation came up it was quickly dismissed.

Mr. Meadows. Who dismissed it?

Mr. Baker. A, I don't really know, but, B, my belief is that it was just not something that made any sense to do, it was too risky, it just would not pay the benefits. It wouldn't obtain the information that they thought it would obtain, so it just was one of these things that didn't make sense from a commonsense perspective, despite any legal analysis.

Mr. Jordan. Do you know how the New York Times obtained this information?

Mr. Baker. Which information?

Mr. Jordan. The information about the McCabe -- the story that was written a week and a half ago about the McCabe memos and the fact that Mr. Rosenstein had this conversation in the presence of Mr. McCabe and Ms. Page, information you have just been talking about, do you know how they got a hold of this information?

Mr. Levin. Again, I am not going let him answer any questions about leaks.

Mr. Jordan. Did you talk -- Mr. Baker, have you talked to the New York Times about this information?

Mr. Levin. I am just not going to let him -- without in any way suggesting he has, I am not letting him answer any questions about conversations with reporters going in that direction, so I am just not allowing that.

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Mr. Jordan. I am sorry, Mark. Go ahead.

Mr. Meadows. So are you suggesting this this is part of the criminal investigation? Because this just happened. This would be beyond the scope, so what reason are you giving us for not answering this question?

Mr. Levin. There is still an ongoing investigation, and I don't know what the scope of it is.

Mr. Meadows. I beg your pardon?

Mr. Levin. There is still an ongoing investigation that the department hasn't closed, and I don't know what the scope is, and I don't know --

Mr. Meadows. Yes, but this lead just occurred, so it would have had to have been --

Mr. Levin. I am sorry, I am not allowing it. That is the answer.

Mr. Jordan. Let me try it this way. You told us that you have talked to Mr. Corn. Have you ever talked with the New York Times about the Russia investigation?

Mr. Levin. Again, I am not allowing the question. I am not allowing him to answer questions -- obviously you can ask whatever you want. I am not allowing him to answer questions about that.

Mr. Jordan. Thank you.

Mr. Meadows. We are out of time, so maybe a 5-minute break if you all want one, and then minority will --

Mr. Levin. Again, I apologize, it is my fault, but we will stop at 2, and then we can always arrange to come back if it is necessary.

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Mr. [REDACTED] As a cleanup matter, with respect to the request for the name of the GS-15 employee based on to confidential nature of the hearing, the general counsel has approved the release of the name Sally Moore.

Mr. Jordan. Do I understand we are done at 2:00? Is there a long break? Are we coming back or is 2:00 --

Mr. Meadows. Set up another time to come back.

Mr. Jordan. Another day. Okay. Thank you, guys.

Mr. Levin. Are we done now or are we going to go until 2:00?

[Recess.]

BY MS. SACHSMAN GROOMS:

Q Back on the record. It is 1:37. I am Susanne Grooms.

A Yes.

Q Can you explain what the atmosphere was like at the FBI after the President fired Jim Comey?

A I am not sure that I can reduce it to one or two words. It was an, I guess, horrible atmosphere. It was shock, dismay, confusion, at least initially that night and then -- and then a sense of resolve that came pretty quickly as well to continue the FBI's mission. And as I was saying earlier to the Congressman, make sure that we were all adhering to our oaths to the Constitution and executing our responsibilities.

Q Was there a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the FBI's investigation into the Russia matter?

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A Yes.

Q Was that a concern you had?

A Yes.

Q Was that concern shared by others?

A I think so, yes.

Q Who? Who else?

A The leadership of the FBI, so the acting director. I can't remember if we appointed an acting deputy director immediately. The heads of the national security apparatus, the national security folks within the FBI, the people that were aware of the underlying investigation and who had been focused on it.

Q Was there discussion about opening a case into the obstruction of justice matter?

A I am looking at the FBI to see if you have any objection to me answering this question in this format.

Ms. [REDACTED] Could you restate your question, please?

Ms. Sachsman Grooms. Was there discussion about opening a case to investigate the obstruction of justice matter?

Ms. [REDACTED] Okay. So that would -- that would call for a yes or no response. If we go further into that we may have to stop the witness from answering.

Mr. Baker. Yes.

BY MS. SACHSMAN GROOMS:

Q Was any of that discussion had with the Department of Justice?

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A Not by me, and I can't recall if anybody in particular had that conversation early on with the Department of Justice. I think eventually, yes, but I am not sure like in the first day or couple of days whether we had a conversation with the department about that.

Q Did individuals in leadership at the Department of Justice share the concern of leadership at the FBI that the President had fired Director Comey as part of an attempt to obstruct the FBI's investigation into the Russia matter?

A I believe the answer to that is yes. I am not sure that anybody has specifically told me that personally, but that is my understanding.

Q And where do you get that understanding?

A From conversations with other FBI executives.

Q FBI executives that communicated to you that they had been talking to people at DOJ or --

A Yes, yes.

Q So in the previous round you mentioned that at some point you had a conversation with either Mr. McCabe or Lisa Page or maybe both about the idea of the Deputy Attorney General wearing a wire. Is that accurate?

A Yes.

Q Who was the conversation with?

A My conversation?

Q Yes.

A I believe it was with Andy McCabe and either at the same time

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or later I had a similar conversation with Lisa Page, I think.

Q And you were not there during the Deputy Attorney General's conversation?

A Correct.

Q And you don't know specifically who was in the room during the Deputy Attorney General's conversation?

A I don't know specifically who was in the room.

Q And when -- I believe you said that the issue had been dismissed rather quickly. Is that accurate?

A Yes.

Q Was it dismissed --

A Not immediately, but rather quickly, yes.

Q Was it dismissed during the same meeting?

A My recollection is that there were discussions about it over a longer period than the course of one meeting. It was relatively short, but I don't believe it was just in the one meeting that it was dismissed.

Q And the conversations that continued having after the meeting were conversations at the FBI. Is that right?

A So the FBI, the acting director Andy McCabe and others were having conversations with the department and then after the fact I would hear about them.

Q So you are now telling us hearsay information about conversations that other people had, right?

A I am telling you information that I heard from people who

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were in the meeting who told me about what happened afterwards.

Q And the issue was dismissed because it didn't make any sense. Is that right?

A It just didn't make common -- yes.

Q Did you think it was a good idea?

A I am not sure that I ever reached that conclusion because it was kind of dismissed so quickly. So I saw the risks of it. I saw some potential benefits to it, but I am not sure that I ever came to -- at that time I don't believe I came to a final conclusion like, yes, we should do this or, no, this is terrible. It was just -- it was a stunning kind of idea and one that had all kinds of implications and problems associated with it. And so, yes -- but there was not just one conversation about it, there were more than one conversation about it that I was present at to the best of my recollection.

Q And the conversations, that you were present at, nobody from the Department of Justice was present at. Is that right?

A That is correct.

Q And the conversations you were present at who else was present from the FBI?

A I believe it was Andy McCabe, Lisa Page, and eventually it might have been Carl Ghattas, as well, who was the head of the national security branch at the time.

Q And those took place in a very short period of time?

A Yes.

Q Is that --

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A Excuse me, Bill Priestap may have also been present for one of those conversations. I am sorry.

Q And the short period of time was matter of hours, a matter of a day, 2 days --

A A couple of days or something, yes.

Q And how did you learn that the idea had been dismissed?

A I don't think there was ever a formal decision at a meeting where let's dismiss this. It just kind of didn't -- it was an idea that just didn't go anywhere because it was too impractical, too risky, and unclear that it -- unclear that it would produce any results that would be useful.

Q You also said that you were aware, again not in any conversation with but of some hearsay information around a conversation about the 25th Amendment. Is that accurate?

A Yes.

Q Was the 25th Amendment conversation had in the same conversation as the wire conversation?

A I don't recall that. They were at or about the same time.

Q And you were in neither of those conversations, correct?

A Correct.

Q So at or about the same time you don't know whether they were part of the same conversation or different conversations. Somebody told you that the DAG had spoken about the 25th Amendment. Is that accurate?

A Andy McCabe told me that the DAG had talked about the 25th

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Amendment.

Q And what did Mr. McCabe tell you?

A To the best of my recollection he told me that the DAG said that he had at least two members of the cabinet who were ready to invoke the 25th Amendment.

Q And what happened after that during that conversation? Did Mr. McCabe tell you anything else?

A I am sure he told me other things in that conversation, but it was in part both of those things were relayed to me with other information with respect to the -- what the DAG was going through at the time and how he was thinking about his involvement in the firing of Director Comey and how he was thinking about proceeding after that.

Q Did people tell you that the DAG was upset?

A Yes.

Q Did they tell you that he was making jokes?

A No.

Q Did they tell you that --

A This was not a joking sort of time. This was pretty dark.

Q And did they -- did Mr. McCabe explain to you in what context the 25th Amendment came up?

A Again, I think the DAG was struggling with figuring out what to do in the aftermath of the firing of Director Comey, and he was talking about and saying lots of different things. And my understanding these were long meetings that they had over at the department with the deputy, the deputy attorney general and that they

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were talking about lots of things, and these were two pieces of information among others that I heard about.

Q What kinds of other things?

A So trying to understand the role that the deputy attorney general played in the firing, the disclosure of this written -- I guess there was a draft of -- a first draft of something that the President or somebody on his behalf had written. I think we got a copy from the DAG of the memo or a document, whatever you want to call it, that he had written and sent to the White House.

There were discussions about what investigative steps made sense next. There were discussions about the Deputy Attorney General's sort of state of mind at the time that all this was going on, and then there were discussions about how we should proceed forward with a special counsel and so -- and what the FBI was going to do in terms of investigations that it might open in response to the firing as I just said a few minutes ago. So there was a range of topics that we discussed associated with all this. I am happy to say more about that if you want to ask me more questions, but --

Q When Mr. McCabe spoke to you about these conversations was it immediately after the conversation?

A I think so. I think it was -- it was either the -- it was either that day or the next day.

Q And what was Mr. McCabe's state of mind?

A At this point in time Andy was unbelievably focused and unbelievably confident and squared away. I don't know how to describe

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it other than I was extremely proud to be around him at that point in time because I thought he was doing an excellent job at maintaining his focus and dealing with a very uncertain and difficult situation. So I think he was in a good state of mind at this point in time.

BY MS. SHEN:

Q So, Mr. Baker, last round there was discussion about the Carter Page FISA application. I believe you said that you had reviewed the factual part of that application?

A That's my recollection.

Q Okay. So I would like to introduce as Exhibit 1 pages 15 to 17 of the Carter Page FISA application, which was heavily redacted and released under the Freedom of Information Act.

[Baker Exhibit No. 1

Was marked for identification.]

BY MS. SHEN:

Q And on Page 15 there is a section entitled, "Page's Coordination with Russian Government Officials on 2016 U.S. Presidential Election Influence Activities?"

Mr. Baker, do you recall reading this portion of the document?

A I don't recall this specifically. As I flip the page and look at page 16 I remember a long footnote that seems to go on for at least a couple pages here. That I remember, and I remember focusing on that and spending some time on that.

Q Okay. So if you will bear with me I will just sort of quickly read right underneath it says, "According to open source information

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in July 2016, Page traveled to Russia and delivered the commencement address at the New Economic School. In addition to giving this address, the FBI learned that Page met with at least two Russian officials during this trip. First, according to information provided by an FBI confidential human source, (Source #1)."

And then there is a footnote, footnote 8, that references down to the page, and I believe that is the footnote you just referenced about, you know, going on for at least a page. And in that footnote it says, "Source #1's reporting has been corroborated and used in criminal proceedings and the FBI assesses Source #1 to be reliable."

Mr. Baker, is it a good indicator of a source's reliability when their information can be corroborated by the FBI?

A Yes.

Q Okay. Is it a good indicator of a source's reliability when their reporting has been used in criminal proceedings?

A Yes.

Q Okay. So it continues, "Source #1 has been compensated," redacted, "by the FBI and the FBI is unaware of any derogatory information pertaining to Source #1." So if I am reading this correctly, there was no derogatory information found by the FBI regarding Source #1 in this case, is that consistent with your understanding?

A So the people filing the FISA application and the people who checked the Woods file to verify that the way this works is that they would not have had any information that was derogatory about Source

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#1 at the time that this was submitted.

That there might exist in the files of the FBI or in somebody's memory some interaction that might be derogatory and that it didn't make it into the files I don't know that that happened or didn't happen. That kind of thing in theory, in theory could happen. So, but the people responsible for this FISA should have believed that that was accurate at the time and should have had documentation to support that assertion.

Q Okay. So the people according to the normal procedures of FISA, the information they had in hand there was no such derogatory information?

A There shouldn't have been, right, because I believe they would not try to file a false statement with a FISA court under any circumstances knowingly. No one would.

Q Okay. And just for clarification, you know, it is my understanding that Source #1 would be referring to Christopher Steele.

A I think that is right.

Q Okay. So I will ask you to turn to page 16. The last sentence in the first paragraph says, "The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign." So I believe that refers to Glenn Simpson who may have hired Christopher Steele to conduct research. Is that consistent with your reading of this?

A I don't remember who the identity was of the person.

Q Okay. So, you know, there have been allegations that the

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FBI and the Department of Justice abused the FISA process because they failed to disclose a possible political motivation from Christopher Steele to the FISA court judges.

Given the information in this footnote that was provided, including the FBI speculating that, you know, this information may have been used to discredit this candidate's campaign, do you believe this FISA information was sufficiently transparent? Do you believe there was abuse in failing to disclose additional information?

A I guess I would answer it a couple ways. One, I don't know what other information there is in the FBI files with respect to Christopher Steele. I don't fully know all of that, and I have heard some things today about the interaction between Bruce Ohr and Christopher Steele that I didn't to the best of my recollection I didn't know before. So I am not claiming to know everything that there is about -- that there is out there with respect to Christopher Steele.

What I would say is that that sentence at the end of the first paragraph on page 16, "The FBI speculates that the identified U.S. person was likely looking for information that could be used to discredit Candidate #1's campaign" puts -- is sufficient to put the FISA court on notice that there may be a political motive behind all this and that the court should take this into consideration. And so to me I can't see what is behind the blackout and I don't remember it.

My recollection is when I -- whatever last draft that I read about this, that I read of this application, whatever briefing I received from my folks about what was in the application, my assessment was that

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the information that we were providing was adequate and consistent, it was adequate to put the FISA court on notice of the important information that it needed to know, and we were doing so in way that was consistent with our practice with the FISA court that I have been involved with for 20 years.

Q So is it fair to say that because it appears that the FBI tried to put the FISA court on notice about possible political motivations that is a strong indication they were not trying to abuse the FISA process?

A I don't think -- I know that the FBI was not trying to abuse the FISA process. I never heard anybody say anything of that nature, and I certainly would not have countenanced that whatsoever.

Q Okay. Given that this footnote seems to span at least a page, how likely do you think it is that the FISA judges missed the footnote and did not read this? Do FISA judges tend to read footnotes?

A It is highly unlikely that anybody would miss a footnote that is this long, and I just note for the record it is not in small type or anything like that, it is in normal font.

Q Okay. I will just go further down on the same page. It says, "Notwithstanding Source #1's reason for conducting the research into Candidate #1's ties to Russia, based on Source #1's previous reporting history with the FBI, whereby Source #1 provided reliable information to the FBI, the FBI believes Source #1's reporting herein to be credible."

Sitting here today, do you agree with that assessment?

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A So I want to be careful. I don't know everything about Mr. Simpson, so today I can't assess that. I just don't know enough of the details. It would not be appropriate for me to say that.

Q Okay. And we --

A I certainly believed this at the time. I am sorry.

Q Okay. Thank you. And just related to something we discussed in the previous round, this paragraph seems to assert that, you know, there is an awareness that, you know, that a reason for conducting the research, you know, may have political motivations, but nonetheless based on other information such as a credible, you know, previous history that the FBI ultimately concluded that Christopher Steele was a credible source. Do you agree that Christopher Steele was a credible source?

A That is what I thought at the time. Again, I don't know everything that he -- I don't know everything that is to be known about him, but based on the information presented to me and the way this was articulated, I thought that he was a credible and reliable source and certainly enough to put into a FISA application with the appropriate caveats and other disclosures to the Court associated with it.

Ms. Shen. Okay. Thank you.

Mr. Levin. This is probably a good time to stop then. We will work with Mr. Baker for another time.

Ms. Shen. Okay. Thank you.

[Whereupon, at 2:00 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing \_\_\_\_ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

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Witness Name

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Date

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EXECUTIVE SESSION

COMMITTEE ON THE JUDICIARY,

JOINT WITH THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JAMES A. BAKER (DAY 2)

Thursday, October 18, 2018

Washington, D.C.

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

Present: Representatives Meadows, Jordan, Ratcliffe, and Gaetz.

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Mr. Somers. Good morning. This is a continuation of the Committee on the Judiciary and the Committee on Oversight and Government Reform's transcribed interview of James Baker, the former general counsel of the Federal Bureau of Investigation.

I'm not going to read through the entire preamble again. I would just remind the witness that he is required to answer questions to Congress, including congressional staff, truthfully in a transcribed interview.

And the time is now 10:03. I'll turn it over to Mr. Jordan to begin our first hour of questions.

Mr. Jordan. Thank you.

Mr. Baker, thank you again for being here.

I want to pick up where we left off a couple weeks ago. You'd indicated that Mr. McCabe, Andrew McCabe, and Lisa Page came to you after a meeting with Deputy Attorney General Rosenstein where Mr. Rosenstein had said that he was looking at recording the President.

Mr. Baker. I'm sorry, Mr. Jordan. I'm having a little hard time hearing. I don't know what the --

Mr. Jordan. Okay. I'll do it again.

So, when we left off a few weeks ago, we were talking about a meeting you had with Andy McCabe and Lisa Page shortly after the meeting they had with Deputy Attorney General Rosenstein where Mr. Rosenstein indicated he was looking at the possibility of recording the President of the United States.

Tell me when that meeting that you had with -- when was the meeting

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you had again with Ms. Page and Mr. McCabe?

Mr. Baker. Okay. First of all, if I can just say, at some point in time, there's something I remembered from last time I'd like to -- that I didn't remember when we were sitting here together. I'd look to talk about that at some point and put that on the record. I don't want to interrupt your flow of questions.

Mr. Jordan. Go do that. If there's something you want to clarify from last time, do that upfront, and then we'll go right back to my question.

Mr. Baker. Okay. Sure. It's not directly related to this, and I'm happy to answer your question that you just asked me.

Mr. Jordan. Okay.

Mr. Baker. So I recalled after -- just actually a few days ago -- that another incident when a -- this time an attorney on behalf of a client came to me and wanted -- came specifically to me and wanted to make information available to the FBI in the form of electronic media that he wanted to get into the --

Mr. Jordan. Different case or same case?

Mr. Baker. Different case.

Mr. Jordan. Okay.

Mr. Baker. Well, a completely different case. Different attorney, different client, but insistent on meeting only with me or the Director. And then he did not have the material with him at the time. We had to actually dispatch FBI agents to go to a -- from a field office to go collect this material. It was in the -- to the best of

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my recollection, it was roughly in the late summer, fall of 2016 timeframe.

Mr. Jordan. Can you tell us the case?

Mr. Baker. It was Larry --

Mr. [REDACTED] Mr. Baker, please do answer the question, but if it's in a -- if it's a matter that's totally unrelated to what's being discussed here, I'd ask you not to discuss any specific investigative details. Can you answer the question?

Mr. Baker. Can I give the name of the attorney?

Mr. [REDACTED] The name of the -- absolutely. Yes, sir.

Mr. Baker. Okay. The name of the attorney was Larry Klayman, and he also brought one of his associates with him whose name I don't recall at this point in time, and it was on behalf of a particular client. Anyway, that's what I recalled. And we were talking about that last time, and I did not remember that incident. Now I do.

Mr. Jordan. Okay. Thank you. Let's go back to Mr. McCabe, Ms. Page, and --

Mr. Breitenbach. I'm sorry, Mr. Jordan. Can I just follow up?

Mr. Jordan. Sure.

Mr. Breitenbach. With regard to Mr. Klayman coming to visit you, was it with regard at all to surveillance concerns that he had concerning the general fact pattern that we're here to discuss today?

Mr. Baker. Well, it had to do with surveillance. It had to do with an allegation about unlawful surveillance, but it was -- I believe it was different from any fact pattern that we talked about last time

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here.

Mr. Breitenbach. Unlawful surveillance of whom?

Mr. Baker. Of Americans, including government officials.

Yeah. I can go -- I mean --

Mr. Jordan. Who was his client?

Mr. Baker. Can I just -- I'm turning to the Bureau to describe this. So his client was an individual named Dennis Montgomery, who I believe, to the best of my recollection, he said that he had been a U.S. Government contractor and, in the course of that work, had come across evidence of unlawful surveillance by the government of Americans -- and including government officials -- and wanted to give that information to the Bureau, which eventually did take place.

Mr. Jordan. And was this -- I'm sorry. Go ahead.

Mr. Sommers. During what time period?

Mr. Jordan. Yeah. That's what I was going to ask.

Mr. Baker. To the best of my recollection, it's in the late summer, early fall 2016.

Mr. Sommers. And the surveillance, what time period was that?

Mr. Baker. I'm not entirely sure what the timeframe was. It was a significant -- it was -- one of the issues in the case was it was a large amount of data that he had that he wanted to provide, that these -- these disks or other media had a lot of data on them about this, allegedly.

Mr. Sommers. Surveillance by whom?

Mr. Baker. By the U.S. Government itself of Americans,

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unlawfully.

Mr. Jordan. Interesting. All right. Thank you. All right. Let's go back to the McCabe-Page-Rosenstein meeting.

When did you talk to Lisa Page and Andy McCabe about the meeting they had with Mr. Rosenstein?

Mr. Baker. I don't remember the particular date. I believe it was shortly after they had met with the Deputy Attorney General, and this was in the days immediately after Director Comey was fired, which I'm drawing a blank on right now.

Mr. Jordan. Just to be clear, then, was it minutes after the meeting, hours after the meeting, or days after the meeting?

Mr. Baker. I believe it was the day after.

Mr. Jordan. The day after?

Mr. Baker. I think so.

Mr. Jordan. Okay. So was that --

Mr. Baker. I believe there were a couple of different meetings, and they -- I believe there were a couple of different meetings, and each time, I think, it was the day after because I believe the meetings went late into the evening. That's to the best of my recollection.

Mr. Jordan. Okay. And is it your understanding that there were multiple meetings that Mr. McCabe, Ms. Page, Mr. Rosenstein had about the potential of recording the President?

Mr. Baker. I don't know. I know that they had multiple meetings with the Deputy Attorney General discussing a lot of things in the immediate aftermath of the firing, and I don't specifically remember

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how many times this was discussed.

Mr. Jordan. So, just to be clear, the firing of Mr. Comey took place on May 9th, and then the hiring of the special counsel took place on May 17th. So these numerous meetings and the one you had with Mr. McCabe and Ms. Page took place between the 9th and the 17th?

Mr. Baker. I believe that's correct.

Mr. Jordan. Okay. All right. And you said you took it -- you took it as serious. When they presented it to you, their recollection or their recalling to you what took place in the meeting with Mr. Rosenstein about recording the President and talk about the 25th Amendment, you took it as serious?

Mr. Baker. I took it seriously because my assessment was that they took it seriously.

Mr. Jordan. Right. Okay.

Mr. Baker. I could have been wrong. They could have been wrong. But that's how -- that's what I assessed.

Mr. Jordan. Okay. What did you do then? So you got the deputy -- well, actually you've got the Acting Director of the FBI, Andy McCabe, you've got FBI counsel Lisa Page, who's been intricately involved in this case, the Trump-Russia case, and now you as the FBI general counsel are all taking it seriously that Mr. Rosenstein had said he was going to record the President. What did you do then?

Mr. Baker. I believe that we discussed it internally within the FBI, to the best of my recollection, maybe with a couple other people who were there at the time. And --

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Mr. Jordan. And who were those other people?

Mr. Baker. To the best of my recollection, it was Colonel Gattis (ph), I think, who was a high-ranking national security official at the Bureau.

Mr. Jordan. Yep.

Mr. Baker. So I think we talked about it with that small group, but I believe that's it.

Mr. Jordan. So McCabe, Page, Mr. Gattis (ph), one other person.

Mr. Baker. Maybe one other person and myself.

Mr. Jordan. Okay. Do you have any idea who that other person is?

Mr. Baker. It could have been Bill Priestap, but I'm not really sure.

Mr. Jordan. It could have been Mr. Priestap. So five of you have subsequent meeting or meetings?

Mr. Baker. On the -- let's just take them. On the wiretap one -- or not the wiretap, but the wearing a wire, I think it was just one conversation about it.

Mr. Jordan. Okay. And that's in addition to the -- the initial conversation you had with Mr. McCabe and Ms. Page, you have that conversation, you're, like, "Wow, this is serious; they're serious; I'm taking it as serious," and then there's a meeting at some later time?

Mr. Baker. So I'm trying to be clear and not confusing, and I apologize.

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I believe that Andy told me about this conversation about wearing a wire. I think separately Lisa told me about it.

Mr. Jordan. Okay.

Mr. Baker. And at some point, it could have been -- I don't think there were more than two conversations about it total, at least with me, but then part of those conversations, including me being told about what happened and then us discussing it -- so I think in some combination of those two conversations, it was informing me, and then let's talk about this idea.

Mr. Jordan. So was there a scheduled meeting? It's like, okay, we need to get Mr. McCabe, Ms. Page, yourself, Mr. Priestap, Mr. Gattis (ph) together to -- a scheduled a meeting where you then talked about how you were going to deal with this?

Mr. Baker. I don't recall that, no.

Mr. Jordan. So these are just conversations in the hall, conversations -- what, they'd stop by your office or a few people would show up?

Mr. Baker. I believe they were in Andy McCabe's office.

Mr. Jordan. Okay. I mean, this is a serious issue that they're talking about recording the President of the United States. Did you do any type of -- did anyone do any type of legal analysis, did you do some, we'd better check some case law, we better look at what we can do, and if we are going to do it, what are the procedures within the Department that you have to go through in order for someone to actually go record an elected official?

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Mr. Baker. To my recollection, we didn't do any legal research or anything of that nature.

Mr. Jordan. So then what happened? You just dropped it, like, okay, no big deal?

Mr. Baker. We decided that it was -- my recollection is that the discussion was that this was an idea that did not make any sense from an investigative or operational perspective and really shouldn't be pursued further. That's my recollection.

Mr. Jordan. Go ahead.

Mr. Meadows. So help me. Bring me inside the room with these conversations. Characterize, if you could, for me the attitude of either Lisa Page or Andy McCabe. Were they excited, were they concerned, were they talking about whether this would be done or not? Help me understand what was going on in those conversations.

Mr. Baker. So, obviously, it was a very stressful time to begin with, right --

Mr. Meadows. Right.

Mr. Baker. -- because the Director had just been fired, and so that was number one. And then we were trying to figure out, okay, what do we do, how do we run the organization, what steps need to be taken and so on. I think Andy McCabe had to come up to the Hill, like, the day or two after that, so it was a very, very challenging and stressful and tumultuous time. So that's sort of the background.

And then there are these -- some number of conversations with the Deputy Attorney General about what to do next, what needs to be done,

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and my recollection is numerous topics were discussed, and these were among them. The wearing the wire and the 25th Amendment were one of a list, one or two of a list of things that we were going -- that people were going through to try to figure out what to do.

My recollection is that I think, at least with Andy McCabe, that's what I'm remembering more clearly, I think he was sort of -- he was list -- he was sort of going through and summarizing the conversation that he'd had with the DAG and mentioned this with the wearing the wire, and I guess I would say he was sort of stunned, surprised, didn't know how to really react to that kind of a suggestion. It seemed extremely unusual, obviously. So it was surprised, stunned.

Mr. Meadows. But you weren't sitting there laughing about the fact that it was brought up? I guess that's what -- I guess what -- I'm trying to figure out, because if it's a joke, you know, you'll say, "Hey, you can't believe what Rod said," and you end up laughing it off, but it sounds like you had at least two conversations, maybe three conversations about this. And if it's a joke, it's either about the joke being in poor taste or, you know, it's about whether it was a joke or not.

And so help me -- you don't have multiple conversations about something unless it's seriously -- or at least thought to be serious.

Mr. Baker. Yeah. Again, I think, on our side of the street, we thought it was serious. So my recollection is, yeah, it was -- we were stunned and surprised. I don't think people laughed it off as a joke. It wasn't like that, but it was an idea that just did not make a lot

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of sense, and operationally to try to pull this off, how are you going to do this? It just -- I'll say that it seemed crazy. I don't remember Andy saying that literally, but it just seemed like a crazy idea that didn't make sense, and so there was no real reason to pursue it further, at least from our perspective.

Mr. Meadows. So one last followup. So you say that this was one of several things that the team discussed in the aftermath of James Comey's firing. Discussed to do what? I guess my question is, was there the feeling that the President needed to be removed from office? I mean, what were the other things? If this is a list, you know, in a litany of long items that you discussed in terms of action items, what were the other action items?

Mr. Baker. So I'm going to pause and just to ask the Bureau if there's any issue with me responding to that question here.

Mr. [REDACTED] May we can confer with the witness?

[Discussion off the record.]

Mr. [REDACTED] Congressman Meadows, at this time, we'll instruct the witness not to answer. I anticipate that you will ask us to seek clarity from our chain of command in reference to this question.

Mr. Meadows. This is not your first rodeo. So, if you will do that, I will say it nicely and politely: Obviously there are concerns, and we all know that there are potential talks about obstruction of justice, and certainly if this gets over into those, but this can't be just singularly about obstruction of justice if there's a long list of things that you were talking about, but --

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Mr. [REDACTED] We will seek clarification, and we thank you for the opportunity.

Mr. Meadows. Yeah. And so let me follow up. Obviously you thought it was crazy. Did that get communicated back to Rod Rosenstein that it was crazy?

Mr. Baker. It's a good question. I don't know the answer to it. I'm not sure.

Mr. Meadows. So you did not communicate to Rod?

Mr. Baker. I did not communicate it, no.

Mr. Meadows. And you have no knowledge of Andy communicating that?

Mr. Baker. Not specifically, no.

Mr. Meadows. So, for all you know, he could have gone ahead with the wiretap?

Mr. Baker. As far -- I have not confirmed one way or the other whether it took place. That's true.

Mr. Jordan. I just want to be clear on that. So, when you were first told by Mr. McCabe that Mr. Rosenstein had made this statement, what was your response? Did you say that to -- "Well, that's crazy," or what did you say?

Mr. Baker. Something -- words to that effect, yes. I thought it was a --

Mr. Jordan. You made very clear right at the front that --

Mr. Baker. To the best of my recollection, sir, yes.

Mr. Jordan. Okay.

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Mr. Baker. I just did not think it was a good idea.

Mr. Jordan. And did you do any followup with the Deputy Attorney General? Did you talk to Mr. Rosenstein and say --

Mr. Baker. I did not talk to him about it, no.

Mr. Jordan. And Mr. Meadows asked, you don't know if Mr. McCabe did or Ms. Page did?

Mr. Baker. I specifically don't know the answer to that, yes.

Mr. Jordan. Okay. Have you ever met with Mr. Mueller?

Mr. Baker. Mr. Mueller, yes.

Mr. Jordan. Did you meet with him between May 9, 2017, and May 17th?

Mr. Baker. May 17 is the day he was appointed?

Mr. Jordan. Yes.

Mr. Baker. No, I did not meet with him during that time.

Mr. Jordan. You didn't talk to him at all?

Mr. Baker. Not to my recollection.

Mr. Jordan. On the phone?

Mr. Baker. No. Not that I recall.

Mr. Jordan. Do you know if Mr. Mueller was in the meeting with Mr. McCabe, Ms. Page, and Mr. Rosenstein when this was said?

Mr. Baker. Not to my knowledge. No one -- I don't recall anybody mentioning his presence there, no.

Mr. Jordan. And do you know if Mr. Mueller was -- my understanding is Mr. Rosenstein was communicating with Mr. Mueller prior to the 17th and may have been with him the day that Mr. Mueller

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interviewed with the President for the job of Director of the FBI. Do you know anything about that?

Mr. Baker. No.

Mr. Jordan. Okay.

Mr. Baker. Not to my -- to the best of my recollection, no.

Mr. Jordan. Okay.

Have you got anything more on this, because I'm --

Mr. Meadows. Yeah. One other. I want to make sure we're clear. The reference to tape the President of the United States came from Rosenstein to McCabe, not from McCabe to Rosenstein. Is that correct?

Mr. Baker. My recollection, it was the Deputy Attorney General who had the idea, or who made the suggestion, at least, and that went to Andy McCabe, and then Andy McCabe told me.

Mr. Meadows. And you don't know who else was in that meeting? They never -- Lisa and Andy, other than the ones you've mentioned, they didn't mention who else was there?

Mr. Baker. It was other -- my recollection is that there were other people in the room from the Deputy Attorney General's Office. I wasn't there and don't specifically recall who it was. I think it was Jim Crowell at least, who I think was the chief of staff at the time to the DAG, but beyond that, I'm not sure who was there. It may have been -- actually, it may have been Scott Schools also from the Department who worked in the DAG's office.

Mr. Meadows. But there were a couple of other people?

Mr. Baker. My recollection is that Andy and Lisa told me that

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there were several people in the room from the DAG's staff as well.

Mr. Meadows. Did they mention who would wear the wire?

Mr. Baker. My understanding was the DAG -- the idea was the DAG would wear the wire.

Mr. Meadows. Was there any mention of Bob Mueller wearing the wire?

Mr. Baker. No. Again, I don't remember Mueller's name coming up during this time period at all until immediately -- like, immediately before the Deputy Attorney General briefed Congress on the fact that he was appointing a special counsel and --

Mr. Meadows. Well, the only reason why I ask is, in this particular timeframe, obviously, there was an interview with Mueller going in for an interview for Director, there were multiple conversations with Rod in terms of being the special prosecutor. I mean, a lot happened in a 72-hour period. And what you're saying is you're unaware of any of those personal conversations where Bob Mueller would have been part of that?

Mr. Baker. Not with Mueller. I was aware of the conversations about the special counsel being created and that topic, and not specifically associated with Director Mueller as the person. That, I didn't hear, to the best of my recollection, until after I was up here with the DAG and Andy McCabe on the Hill and the briefing was provided to the leadership.

Mr. Meadows. Okay. And I'm going to refer -- after this last question, I'm going to go back to my good friend from Ohio.

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Back to the special prosecutor, we now have evidence that would suggest that a special prosecutor was being discussed prior to the firing of Director Comey. Specifically it's in Bruce Ohr's notes where he was having conversations about a special prosecutor in March of 2017.

Did you have conversations prior to the firing of James Comey about a special prosecutor?

Mr. Baker. To the best of my recollection, that topic came up, but I don't remember a specific conversation sitting here today about it, but I remember it coming up, but not like a meeting or anything of that nature. It was mentioned as a possibility or --

Mr. Meadows. Why was it mentioned as a possibility?

Mr. Baker. I'd have to think about it that. I don't recall, off the top of my head.

Mr. Meadows. I mean, what would be the conflict of you all continuing your investigation?

Mr. Baker. Well, I think it was as the Russia investigation was moving forward and the interactions that the President was having with the Director, Director Comey, and it was sort of on the -- it was on the margins of some type of conversation. I don't even remember who said it, quite honestly, but I'm telling you that the topic did come up before the firing. I just don't have a --

Mr. Meadows. So, before the special prosecutor, we've had other witnesses who have said that, at that point, they could not prove collusion, other FBI officials. Is that your understanding?

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Mr. Baker. I'm sorry. I don't understand the question.

Mr. Meadows. Prior to the appointment of the special prosecutor, as late as May of 2017, we've had other witnesses that have suggested that they could not prove collusion between the Trump campaign and the Russians as late as May of 2017. Is that your understanding?

Mr. Baker. I've heard press reports to that effect, or seen press reports to that effect.

Mr. Meadows. Do you have any evidence to the contrary that you observed personally in your official capacity?

Mr. Baker. So the difficulty I'm having with your question is, what does "collusion" mean, and what does "prove" mean? And so I don't know how to respond to that.

Mr. Meadows. I'll yield back.

Mr. Jordan. Okay. You said you had conversations with folks at the FBI about the appointment of a special counsel prior to Mr. Comey's firing.

Mr. Baker. Well, I don't specifically remember who it was. I believe it was people at the FBI, and it was just about a special counsel in general, and it was not a long conversation. It was a mention of a --

Mr. Jordan. Did you talk to Director Comey about this?

Mr. Baker. That's what I can't recall sitting here today. I apologize. It could have been, but I don't specifically remember that.

Mr. Jordan. Could it have been Mr. -- I mean, not could. Did you talk to Andy McCabe about it?

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Mr. Baker. I'm hesitant to say who it was specifically because I think it was a passing conversation that could have been with the Director, with the Deputy Director, and some of the other senior leaders.

Mr. Jordan. And this was in what timeframe again?

Mr. Baker. Sometime -- it was sometime after the Russia investigation started, but I don't specifically remember when. I don't remember being part of long conversations about it, quite honestly.

Mr. Jordan. Did you talk to Peter Strzok about it?

Mr. Baker. About a special counsel?

Mr. Jordan. Yep.

Mr. Baker. Not to my recollection.

Mr. Jordan. Lisa Page?

Mr. Baker. I don't think I discussed it with Lisa.

Mr. Jordan. So it was the discussions, then, most likely Mr. Comey and/or Mr. McCabe? Is that fair?

Mr. Baker. Most likely it was people in the FBI leadership, not including Lisa and Pete.

Mr. Jordan. Okay. Then --

Mr. Baker. I can't specifically remember who it was.

Mr. Jordan. Okay. So, then -- so FBI leadership, but not Peter Strzok or Lisa Page. Then Mr. Comey is fired on May 9th. Between May 9th and May 17th, did you have conversations about a special counsel then?

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Mr. Baker. Yes.

Mr. Jordan. In that week?

Mr. Baker. Yes.

Mr. Jordan. And who were those with?

Mr. Baker. So I think the people that I was in communication with would have been the people I mentioned before, so it would have been Andy McCabe, I think Carl Gattis (ph) was there, probably Lisa Page, Bill Priestap. I don't specifically remember Pete Strzok being in those conversations.

Mr. Jordan. So these are the same group of people you talked about earlier you were having these conversations discussing a number of items, including Mr. Rosenstein's statement about recording the President and including now the appointment of a special counsel?

Mr. Baker. Yes.

Mr. Jordan. Okay. In your last time here with us, you were asked about, was there anything talked about the 25th Amendment issue? And your response was, "Yes."

So, on that list of things you're talking about, you're talking about Mr. Rosenstein recording the President. You're talking about possible appointment of a special counsel. Again, this is all between May 9th and May 17th. And you're also now talking about the 25th Amendment. Is that accurate?

Mr. Baker. It was -- well, yes. It was -- the topic was brought up.

Mr. Jordan. Okay. So tell me about those conversations. Who

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discussed that, and what did you discuss?

Mr. Baker. On the 25th Amendment?

Mr. Jordan. Yes.

Mr. Baker. Yeah. Okay. So, again, my --

Mr. Jordan. Let me ask you one other question. Well, no. Go with that. Go with that.

Mr. Baker. To the best of my recollection, it was the same kind of thing I described with respect to the wire, that I was being told by some combination of Andy McCabe and Lisa Page that, in a conversation with the Deputy Attorney General, he had stated that he -- this was what was related to me -- that he had at least two members of the President's Cabinet who were ready to support, I guess you would call it, an action under the 25th Amendment.

Mr. Jordan. So both Andy McCabe and Lisa Page told you that Mr. Rosenstein had indicated to them that two members of the President's Cabinet were serious about the 25th Amendment approach to removing --

Mr. Baker. I had the impression that the Deputy Attorney General had already discussed this with two members in the President's Cabinet and that they were -- what I understood was that they were onboard with this concept already.

Mr. Jordan. Okay. Do you know which direction that went? Was it Mr. Rosenstein seeking out members of the Cabinet looking to pursue this 25th Amendment approach, or was it the other way around?

Mr. Baker. What I recall being said was that the Deputy Attorney

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General had two members of the Cabinet. So he -- how they came to be had, I don't know, but --

Mr. Jordan. So he had two members, almost like he was taking the initiative and getting the members.

Mr. Baker. That would be speculation on my part.

Mr. Jordan. Okay. And do you know who these two members were?

Mr. Baker. I do not. I never heard, no.

Mr. Jordan. Any idea from what -- from the context in what Mr. McCabe and/or Ms. Page related to you after that meeting, any idea?

Mr. Baker. Lisa and Andy did not tell me, and my impression was they didn't know themselves. So I'm not -- it wasn't that they were holding it back, or I didn't have that impression that they were holding it back. My impression was that they didn't know either.

Mr. Jordan. Okay. So the same question I asked you earlier, then, in relation to what you did when you heard about the recording. What did you do in response to you now have the Deputy Attorney General relaying to the top people at the FBI, the Acting Director of the FBI, that there are two members of the United States Government, two Cabinet members who are looking at the 25th Amendment. What did you guys do then?

Mr. Baker. I don't think we did anything. My recollection is this was a matter for the Deputy Attorney General to sort out. This was not an FBI matter. We should stay out of that.

Mr. Jordan. So no subsequent action?

Mr. Baker. I don't believe that we took any subsequent action

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on that, to my knowledge.

Mr. Jordan. So, when you were told this -- I mean, I'm just curious. You're told this. You're the chief counsel at the FBI. You're told that the Deputy Attorney General had just told the Acting Director of the FBI that two members in the United States Government, in the Cabinet, were looking to invoke the 25th Amendment. Did you -- was it, like, did your jaw hit your chest, or what was your reaction when you got that information?

Mr. Baker. My personal reaction? I guess I was surprised. I was surprised, but this was at the end of -- you know, for me, this is a stream of activity starting with the Hillary Clinton investigation and everything having to do with that, up until the election, and then everything having to do with the Russia investigation, the Director's conversations with the President, everything else that was going on, and this -- and then the Director being fired. So this was a tumultuous time to say the least. And so it was one, frankly, crazy thing after another, unusual thing after another, and this was --

Mr. Jordan. This one was -- this is a little more -- I mean, I agree there's lots of crazy things going on, but this one is as crazy as it gets.

Mr. Baker. Well, the Director being fired because the President doesn't like the fact that we're investigating Russia was pretty crazy to my mind.

Mr. Jordan. I'm going to come to that. I know Mr. Meadows has a question.

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Mr. Meadows. Yes. So --

Mr. Jordan. One second, Mark.

So just so I understand, I'm trying to develop this list of things you were discussing between May 9th and May 17th, and that is the recording of the President, Mr. Rosenstein's statement, that is the 25th Amendment, and that is the appointment of a special counsel. All those things were ongoing items of discussion with the top people at the FBI and, frankly, top people at the Justice Department? Is that fair?

Mr. Baker. Yes. Yes. But most importantly, I think, at the Bureau, we were trying to figure out what investigative steps we needed to take in light of the firing. And I'm --

Mr. Jordan. I want to come -- I'm coming there next.

Mr. Baker. That was sort of -- to me in this time period, that was the thing that the Bureau and the Bureau's --

Mr. Jordan. I understand, and that's where I'm going next, but Mr. Meadows has some other questions.

Mr. Baker. Yes, sir.

Mr. Meadows. So how long did you work in either DOJ or FBI? How many years?

Mr. Baker. I worked at DOJ from 1991 to 2007. Then I left in 2009 to 2011, and then from 2014 to 2018. So 23, 24 years, something like that.

Mr. Meadows. So more than two decades of experience?

Mr. Baker. Yes, sir.

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Mr. Meadows. In those more than two decades of experience, have you ever had a Deputy Attorney General or anyone high ranking come to you about invoking the 25th Amendment?

Mr. Baker. No.

Mr. Meadows. Have you had anyone come to you, a Cabinet member, seek you out to get your opinion on the 25th Amendment or have you heard of that?

Mr. Baker. No.

Mr. Meadows. What would be, in your mind, the probability -- well, I won't ask you. I'm a math guy, so I won't ask you that.

Do you find it highly unusual that two Cabinet members independently would reach out to Rod Rosenstein on their own to discuss the 25th Amendment without it being initiated by Mr. Rosenstein?

Mr. Baker. I'm not sure I can answer that question. That's a hard one to answer. I'm not sure I can assign a probability to that.

Mr. Meadows. All right. But in your opinion, you believe, based on your previous testimony, that it was Deputy Attorney General Rod Rosenstein that reached out to them, based on the way it was communicated to you?

Mr. Baker. Let me say it this way: I had the impression that he was an active participant in those discussions, because he said he had two members.

Mr. Meadows. And so, as part of this conversation, I think in your previous testimony the other day, you mentioned that there was

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some question about Rod Rosenstein's state of mind at that point. Was that because he was being blamed for Director Comey's firing, or why would you question his state of mind?

Mr. Baker. I think it was that my impression was it was the Deputy Attorney General having a -- yes, a reaction to the events that occurred -- remember, this is shortly after he arrives in office -- and the belief, at least in the public to some degree and among others, that he supported or facilitated or was responsible for in some fashion Director Comey's firing, that he provided the President with some information that allowed the President to rely on that and --

Mr. Meadows. Well, indeed he did write -- I mean, we know that, that he wrote a memo. So what you're saying is, is that his communication to you was that he didn't think that Director Comey should be fired?

Mr. Baker. Say that -- his communication to me?

Mr. Meadows. Right.

Mr. Baker. I don't think he ever communicated to me directly about that.

Mr. Meadows. Okay. So was he denying it, from what you heard from others, that he -- because that's a key point. If he's making a recommendation of the President to terminate and then he comes back and denies it with his colleagues, it would create some angst.

Mr. Baker. My recollection and my impression wasn't that he was denying that he had participated in the firing. My recollection was that he believed that either he made a mistake or was fooled or drawn

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into it in some way that he didn't anticipate how it was going to turn out, and that he had extreme regrets about what had happened.

I guess that's the last point. He regretted the facts and circumstances that led to the firing and was very upset about it.

Mr. Meadows. And so that's why he wanted to tape the President of the United States, because he was upset about it and the backlash he was getting?

Mr. Baker. My recollection is that the reason for the taping was to obtain evidence with respect to the President's state of mind with respect to why he fired Director Comey.

Mr. Jordan. So it was all about the obstruction of justice issue?

Mr. Baker. I beg your pardon?

Mr. Jordan. It was all about the obstruction of justice issue?

Mr. [REDACTED] I'm sorry. I'm going to instruct the witness not to respond directly to that question. We are trying to give as much latitude here as we can today.

Mr. Jordan. But, I mean, I can tell Mr. Baker wants to talk about this obstruction of justice issue. I mean, he's been wanting to get in there the whole time -- I mean, the last several minutes.

Mr. [REDACTED] Believe me, Congressman Jordan, we are sitting between members very interested in getting answers to these questions, and my former boss, who I can tell, he's anxious to answer them. At this time, I must instruct him not to answer. As I represented to Congressman Meadows, we will take your question back and seek clarification, and if we may allow him to answer, we --

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Mr. Jordan. Can I go for a second, Mark?

So, again, I'm developing this list. You had numerous conversations between the 9th and the 17th on the 25th Amendment issue, on the wiretapping -- or wearing a wire to record the President issue, and on the appointment of a special counsel. Were there any other issues you talked about, big issues, you're talking about what was going on at the FBI now that Mr. Comey had been fired, any other issues that were big in that list of categories I'm making, notwithstanding, of course, what I think is the biggest one and the one I think you want to talk about, which is the obstruction of justice issue?

Mr. Baker. I can't recall any other big issues. I mean, other than trying to run the FBI in this tumultuous time.

Mr. Jordan. Right.

Mr. Baker. Andy's the Acting Director, and we're trying to figure out how to support and help him.

Mr. Jordan. So there's four big things that are going on there then. You've got the special counsel issue, you've got the wearing the wire to record the President, and you've got the 25th Amendment issue, four big things you're talking about.

Mr. Baker. And the investigative actions of the FBI. That's the other thing, right.

Mr. Jordan. Of course your normal work. I get that.

Mr. Baker. Well, but we're -- relative to this. This is the thing --

Mr. Jordan. Relative to this.

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Mr. Baker. -- we can't talk about.

Mr. Jordan. All right. Were you upset that James Comey was fired?

Mr. Baker. Was I?

Mr. Jordan. Yes. Personally.

Mr. Baker. I didn't hear the word, though. Sorry.

Mr. Jordan. What was your reaction? Were you upset by the fact the President had fired Mr. Comey?

Mr. Baker. Yes.

Mr. Jordan. And is it fair to say Lisa Page was upset about that and Andy McCabe was upset about that?

Mr. Baker. Yes. I think everybody was upset about it, yeah.

Mr. Jordan. And now what you just related to Mr. Meadows, it sounds like Mr. Rosenstein was upset about it, even though he wrote the memo recommending it?

Mr. Baker. I think he was upset about it too, yeah. But I think one of the things that I urged everybody, having been through many crises in the past, was to immediately retain our laser focus on what needed to be done, because that's what the American people were counting on us to do, and just keep focused on what the Bureau needed to do, not lose sight of that, not be distracted by all these other things, and move forward professionally and quickly to deal with whatever it is we needed to deal with.

Mr. Jordan. Go ahead.

Mr. Meadows. So let me follow up on that, because what it sounds

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like is that the conversation about taping the President was retaliatory. It sounded like, "Well, gosh, we couldn't get him this way, so let's find another means of proving our case," and one of those was taping, the other would be a special prosecutor, but --

Mr. Baker. I would disagree that it was retaliatory. It was an effort to obtain information. In my mind, that --

Mr. Meadows. Well, you said you never spoke to the DAG, so how would you know that it's not retaliatory?

Mr. Baker. I don't know. You'd have to ask him. That's a fair point. That's a fair point. But that was not how I thought about it on our side.

Mr. Meadows. So how did you think about it?

Mr. Baker. That this was a suggestion with respect to an investigative step that could be taken to obtain further information on whether the President had obstructed the FBI's investigation of Russia.

Mr. Meadows. All right. So here's what it's boiling down to, it sounds like to me, and I think with a little bit of latitude from your counsel at the FBI, we might be able to get to this. It sounds like that, at that particular time, once Director Comey was fired, the shifting of the investigation shifted from a Russia collusion investigation to an obstruction investigation. And that's really what it sounds -- I mean, in the context of where you are, it sounded like it shifted in May of 2017 from collusion to obstruction. Is that correct?

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Mr. [REDACTED] At this time, I will have to instruct the witness not to respond directly to that question. And I know what request is coming, and I assure you we will follow up on that.

Mr. Jordan. Was there any talk -- and maybe you'll give me the same answer, Counsel, but was there any talk of an obstruction of justice investigation prior to the firing of Mr. Comey?

Mr. Baker. Yes. Well, obstruction of the FBI's investigation.

Mr. Jordan. When did that start?

Mr. [REDACTED] Again, I'm going to have to instruct the witness not to answer that.

Mr. Jordan. So I'm going to -- I want you to look at this.

Can we make a copy of this for Mr. Baker?

I want you to look at this text message from May 9th. This is a text message from Mr. Strzok to Ms. Page.

Can you make a copy of that? Do you have it? Okay. Can you give Mr. Baker a copy? And the minority's going to want one too, I'm sure.

It's the one that says: And we need to open the case we've been waiting on now while Andy is acting.

Mr. Baker. Sir, what page are you on?

Mr. Jordan. Whatever they just handed it.

Mr. Baker. Page 32? Oh, it's all 32. Okay.

Mr. Jordan. Thirty-two. It's about two-thirds of the way down the page.

Mr. Baker. Okay. I see that. Yes.

Mr. Jordan. What are they talking about?

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Mr. Baker. Well, A, I'm not really sure, so I can speculate, but I can speculate that I believe they are talking -- well, okay.

Mr. [REDACTED] Before the witness speculates, may we consult with the witness?

Mr. Jordan. Yep.

Mr. [REDACTED] Thank you.

[Discussion off the record.]

Mr. [REDACTED] Can we have the question read back or re-asked again, please?

Mr. Jordan. So Mr. Baker had said -- I asked him what this text message refers to. I think he said he's speculating that it refers to something, and then you -- that you needed to have a little sidebar.

Mr. [REDACTED] So I'm going to instruct the witness he may answer if he knows what the text refers to, but I'm going to instruct him not to discuss any speculation of any investigation that it may refer to. So, first of all, if the witness would answer whether he knows what it refers to, I think that may help us.

Mr. Baker. I don't know specifically what they were talking about.

Mr. [REDACTED] And if the question is for him to speculate as to what it may pertain to, I would instruct him not to discuss any potential or ongoing investigation.

Mr. Jordan. So just again to set the context here, this is literally, it looks like, could be minutes, could be hours after Mr. Comey has been fired, it's the same date, May 5th, 2017: We need

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to open the case we've been waiting on now while Andy is acting.

Just a few minutes ago, I asked you were you discussing obstruction of justice prior to the firing of Mr. Comey, and you said yes.

Now, on May 17 -- or excuse me, May 9 of 2017, Mr. Comey gets fired, and we have a text message from Peter Strzok to Lisa Page saying: We've got to open the case now while Andy is Acting.

It sure looks like they're talking about an obstruction of justice investigation. Would you agree with all that?

Mr. [REDACTED] Again, we would instruct the witness not to discuss any ongoing investigation.

Mr. Jordan. I'm not going to discuss it. I'm just asking whether you agree with the assessment I just laid out. It looks pretty obvious to me, but I'd like the former chief counsel of the FBI's opinion.

Mr. [REDACTED] If you know.

Mr. Baker. I don't know what -- I can guess, but I don't know.

Mr. [REDACTED] So, again, we want to be helpful here. It sounds, if I'm understanding you correctly, Congressman, that you're asking him if he agrees that a certain inference could be drawn.

Mr. Jordan. Yep. Exactly what I'm asking.

Mr. [REDACTED] All right. You may respond.

Mr. Baker. Okay. I'm slightly confused, but I think it looks as though they are talking about opening an obstruction investigation. That's what I interpret from this.

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Mr. Jordan. An obstruction investigation based on the fact the President fired Mr. Comey?

Mr. Baker. In addition to other things.

Mr. Jordan. Okay. And can you talk about those other things?

Mr. Baker. I think that's what we just said. I can't talk about it.

Mr. [REDACTED] We will have to instruct the witness not to respond at this point.

Mr. Jordan. The gentleman from Texas wants some time.

Mr. Ratcliffe. For the record, I'm John Ratcliffe. I represent the Fourth District of Texas, Mr. Baker. Thank you for being here today. I'm sorry I was a few minutes late.

You've been instructing the witness not to answer certain questions as it relates around obstruction, just so I'm clear on the admonition that you've given him for today.

Mr. [REDACTED] Are you asking me, Congressman?

Mr. Ratcliffe. Yes.

Mr. [REDACTED] It's difficult to respond in the abstract, but as questions arise that we have concerns could impact any ongoing investigation, particularly with reference to the special counsel's equities, we are doing our best to permit the witness to answer, but there are some questions where we either know his testimony could adversely affect the investigation or where we feel we'll need to get additional clarification before we can allow him to respond, but we are certainly doing our best to be as accommodating as we can today.

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Mr. Ratcliffe. Okay. The reason I ask, I want to probe a little bit with you, Mr. Baker, the legal basis behind some of the things the FBI was doing as it relates to potential obstruction, because I heard you say earlier, I think I wrote this down correctly, in response to Congressman Jordan's question about the 25th Amendment and the assertion, and you said that against a President is a crazy thing or that there's nothing more crazy than that; you said: Well, a Director being fired because the President doesn't like us investigating Russia is pretty crazy.

Do you recall saying that?

Mr. Baker. Words to that effect, yes.

Mr. Ratcliffe. Okay. Or words to that effect.

Okay. And so you very clearly have said that you didn't like that, but I'm trying to find out what basis you think that that was somehow inappropriate or improper, much less illegal? And so the Russia investigation was opened as a counterintelligence investigation, correct?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. So, in fact, I'll just tell you, on March 20 of 2017, Jim Comey said that the FBI was conducting the investigation into Russia as part of our counterintelligence mission, end quote.

Do you agree with that?

Mr. Baker. Yes.

Mr. Ratcliffe. And you were his general counsel at that time,

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correct?

Mr. Baker. Yes.

Mr. Ratcliffe. We know at some point in time that elements of the counterintelligence investigation into Russia's actions gave rise to criminal investigation, because of the appointment of Special Counsel Robert Mueller, correct?

Mr. Baker. I'm not sure I understand the premise of your question.

Mr. Ratcliffe. Well, what I'm trying to find out, Mr. Baker, is at what point in time, as the FBI general counsel, can you tell us that this counterintelligence probe became a criminal investigation?

Mr. Baker. From its inception.

Mr. Ratcliffe. Explain that to me.

Mr. Baker. That as a general -- so when the FBI -- the FBI has numerous authorities and numerous responsibilities, and whenever it investigates anything, especially in the national security area, it brings to bear with respect to that issue or that investigation all of its authorities.

So, when we confront a problem, yes, we're looking at it from a counterintelligence or intelligence perspective using our intelligence authorities, but to the extent that that same activity at the exact same time also involves criminal activity, we're investigating that as well. And so this is one of the fundamental changes that occurred post-9/11 with the bringing down of the wall, that this line that people try to draw between intelligence or

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terrorism, counterterrorism, counterintelligence and criminal is really illusory. It doesn't really exist, and the FBI has all of its authorities all the time and can look at something from -- look at a set of the facts from a counterintelligence perspective trying to understand what the foreign adversary is doing, their tradecraft is, things along those lines, and whether a crime was committed and be looking at it simultaneously from both of those perspectives. So they occur at the same time; they're part and parcel of each other. They're not easily separated.

That's the hard part, I think, about this, and I think unfortunately has led to the -- the fact that this is how it's done and a, you know, especially in the media, lack of understanding about that leads to confusion, unfortunately.

Mr. Ratcliffe. Okay. So let me drill down on that a little bit further. The purpose of a counterintelligence probe and the reason that it's not defined as a legal proceeding in the U.S. attorney's manual and under the penal code is because it's specifically for the purpose of advising the President as to foreign threats, correct?

Mr. Baker. Well, so you're -- so the purpose of a counterintelligence investigation is to thwart the activities of an adversary, to identify, understand and thwart, disrupt, defeat, whatever words you want to use, the activities of the adversary. To the extent that that produces intelligence information, then, yes, that should be reported to appropriate officials within the U.S. Government and our foreign partners, including the President of the United States

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if it warrants his attention, but at the same time, you're also -- the FBI is also, because it's the FBI, not the Justice Department prosecutors, the FBI is investigating to assess whether or not any crimes were committed.

In a typical counterintelligence case, you would be looking at espionage, for example, let's say, which is a crime, obviously, and so you're investigating that from the get-go and you're also trying to figure out, you know, let's say the Russians, what were the Russians doing, how were they doing it, what Russian diplomats might have been involved in this kind of a thing, intelligence officers, that thing. You're trying to understand the full nature and scope of everything that happened, including whether there were any crimes committed, including whether there were any Americans who were involved in these offenses.

Mr. Ratcliffe. So, with that explanation, would you agree with me that the President, as the head of the executive branch, has the ability to end a counterintelligence probe at any point in time; lawfully, lawfully end a counterintelligence probe at any point in time?

Mr. Baker. Does he have the constitutional authority to do so?

Mr. Ratcliffe. Yes.

Mr. Baker. This is a difficult question to answer. If you look narrowly, I think, at Article II, your answer would be yes. I think if you look more broadly at all of his responsibilities under the Constitution, including his oath of office, I think it's less clear,

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especially when the investigation may pertain to him or people associated with him.

Mr. Ratcliffe. And did you have that discussion at the FBI during the timeframe that we're talking about here about whether it was proper for the FBI to be engaged in these types of obstruction conversations?

Mr. [REDACTED] I believe the witness, I think, wants to answer, but I'm going to instruct him not to answer at this time.

Mr. Meadows. Let the record reflect that Mr. Baker nodded twice in the affirmative.

Mr. Baker. Well, I nodded in the affirmative because I am prepared to answer the question and ready to answer the question, but I will not.

Mr. Meadows. So I want to make sure --

Mr. Baker. It was not a substantive nod. It was a nod of willingness to respond to the question.

Mr. Meadows. Well, I've made lots of money reading people. And so what you're saying is that at no time did you agree with Mr. Ratcliffe's statement, that that nod was not affirmative? I want to make sure. Listen, you've been an honest broker with me to date, and I'm just telling -- don't equivocate.

Mr. Baker. So, sir, to be honest, I'm not sure I can remember exactly now, with the back and forth, what his question is. If he wants to ask it again, I'd be happy to try to deal with it.

Mr. Meadows. He's not going to let you answer.

Mr. Baker. Okay.

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Mr. Ratcliffe. Well, and I'm not trying to -- what I'm really trying to do here, Mr. Baker, is to understand. I get the fact that, as you've testified, you were upset and Ms. Page was upset and Mr. McCabe was upset about Jim Comey being fired and that you didn't like it and that you thought it was crazy and that you didn't think it was a good idea, but that's all different than indicating that there was something unlawful about that. And you've just told me that you think that the President constitutionally has the authority to end a counterintelligence investigation at any point in time.

Does a President have the ability to, as the chief executive, end a criminal investigation at any point in time?

Mr. Baker. Can I answer this question? Yeah.

Does the President have the authority to end a criminal investigation at any point in time? I would answer in this way: Yes, insofar as his doing so, either with respect to a criminal investigation or an intelligence investigation, is not otherwise in contravention of his other responsibilities under the Constitution.

Mr. Ratcliffe. And how would those other responsibilities come into play in this situation?

Mr. [REDACTED] Again, it's that last part of "in this situation" that, at this point, we must instruct the witness not to respond.

Mr. Breitenbach. Without getting into any of the substance as to the answer to Mr. Ratcliffe's question, are you aware whether there was any legal analysis performed by either the FBI or the Department of Justice into whether the FBI could engage in particular

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investigations subsequent to the firing of Director Comey?

Mr. Baker. Yes.

Mr. Breitenbach. And were these written legal memos that were addressing whether this was an action that could be taken?

Mr. Baker. I don't recall a written legal memo. I would say that there were conversations and perhaps some emails, that type of thing; not like a formal memo or anything like that that I recall.

Mr. Ratcliffe. So, again, let me -- I'm trying to understand, since you were the general counsel lawyer for the FBI Director at the time, to understand here about how anything could be improper or how the President could have possibly been obstructing justice at any point in time.

I'll just say for the record, I'm not one of those folks that say that a President cannot obstruct justice. I think that there are times if performing illegal acts aimed at corruptly influencing legal proceedings, for instance, suborning perjury or bribing witnesses, those types of things, but would you agree with me as the FBI general counsel that a President cannot commit obstruction by performing lawful acts to which he is authorized under the Constitution?

Mr. Baker. If those acts are in fact lawful with respect to all of his duties and responsibilities under the Constitution, I would say yes.

Mr. Ratcliffe. Okay. Well, let's talk about what lawful actions may encompass. A President has the lawful authority to dismiss executive officers, including FBI Directors, correct?

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Mr. Baker. Well, so, yes. We could go down a list of things that the President can do, but at the end of the day, if the President's purpose is in contravention of his other duties under the Constitution, in my view, he cannot do those things.

Mr. Ratcliffe. Yeah. And so I guess we need to get to that in terms of the things that when you talk about his other duties and how those would come into play here, I think it's important that we try and understand that, but -- so you agree that generally a President has -- it is a lawful action to dismiss executive officers, correct?

Mr. Baker. Well, again, so is the President executing his responsibilities in connection with his oath of office to preserve, protect, and defend the Constitution in connection with that particular action? If it's not, then I say no. If he's not -- the President has a solemn obligation under the Constitution to take care that the laws are faithfully executed, all of the laws simultaneously. It's a hard job to do that and to reconcile how that actually has to be done, but if he is somehow in this particular action not doing that, then I would say no, that is not a constitutionally authorized activity.

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[10:59 a.m.]

Mr. Ratcliffe. So it's your opinion that the termination of an FBI Director can be a violation of lawfully and faithfully executing the laws and the Constitution of the United States?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. So do you -- back to the question I had before. We can talk about whether or not a President shouldn't interfere in pending criminal investigations. What is your opinion about whether or not -- whether or not -- regardless of whether one shouldn't or historically doesn't, whether or not a President can?

Mr. Baker. Interfere in a criminal investigation?

Mr. Ratcliffe. Yes.

Mr. Baker. Again, in theory, the President can. But if it's for a purpose that is contrary to his other responsibilities on the Constitution, then he can't.

Mr. Ratcliffe. Okay. So, again, I'm going to --

Mr. Baker. A narrow reading of Article II would lead you to conclude that he could do that because the -- all the executive branch is under his command. But if he is doing that for some purpose that is not appropriate, I'll use that word, not lawful, then I don't believe he can. I don't believe he has that authority.

Mr. Ratcliffe. Okay.

Mr. Meadows. So, Mr. Baker, prior to the firing of Director Comey, you instructed Peter Strzok and Lisa Page to open up an investigation. What investigation was that?

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Mr. [REDACTED] May we confer quickly with the witness?

[Discussion off the record.]

Mr. [REDACTED] If we may, can we have the question read back or re-asked, just because I believe the wording of it as it was asked may be significant into whether he can answer or not.

Mr. Meadows. Prior to the firing of Director Comey, you instructed some members at the FBI -- it was communicated between Lisa Page and Peter Strzok, but they were referring to you -- that you instructed them to open an investigation, and I said what investigation is that.

Mr. Baker. So the --

Mr. Meadows. In April of 2000 --

Mr. Baker. April?

Mr. Meadows. Well, the text message was April 26, 2017, where it's going back and forth. And I can give you a copy of this. It says: Why -- we need to know why you didn't open the case when you were directed by the -- you, the GC.

Can you give him a copy of that?

Well, here you can have mine, the highlighted one.

Mr. Baker. I'll read it and hand it back.

April 26th.

Mr. Meadows. And we'll get the minority a copy as well.

Mr. Baker. Yeah. That -- that one, given the timeframe, I'm not sure what they're talking about, quite honestly.

Mr. Meadows. So you didn't instruct anyone to open an

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investigation prior to the firing of Director Comey? Because obviously you -- something came to mind because that's why you conferred with counsel.

Mr. Baker. Something later came to mind. I don't -- I don't believe that I did instruct anybody to open an investigation, not to the best of my recollection sitting here today.

Mr. Meadows. Well, there will be enough of an audit trail where we'll be able to figure it out.

So are we quibbling over a couple of days or -- I mean --

Mr. Baker. This is -- this is before the firing, right?

Mr. Meadows. That's correct.

Well, I mean, according to the date stamp, it would be, yes.

Mr. Baker. So, A -- I guess I would respond, A, I don't believe I instructed anybody to open the investigation. B, I wouldn't have the authority to tell the Counterintelligence Division they must open an investigation. That's --

Mr. Meadows. But it's not referring to that. It's just saying that they had your approval.

So what case were you talking about opening that obviously had you cc'ing the DD --

Mr. Baker. So, again --

Mr. Meadows. -- the Deputy Director?

Mr. Baker. -- the April 26th thing, I don't remember. I'd be interested --

Mr. Meadows. Let's take away the date. What case would you have

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copied the Deputy Director on opening?

Mr. [REDACTED] At this point, we'll have to instruct the witness not to respond to the question.

Mr. Meadows. But, Counselor, this is critically important. If we're talking about obstruction before the firing of Director Comey, then it fundamentally undermines many of the arguments that are being made.

Mr. [REDACTED] Congressman --

Mr. Meadows. And so the date is critical.

So here's what I need you to do.

Mr. Somers. Are you going to answer the question before you object to it?

Mr. Baker. Which question are you talking about?

Mr. Somers. Which case?

Mr. Baker. What's throwing me off is the date. So I don't know what -- I'm having a hard time figuring out what they're talking about given that date.

If I had emails, they would be helpful to me, perhaps, you know, my own emails. If I had cc'd the Deputy Director on something, that would be helpful to me to figure out. And I'd be happy to answer the question once I was able to ascertain what the heck they're talking about.

Mr. Meadows. So is it your testimony that you have no knowledge of discussing or directing anyone to open up an investigation prior to the firing of Director Comey?

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Mr. Baker. I -- I don't recall that specifically sitting here today. I'm not saying that in the course of my 4 years at the FBI I didn't suggest or tell --

Mr. Meadows. Obviously we're not talking about the course of 4 years. We're talking about specifically as it relates to Mr. Trump and to this -- this initiative in terms of either obstruction or other related matters.

It appears that you were talking about it prior to the firing of Director Comey.

Mr. [REDACTED] So, again, I'm going to have to instruct you not to respond to that question or premise. Will you abide by the instruction?

Mr. Baker. Yes, I will not answer that.

I will say that, as a matter of public record, the Director, former Director, has already talked about the fact that, even before he was fired, that I had thought that the President of the United States was a subject of the investigation that we were already conducting before then for a variety of different reasons.

Mr. Meadows. Yeah, but that investigation started over a year prior to this --

Mr. Baker. Yes, I --

Mr. Meadows. -- the one that you're referring to.  
We're out of time.

Mr. Jordan. Let me --

Mr. Meadows. I tell you what. We'll get you copies of this.

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And then hopefully in the next hour we can have some of your emails as well delivered, refresh your memory.

Mr. Baker. You're more of an optimistic on that than me, but okay.

Mr. Jordan. And maybe you can't answer this, maybe you've said this already, but I keep coming back to this. Why are -- why are or on what basis were you discussing obstruction of justice prior to the firing of the Director?

Mr. [REDACTED] Again, we'll have to instruct the witness not to respond to a question that specific that pertains to special counsel ongoing investigative efforts.

Mr. Jordan. But it doesn't -- I mean, this is -- the special counsel was named after the firing of Mr. Comey. That was the catalyst for the naming of the special counsel. Why would you be talking about obstruction of justice prior to the firing of Director Comey?

Mr. [REDACTED] Again, same instruction to the witness on this question.

Mr. Jordan. Okay. Thank you.

[Recess.]

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[11:24 a.m.]

[Baker Exhibit No. 2

Was marked for identification.]

Ms. Sachsman Grooms. It's 11:25. We'll go back on the record.

BY MS. SACHSMAN GROOMS:

Q Mr. Baker, I just wanted to start by going over a couple things that went through on the previous round. And one thing that got raised following your last time before us, I've entered as exhibit 2, a FOX News story.

The headline of the FOX News story is "Top FBI lawyer Baker offers explosive testimony on, quote, abnormal, unquote, handling of Russia probe into Trump campaign, colon, lawmakers."

And Mr. Meadows is quoted in here saying, and I quote, "Some of the things that were shared were explosive in nature," speaking of your previous testimony from the last time. Quoting again, "This witness confirmed that things were done in an abnormal fashion. That's extremely troubling," end quote.

And then there's a description that says, and I'm quoting from the article now, not Mr. Meadows: Meadows claimed the abnormal handling of the probe into alleged coordination between Russian officials and the Trump Presidential campaign was a reflection of inherent bias that seems to be evident in certain circles. The FBI agent who opened the Russia case, Peter Strzok, FBI lawyer Lisa Page, and others sent politically charged texts and have since left the Bureau, end quote.

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So following when that occurred, I pulled your transcript from the last time you were here on October 3rd. And I'm just going to assert for the record that you never used the word "abnormal," but you did respond to this question on page 102. Mr. Meadows said: So is that why you took the abnormal or unusual step in this particular situation was because it was sensitive? And you answered yes.

I just wanted to give you a chance to explain whether you felt that the receipt of the information from Mr. Sussmann or anything else that occurred in the -- in the case that you were involved in you considered to be abnormal.

A It was unusual for me to be the recipient of information directly from the public or a lawyer or anyone else about an allegation of a crime. However, the FBI accepts information and encourages the public to provide the FBI with information as much as possible. And so there are numerous structures built within the FBI, 800 tip lines, online abilities to do this, you can phone the field office or other parts of the FBI. The FBI has a variety of, especially in the terrorism area, mechanisms built into place to make sure that we receive and act on and handle appropriately all kinds of tips and other offers of information to us.

And so to the extent that I was receiving information -- and I amplified that earlier today, I don't know if you were in the room with respect to this information that Mr. Klayman brought to me, so I remembered another incident when this happened. I wasn't in the business day to day of receiving information from the public or evidence

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from the public about ongoing crimes or national security issues. But the FBI, of which I was a part, does that all the time, indeed it's part of the bread and butter of our business.

Q Did you think there was anything improper about you receiving the information yourself?

A At that time, no, I did not think it was anything improper. I was aware of the fact that I was taking in evidence and wanted to quickly get it to agents as fast as I could. But I didn't -- it did not strike me as unethical, improper, illegal, contrary to FBI policy, or anything like that.

Q And you said "at that time." Do you still hold that belief?

A Yes.

Q And you just mentioned that also, while it was not a usual practice for you to do, that you recalled in between the interview last time and today that you had done -- you had received information in a similar fashion at least one other time. Is that right?

A Yes.

Q So in addition to --

A Well, it's a total of two other times. So Klayman, Sussmann, and Corn, as I explained last time.

Q And the information that you received from Mr. Sussmann was unrelated to the dossier, right?

A To the best of my knowledge, it was unrelated to the dossier.

Q I think there's been an implication that the information you received from Mr. Sussmann was then folded into the Carter Page FISA.

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Can you speak to that?

A I have no knowledge of that being the case. I believed them to be separate reporting. At the end of the day, it had to do with the same foreign power at issue, but the cases were separate. I didn't understand what Mr. Sussmann to have given us, the FBI, to have anything to do with the Carter Page FISA or the dossier or anything along those lines.

Mr. [REDACTED] Let me just give the witness one general instruction so we don't interject a lot as you go.

Mr. Baker, to the extent you're asked questions today about the Carter Page FISA or any other FISA process, please confine your answers to matters you know to be declassified. And if you're uncertain, just please ask to consult with FBI counsel.

Thank you.

Mr. Baker. Sure.

BY MS. SACHSMAN GROOMS:

Q So similar to that discussion the last time, I just want to go through a couple words that were raised in the first hour as part of a question that you didn't address specifically in your answer to make sure that we can clarify your meaning on that and essentially that you weren't adopting the words in the question, because I think that's been at odds a little in the past.

During the first round, you were asked questions about Mr. McCabe and whether Mr. McCabe thought that the information about wearing a wire was serious. Did Mr. McCabe ever explicitly tell you that he

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thought that the conversation was a serious conversation?

A I don't think he literally said those words. That was my impression. I -- I tried to convey that earlier today, perhaps I didn't do a good job of it. But that's -- yeah, that was my impression based on the words he said, his demeanor, and so on.

Q Also in the previous round you were asked a question that in my notes reads as, for all you know, he, meaning the DAG, could have gone through with a wiretap. Was there ever any discussion of a wiretap?

A Of a wiretap? No, not to my -- not to my recollection.

Q So the discussion was wearing a wire?

A Wearing a wire, yes.

Q Sometimes the words are switched?

A The activity -- and that activity falls within the scope of the Wiretap Act, so I may not have been precise on that.

Q Again, I'm not talking quite so much about your answers as about the questions.

A I see.

Q That -- sort of implicit words that were stuck into question.

If the DAG had decided to move forward with wearing a wire, wouldn't the FBI have been aware of that and that you would have -- someone from the FBI would have been involved in that process?

A I'm speculating, but most likely yes. Somebody would have had to have provided the DAG with the technical capability to do that. Other Federal investigative agencies have that capability, ATF,

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Marshals, DEA, people like that. But in these circumstances, I would have expected that it would have been something that would have gone through the FBI.

Q So would you have expected, in this instance, if the DAG had decided to move forward with that process, someone would have known about that at the FBI?

A I'm almost completely confident that Andy McCabe would have told me about this had it gone forward.

Q And as far as you know, it did not go forward, right?

A As far as I know. Yes. Yes, it did not go forward.

Q In the previous round, you were asked a question about -- about the time period before the special counsel was appointed. And you were told that other witnesses had told us they could not prove collusion at that time, which was May 2017, and asked if you agreed.

What was your view of the case at that time?

Mr. [REDACTED] Could you clarify the question, what you mean when you refer to the case?

Ms. Sachsman Grooms. Sorry. So the question -- the essential question was whether you could prove collusion between the Trump campaign and Russia in May of 2017. And I believe your response was the difficulty was you -- you didn't know what he meant by prove or collusion, so you didn't know how to respond. And I just wanted to open up the question so that you could explain in your own words.

Mr. [REDACTED] If you can respond to the question without

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discussing an ongoing criminal investigation into any individual or enterprise, please answer. If not, then I'd instruct you not to respond further.

Mr. Baker. So I guess I would say that the investigative activity that we were engaged in at this time with respect to which we're having this conversation today, I believed at the time, and still believe today, was a lawfully authorized investigation by the FBI consistent with the Constitution and laws of the United States, including Attorney General guidelines. So I believe that what we were doing was an investigation to determine what the facts were.

There was evidence -- I'm not going to go into the details of it -- which that evidence, information, the types of things that are recognized as authorizing and being the foundation for an FBI investigation, we had that type of, I'll call it stuff. And so, therefore, I thought that what we were doing was a legitimate investigation that was progressing as other investigations of this sort would in the sense that it's difficult to conduct counterintelligence investigations. They're hard things to do. It's hard to actually ascertain what happened. It's hard to get into people's heads and understand what they're thinking, those types of things. So my assessment was it was a lawfully authorized and predicated investigation.

BY MS. SACHSMAN GROOMS:

Q Had the investigation concluded?

A No.

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Q Had you obtained sufficient evidence within the investigation to indict someone?

A Whether we had or had not, so I won't comment on that, I guess. I would say that we had not discussed or sought an indictment at that point in time.

Q In the previous round you were asked a question, which really was a statement, that said that you had questioned the deputy attorney general's state of mind.

I just want to be clear on this one. Do you have any actual concerns about the deputy attorney general's state of mind?

A Currently or at that time?

Q Currently or at that time. And I mean, you know, the kinds of concerns that one would have about someone's state of mind, the way that that language is often used, which is that they would have trouble working through normal daily activities or judgments or that they would maybe need to go into a hospital or something to that extent. Mental issues.

A I -- I don't -- so my understanding was that it didn't reach the level of requiring hospitalization or an intervention in that sense. My understanding was that the Deputy Attorney General was upset for a variety of reasons. I'll use that word, but that -- and that some of the suggestions he was making, again, I -- I don't know what is in his head or what was in his head, and I'm not commenting on that at all. All I'm saying is what I thought based on what I was being told.

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So, anyway, I'll just say that the deputy attorney general's assertions in public directly and through the department could be true and yet at the same time what I'm saying could be true, because we were just -- we didn't talk directly about these things.

He seemed, based on the information I had, upset. And I think he was -- he was in a difficult position having to make hard decisions under incredible pressure. And so I'm not sure what else to say about that.

Q Sure. You also described yourself as upset. Is that accurate?

A Well, upset, yes, in that -- I mean, not -- I don't want to create a misimpression. Not like falling down on the floor and crying and that kind of thing. I think it was upsetting on a personal level because of my close working relationship and personal relationship with the Director and the team around him, but that I also immediately was very focused on what we needed to do to keep the organization moving forward and address all the matters that had to be addressed. We had to make legal decisions that evening with respect to a number of different matters having to do with the Director coming back on the FBI plane, that kind of thing. And so we just got back to business.

And so, yeah, that -- I just knew that is what we had to do, having been through crises before in the past.

Q I think in the previous round some of our Republican members were concerned that your emotional state or your preference for Mr. Comey might have caused you to want to retaliate against the

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President. Do you feel that that's accurate?

A No.

Q Did you consider -- well, how about for the DAG? Did the DAG's emotional state cause him to want to retaliate against the President, as far as you know?

A Not -- not as far as I know, no.

Q And to the extent that you were upset about the firing of Director Comey, was part of that based on substantive concerns that you had about the firing?

A I was upset because my friend had been fired in a very public way. So -- but I had -- so that's, I guess, what it was. It was on that personal level. On a work-related level, we had to execute our responsibilities, because we had all taken an oath to the Constitution, and we had to do what we needed to do, and we had to get back to our jobs immediately.

And so, yeah, having been -- you know, just -- a comment I'll make is having been through 9/11, right, which was a very challenging thing to go through and to have to be in a position of responsibility on that day and have to get my workforce to go back to work immediately to deal with the counterterrorism matters we had to deal with, I know what is required to stay focused on the task at hand, even in challenging and difficult circumstances. And the Bureau is comprised of professional people who are able to do that, even in difficult circumstances.

Q So then putting aside the fact that you were upset about your

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friend being fired, did you also have serious concerns about the circumstances of the firing?

A From a legal perspective and from a national security perspective, yes.

Q What were those concerns?

A Well, this is where I'm a little -- I'm concerned about --

Mr. [REDACTED] If I may, as I understand the question, it did not ask you to comment on any investigative steps or measures. I believe the question was just asking you about your views of the appropriateness. I would instruct you not to relate your answers to any ongoing investigative interests, but you may comment on simply if you had views about whether the firing was appropriate or not. If you need to consult, then we would ask that we get a chance to consult with you if you feel you're unable to respond.

Mr. Baker. I guess I was -- I was gravely concerned about the firing with respect to the implications for the country.

Ms. Sachsman Grooms. What implications for the country?

Mr. Baker. Can I just go talk to --

Ms. Sachsman Grooms. Sure. Of course.

[Discussion off the record.]

Mr. [REDACTED] Thank you for that opportunity.

We will allow the witness to answer the question. But just so the record is clear, because we don't want any misunderstanding of his testimony, the FBI is instructing him to give a very general, nonspecific response to this question. But he may do that.

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Mr. Baker. So I was very concerned about the implications of the -- of the firing with respect to the Russia investigation.

Ms. Sachsman Grooms. The last time you were here, you stated that there was, quote, a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the investigation into the Russia matter and that this concern was shared by others, including the Acting Director, the heads of the national security apparatus, the national security folks within the FBI, and leadership at the Department of Justice. Is that right?

Mr. Baker. I don't remember off the top of my head what I testified about last time. I'm sorry.

Ms. Sachsman Grooms. No, that's fine. My question is was there a concern at the FBI that the President had fired Director Comey because he was trying to obstruct the investigation into the Russia matter?

Mr. [REDACTED] Could you rephrase the question?

It won't surprise you, the word "obstruct" has legal significance, particularly when there are ongoing investigations.

Ms. Sachsman Grooms. He's already answered this question.

Are we -- are we working off of different guidelines than last time?

Mr. [REDACTED] No, we are not. As you can imagine, these are very difficult matters for us to navigate. I would ask that you rephrase the question. But if the witness has already responded to it, then, of course, he can reconfirm his prior answer.

Mr. Baker. I don't remember what I said last time. But I was

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doing my best to try to answer truthfully last time, so I would rely on whatever the transcript says, I guess.

Ms. Sachsman Grooms. Okay. Did you have concerns that the President's firing of Director Comey was done in order to prevent, stop, or inhibit the Russia investigation?

Mr. Baker. So I've been instructed that I can answer that question, and the answer is yes.

Ms. Sachsman Grooms. And why did you have that concern?

Mr. [REDACTED] Again, if you can respond without discussing in detail any ongoing investigation of any individual or enterprise, please go ahead. I believe the question was referring to your mind state at the time, and I believe that's appropriate for you to respond to.

Mr. Baker. Okay. So can you just ask the question again --

Ms. Sachsman Grooms. Sure.

Mr. Baker. -- just so I answer it properly?

BY MS. SACHSMAN GROOMS:

Q So you said that you had a concern that the President's firing of Director Comey was done in order to impede or interfere with, something like that, the investigation into the Russia matter. Is that right?

A I'm relying on whatever I said last time in the transcript, yeah.

Q Yes. And I asked why you had that concern.

A In trying to answer that question within the parameters of

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what the FBI has said that I can do, I would say that it was the facts and circumstances directly surrounding the firing, but then also the buildup to it and the interactions, activities that had taken place prior to that, that I don't feel I can go into any more detail here given what the FBI's instruction to me is.

Q Were the facts and circumstances that you're referring to the ones that Director Comey testified to in front of the Senate?

A They would include those, yes.

Q Were there ones in addition to that?

A I think so, yes.

Q Can you tell me what those are?

Mr. [REDACTED] Again, I would ask the witness to abide by the previous instructions that he's received and invite him to consult with the FBI if he needs to.

Mr. Baker. Well, I guess I would -- in trying to answer it at a high level, it was the other discussions that I had with people at the FBI as well as my own analysis of the facts and concerns that I had.

Ms. Sachsman Grooms. Can you give me any more detail into your analysis of the facts and concerns that you had?

Mr. Baker. I don't -- I'm not sure that I --

Mr. [REDACTED] I believe that we've let the witness go as far as we can on this line of questioning.

Ms. Sachsman Grooms. It's still well within his state of mind.

Mr. [REDACTED] Within his state of mind, but, of course, his state

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of mind includes ongoing investigative equities, and that's the difficulty for us.

Ms. Sachsman Grooms. How serious was your concern?

Mr. Baker. Extremely serious.

Ms. Sachsman Grooms. What would be the implications of a President firing the FBI Director in order to stop an investigation of his own campaign?

Mr. [REDACTED] Please, go ahead. Yes.

Mr. Baker. I assume I can answer that one?

So one of the implications of that would -- one -- one -- let me stress one of the implications of that would be that such an action would be contrary to the President's responsibilities and obligations under the Constitution of the United States.

BY MS. SACHSMAN GROOMS:

Q Would it also have national security implications?

A Yes, potentially.

Q And can you describe what some of those, in general, national security implications would be?

A Well, it depends on why -- are we saying a President? If we're just saying a President, it would depend on why a President was doing it. If it was done for some purpose, again, that's contrary to the Constitution and the interests of the American people, then I think that would be alarming and concerning.

Q In this instance, did you think that there was a threat to national security?

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A In this instance?

Q Yes.

A Well, yes, because we had a national security investigation that was opened.

Q Did you think that the additional action of firing Director Comey added to that threat to national security?

Mr. [REDACTED] You can respond.

Mr. Baker. Yes.

Ms. Sachsman Grooms. In what way?

Mr. Baker. I'm just hesitating because I'm not sure what I can -- how much detail I can go into.

Mr. [REDACTED] Can we consult?

Thank you.

[Discussion off the record.]

Mr. [REDACTED] Thank you for that opportunity. And we thank Mr. Baker for being a very conscientious witness.

We will allow him to answer the question, again, consistent with other instructions we've given today. We do want him to confine his answer to general topics and not to discuss any ongoing investigative measure or matters.

So can you ask your question again? I'm sorry.

Ms. Sachsman Grooms. No problem.

BY MS. SACHSMAN GROOMS:

Q You had said that the President's firing of Director Comey you considered to be a threat to national security. And my question

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was, in what way was it a threat to national security?

A So the investigation at a high level was about Russia, period, full stop. And it was trying to assess, in this particular instance, what the Russians were doing or had done with respect to the 2016 Presidential election. We were trying to investigate what the Russians did and what any -- and whether there were any Americans or others who had done things in support of those efforts, either knowingly or unknowingly, so that we could understand the full nature and scope of what the Russians had attempted to do.

And so to the extent that this action of firing Director Comey may have been caused by or was the result of a decision to shut down that investigation, which I thought was a legitimate investigation, then that would frustrate our ability to some degree to ascertain what the Russians as well as any other Americans or others had done in furtherance of the objectives of the Russian Federation.

So not only -- I guess the point is not only would it be an issue about obstructing an investigation, but the obstruction itself would hurt our ability to figure out what the Russians had done, and that is what would be the threat to the national security. Our inability or our -- the inability or the delays, the difficulties that we might have with respect to trying to figure out what the Russians were doing, because our main objective was to thwart them.

Q "Them" being the Russians?

A The Russians.

Q Can you pinpoint when was the first time that you had

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concerns that the President of the United States would attempt or was attempting to interfere with the Russia investigation?

Mr. [REDACTED] We're going to instruct the witness not to respond to that question. Thank you.

Ms. Sachsman Grooms. Was there anything particular going on in the Russia investigation shortly before or at the time that the President fired Director Comey that would have particularly made the President concerned enough about his own personal liability or that of his close associates that the President would have taken the extreme step of attempting to interfere with the investigation?

Mr. [REDACTED] Same instruction.

BY MS. SACHSMAN GROOMS:

Q Let's start at the beginning of the Russia investigation.

As I understand it, and I believe Lisa Page explained this one to us, the counterintelligence investigation was initiated on July 31st. Were you aware of it at the time of its initiation?

A I don't remember the dates specifically, but I think I was aware of it before it was initiated, when we first received the information that started the investigation. And that -- I can't remember exactly how much of that's been declassified. But we had received information from a third party that caused us to open the investigation. I was aware of that at or about the time that it came into the Bureau. And I think that was even before officially that the investigation was opened.

Q Do you recall exactly how long after that information came

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in the investigation was opened?

A I think relatively soon thereafter.

Q And you wouldn't have been involved in the actual opening of the investigation, right?

A Not that particular investigation, no.

Q What was your role?

A With respect to this particular investigation?

Q Yes, sir.

A To at -- fundamentally, to make sure that the FBI had the best legal advice -- was receiving the best legal advice with respect to the investigation from whomever had to give it or could give it. So whether from my troops, the Department of Justice, or anybody else that we needed assistance from. So that was fundamentally that.

The second part was that I played a role of a, I guess, counselor/advisor with respect to how to handle the -- many of the various aspects of the investigation when they reached the attention of the Director, the Deputy Director, or other senior leaders.

So I wasn't there every day advising agents, conducting the investigation, reviewing documents, reviewing papers as a general matter and that kind of thing. I was advising the Director, Deputy Director, other leaders about how to confront investigative matters that came up from -- on a day-to-day basis.

Q And what was the initial concern/issue raised in the investigation?

A Well, the initial -- the initial issue was whether there had

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been interactions of an unlawful nature or that were a threat to the national security, or both, in connection with the -- the -- at least some people in the now President's campaign with the Russian Federation, witting or unwitting.

Q And these were related to George Papadopoulos?

A Yes. Information that he conveyed, yes.

Q Can you confirm that the initial allegation that started the Russia counterintelligence investigation had nothing to do with the Steele dossier?

Mr. [REDACTED] We'll instruct the witness he may answer if he can do so in an unclassified setting. I believe the question was a yes/no question, if he can --

Mr. Baker. Based on the information that I have seen in the public domain, I think I can answer it. And I think the answer is it did not have to do with the dossier.

BY MS. SACHSMAN GROOMS:

Q In fact, the Steele dossier was not provided to the FBI until later in 2016. Isn't that right?

A I -- yes. I'm not sure of the date when we first started to get parts of the dossier.

Q Sure. Lisa Page explained to us that, upon opening the investigation, I'm just going to quote from her, we had a number of discussions up and through and including the Director regularly in which we were trying to find an answer to the question, right, which is, is there someone associated with the campaign who is working with

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the Russians in order to obtain damaging information about Hillary Clinton, end quote.

Were you part of those conversations?

A I believe so, yes. It was broader than that, I would say, but that -- I was part of conversations having to do with the Russia investigation, yes.

Q And can you describe the broader context?

A We were trying to figure out what the Russians were doing, period. Like the full nature and scope of what they were up to, part of which may have had to do with the -- with the emails. But it was really trying to understand more broadly what they were up to.

Q And how important was it at the time to keep secret the aspect of the investigation related to the campaign?

A I think our collective assessment was that it was critically important to keep it secret at that time because we were at the very, very outset of the investigation. I think everybody recognized from the outset that this would be a hard case to investigate, that we needed to move carefully so that we would not alert anyone to the fact that we were investigating this in order for us to be able to figure out what happened and to not alert, importantly, the Russians, about what we were up to and what we already knew about them.

Q Did you keep it secret?

A Yes.

Q Were there other steps taken at the FBI to keep it secret?

A I think there were -- yes, there were. I mean, there were

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a number of steps taken to try to limit the number of people who had access to this information.

Q How serious was the threat to national security of these allegations that someone associated with the campaign was colluding or working with the Russians to impact the upcoming election?

A The 2016 elections?

Q Yes.

A So, again, I -- this word "colluding," I have a hard time understanding what that means, so -- we were concerned that the Russians were engaged in an effort to try to impact our elections -- that particular election, and we were trying to figure out exactly what they were doing and how they were doing it. And that -- there were various strands to that. And we were trying to learn as much as we could from our existing information that we had accessible to us and then to take logical investigative steps in a nonalerting way so that we wouldn't tip off what we were up to to understand what they were doing across the board with respect to our elections.

I'm not sure -- does that answer your question?

Q Well, was the case a priority for the FBI?

A Yes.

Q Did you think that was the right decision?

A Yes.

Q Why?

A Because if the Russians were trying to influence something as fundamental as a Presidential election, then I thought that would

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be a particular threat to the country, because so much of our system depends on the integrity of our elections. So much of our constitutional system depends on the integrity of our elections.

Q Would that threat to the national security increase if the President was the elected and, therefore, obtained classified briefings and was exposed to the Nation's most sensitive secrets, if there was someone within -- if he or someone within his campaign had been, in fact, working with the Russians?

A Let me answer that generally. I guess I would say we would -- I think we would -- well, I think we were concerned about anyone who might enter government and be in a position to have access to classified or sensitive information who might provide that to a foreign power.

Q How serious would that concern be?

A Extremely serious.

[Baker Exhibit No. 3

Was marked for identification.]

BY MS. SACHSMAN GROOMS:

Q I'm going to enter into the record exhibit 3. It's Director Comey's statement for the record before the Senate Select Committee from June 8th, 2017.

A I'm ready whenever. I don't know what particular part to look at, but just tell me.

Q I'm going to -- have you read it before?

A I think I read it at or about the time that he gave it.

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Q Did you watch Director Comey's testimony before the Senate?

A I watched most of it, yes. I didn't see all of it, but I watched most of it, I think.

Q To the extent that you're aware of them, did you find Director Comey's description of the events in his written and oral testimony to be consistent with the contemporaneous descriptions that he had shared with you at the time of the events?

Mr. [REDACTED] You may respond.

Mr. Baker. Yes.

BY MS. SACHSMAN GROOMS:

Q Do you believe that Director Comey accurately shared with the Senate his memory of those interactions with the President to the best of his recollection?

A Yes, I think so.

Q And why do you believe that?

A Based on conversations that I had had with Director Comey at the time of the events that he described as well as my review of the memos and discussions with him about the events after they had taken place.

Q I'm going to start with the January 6 Trump Tower briefing. It's on the first page.

Director Comey wrote that on January 6, he first met with President-elect Trump at Trump Tower in New York. It was at this meeting that Director Comey first informed President-elect Trump about the Fusion GPS dossier.

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He wrote that, quote, prior to the January 6 meeting, I discussed with the FBI's leadership team whether I should be prepared to assure President-elect Trump that we were not investigating him personally, end quote.

He then wrote that he did offer President Trump that assurance.

Were you part of the FBI's leadership team with whom Director Comey discussed this briefing before it occurred?

A Yes.

Q And after this meeting, did Director Comey discuss this interaction with you?

A Yes.

Q Is this statement consistent with what Director Comey recounted to you about the meeting?

A So I'm going on just what you read orally, and so I haven't had a chance today sitting here to read the written testimony or review his transcript. But based on what you said, yes, that sounds accurate.

Q Can you describe to us any other details about the conversation that you had with Director Comey about his January 6 meeting with the President?

A So I'm going to look to the FBI to see -- I'm not sure to what extent I can go into these conversations.

Mr. [REDACTED] You may respond as long as you do so keeping your responses to unclassified information, information that you know has been officially declassified. If you're not certain, if you say so, we'll try to address that with the committees.

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Mr. Baker. Okay. So, in general, I had several conversations both before and after the briefing with the Director, the Deputy Director, and other people at the FBI about both the substance and the format of this interaction.

What did we say the date was?

Ms. Sachsman Grooms. January 6.

Mr. Baker. January 6. How it was -- what was going to be said, how it was going to be conveyed, who would be in the room, and then what would -- and then getting an assessment from the Director afterwards about how it all had gone down. So I was involved in all of that trying to figure out how to do it.

BY MS. SACHSMAN GROOMS:

Q And did the Director describe to you how it went down?

A He did -- initially, he wrote a memo with respect to how it went down, which I read. At various points I read it a couple times, I think. And then I'm trying to remember if he had a conversation with us from New York. He may have had a conversation with the Deputy Director from New York. And then I heard about it from the Deputy Director. And then I think we talked about it as well when the Director was back in town.

Q And what did you hear about from the Deputy Director?

A Well, it was -- it was a summary of the meeting, again, the -- what was discussed, who was there, what the interactions were, who was -- who was taking the lead on discussing things, the fact that there was a -- sort of a, I guess you would say a sidebar discussion

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in the room about how to handle certain aspects of what had been disclosed among the President and his key advisers in front of the other participants from the intelligence community that I think people found unusual. So --

Then other details. I mean, I can't remember all the details about the meeting. I haven't read the memo in a long time. But, yeah, we -- the Deputy Director gave me a high level discussion -- high level description of that, and then I got more details as time went by from the Director.

Q Were the director's details consistent with the details that you had heard from the Deputy Director?

A Yes, I think so. Yeah.

Q And were those descriptions consistent with the memo that you read that the Director wrote?

A Yes. To the best of my recollection, yes.

Q Do you remember any more details from the discussion with the Director?

A I mean, I guess other than what has been conveyed in the memo that he produced or his testimony in front of the Hill -- or on the Hill. I mean, he conveyed things about the atmospherics in the room, things of that nature, his concerns that he had going in with having to convey this information, being the one selected to convey the information, how uncomfortable he was about that. We had conversations about whether that was a good idea, a bad idea, whether somebody should go with him in that room, including, potentially, the

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Deputy Director going in the room, who is an FBI agent and who could be present were statements to be made that would be related to our underlying investigation. It was ultimately decided that that was not a good idea.

But, you know, we had numerous conversations about how to handle the interpersonal aspects of the conversation that we all knew was going to be extremely difficult and uncomfortable.

Q Can you explain why you determined it was not a good idea to have an agent in the room?

A Because the Director -- to the best of my recollection, the Director was anticipating a long relationship with the President, and he wanted to have that relationship founded on -- founded on trust. And -- meaning that the -- that the President could count on the Director to always tell him the truth and to advise him to the best of his ability.

And so by bringing anybody else into the room to discuss this sensitive material that was being described to the President, we thought that that might throw off that dynamic, that would be one thing. That it would not allow a relationship of trust to get off on the right foot. And it would also then convey, which would have been accurately, that we had an agent there who could become a witness were there to be any problems down the road. And that -- and that, you know, Andy McCabe, in this case, is authorized and could have produced an FBI 302 with respect to the interaction, which is of a very different tenor than a conversation -- a conversation about a sensitive matter between

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the Director and the President of the United States.

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[12:15 p.m.]

BY MS. SACHSMAN GROOMS:

Q Following the meeting, did Director Comey share any concerns with you about the meeting?

A Concerns. I mean, he -- I think he described what happened and his uncomfortableness with being the person having to convey this information to the President and what it meant for the President's thoughts about the Bureau and how he would think about the Bureau, how he the President would think about the Bureau and whether he would think negatively about the Bureau, and how that would impact us. Things along those lines.

Q Let's turn to the January 27th dinner at the White House. That's the next meeting that's recounted in Director Comey's statement. It's a January 27th dinner in the green room at the White House. Director Comey wrote that he received the invitation around lunchtime and that he arrived at the White House to find that he and the President were dining alone.

Director Comey wrote, quote: "The President began by asking me whether I wanted to stay on as FBI Director, which I found strange because he had already told me twice in earlier conversations that he hoped I would stay, and I had assured him that I intended to," end quote.

He also wrote, quote: "My instincts told me that the one-on-one setting, and the pretense that this was our first discussion about my position, meant the dinner was, at least in part, an effort to have me ask for my job and create some sort of patronage relationship. That

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concerned me greatly, given the FBI's traditionally independent status in the executive branch," end quote.

The President then informed Director Comey, quote: "I need loyalty, I expect loyalty," end quote.

Did you discuss the dinner invitation with Director Comey before he attended?

A To the best of my recollection, no.

Q Did you discuss the dinner with Director Comey after it occurred?

A Yes.

Q Is this statement consistent with what Director Comey recounted to you about the meeting after it happened?

A Yes.

Q Do you recall him recounting to you the President's statements about needing and expecting loyalty?

A Yes.

Q Did Director Comey express concern about that?

A Yes.

Q What was the concern?

A That he didn't want to give an impression that he was pledging undying loyalty to the President, and he talked about how he -- there was a discussion of the loyalty at the outset of the conversation. The conversation then went in many other directions, and then the President looped back to the -- my recollection is the President looped back to the conversation about loyalty at the end.

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And Director Comey described to me how he tried to make sure that while the President was talking about these topics, that he kept his head exactly level and never made any effort to nod one way or the other, to make any head movements, because he didn't want the President to misinterpret any head movement as an acceptance of what the President was saying -- so he was very focused on that -- and that, yeah, he tried to convey to the President he was going to be -- the message, I believe, that he was trying to convey that he talked to me about was that he would be loyal to the President in the sense that he would tell the President the truth, he would give the President his honest -- he would tell him truthful facts and that he would convey his honest opinion about whatever the President in the future would ask him about, especially given the sensitive role the FBI plays within the executive branch and the government. And so that is what he tried to convey, and that Director Comey and I in the past had talked numerous times about the importance of having relationships based on that kind of honesty, and, for example, that's the kind of relationship that he and I had and expected from each other, and so that's what he was trying to convey.

It was an extremely uncomfortable -- he described it as a very uncomfortable meeting overall, and he was quite concerned about it.

Q Did you share the concern?

A Based on what he was telling me, I was concerned also about what was going on, yes.

Q In your 24 years at the FBI, had you ever had anything like

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that happen?

A No.

Q I mean, is it fair to say --

A Well, 24. It was 4 years at the FBI and 20-some odd years at the Department of Justice, yeah.

Q I apologize.

A Yeah.

Q In your 20-some odd years at the Department of Justice and 4 years at the FBI, had you ever had anything like that happen?

A No.

Q What's the concern about the President of the United States demanding loyalty or requesting loyalty from the FBI Director?

A So I guess the -- I have to try to give you a structured answer. I would have to think about it for a moment here. I mean, there are concerns at a number of different levels.

The FBI is supposed to be and is trusted, I think, by the American people, the other parts of the executive branch, the Congress, to be independent and professional and to render its views without respect -- to render its views and conduct its activities without respect to political party, political affiliation, an eye towards the political impact of what we would be doing, how that would play out. And so for an FBI Director to somehow pledge loyalty to one particular President would fundamentally undermine, I think, if it were to be learned by the public, it would fundamentally undermine in the minds of a significant portion of the public that confidence that the FBI

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was an independent law enforcement and national security agency, so it goes to sort of the core of what the FBI is all about.

Q Would there be concerns even if the public didn't learn about it?

A Absolutely, yes, because behind closed doors -- eventually the public would learn about it, but even so, yes. I mean, it would call into question what we were doing and whether we were doing things in a lawful way and whether we were -- we ourselves were adhering to our oaths to the Constitution.

Q Is it fair to say that you believe that the FBI should act in an independent fashion and not take direction on specific matters from the President?

A Well, it's -- no, I wouldn't go that far, because especially, you know, for example, in a counterterrorism matter, let's say, there are regular interactions between the FBI and the President of the United States, regardless of who that is; especially, you know, if you think about President Bush after 9/11, the FBI had numerous interactions with the President to keep him informed, to keep him up-to-date. So certain types of interactions with the President are not only natural; they're expected and necessary. But with respect to pledging loyalty to a particular occupant of the office, that is something else, and to pledge loyalty to any political party is something else as well, if that's what was being discussed.

Q Did you think that the request was improper, the request of the President, that the loyalty pledge was improper?

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A I had grave concerns about it.

Q What were your grave concerns?

A Well, along the lines that we just discussed. And I also worried -- I mean, one of the things that I worried about was whether, and then discussed with Director Comey, whether the President was -- whether the President, because he was new to government, perhaps didn't understand all of the intricacies of the relationships that had existed over time within the government and how the FBI had handled itself with respect to its exercise of its duties. I was concerned that people around the President might not be giving him the best advice with respect to that.

And so I had hoped that the FBI might be able to play a role in terms of helping the President understand how we helped him execute his responsibilities under the Constitution and laws of the United States and that we would be able to educate him in some fashion.

Q On January 24, 2017, the FBI had a voluntary interview with Michael Flynn during which he lied to FBI agents about his conversations with the Russian ambassador, Sergei Kislyak.

Were you aware of that at the time?

Mr. [REDACTED] I'm sorry. We will have to instruct the witness not to respond to the question.

BY MS. SACHSMAN GROOMS:

Q On February 13, 2017, the President fired National Security Advisor Michael Flynn. The next day, on February 14th, Director Comey met with the President alone in the Oval Office at the President's

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request. That is described in Director Comey's statement before the Senate Select Committee on Intelligence.

He states, and I quote, I'm on page 5: "The President began by saying Flynn hadn't done anything wrong in speaking with the Russians, but he had to let him go because he had misled the Vice President. He added that he had other concerns about Flynn, which he did not then specify."

The President then said, according to Director Comey, quote: "'He is a good guy and has been through a lot.' He repeated that Flynn hadn't done anything wrong with his calls with the Russians but had misled the Vice President. He then said, 'I hope you can see your way clear to letting this go, to letting Flynn go. He is a good guy. I hope you can let this go.'"

Did Director Comey discuss the February 14 interaction with you --

A Yes.

Q -- at the time?

A Yes.

Q Is Director Comey's written statement consistent with the way that he described the events to you after the meeting?

A Yes.

Q Did the meeting cause him concerns?

A Director Comey?

Q Yes.

A Based on what he told me, the answer is yes.

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Q Why?

A Again, it's concerns at a number of different levels having to do with the independence of the FBI; the President speaking to the FBI Director about a particular case that we were handling, that was of particular concern; the implication that the President was trying to direct an outcome with respect to that particular investigation. They were very alarming on a number of different levels.

And I think -- if I'm not mistaken, I think this is the meeting when the President excluded the Attorney General and others from the meeting, and Director Comey discussed at length with me that issue and the fact that he was quite concerned about that fact.

Q Did you share his concerns?

A Yes.

Q In Director Comey's statement, he described, and I quote: "I had understood the President to be requesting that we drop any investigation of Flynn in connection with false statements about his conversations with the Russian Ambassador in December," end quote.

Is that what he relayed to you at the time?

A I don't remember those exact words, but generally speaking, yes.

Q Did you also have concerns that the statements by the President were requesting that the FBI drop the investigation of General Flynn?

A Yes.

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Q And why would it be concerning if the President asks the FBI to drop the investigation of his National Security Advisor?

A Well, A, it's an investigation, period. It's the President, I mean, I guess you would say breaking a norm in that sense, the President actually intervening while it's going on with respect to a particular investigation.

It also goes back to what we talked about earlier. It has to -- it's not just some investigation; it's an investigation that is also related to the Russia matter that we were investigating, right, so it was not a freestanding independent investigation; it was something related to these other things. So it was alarming in that regard, too.

Q Is it alarming even if the FBI has no intention of dropping the investigation?

A Well, we didn't have any intention of dropping the investigation, so -- but it's alarming nonetheless, yes, because we'll -- you know, at a minimum, the existence or the fact of the -- at a bare minimum, the fact of this conversation just, again, looks bad if it were to ever -- would look bad if it were to ever become public, because it looks like the President's trying to put his finger on the scale to cause the investigation to go in a particular way, and that would hurt the FBI's credibility and reputation for independence. That was very alarming.

Q You said it would look like that to the public. Did you believe that's what actually was going on?

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A That the President was trying to put his finger on the scale? Yes, that's what I thought was going on.

I was quite concerned with all of these interactions between the Director and the President and had numerous conversations about that. I don't know if we'll get to that, but, anyway, I was uncomfortable with the way that these conversations were -- the fact that they were occurring in the first place and the way they were going, and the Director and I talked about how to try to deal with that. That eventually played out over time. That eventually plays out, and you see that in the memos as things progress.

Q Is it fair to say that your concerns were growing as the conversations continued?

A Yes.

Q And why is that?

A Because they touched on -- they continued to touch on matters that I thought were not appropriate, a good idea to be talking to the President of the United States about directly with the FBI Director. And I thought if there were to be interactions between the President and the Department of Justice about a particular matter, that those should go through his staff to the Attorney General or the Deputy Attorney General, as opposed to directly to the investigative agency, including the Director.

Q Was that the practice in the previous administration?

A That's generally how -- I mean, the practice ebbs and flows and changes over time depending upon which administration is in power

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and the preferences of the AG and the White House counsel and the President and that kind of thing, and then also what kind of a matter you're talking about, for example, as I said earlier, counterterrorism, but generally speaking, you know, the White House is not calling the FBI about particular ongoing criminal investigations that are not directly related to some urgent threat or something like that.

Q And had the -- was it unique that the White House was contacting -- or the President in this case was contacting the FBI directly about a matter that concerned the President's staff? I mean, had something like that ever happened before?

A I can't say whether it ever happened before. To the -- based on what I know, it was unique, I guess, in that -- I was unaware of prior instances of that. I can't say whether these kinds of conversations had taken place in prior administrations with prior Directors, that kind of thing.

Q Is it more concerning if the President is having that kind of contact and directing the FBI to stop an investigation of somebody that he knows or has a personal relationship with or works with him or he has a financial relationship with?

A That's concerning. That would not be typical.

Q You alluded to the fact that, at some point, you had a conversation with Director Comey about an ongoing concern about these conversations with the President and how to deal with them. Can you explain when that occurred?

A I had numerous conversations with the Director over an

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extended period of time about how to effectively interact with the President, and so I don't -- so it was, you know, starting before the January 6 meeting, which was obviously before he became President, and then continuing up to and around the time that he, Director Comey, was fired.

Q In this timeframe, right, which is around the firing of General Flynn and this request to drop the General Flynn investigation, do you recall what those conversations with Director Comey were about?

A Not specifically, sitting here today. Generally what happened was if the Director knew that he was going to have a conversation with the President, we might talk about it beforehand. He would go have whatever conversation. We would talk about it afterwards. Sometimes I would read his memos that he had prepared. I didn't -- I don't think I read all of them contemporaneously, but I think I read most of them. Then I might loop back with him and have a further conversation with him about it. We would have lunch sometimes in his office and we would talk about how to interact and how to handle these situations, what the right thing to do for him as the leader of the organization, for the organization, for the Department of Justice, how to help the President deal with this new situation that he's encountering as President for the first time, and how to protect himself, he the Director personally, with respect to these interactions. Yeah. So we talked about a lot of things with respect to all this.

Q Director Comey described in his statement, quote: "The FBI

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leadership team agreed with me that it was important not to infect the investigative team with the President's request, which we did not intend to abide," end quote.

He also stated that the leadership team discussed whether to share the President's request with the Department of Justice, which it did not do.

Were you involved in those discussions?

A Yes. I think it was my idea to make sure that that did not happen, that we had to be very sensitive about who was being exposed to these conversations.

Q I'm sorry. Just to be clear, because I had combined two things in one, it was your idea to make sure that which thing did not happen?

A That we made sure that -- there was one meeting in particular where the Director was describing, I can't remember exactly which interaction it was, with the President, and I was alarmed about it and said that we needed to take steps to make sure that none of the actual investigators learned about these interactions and what they were discussing so that they -- so that, to the extent that this was intended to influence them, that we would make sure that it did not.

Q Were you part of the discussion about not sharing the President's request about General Flynn with the Department of Justice?

A That, I don't remember specifically, sitting here today.

Q The written statement describes that Director Comey subsequently informed Attorney General Sessions about the President's

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concerns with leaks and that he, quote, "took the opportunity to implore the Attorney General to prevent any future direct communication between the President and me. I told the AG what had just happened - him being asked to leave while the FBI Director, who reports to the AG, remained behind - was inappropriate and should never happen," end quote.

Did Director Comey discuss his intention to raise this concern to the Attorney General with you before he did it?

A Yes.

Q And did he talk to you about it after?

A I think so.

Q Is this statement --

A I can't remember specifically right now, but I know we had numerous conversations about pushing this out -- making -- pushing this away from the Director and making sure that these interactions, to the extent that they were going to occur, would occur between the Department leadership and the President or his staff.

I was -- I was urging the Director to not have these interactions anymore and to have them go through the Department of Justice.

Q And is Director Comey's statement in his testimony before the Senate Select Committee consistent with what he recounted to you about his meeting with the Attorney General?

A I don't remember all the parts of that, especially the parts about the leak at the start, that doesn't ring a bell with me, but generally speaking, that he would prefer that these interactions took place between the AG or the DAG and the President, yes.

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Q Do you recall how the Attorney General responded -- or how Director Comey described to you that the Attorney General responded?

A I remember discussing it, but I can't remember the details of it right now, but I think that the -- I think the Department was receptive to taking on a more active role in trying to deal with these types of interactions.

Q Let's go to the March 30th call. The written statement then says that on the morning of March 30th, President Trump called Director Comey at the FBI. Director Comey wrote that the President, quote, "hoped I would find a way to get it out that we weren't investigating him," end quote.

And then he shifted the conversation to Mr. McCabe, raising concerns about a potential conflict of interest because Governor McAuliffe, who is close to the Clintons, had donated to Mr. McCabe's wife's campaign.

Director Comey wrote that immediately after the conversation, he called the Acting Deputy Attorney General to report the substance of the call from the President.

Did Director Comey discuss this interaction with the President with you after it happened?

A Yes.

Q Did he disclose to you the comments by the President about Mr. McCabe?

A Yes.

Q And did he discuss with you that he was calling the Acting

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Deputy Attorney General Dana Boente at the time?

A Yes, because I think I urged him to do that.

Q Are the facts in Director Comey's written statement consistent with what he recounted to you about the call?

A I haven't read these statements today, but my recollection having read it before and what he testified about is that he accurately portrayed what he had told me, what we had discussed at the time.

Q Why did you urge him to call the Acting Deputy Attorney General?

A Because I thought that he needed to get out of these kind of -- he, the Director, needed to get out of having these kind of interactions and needed to get some cover from the Department, and to tell them about it, and to get them to take over this role as quickly as possible in terms of interacting with the President about ongoing matters. I just didn't feel comfortable with it and thought it was not a good idea for the Director to be having these conversations.

Q Let's turn to the April 11th phone call. Sorry. There are a lot of these. This is the last interaction that Director Comey wrote about. The President asked what Director Comey, quote "had done about his request that I 'get out' that he is not personally under investigation," end quote.

Director Comey recounted that the President stated to him, quote, "'Because I have been very loyal to you, very loyal; we had that thing you know,'" end quote.

Did Director Comey discuss this interaction with the President

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with you after it happened?

A Yes, to the best of my recollection.

Q Do you recall him recounting to you that the President stated, "Because I have been very loyal to you, very loyal; we had that thing you know"?

A Yes, he talked about that part with me.

Q Did that concern him?

A Yes.

Q Why?

A Because he thought that the President was misremembering the conversation at the dinner. I think that's what the Director interpreted that to mean. Well, the Director told me at the time that he had -- that he believed that the President was referencing the loyalty conversation that took place at the dinner and that somehow the President was misremembering those facts, or the facts of what actually took place in the conversation.

And at some point in time, I think there's a part of this conversation I think when the Director didn't agree with some part of what the President was saying, he perceived a change in the President's demeanor and tone with respect to what -- with respect to the rest of the conversation, if I'm remembering correctly the conversations.

Q Were the facts in Director Comey's written statement consistent with what he recounted to you about his call?

A Again, I haven't read it today, but that's my recollection from having looked at it in the past.

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Q Is it fair to say that the repeated and ongoing contacts increased your concern at the time?

A Yeah. I haven't done an analysis of the frequency of them to tell whether they were increasing or decreasing, but the nature and scope, the subject matter of what was being discussed alarmed me considerably and I just didn't think it was a good idea to have the Director continue these conversations with the President -- and to try to figure out a way to get him out of having these types of interactions and get this in a different lane.

Q Were these conversations that we've discussed that are recounted in Director Comey's statement to the Select Committee on Intelligence part of why you had concerns when Director Comey was fired that the President had fired him in order to impede the Russia investigation?

Mr. [REDACTED] May we consult?

[Discussion off the record.]

Mr. Baker. Okay. I'm sorry. Just for the record, could we just get the question -- or can I just get the question again?

Ms. Sachsman Grooms. I will try my best.

Were these conversations that we've been discussing and that Director Comey recounted in his testimony before the Senate Select Committee, these conversations that Director Comey had with the President, part of why you had a concern when the President fired Director Comey that he had done so in order to impede the Russia investigation?

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Mr. Baker. Yes.

Ms. Sachsman Grooms. Can you describe it in any more detail?

Mr. [REDACTED] I think we've instructed the witness not to elaborate.

Ms. Sachsman Grooms. Got to try.

BY MS. SACHSMAN GROOMS:

Q Did Director Comey explain to you why he decided to write the memos and share them with you?

A Yes, he did.

Q And what was his explanation?

A His explanation was that he was concerned about, again, the nature and scope of these conversations and wanted a more or less contemporaneous record of what was discussed in case there were questions -- he was ever questioned about it down the road.

Q Who did he anticipate he'd be questioned about it down the road by?

A It could be the Congress in particular, the public, inspector general.

Q Did you agree with him that it was a good idea to make these memos, the contemporaneous memos?

A Yes, I did.

Q And why did you think they were important?

A For the exact same reasons that he did.

Q And I'm sorry. I think I've asked this before, but you believe that Director Comey's memos were accurate to the best of his

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recollection?

A The memos were -- obviously, I was not in the meetings or on these phone calls. The memos were consistent with the oral statements and oral descriptions that the Director provided directly to me at or about the time of the events and at or about the time that he did the memos.

Q Did you ever have any concerns that the memos, writing the memos might be considered improper or wrong?

A No, I didn't think that. I mean, they reflected, unfortunately, I think, the fact that the President was saying things that we thought required there to be memos about.

Q Which in its own sort of very nature you found to be disturbing?

A Yes, disturbing, unfortunate. I'm not sure. It just did not bode well for the relationship between the President and the Director and the FBI in general.

Q You said originally that, at some point early on, you thought the problem was just that the President didn't understand the nature between -- the nature of the traditional relationship between the FBI and the White House.

Did you come to a point where you thought or felt that he did understand it and was just ignoring it?

A That's hard for me to answer. I don't specifically remember thinking that. Yeah. I don't specifically remember thinking that.

Initially, it was my -- and I urged the Director to try to figure

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out a way to help the President understand more about the historical role for the FBI and why it was that way, but that the nature of the conversations with the President were such that it was difficult or impossible for the Director to present that type of information to him.

And then as time went on and the President seemed to be -- well, having the types of conversations that he had with the Director, I became, I guess -- I came to the belief that the President would not be interested in that kind of a conversation, given what he was doing, but I remained concerned that the President was not getting good advice from people around him in the White House who should have been steering him away from these kinds of conversations. Like, in other words, why didn't someone tell him, "You shouldn't be alone with the Director of the FBI. That is a bad idea for you"? Forget the FBI. "That's a bad idea for you. That looks bad. That's breaking all kinds of norms." And it would have seemed to me that somebody around the President should have been looking out for his best interests and telling him not to do that.

Q But was it your impression that Director Comey attempted to communicate to the President the norms that he thought were the appropriate norms?

A He tried to, especially later on when he raised this issue of, "Mr. President" -- I don't remember the exact words, "but these kinds conversations really should take place between the Department of Justice and you or the White House, White House counsel, that kind of thing, chief of staff."

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Q And did the conversations continue after that?

A No. I think they eventually ended after the one that you cited; I don't remember the exact date of it, April 11 or something like that.

Q And did --

A It may have been the case that -- I think the Director at that point in time took a firmer line with the President about how "these conversations were not a good idea, sir," and that's when, again, I think the President's tone changed a bit and -- but I think the conversations stopped at that point in time.

Q And then Director Comey was fired?

A Eventually, a few weeks later, yeah.

Ms. Sachsman Grooms. I believe I'm out of time. Let's go off the record.

[Recess.]

Mr. Gaetz. Matt Gaetz representing Florida. I want to offer my objection on the record to this proceeding occurring behind closed doors. I know of no House rule that binds any of the Members or any other observers or witnesses to the confidentiality provisions that were expressed at the beginning, and I don't consider myself bound by them, and I wanted to log that objection for the record.

Mr. Meadows. So, Mr. Baker, let me come back to a few things.

Mr. Baker. Excuse me, sir. The FBI is not here right now, so --

Mr. Meadows. We would prefer to go without the FBI. We'll hold the clock.

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[Recess.]

Mr. Meadows. All right. So, Mr. Baker, we'll go back on the record. And I wanted to follow up on just a few things. One is, when you came in today, you mentioned that in terms of other people coming to you directly, Larry Klayman actually came to you directly, and that's the only other time that you could recall, but you clarified the record from our previous time together that him coming to you to actually give you documents -- was it documents he was giving you?

Mr. Baker. Well, he didn't give them to me. It was -- what I remember is he wanted to come specifically to either me or the Director, because he lacked confidence in other parts of the FBI, and to basically get me to get the FBI to take these electronic media. I don't think they were printed documents. I could be wrong, but I think --

Mr. Meadows. Were there six thumb drives? Does that ring a bell?

Mr. Baker. I think it was more massive than a thumb drive. I think these were very large --

Mr. Meadows. Yeah. Six different ones, is what I --

Mr. Baker. Six or some number, yeah. A large number of very high-capacity --

Mr. Meadows. And what did he indicate that this was proof of?

Mr. Baker. To the best of my recollection, and I haven't gone back to look at it, but it was an allegation that there was an effort within the United States Government to conduct unlawful surveillance of other Americans, including government officials.

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Mr. Meadows. Did he indicate that there was surveillance of Members of Congress?

Mr. Baker. I can't remember that specifically. I remember him telling me that it had to do with members of the judiciary. I think it was a range of government officials. I don't specifically remember Congress, but it certainly could have been, and it was --

Mr. Meadows. Did he indicate that there was surveillance of Donald Trump and his associates?

Mr. Baker. Sitting here today, I can't specifically remember that. I'm sorry. And I haven't gone back and looked at anything since that time.

Mr. Meadows. So, when you were given this, did the FBI investigate that?

Mr. Baker. Eventually, yes. FBI agents went and seized the material, not me. FBI agents went out and seized the material.

Mr. Meadows. Did you open an investigation on it?

Mr. Baker. To the best of my recollection, yes.

Mr. Meadows. Is that investigation ongoing?

Mr. Baker. I don't -- when I left the Bureau, I believe there were no further investigative activities occurring, but I don't know that it was technically closed.

Mr. Meadows. Was George Papadopoulos surveilled by extraordinary measures?

Mr. [REDACTED] We're going to have to instruct the witness not to respond to that question.

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Mr. Meadows. Under what grounds?

Mr. [REDACTED] Again, our understanding is that it pertains to an ongoing investigation.

Mr. Meadows. Mr. Papadopoulos has been sentenced, and that investigation is over as it relates to Mr. Papadopoulos.

Mr. [REDACTED] I certainly understand your point, Congressman, that he has been sentenced, but our concern is that answers the witness may give could still affect the ongoing investigation. It may not affect Mr. Papadopolous' personal legal jeopardy, but our concern is that it could affect the overall investigation itself.

Mr. Meadows. So, in any event, you're instructed not to answer it.

Would it surprise you to know that there is credible evidence that Mr. Papadopoulos was surveilled in a manner with either tapes or some kind of recording device? Would that surprise you?

Mr. [REDACTED] We'll give the same instruction.

Mr. Meadows. So, Mr. Baker, then, let me ask it in more of a generic sense.

Is it common practice for the FBI to actually surveil individuals without their knowledge, U.S. citizens, and tape them for investigative purposes with confidential human sources?

Mr. Baker. So, as a general matter, it is an approved investigative technique under Attorney General guidelines and internal FBI policy to allow that to occur with appropriate predication and appropriate approvals. I can't remember the specific approvals,

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sitting here today, for where it --

Mr. Meadows. Would you be part of those approvals?

Mr. Baker. In a particular case, usually not.

Mr. Meadows. If it involved a Presidential campaign, would you have been involved in it?

Mr. Baker. So I was not involved in -- so, for example, in the two Presidential campaigns in 2016, I didn't usually -- usually -- get involved in details of the investigations like that.

Mr. Meadows. So what do you mean "usually"?

Mr. Baker. Well, sometimes --

Mr. Meadows. Did you get involved?

Mr. Baker. Well, sometimes, for example, the Hillary Clinton search warrant, or the Anthony Weiner --

Mr. Meadows. Yeah. In fact, that was part of when I went back and forth, you talked about the narrow scope and the fact that some of those emails weren't read because of the narrow scope, and that's what I've read more about you than anything else.

So, if we look at this, the claims that have been made about some members of the Trump campaign being surveilled, it is within the scope that that is possible, is what you're saying?

Mr. Baker. Well, okay. So "surveilled" to me has multiple meanings, meaning electronics --

Mr. Meadows. You can take electronic --

Mr. Baker. Physical surveillance.

Mr. Meadows. -- taped. No, I'm not talking about physical

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surveillance. I'm talking about taped, extraordinary measures where they would either tape conversations, wiretap conversations. Is it within the realm of possibility that that happened?

Mr. Baker. Is it within the realm of possibility? Given the constraints of what the FBI --

Mr. Meadows. No. He's not constraining you.

Mr. Baker. I'm having a hard time answering.

Mr. Meadows. Do you want to follow up and clarify?

Mr. Ratcliffe. Yeah. Can I?

Mr. Meadows. Yeah.

Mr. Ratcliffe. So, Mr. Baker, were you involved in the FISA application with respect to Carter Page?

Mr. Baker. Yes.

Mr. Ratcliffe. All right. And the Russia counterintelligence probe was opened by Peter Strzok, correct?

Mr. Baker. I believe I've heard that in the press. I don't specifically remember myself.

Mr. Ratcliffe. All right. And also it's been reported in the press and in testimony, it was opened based on intelligence relating to George Papadopoulos having a conversation with an Australian diplomat?

Mr. Baker. I don't know whether the country of origin of that person has been publicly disclosed, but the information had to do with George Papadopoulos, yes.

Mr. Ratcliffe. And the conversation that he had with a foreign

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diplomat?

Mr. Baker. I don't even know if we've identified -- I just, I really don't know what's been made public.

Mr. Meadows. It's been widely reported.

Mr. Ratcliffe. It's okay. I don't -- but I'm just trying to understand your knowledge as someone that was involved in that FISA application.

Mr. Baker. There had been a conversation between George Papadopoulos and another person, and that information was relayed to us.

Mr. Ratcliffe. Okay. And --

Mr. [REDACTED] If I may. I'm sorry. I don't want to keep interjecting. I know you're trying to move fast.

Again, if you can respond to a question about the Carter Page FISA application without discussing information that's classified, please go ahead. Feel free to respond to this line of questioning.

Mr. Ratcliffe. So that conversation and the basis for which the Russia probe was opened allegedly related to Trump campaign officials working with the Russian Government to access hacked emails of either Hillary Clinton or the DNC, correct?

Mr. Baker. I don't remember the specifics of the reporting. If you had a piece of paper to look at it, but generally speaking, that sounds correct to me. I'm not 100 percent sure, but I --

Mr. Ratcliffe. Okay. So question for you. Prior to the October 21, 2016, FISA application, the initial FISA application, had

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you seen contradictory or exculpatory evidence about whether or not George Papadopoulos had any knowledge about Trump campaign officials working with the Russian Government?

Mr. Baker. Exculpatory information about Papadopoulos.

Exculpatory in what sense?

Mr. Ratcliffe. Exculpatory or contradicting --

Mr. Baker. Contradicting his initial report?

Mr. Ratcliffe. Yes.

Mr. Baker. Not to my recollection, sitting here today.

Mr. Ratcliffe. Okay. If there was exculpatory or contradictory evidence, would you agree with me that that should have been presented to the Foreign Intelligence Surveillance court in October of 2016?

Mr. Baker. Again, not knowing what you're talking about, but generally speaking, the government has a very high duty of candor to the FISA court and should make -- and must make sure that all material information is provided to the FISA court. So, if there is information that undercuts the reliability of information that we're putting forward, then generally speaking, yes, it should be -- the court should be informed of that.

Mr. Ratcliffe. Thank you.

Mr. Meadows. And so, if, indeed -- because on that particular FISA application, going back to our previous conversations the other day, you reviewed the FISA application as it related to the probable cause portion of that. Is that correct?

Mr. Baker. That's my recollection. The first one, at least.

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Mr. Meadows. Right. So how many FISA applications did you review as it relates to Russia?

Mr. Baker. In my career or at --

Mr. Meadows. Yeah. As it relates to Russia collusion, this whole -- how many FISA applications did you review?

Mr. [REDACTED] I think we will have to instruct the witness not to respond to that.

Mr. Meadows. On what basis?

Mr. [REDACTED] Again, Congressman, by discussing the frequency and the quantity of use of that particular investigative technique, which is, as you know, quite sensitive and almost always classified, our concern is that it could impede the ongoing special prosecution.

Mr. Meadows. Well, there was a text message in a nonclassified setting that would indicate that there were multiple FISA applications, as many as 17 different FISA applications that may or may not have related to this particular subject. Would it surprise you to know that there were -- or is there more FISA applications beyond just the Carter Page FISA application that we've been discussing as it relates to this investigation?

Mr. [REDACTED] Again, in the abstract, we'd give him the same instruction. However, I certainly take your point, Congressman, if there's a particular text that the FBI's produced that you'd like to --

Mr. Meadows. There's multiple texts. There's multiple texts that would indicate Lisa Page -- it's in a text message between Lisa Page and Andy McCabe that says, you know, your particular -- I can read

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it. Would you like me to read it?

Mr. [REDACTED] That actually would be extremely helpful, Congressman. Thank you.

Mr. Meadows. Okay. On October the 19th, 2 days before the FISA was opened on Mr. Page, it's Lisa Page going to Andy McCabe: There will be nine packages for you to sign, with the possibility of eight additional if the NSLB signs off on them. They'll probably won't be WUDsd (ph) by 7:30. The FISA team will be delivering them at 7.

So that would indicate multiple FISAs that may or may not relate to this, but as your -- since you reviewed those, were there more than one FISA application candidate or subject other than Carter Page? Were there other FISA applications? And this was in a nonclassified setting, text messages back and forth.

Mr. [REDACTED] Again, Congressman, I appreciate your reading the text for us. My understanding of those texts is that they do not necessarily relate to the special counsel or the Russia investigation.

Mr. Meadows. It's great -- Counsel, I'm not asking you the question. I'm asking him a question. Does he have knowledge of anybody else involved in the Russia investigation where a FISA application was taken out on them?

Mr. [REDACTED] Respectfully, Congressman, I'm certainly not disagreeing or arguing the point that you're making, but I'm explaining the basis for our objection that stands.

Mr. Meadows. Okay. I would ask that counsel goes back and get us an answer to that. And even if we've got to have that in a classified

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setting, that would be appropriate.

Mr. [REDACTED] We certainly anticipate your following up with our employer about that.

Mr. Meadows. No. I'm asking you to follow up so I don't have to.

Mr. [REDACTED] We certainly will do so.

Mr. Meadows. Okay.

Mr. [REDACTED] For clarity, read back the specific question pending, please.

Mr. Meadows. So let me restate it so you don't have to read it back.

Were there other individuals connected directly or indirectly with the Trump campaign that had a FISA warrant placed on them for the purpose of surveilling conversations and collecting data other than Carter Page that you're aware of?

Mr. [REDACTED] And the same instruction --

Mr. Baker. I'm not going to answer it right now.

Mr. [REDACTED] -- but we'll represent to the committee that we will take this back and check on obtaining an answer to that question if we are able to do so.

Mr. Meadows. All right. So let me finish up, and then I'll yield back to the gentleman from Ohio.

There is great concern, from my standpoint, with regards to the actions of Mr. Rod Rosenstein in terms of his state of mind. You said you questioned his state of mind when he said that -- now, certainly

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you didn't mean that you questioned his state of mind in terms of was he capable of carrying out his job. Is that what you meant?

Mr. Baker. It was a bad idea for a number of reasons, this idea of wearing a wire. So --

Mr. Meadows. I understand it was a bad idea, but were you questioning his ability to carry out his job?

Mr. Baker. I was not questioning his ability to carry out his job. However, I knew that he was quite upset at the time about what had happened. I --

Mr. Meadows. He was quite upset about being blamed for Director Comey's firing?

Mr. Baker. Yes. Among other things, yes. That's my understanding. I didn't talk to him directly about that, but that's what I heard from others.

Mr. Meadows. Okay. So, if that is indeed the case that he was concerned, did you elevate that concern to anybody else?

Mr. Baker. I was speaking directly to the Acting Director of the FBI about it, so I didn't know where else I could go.

Mr. Meadows. So what actions did Mr. McCabe take on that?

Mr. Baker. Well, I think, like, for example, with that idea, the wearing a wire idea, the FBI, to the best of my knowledge, took no further action, because it was something that --

Mr. Meadows. But they didn't tell anybody? They didn't tell the Commander in Chief. They didn't tell anybody else that, "Hey, we're thinking about taping the President of the United States"?

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Mr. Baker. To my knowledge, they didn't tell anybody outside the Bureau.

Mr. Meadows. Do you think that -- you know, you were talking earlier about it looking bad? Do you think that looks bad, that you wouldn't tell somebody that you might be taping the President of the United States?

Mr. Baker. So the only -- so the --

Mr. Meadows. Because you're not an independent agency. I want to make clear. You've been talking about independence. You are not an independent agency.

Mr. Baker. I understand well the nature of the FBI's --

Mr. Meadows. Well, but you've been kind of characterizing it very different. You talk about independence, and we certainly want you to have a fair and independent investigation, but you are not an independent investigation. You go to the -- you know --

Mr. Baker. We're not --

Mr. Meadows. -- you report up to the AG, and you are a function of the executive branch.

Mr. Baker. I agree completely.

Mr. Meadows. Okay. So did you not have an obligation to let someone know that someone may be trying to tape the President of the United States?

Mr. Baker. At that time, I did not think we had an obligation to tell anybody.

Mr. Meadows. And why is that? Because you thought it was a good

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idea?

Mr. Baker. I didn't think it was a good idea.

Mr. Meadows. No, you didn't think it was a good idea. So, if you thought it was a bad idea, why would you not communicate that up the line?

Mr. Baker. So, up the line, the only person --

Mr. Meadows. Other than the other person that was in the intimate conversation with you, Mr. McCabe. Why would you not notify someone like the White House counsel or someone like that? Why would you not do that?

Mr. Baker. Because I didn't think that the suggestion, even though it was operationally a bad idea, I didn't think it was an illegal concept that the Deputy Director was -- or that the Deputy Attorney General --

Mr. Meadows. So you wouldn't think that it would be insubordinate?

Mr. Baker. Insubordinate?

Mr. Meadows. Yeah. You got the number two guy at DOJ going to tape his boss. I mean, if I came and taped you, wouldn't you think that that would be insubordinate? You know, if I'm taping everything right now, would that be in keeping with what is normal protocol, as you would say?

Mr. Baker. Everything's being taped right now. I'm well aware of that, Congressman. So -- but I didn't --

Mr. Meadows. Would it not be insubordinate?

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Mr. Baker. I didn't think it was unlawful, immoral.

Mr. Meadows. I didn't ask that. You answered that the other day.

Would it have been an insubordination?

Mr. Baker. I'm not sure I would use that word.

Mr. Jordan. Did you tell the Attorney General?

Mr. Baker. I beg your pardon?

Mr. Jordan. Did you tell the Attorney General?

Mr. Baker. No, I did not tell the Attorney General.

Mr. Meadows. Did anybody tell the Attorney General?

Mr. Baker. Well, the Attorney General, if my -- I believe was recused by this point in time.

Mr. Meadows. He was recused on Russia. He was not recused on obstruction or anything else, and so, at this particular point, it's a totally different matter. It would be an employee matter. Why did you not tell the AG?

Mr. Baker. With all due respect, I don't agree that it was a completely separate matter. So I would have thought --

Mr. Meadows. Okay. So saying it's the same matter, why would you not tell the AG, because he was recused?

Mr. Baker. I would not have told the AG because he was recused on this particular matter.

Mr. Meadows. So did Andy tell Rod that it was a bad idea?

Mr. Baker. I don't know what Andy told him.

Mr. Meadows. What do the memos say?

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Mr. Baker. I haven't read the memos.

Mr. Meadows. You have them in your possession, is what you told us, I believe, the McCabe memo?

Mr. Baker. Not McCabe's memos.

Mr. Meadows. But you talked to him about those?

Mr. Baker. I knew that he was doing memos.

Mr. Meadows. Well, I think the other day you said that you talked to him about the memos.

Mr. Baker. Yes. I knew that he had prepared memos of his interaction --

Mr. Meadows. So he didn't talk about the content of it?

Mr. Baker. So he -- well, he told me contemporaneously about what was going on, but he didn't read the memos to me; he didn't ask me to look at them.

Mr. Meadows. That's not the question I asked.

Mr. Baker. I don't know exactly what's in them.

Mr. Meadows. Do you know in general what are in the McCabe memos?

Mr. Baker. I do not.

Mr. Meadows. Does Rod have the memos?

Mr. Baker. Who?

Mr. Meadows. Rod Rosenstein.

Mr. Baker. I don't know. That's a good question. I don't know the answer to it.

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[1:17 p.m.]

Mr. Meadows. So we have these memos. Who all has them?

Mr. Baker. I don't know.

Mr. Meadows. Does Lisa Page have them?

Mr. Baker. Currently? I --

Mr. Meadows. Did she have them?

Mr. Baker. I would think yes, but I don't know the answer to that question.

Mr. Meadows. All right. So multiple people at the FBI knew that there was this conversation about invoking the 25th and taping the President of the United States, and you didn't tell the Attorney General?

Mr. Baker. Correct, to my knowledge. I did not.

Mr. Meadows. All right. I'll yield back.

Mr. Jordan. Thank you, Mark.

Mr. Baker, I want to go back to Michael Sussmann. We have your calendar here, some dates, Monday --

Mr. Baker. Excuse me, sir. I don't think your mic's on.

Mr. Jordan. Monday, September 19, you met with -- 2016 -- you met with Michael Sussmann. I think last time we were together you said he reached out to you. Is that right?

Mr. Baker. That's my -- so we're talking about the September 19 thing?

Mr. Jordan. Yes.

Mr. Baker. Yes. That's my recollection, that he reached out to

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me.

Mr. Jordan. Okay. Did Mr. Sussmann talk with anyone else at the FBI, to your knowledge?

Mr. Baker. About this particular matter or the matter that I talked about last time? What do you mean?

Mr. Jordan. Anything -- I know what you talked about last time. Anything relative to Russia? Any -- or, frankly, did Michael Sussmann, during this timeframe, talk to anyone else?

Mr. Baker. Not about this issue.

I just want to clarify that Michael Sussmann had been -- has had numerous interactions with the FBI over a period of time because he represents a number of different clients that interact with the FBI. So I have talked to Sussmann about, you know -- his clients have sued us and otherwise interacted with us. So the FBI has had many interactions with Sussmann --

Mr. Jordan. About this subject matter.

Mr. Baker. With respect to this?

Mr. Jordan. Yeah.

Mr. Baker. To my knowledge, I don't think he talked to anybody else in the FBI other than me.

Mr. Jordan. Okay. So didn't talk to Mr. Comey?

Mr. Baker. I don't believe so, no.

Mr. Jordan. Mr. McCabe?

Mr. Baker. Not to my knowledge.

Mr. Jordan. All right. How did Mr. Sussmann get the

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information that he gave you, do you know?

Mr. Baker. To the best of my recollection, he told me that it had been obtained by some type of cyber experts, and I don't know who -- how they started their inquiry into this. But that is what he told me, that some certain cyber experts had obtained information about some anomalous looking thing having, to my knowledge, nothing to do with the dossier. But anyway --

Mr. Jordan. Did he mention -- did Fusion GPS play a role in him getting information that he subsequently gave to you?

Mr. Baker. I don't remember him mentioning Fusion GPS in connection with this material.

Mr. Jordan. Did he mention at all when he was talking to you?

Mr. Baker. Not to my recollection, no.

Mr. Jordan. What about Glenn Simpson?

Mr. Baker. Not on this thing, no.

Mr. Jordan. How about Christopher Steele?

Mr. Baker. No.

Mr. Jordan. Okay. Did you meet with anyone else at Perkins Coie relative to this issue, Russia investigation issue?

Mr. Baker. I believe that Sussmann came in by himself, so I think the answer is no.

Mr. Jordan. Didn't talk to Marc Elias?

Mr. Baker. Who?

Mr. Jordan. Mr. Elias.

Mr. Baker. No.

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Mr. Jordan. All right. Was Mr. Sussmann's information used -- the information he gave you, was it used to support the FISA?

Mr. Baker. Not to my knowledge, no.

Mr. Jordan. Okay. Did you know -- did you know that Mr. Sussmann was also communicating with reporters?

Mr. Baker. At some point in time, either in that initial conversation or perhaps a subsequent one, I think I said last time he told me that the press had some or all of this information.

Mr. Jordan. Did he say who in the press?

Mr. Baker. Eventually he did tell us, yes.

Mr. Jordan. And when did he tell you that?

Mr. Baker. I'm sorry?

Mr. Jordan. When did he tell you that?

Mr. Baker. That was in a subsequent, I think -- I think it was a phone call, a subsequent phone call that I had with him, because we asked him -- we -- I asked him on behalf of the Bureau, after having discussed it internally, who it was at the press that -- that we could talk to about this, because we wanted them to not publish right away.

Mr. Jordan. And subsequently, was it the next day? Was it still in September? When was it?

Mr. Baker. I think it was like maybe a week -- sorry. A week or two later.

Mr. Jordan. Okay. I want to -- and I thought I had some copies here.

I want to have you look at a handout. It's footnote 43. Where

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did I -- oh, right here they are.

This is a footnote from the House Intelligence Committee's report. I just want to walk you through it.

Mr. Baker. Could I get one?

Thank you.

Mr. Jordan. I'm looking at footnote 43.

Mr. Baker. Okay. I've read through it.

Mr. Jordan. Okay. So in September 2016, redacted, shared similar information, whatever's above the large block of redacted information -- shared similar information in a one-on-one meeting with FBI General Counsel James Baker.

Is the redacted name there, is that Mr. Sussmann?

Mr. Baker. I don't know what's behind the redactions. I'm sorry.

Oh, in this? I would -- I'm sorry. In that September 2016?

Mr. Jordan. Yeah.

Mr. Baker. Yeah. I was talking about all the blackout above that.

Mr. Jordan. Yeah. No, I'm not asking about that.

Mr. Baker. I would guess, from -- my assumption is, from the context, that that's Sussmann.

Mr. Jordan. Yeah. That's what I think too.

And then as conveyed in an executive session December 18 of, blank, around the same time as the meeting with the FBI, blank shared the information with journalists, including a name at Slate Magazine.

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Follow all that? And, again, this is -- the redaction is Mr. Sussmann -- the two smaller redactions.

Mr. Baker. It seems like that, yes.

Mr. Jordan. Okay. First of all, why was it redacted? Did you -- the FBI do this?

Mr. Baker. You have to ask the Bureau. I don't know. I didn't participate in that process, to my recollection.

Mr. Jordan. Yeah, I don't know why that would be redacted.

Okay. And then it says Slate, who published at a Trump service communication with Russia, published an article that was titled, Was a Trump Service Communicating with Russia, on Slate Magazine October 31st, 2016.

I'm just curious, did you happen to read that article?

Mr. Baker. No, I did not.

Mr. Jordan. Okay. Do you know anything about what the article said? Have you read it since then?

Mr. Baker. I have not read the Slate article, no.

Mr. Jordan. It talks about some bank in Russia, Alfa-Bank, communicating with some Trump financial institutions in the server there.

None of that kind of conversation was related to you by Mr. Sussmann when you met?

Mr. Baker. Oh, yes. I mean, that is what he told me about. Yeah, absolutely.

Mr. Jordan. Okay. So -- well, tell me more about that.

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Mr. Baker. I didn't read the Slate article, but Sussmann told me that that's, in essence, what this was all about.

Mr. Jordan. Okay. We'll go into more detail about that, because I think the last time we talked, you just said it was something about some hacking. We didn't get into what it was hacking about.

So what did Mr. Sussmann tell you?

Mr. Baker. So now I'm nervous that maybe the last time the FBI interposed an objection, so --

Mr. [REDACTED] May we consult very quickly?

I know you're on a tight clock.

Mr. Jordan. Yep.

[Discussion off the record.]

Mr. Baker. So if the question is what did Sussmann tell me?

Mr. Jordan. Yeah.

Mr. Baker. Okay. And given the guidance I just got from the FBI, so I'll answer this at a somewhat high level.

So he was describing a -- what appeared to be a surreptitious channel of communications -- communication between some part of President Trump's, I'll say organization but it could be his businesses. I don't mean like The Trump Organization, per se. I mean his enterprises with which he was associated. Some part of that and a -- an organization associated with -- a Russian organization associated with the Russian Government -- a private organization associated with the Russian --

Mr. Jordan. Private organization in Russia associated with the

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government had some kind of electronic communication with some organization, some business associated with the Trump family or the Trump organization?

Mr. Baker. Yes, sir. And there was some effort -- there was some belief that this was a -- being conducted in a way so as to make it a covert communications channel.

Mr. Jordan. Okay. And my first question would be how'd you get this? Did you ask that question?

Mr. Baker. I did ask that question at a high level, yes. And he explained that he had obtained it from, again, cyber experts who had -- who had obtained the information, and he said that the details of it would explain themselves. That's my recollection.

Mr. Jordan. And was he representing a client when he brought this information to you? Or just out of the goodness of his heart, someone gave it to him and he brought it to you?

Mr. Baker. In that first interaction, I don't remember him specifically saying that he was acting on behalf of a particular client.

Mr. Jordan. Did you know at the time that he was representing the DNC in the Clinton campaign?

Mr. Baker. I can't remember. I have learned that at some point. I don't -- as I think I said last time, I don't specifically remember when I learned that. So I don't know that I had that in my head when he showed up in my office. I just can't remember.

Mr. Jordan. Did you learn that shortly thereafter if you didn't know it at the time?

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Mr. Baker. I wish I could give you a better answer. I just don't remember.

Mr. Jordan. I mean, I just find that unbelievable that the guy representing the Clinton campaign, the Democrat National Committee, shows up with information that says we got this, and you don't ask where he got it, you didn't know how he got it. But he got it from some, you know, quote, expert.

Mr. Baker. Well, if I could respond to that.

Mr. Jordan. Sure.

Mr. Baker. I mean, so I was uncomfortable with being in the position of having too much factual information conveyed to me, because I'm not an agent. And so I wanted to get this -- get the information into the hands of the agents as quickly as possible and let them deal with it. If they wanted to go interview Sussmann and ask him all those kind of questions, fine with me.

Mr. Jordan. Did that happen?

Mr. Baker. I don't know that. But I -- I mean, I -- well, A, I did hand it off to the -- to the investigators.

Mr. Jordan. I think you told us you handed it off to Mr. Strzok and Mr. Priestap?

Mr. Baker. My recollection is Mr. Priestap.

Mr. Jordan. Okay. And you don't know if they followed up or not?

Mr. Baker. Bill Priestap told me that they did follow up extensively.

Mr. Jordan. And back to a question I asked earlier. This was

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not part of the FISA that was taken to court on the FISA ap for Carter Page?

Mr. Baker. To the best of my recollection, it was not part of that.

Mr. Jordan. It was not. Okay.

Mr. Ratcliffe wants to get in here, so I'm going to jump around here a little bit now.

Did any -- did Franklin Foer, the guy who wrote this article, did he ever reach out to you?

Mr. Levin. I'm not going to have him answer any questions as asking about any interactions with the press.

Mr. Jordan. I'm not talking about whether he reached out to reporters. I'm asking did reporters reach out to you? So it's coming this direction.

Mr. Levin. I understand. I'm not going to have him talk about any conversations with reporters.

Mr. Jordan. Well, I think we -- last time we talked about Mr. Corn pretty in-depth.

Mr. Levin. I don't believe we --

Mr. Jordan. Yes, we did.

Mr. Levin. We talked about him bringing some information in, but I don't believe we -- anyway, that's -- I'm not going to let him answer the questions about whether he had conversations with reporters.

Mr. Jordan. Are you going to give me the same answer when I ask did Mr. Isikoff ever reach out to you?

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Mr. Levin. Yes. Same instruction to him.

Mr. Jordan. Okay. All right.

So let's go to a couple text messages so Mr. Ratcliffe can take over.

Can we get him the same one where -- you had it earlier where it says, and we need to open this case while Andy is acting?

You got it?

Go to the bottom of that page.

Mr. Baker. So just to be clear, we're on page 32 here?

Mr. Jordan. Yep.

Mr. Baker. Okay.

Mr. Jordan. Go to the bottom.

We need to lock in blank in a formal charge of a way soon.

Who's the blank?

Mr. [REDACTED] What's the date of that?

Mr. Levin. The date is 5/10/2017.

Mr. Baker. We need to lock in blank in a formal charge of a way soon.

I can't figure that one out.

Mr. Jordan. Pardon?

Mr. Baker. I can't figure that one out. I don't know what's behind the blank.

Mr. Jordan. Okay. Thank you.

Let's go to the other one. This one is page 56.

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Do we have that one for --

Mr. Levin. No, we don't have that yet.

Mr. Jordan. Text messages 56. This is -- can you make copies of that real quick? I want to move on to another question while we're waiting.

There was -- the Office of the Inspector General just released a report recently, maybe even 2 days ago, findings of misconduct by FBI official for accepting gifts from members of the media and for lack of candor.

Are you familiar with what the Inspector General --

Mr. Baker. No, I haven't seen that one yet.

Mr. Jordan. Have you got copies of this? You got a copy of that? All right. Give him one of those. Let me have one back. Thank you.

All right. We'll go back to this one. While we're doing that, can you make copies of this? I thought we had this.

So let's go back to the text messages between Page and Strzok. This is the now somewhat famous insurance policy text message. It should be page 56, if you got it in front of you.

Mr. Baker. Fifty-six? I've got 56.

Mr. Jordan. Middle of the page. I want to believe the path you threw out for consideration in Andy's office, there's no way he gets elected, but I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before you're 40.

Were you in that meeting?

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Mr. Baker. To the best of my recollection, no. I don't remember a conversation about an insurance policy.

Mr. Jordan. Okay. Do you have any idea what they mean when they say "it's like an insurance policy"? What does that refer to?

Mr. Baker. You know, I can't remember if Mr. Strzok was questioned about this and testified and said something about it. To be frank, sitting here today, I just don't understand what it means.

Mr. Jordan. Okay. All right. I want to come back to that as soon as we make copies, but let me ask you a few other things here.

Did you have contact with anyone at the State Department about the subject matter we've been -- about the Trump-Russia investigation or dossier or anything related to that? Any folks at the State Department?

Mr. Baker. Not -- not to my recollection, no.

Mr. Jordan. Victoria Nuland?

Mr. Baker. I don't recall interacting with her on this, no.

Mr. Jordan. Liz Dibble?

Mr. Baker. No.

Mr. Jordan. Okay.

Mr. Baker. Not that I recall.

Mr. Jordan. Anyone from the Clinton campaign ever talk to you about this issue?

Mr. Baker. About Russia?

Mr. Jordan. Yeah.

Mr. Baker. Not to my recollection, no.

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Mr. Jordan. Sidney Blumenthal ever talk to you? Ever have --

Mr. Baker. No.

Mr. Jordan. -- any conversation with him?

Mr. Baker. Not to my recollection. I don't think I've ever met him.

Mr. Jordan. Okay. And then, Mr. Ratcliffe, while I'm waiting for -- did you ever travel to London or to the U.K.?

Mr. Baker. In my life, yes.

Mr. Jordan. No, I'm talking about this time.

Mr. Baker. No, not in connection with any investigative matter pertaining to Russia.

Mr. Jordan. Okay. How about Mr. -- relative to this subject, did you ever talk to Mr. Brennan?

Mr. Baker. About this particular investigation?

Mr. Jordan. Yeah.

Mr. Baker. I don't recall that I personally spoke to him about that, no.

Mr. Jordan. Mr. Clapper?

Mr. Baker. Not me personally, no.

Mr. Jordan. And how about General Rogers -- or Admiral Rogers? Excuse me.

Mr. Baker. About Russia? I don't think we ever discussed Russia. I've had -- the reason I'm hesitating, I've had conversations with Admiral Rogers. I don't recall ever discussing that with him.

Mr. Jordan. How about Susan Rice?

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Mr. Baker. No, not to my recollection.

Mr. Jordan. Okay. So I just want to take a quick look at this, and then Mr. Ratcliffe will have the remainder of our time.

This is from the Inspector General just a couple days ago, October 16. I just want know if you know who this is.

Mr. Baker. I beg your pardon?

Mr. Jordan. I just want to know if you know who it -- who is he referring to? Who's the FBI official who took tickets and then wasn't square with the investigators and took tickets from people in the press?

Mr. Baker. I would -- I would have to guess at who it is, and I don't know if I should do that. I don't know what the Bureau's policy is on disclosing that since it appears that the IG did not do that. And I'm worried about it would be a violation of the Privacy Act.

Mr. Jordan. Okay. All right.

Thank you very much, Mr. Baker. I appreciate it.

Mr. Baker. Thank you.

Mr. Ratcliffe. Mr. Baker, I want to start out by making sure the record is clear about the conversation that we had earlier.

I asked you this morning, when did the counterintelligence probe into the Trump-Russia matter become a criminal investigation, and I thought I heard you say "from the beginning." Is that right?

Mr. Baker. I think that's what I said. I don't remember the record -- we have the record, but --

Mr. Ratcliffe. It's not a trick question. I'm trying to -- I want to make sure I understand, because I think we see this differently.

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But as I understood your explanation, was post 9/11, when the wall came down between law enforcement and intelligence, that every counterintelligence probe is simultaneously a criminal investigation.

Is that a fair summary of what you testified to?

Mr. Baker. That the FBI always has all of its authorities in dealing with a counterintelligence matter. And so to my mind, the FBI walks in with all of its options on the table. And it can pursue things in a strictly, you know, foreign intelligence channel, interacting with other intelligence agencies and things like that and never have anything to do with, you know, a grand jury subpoena or putting anybody in a courtroom or anything like that, or an indictment.

But at the same time, if the facts and circumstances warrant going -- using criminal tools, including up to and including prosecution, then the FBI can do that. And so I think it's just misleading to think of a counterintelligence investigation as not also being, in part, at least potentially a criminal investigation.

Mr. Ratcliffe. And to that point, I was trying to find out at what point this counterintelligence probe crossed over into a criminal investigation, and that's where you and I disagree, that there is such a point in time, correct?

Mr. Baker. I think we disagree, yeah.

Mr. Ratcliffe. Okay. So --

Mr. Baker. Or at least we're not -- I don't know exactly what, but, yes, I think --

Mr. Ratcliffe. So did Director Comey, do you know, did he share

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your opinion during his tenure that counterintelligence probes were simultaneously criminal investigations?

Mr. Baker. I --

Mr. Ratcliffe. If you know.

Mr. Baker. I don't know. You'd have to ask him.

Mr. Ratcliffe. Do you know if he shared that in connection with this particular counterintelligence probe into Russia?

Mr. Baker. Well, let me back up. I think, obviously, Director Comey understands very well how to conduct a counterintelligence investigation. And so -- and I think he knew full well that the criminal tools were always available to him as Director, and so he could -- if the facts warranted, we could go down the criminal route, get a criminal search warrant, get a grand jury subpoena, indict someone, and so on, from the same investigative origin.

Mr. Ratcliffe. Okay. So in 2016, obviously we know -- we've talked about the Comey memos. And in those memos and in subsequent public statements and in testimony, Director Comey has said that he told President Trump that President Trump was not under investigation during that point in time, correct?

Mr. Baker. That's what I understand, yes.

Mr. Ratcliffe. Okay. Well, you've seen the memos.

Mr. Baker. Yes. To the extent he talked about it in the memos. And I know he's also testified about this publicly, yes.

Mr. Ratcliffe. Right. So do you know if at any point in time, did Jim Comey as FBI Director ever tell President Trump that President

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Trump was under criminal investigation?

Mr. Baker. I think -- my understanding and belief is that he never told -- that he told the President the opposite.

Mr. Ratcliffe. He told the President the opposite. Okay. So I'm trying to still figure out how the firing of Jim Comey, while upsetting or crazy, in your mind, was in any way possibly unlawful.

Answer this question for me. How could President Trump obstruct a criminal investigation into his actions if he doesn't know there's a criminal investigation into his actions?

Mr. Baker. So, first of all, I'm not sure I used the word -- I don't think I personally used the word "crazy" with respect to the firing. I think -- I think I said I was upset, but I don't believe I characterized the President's action as crazy, so just for the record.

Mr. Ratcliffe. Okay.

Mr. Baker. Theoretically, how could it happen? Theoretically -- let's just be very clear, I'm speaking theoretically. If the President of the United States fired Jim Comey at the behest of the Russian Government, that would be unlawful and unconstitutional.

Mr. Ratcliffe. Is that what happened here?

Mr. Baker. I don't know.

Mr. [REDACTED] I instruct the witness not to answer a question like that.

Mr. Baker. Okay, sorry.

Mr. [REDACTED] Thank you.

Mr. Ratcliffe. Okay. So let's set that aside as a possibility.

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That doesn't say that you don't agree with me that President Trump could not have or did not fire Jim Comey for the purpose of obstructing justice into an investigation of President Trump.

Mr. Baker. I'm sorry. I lost the thread of your question. I'm confused.

Mr. Ratcliffe. So setting aside the possibility that you just gave us, that the reason was that the Russian Government told Donald Trump to fire Jim Comey, you still agree with me, based on the fact that President Trump didn't know that he was under criminal investigation, because he was never told, that President Trump could not have fired Jim Comey for the purpose of obstructing an investigation into the actions of President Trump.

Mr. Baker. So it's unclear to me what the -- so -- I'm not sure I can answer that question easily, because it depends -- so now I'm going to -- I'm worried about going into what the FBI would be concerned about.

It depends on the President's state of mind whether the Director told him something or not.

Mr. Ratcliffe. But we've already -- you're not aware of any -- that the President was told that he was under investigation. In fact, just the opposite happened. So what I'm just trying to do is narrow it down.

The President could not have fired Jim Comey because he was trying to obstruct an investigation into the actions of President Trump.

Mr. Baker. But he could have tried to obstruct the investigation

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with respect to others.

Mr. Ratcliffe. Say it again.

Mr. Baker. He could have tried to obstruct the investigation with respect to others, even if he thought -- even if he thought, which I don't know -- what he thought in his mind.

Mr. Ratcliffe. And I accept that premise as a premise. But what I'm trying to do is eliminate possibilities. And one of those is that, is there any basis that you're aware of as the FBI general counsel at the time for the notion that President Trump, because he wasn't aware of any criminal investigation into his actions, could have possibly obstructed justice by firing Jim Comey for an investigation into his actions that he wasn't aware of?

Mr. Baker. And I'm answering, yes, I think he certainly could have obstructed justice by interfering with an investigation --

Mr. Ratcliffe. No, no, no. Into -- you said into the actions of others. I'm talking about President Trump's actions.

Mr. Baker. I guess we're talking past each other. I'm not sure I fully understand what you're driving at.

Mr. Ratcliffe. Well, what I'm driving at is it's one thing to say that the President tried to obstruct justice into the actions of Michael Flynn or Paul Manafort or some other person. That's different than obstructing justice into an investigation of President Trump's actions. And Jim Comey has expressly told President Trump that he's not under investigation for his actions, correct?

Mr. Baker. But if the President -- yes, that's correct, to

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answer your question directly.

But if the President had in his state of mind -- if he was -- if he had guilty knowledge, even if the FBI didn't have it, and he was attempting to thwart the investigation before it got to him, then I think that would also be -- I think that would be obstruction. The President at the time --

Mr. Ratcliffe. Do you believe that happened?

Mr. Baker. I don't know. I'm not -- I'm not part of the investigation anymore. I don't know what the investigators have determined.

Mr. Ratcliffe. Well, did Jim Comey ever indicate that that was something that was going on? Because it's not reflected in his memos and it's not been reflected in his public testimony.

Mr. Baker. But Jim Comey didn't write things about that at the FBI after he was fired, obviously.

Mr. Ratcliffe. Okay. So your notion is that President Trump may have obstructed justice possibly because of the actions of others.

Are there any limitations on a President's pardon authority?

Mr. Baker. Well, the contours of the President's pardon authority, I think, are not completely clear. So the question, for example, can the President pardon himself?

Mr. Ratcliffe. But we're talking about others.

I'm trying to figure out why President Trump would obstruct justice into an investigation of Michael Flynn or Paul Manafort or anyone else if he had the ability to pardon those folks, which I believe

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is an absolute authority under the Constitution.

Mr. Baker. So I think the answer is not completely clear with respect to the contours of that. And I would say that if the President's action in pardoning someone was otherwise contrary to his other obligations under the Constitution, I think that would raise serious constitutional concerns.

Mr. Ratcliffe. Okay. So going back to your original premise between -- or as to how President Trump could have obstructed justice. You gave as an explanation, if the Russian Government instructed him or he did it at their behest.

Mr. Baker. That was a hypothetical and theoretical thing.

Mr. Ratcliffe. Okay. I want to ask -- so was there a discussion about that with Director Comey?

Mr. Baker. I'm just looking at the FBI.

Can I go into this?

Mr. Ratcliffe. Don't cue the FBI, Counsel.

Mr. Baker. I don't want to get myself into trouble with them in terms of --

Mr. [REDACTED] If we may, I think it's best we consult, especially in an unclassified setting. We will be brief.

[Discussion off the record.]

Mr. Baker. So I'm going to try to answer your questions yes or no here, just to be careful. And then we'll just sort of go one question at a time, if that's okay.

Mr. Ratcliffe. Well, so --

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Mr. Baker. That's my instruction.

Mr. Ratcliffe. All right.

What was the question?

I think it was did you have a discussion with Director Comey about the possibility that the Russian Government may have ordered his firing.

Mr. [REDACTED] The hypothetical, theoretical, as he's characterized it.

Mr. Baker. So that particular question, to the best of my recollection, no, I did not discuss that with Director Comey.

Mr. Ratcliffe. Okay. Did you discuss it with anyone?

Mr. Baker. To the best of my recollection, yes.

Mr. Ratcliffe. Who did you discuss it with?

Mr. Baker. We discussed, so to the best of my recollection, with the same people I described earlier: Mr. McCabe, possibly Mr. Gattis, Mr. Priestap, possibly Lisa Page, possibly Pete Strzok. I don't remember that specifically.

Mr. Ratcliffe. So there was -- there was a discussion between those folks, possibly all of the folks that you've identified, about whether or not President Trump had been ordered to fire Jim Comey by the Russian Government?

Mr. Baker. I wouldn't say ordered. I guess I would say the words I sort of used earlier, acting at the behest of and somehow following directions, somehow executing their will, whether -- and so literally an order or not, I don't know. But --

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Mr. Ratcliffe. And so --

Mr. Baker. As a -- it was discussed as a theoretical possibility.

Mr. Ratcliffe. When was it discussed?

Mr. Baker. After the firing, like in the aftermath of the firing.

Mr. Ratcliffe. All right. And it sounds like a fairly large group. Was there more than one discussion about that?

Mr. Baker. So I would not categorize it as a large group. I would categorize it as a small group, in my opinion.

Mr. Ratcliffe. A small group of five or six people that you've identified?

Mr. Baker. Yes.

Mr. Ratcliffe. Okay. And what do you recall about that conversation, the dialogue between the five or six of you that were in that --

Mr. Baker. So the basic idea was that we were trying to under -- throughout the whole investigation, we were trying to understand what was going on here. And at -- that was one extreme. The other extreme is that the President is completely innocent, and we discussed that too. And so -- and then you have things in the middle. And so -- so that was how it came up. There's a range of things this could possibly be. We need to investigate, because we don't know whether, you know, the worst-case scenario is possibly true or the President is totally innocent and we need to get this thing over with -- and so he can move forward with his agenda.

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Mr. Ratcliffe. Were you aware during that conversation at that point in time of the level of bias that folks like Peter Strzok and Lisa Page and Andy McCabe and others may have had or did have against Donald Trump?

Mr. Baker. So I don't know how to respond to the bias question. I did not -- I was unaware of the text messages at that time that were going back and forth between Lisa and the nature of those types of conversations.

Mr. Ratcliffe. Okay.

Mr. Baker. That was unknown to me at the time.

Mr. Ratcliffe. You were unaware of those. Do you agree that those text messages reflect an inappropriate level of bias?

Mr. Baker. All I can tell you is that when you use the word "inappropriate" as folks have done, I did not see, in their official actions, evidence of bias in their official actions.

Mr. Ratcliffe. Well, that doesn't really answer the question, though, do you think it was appropriate.

Let me move on, because my time is very limited. And I've got to ask you about this because we need to shift gears with respect to Bruce Ohr.

You were aware of Bruce Ohr's involvement in the Trump-Russia investigation?

Mr. Baker. I had some knowledge of that, yes. I was -- yes.

Mr. Ratcliffe. Do you know if Sally Yates was aware of his involvement?

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Mr. Baker. Bruce Ohr's involvement?

Mr. Ratcliffe. Yes.

Mr. Baker. I don't know.

Mr. Ratcliffe. I'm trying to understand how the number four -- or a number four, as he's been described at the Department of Justice, was part of the chain of custody in evidence supporting a FISA application.

Mr. Baker. Is it Bruce Ohr?

Mr. Ratcliffe. Bruce Ohr, yeah. Were you aware of the operational role that he was playing with respect to Christopher Steele?

Mr. Baker. I had -- I can't recall the specifics of that. I heard that -- I heard, on a couple of occasions, at least, that Bruce Ohr played some role with respect to Steele and had a relationship, or something like that. And I don't remember the specifics about how exactly that played out. I had some consciousness of it at the time.

Mr. Ratcliffe. Well, even after the fact, were you trying to determine or did you play a role in trying to determine whether or not it was appropriate for the number four person at the Department of Justice to be involved in the creation of a piece of evidence that became the central piece of evidence the Department of Justice was using?

Mr. Baker. I never heard that he was involved in the creation of that. Ohr was.

Mr. Ratcliffe. Do you agree that he was involved in the chain of custody of that evidence?

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Mr. Baker. I'm not sure. I'm not sure. I don't know exactly how --

Mr. Ratcliffe. Well, are you aware that Christopher Steele or Nellie Ohr or Glenn Simpson gave him information that was shared with the FBI?

Mr. Baker. Gave Bruce Ohr information?

Mr. Ratcliffe. Yes.

Mr. Baker. I had some level of understanding of interactions between Steele and Ohr and the FBI. The precise details of that, I don't know. I don't remember.

Mr. Ratcliffe. You agree with me he should have had some authority from someone within the Department of Justice to be engaged in that type of activity?

Mr. Baker. I would have thought that he would have informed his boss at least. I'm not sure who that was at the time, but -- unless the FBI instructed him not to. I just don't know the details of that.

Mr. Ratcliffe. Is it appropriate, under FBI protocols, to work with sources that have been terminated by the FBI?

Mr. Baker. It's a bit of a tricky question, I think, to answer because sources keep coming back. When they've been terminated, they don't always like that and still want to try to provide information to the FBI. And so they go back to their handlers from time to time. And so sometimes disengaging with those folks can be challenging.

Mr. Ratcliffe. Okay. But I want to get into specifics here. Christopher Steele. You were involved in the FISA application

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with respect to Carter Page.

Mr. Baker. Yes.

Mr. Ratcliffe. And you know, then, that Christopher Steele was terminated because of his engagement with the media.

Mr. Baker. To the best of my recollection, that's right.

Mr. Ratcliffe. So in that specific circumstance, would it have been appropriate to use a terminated source to continue for the -- let me strike that.

Would it, in that circumstance, be appropriate for Bruce Ohr to be working with a terminated source?

Mr. Baker. Well, Bruce Ohr, at that point in time, would not be part of the -- he was not part of the FBI. So I -- I don't know what the department's rules would have been on that vis-à-vis him.

Mr. Ratcliffe. Okay. When did you become aware that the wife of the number four person at the Department of Justice was helping in the creation of the Steele dossier?

Mr. Baker. The Nellie Ohr involvement?

Mr. Ratcliffe. Yes.

Mr. Baker. To the best of my recollection, I think I learned about that through public reporting.

Mr. Ratcliffe. At what point in time?

Mr. Baker. I don't remember.

Mr. Ratcliffe. All right.

Mr. Baker. Late -- later on. Much later on in the investigation.

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Mr. Ratcliffe. All right. Would you agree with me that that's a material fact, that the wife of the number four person at the Department of Justice is involved in the creation of the central piece of evidence in the FISA application?

Mr. Baker. I would -- to be able to answer that, I'd have to know more about what she did and exactly what role she played.

As I said earlier, we have an obligation to report all the material facts to the court. I don't disagree with that for a second. But me rendering some judgment on this interaction, I don't know enough about what she did, so I would -- I don't know how to answer that question.

Mr. Ratcliffe. Well, Mr. Baker, with all due respect, you and I both worked at the Department of Justice at different points in time. Do you think it's appropriate for folks to be aware that the number four person at the Department of Justice is involved in the chain of custody and his wife is involved in any capacity in creating a piece of evidence and those facts are not disclosed to the Foreign Intelligence Surveillance Court?

Mr. Baker. So if what you say is true, and I don't know it to be true, then it seems as though the institution of the Department of Justice should provide that to the FISA court. The difficulty is do the people who are actually going to the FISA court know these details, right? That's the problem. You have an -- in this case, an FBI agent who literally will be signing the application attesting to the accuracy of the information. You have particular attorneys reviewing it, a particular structure up to and including the Director and so on. If

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those people don't know about it, then -- then I'm not sure that they -- you know, I would say they didn't do anything wrong.

But the institution of the Department of Justice had a breakdown somewhere, and information that, again, assuming what you say is true, should have been, you know, at least discussed about whether it should go on the FISA application.

Mr. Ratcliffe. So I agree with that with respect to -- but none of that excuses the misconduct. It just raises a question about who didn't disclose the material facts that should have been to the court. Obviously you can't disclose what you're not aware of, right?

Mr. Baker. Right.

Mr. Ratcliffe. But you agree with me, generally speaking, that if the number four person at the Department of Justice and his wife both play roles with respect to the creation of a piece of evidence, that the Foreign Intelligence Surveillance Court should have been apprised of that fact.

Mr. Baker. If they played a role in the creation of it, and that's how it came to the Bureau, then that seems like something that at least -- again, I would like to know more details about it, but it seems like something that should have been evaluated about whether it should go into the FISA application or not. I would have -- what you say concerns me and I would like to know more about it.

Mr. Ratcliffe. Okay. You told the Inspector General that the conduct of Hillary Clinton and her associates was appalling with respect to the handling of classified information, correct?

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Mr. Baker. I believe that's correct.

Mr. Ratcliffe. Okay. And do you still believe that?

Mr. Baker. Yes.

Mr. Ratcliffe. All right. And I have reason to believe that you originally believed it was appropriate to charge Hillary Clinton with regard to violations of law -- various laws with regard to the mishandling of classified information. Is that accurate?

Mr. [REDACTED] You may answer.

Mr. Baker. Yes.

Mr. Ratcliffe. All right. Are you a reasonable prosecutor?

Mr. Baker. Not anymore. I'm not a prosecutor anymore.

Mr. Ratcliffe. Were you a reasonable prosecutor?

Mr. Baker. I think so.

Mr. Ratcliffe. And you came to that conclusion?

Mr. Baker. So I had that belief initially after reviewing, you know, a large binder of her emails that had classified information in them. And I discussed it internally with a number of different folks and eventually became persuaded that charging her was not appropriate because we could not establish beyond a reasonable doubt that -- we, the government, could not establish beyond a reasonable doubt that she had the intent necessary to violate --

Mr. Ratcliffe. And I understood that, that you had to be persuaded, and stated as a basis that ultimately you were persuaded there was a lack of evidence establishing knowledge or criminal intent, correct?

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Mr. Baker. Yes.

Mr. Ratcliffe. Okay. When were you persuaded?

Mr. Baker. Sorry. Pretty late in the process, because we were arguing about it, I think, up until the end.

Mr. Ratcliffe. Yeah. So Jim Comey had reached the opposite conclusion as early as -- or I guess as late as May the 2nd of 2017, as reflected in the memo that he created, correct?

Mr. Baker. Well, I know there's been a lot of public discussion about that. The way I experienced that interaction and other interactions with Jim Comey is he would throw things out like that to get people to start talking and thinking about it and test his conclusions against others and get them to push back. And so it was -- I believe it was in that process that I read these emails and we had these discussions and arguments.

So I -- if I had been -- I believe if I had been persuaded that she had the intent, I would have argued that vociferously with him and maybe changed his view. And I think he would have been receptive to changing his view even after he wrote that thing.

Mr. Ratcliffe. So, again, so the record's clear, as the -- as the FBI general counsel, you originally believed it was appropriate to charge Hillary Clinton with violation of the law for mishandling classified information?

Mr. Baker. My original belief after -- well, after having conducted the investigation and towards the end of it, then sitting down and reading a binder of her materials, I thought that it was

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alarming, appalling, whatever words I said, and argued with others about why they thought she shouldn't be charged.

Mr. Breitenbach. Under what legal standard were you basing your opinion that she should have been charged?

Mr. Baker. Well, it was the statutes that we were considering at the time. I'd have to sit down and relook at them again. But it was the -- it was the nature and scope of the classified information that, to me, initially, when I looked at it, I thought these folks should know that this stuff is classified, that it was alarming what they were talking about, especially some of the most highly classified stuff.

Mr. Breitenbach. So that sounds like a knowledge standard rather than an intent standard.

Mr. Baker. Well, knowledge, intent. I mean, I think those things are hard to distinguish and --

Mr. Breitenbach. They're actually -- I just want to point out they are distinguished --

Mr. Baker. I know they're distinguished in the statute.

Mr. Breitenbach. -- specifically in the statute. You have -- are you aware of that already, that they are distinguishable?

Mr. Baker. I haven't looked at the statute, but I know -- I mean, obviously you're looking at a statutory standard in trying to figure out how to apply it. I was struggling with the facts about even just ascertaining what literally did she know and what was reasonable to infer about what she knew.

Mr. Ratcliffe. So I appreciate that. We're limited on time,

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so -- but if what ultimately persuaded you and what you really had to look at was knowledge or the lack of evidence establishing knowledge or criminal intent, wouldn't the best evidence of that been not a binder of emails but, instead, Hillary Clinton's own testimony?

Mr. Baker. Well, maybe not. I don't know. It depends. I mean, her testimony could be false, right? I mean, theoretically.

Mr. Ratcliffe. Well --

Mr. Baker. I'm not saying it was, but I'm saying once you start --

Mr. Ratcliffe. This debate was taking place before and -- Mr. Comey wrote this memo months before Hillary Clinton was ever interviewed by the FBI.

Mr. Baker. That's correct.

Mr. Ratcliffe. So months before the FBI ever asked the subject of this investigation about her knowledge or her intent, the FBI Director had written a memo saying that no reasonable prosecutor would bring these charges.

Mr. Baker. To the best of my --

Mr. Ratcliffe. First of all, yes or no?

Mr. Baker. I believe that's correct.

Mr. Ratcliffe. All right. And then -- but ultimately, even though you were of a different opinion, he ultimately persuaded you that she should not be charged.

Mr. Baker. He and others, yes. I had discussions with numerous others.

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Mr. Ratcliffe. All right. Thank you.

Mr. Jordan. Thank you.

Mr. Baker. Thank you.

Ms. Sachsman Grooms. We'll go back on the record.

I understand you have a hard stop, so I just have a couple quick followups.

BY MS. SACHSMAN GROOMS:

Q In the last round, I believe you said that you were uncomfortable to get too much factual information from Mr. Sussmann because you were not an agent?

A Uh-huh.

Q Can you explain what you mean by that?

A Well, I didn't want to -- I was trying to avoid becoming too much of a witness. So obviously he showed up, he had this material. I knew that I was going to be a witness of some sort in terms of the chain of custody, because he was giving it to me and then I was going to give it to agents.

So he made some statements, but I didn't want to conduct an interview like this or a deposition, or however you want to think about it, because I wanted to get this in the hands of the investigators and let them sort it out.

Q So your discomfort was related to the fact that you did not want to become a fact witness --

A In an investigation.

Q -- in an investigation?

COMMITTEE SENSITIVE

COMMITTEE SENSITIVE

A Yes.

Q Were you at all uncomfortable about the fact that he was giving you the information in itself?

A No.

Q You didn't think there was anything improper about that?

A No.

I knew Michael. He was a -- we had a prior existing relationship. He was bringing me material that he, as an -- at least as a citizen, if nothing else, thought was evidence either of a crime or of some threat to national security. And so he brought it to the FBI, which is the appropriate institution. And I, as a representative of the FBI, accepted it and then passed it off to the investigators.

Q Switching topics just quickly to Bruce Ohr. Was Bruce Ohr the number four person at the Department of Justice at the time?

A Well, I was running through that in my head. But I think -- I believe he was a deputy assistant attorney general. So attorney general, Deputy Attorney General, assistant attorney general, deputy assistant attorney general. I think that's how you would work it.

Q And there are a number of --

A But there are -- the SG, the solicitor general, and the associate attorney general cloud that picture in terms of who's number one, number two, number three, number four.

Q And there are a number of that -- roles that Bruce Ohr has, right?

A Yes, there are many number fours.

COMMITTEE SENSITIVE

COMMITTEE SENSITIVE

Q So even if he was the number four, he would be one of like seven or eight number fours?

A More than that, yeah. I don't even know how many. Still a high ranking position, the deputy assistant general. But, yes, there are many DAAGs, D-A-A-G-S.

Q And then your discussion -- you don't know what Nellie Ohr did or didn't do?

A I do not.

Q In your discussion in the previous round about what should or shouldn't be put into the FISA court was, more or less, hypothetical based on a hypothetical that Nellie Ohr had created information that then got turned over to her husband that then got turned over to the FBI. Is that right?

A Yes, because that would have -- yes, as a hypothetical, because I don't know any of those facts. And it has to do with the origin of the material, and the source of the material is something that's obviously relevant to a FISA application in terms of evaluating the reliability of that source.

Q Would your concern be obviated if Nellie Ohr was not involved in actually creating that material?

A Well, if she was not involved, then she wouldn't be a source of it. So, then, yes, that would be -- that would diminish my concerns.

Q Would your concerns be diminished if she just worked for the same employer?

A And had no role in the preparation of the material?

COMMITTEE SENSITIVE

COMMITTEE SENSITIVE

Q Yes.

A Yes, my concerns would be diminished.

Ms. Sachsman Grooms. Okay. I think that's all I have. Thank you very much.

[Whereupon, at 2:07 p.m., the interview was concluded.]

COMMITTEE SENSITIVE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendants.

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Case No. 1:19-cv-00573 (JEB)

**PROPOSED ORDER**

Having considered Defendant's motion for partial summary judgment, the opposition,  
and all the pleadings herein:

It is hereby ORDERED that Defendant's motion for partial summary judgment is denied.  
SO ORDERED.

Dated: \_\_\_\_\_.

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U.S. District Judge