

Examining the Inspector General’s Report on Alleged Abuses of the Foreign Intelligence Surveillance Act

Questions for the Record

December 18, 2019

QUESTIONS FROM SENATOR FEINSTEIN

1. Your report identified various inaccuracies and omissions in the Carter Page FISA applications, which you concluded “resulted from case agents providing wrong or incomplete information to Department attorneys and failing to identify important issues for discussion.” [OIG FISA Report at 413]. Although you were unsatisfied with the explanations the case agents and supervisory agents provided, you found no evidence of intentional misconduct. [OIG FISA Report at xiii]. Your report also documented “a lack of understanding or awareness of important information” relating to the FISA errors on the part of managers, supervisors, and senior FBI officials, whom you faulted for not exercising “greater vigilance” in overseeing the FISA process. [OIG FISA Report at 379]. Nonetheless, during the hearing the FISA inaccuracies and omissions were characterized by some Members as “a criminal conspiracy.”

a. Did you find that FBI managers, supervisors, or senior officials directed the FISA inaccuracies or omissions made by various case agents? Specifically, did you find that Peter Strzok, Bill Priestap, Michael Steinbach, Carl Ghattas, Trisha Anderson, James Baker, Andrew McCabe, or James Comey directed inaccuracies or omissions in the Page FISA applications? If so, where in your report are those findings?

The report does not include a finding that these officials directed the inaccuracies or omissions we identified in the Page FISA applications, although the report includes findings that supervisory special agents had shared responsibility under the Woods Procedures for ensuring the accuracy of applications submitted to the Foreign Intelligence Surveillance Court.

b. Your report described an alteration that an FBI Office of General Counsel Attorney made to an email concerning Page’s relationship with another U.S. government agency. Did your report or any witness that you interviewed state that anyone else knew about this change at the time? Did your report or any witness that you interviewed state that anyone had asked this OCG Attorney to make this change?

The report contains the information the OIG learned about the conduct by the FBI OGC attorney. As noted in our report, the OIG promptly notified the Attorney General and the FBI Director of the evidence we found. In view of that referral, and subsequent judicial proceedings, we refer any further inquiries you may have about this matter to the Department.

c. Did any of the individuals on the Crossfire Hurricane investigation who were responsible for the errors in the Page FISA application process say that they were directed by FBI managers, supervisors, or senior officials NOT to comply with applicable rules, including the requirement that case agents ensure that all factual statements in a FISA application are “scrupulously accurate”?

During the course of our review, the OIG did not receive information from individuals on the Crossfire Hurricane investigation who were responsible for the errors in the Page FISA applications stating that they were directed by FBI managers, supervisors, or senior officials not to comply with applicable rules, including the requirement that case agents ensure that all factual statements in a FISA application are “scrupulously accurate.”

2. President Trump and his allies have promoted a conspiracy theory that Joseph Mifsud, a Maltese professor who told Trump campaign advisor George Papadopoulos that Russia had “dirt” on Clinton and would help the Trump campaign – was a CIA or FBI plant, sent to “entrap” the Trump campaign. [New York Times Oct. 6, 2019]. It has been reported that Attorney General Barr traveled to Italy to speak with Italian officials about Mifsud in September. [Reuters, Oct. 2, 2019; Daily Beast, Oct. 5, 2019]. However, your report stated that while your office “investigated an allegation ... that the FBI used Joseph Mifsud ... to pass information to Papadopoulos in April 2016 as a set up, so that the FBI could predicate the Crossfire Hurricane investigation,” “none of the witnesses we interviewed or documents we reviewed had any information to support such an allegation.” [OIG FISA Report at 312- 13].

a. Did you identify any evidence that the Intelligence Community, FBI, or DOJ used Mifsud to set up (or “entrap”) the Trump campaign?

As stated on pages 312-313 of our report, the OIG’s investigation did not identify any evidence that Mifsud was ever an FBI confidential human source (CHS). Additional information relevant to this question can be found in the classified version of the OIG’s report in footnote 484. This footnote was declassified by the Acting Director of National Intelligence after publication of the OIG’s report.

b. Did Attorney General Barr or U.S. Attorney John Durham provide any evidence that altered your conclusion concerning whether Mifsud was used as a set up?

The OIG did not receive evidence from any source contrary to the information about Joseph Mifsud described on pages 312-313 of our report.

3. Bruce Ohr is a 28-year career Justice Department official who, at the time of the events discussed in your report, served as an Associate Deputy Attorney General and the head of the Organized Crime Drug Enforcement Taskforce. Your report notes that he had a “pre-existing professional and ‘friendly’ relationship” with former MI6 officer Christopher Steele since at least 2007. When Mr. Steele approached him with Russia-related information in 2016, Mr. Ohr passed this information along to the FBI. Your report does not fault Ohr for providing this information to the FBI. Rather, it faults him for not also informing his supervisors at the Justice Department about this information. [OIG FISA Report at 392]. During the hearing, you explained that you were concerned because “Mr. Ohr was passing along ... information from Mr. Steele to the FBI,” but “that information was not then being given back by the FBI to the Justice Department.”

a. Did Mr. Ohr play any role in the FBI’s decision to open the Crossfire Hurricane investigation?

The OIG did not find evidence that Department attorney Bruce Ohr played a role in the FBI’s decision to open Crossfire Hurricane. The FBI’s decision to open the Crossfire Hurricane investigation in July 2016 is described on pages 51-58 of our report.

b. Did Mr. Ohr play a role in decision making regarding any aspects of the investigation that your office reviewed?

Our report describes in detail the information we learned regarding Mr. Ohr's actions, including his interactions with the FBI, certain State Department officials, and Mr. Steele.

c. Did you identify any evidence that Mr. Ohr was personally motivated by anti-Trump bias?

We did not find any such documentary or testimonial evidence.

4. At the hearing, you testified that “individuals at the Justice Department and the FBI are allowed to have their political views. They’re allowed to be voters. They’re allowed to be engaged citizens. They should be.” In fact, the Hatch Act ensures that FBI and Justice Department employees retain the right to “express his or her opinion as an individual privately and publicly on political subjects and candidates.” [5 C.F.R. §§ 734.203; 734.402]. The Civil Service Reform Act likewise prohibits Justice Department management from using political affiliation to make personnel decisions. [5 U.S.C. §§ 2301(b), 2302(b)(1)(E)].

a. Do you agree that FBI and DOJ employees have a legal, constitutional right to hold personal political views?

Yes, and they must not let their personal political views influence official action or decisions.

b. Do you agree that it is permissible for FBI and DOJ employees to like or to dislike a particular president or presidential candidate?

Please see the response to question 4a.

c. Do you agree that it would be improper for the FBI or DOJ to consider political affiliation when staffing this (or any other) investigation?

It would be improper for the FBI or DOJ to base a staffing decision on an employee's political affiliation.

5. Your office serves as a line of “last defense” within the Justice Department – an independent body that we must rely on to help investigate serious allegations of potential wrongdoing by Department officials. That is why it is disappointing that you have declined to investigate matters such as Attorney General Barr’s decision not to recuse himself from the Mueller investigation. At the hearing, you suggested that you lacked authority to investigate such issues. But the Inspector General Act expressly permits you to investigate “allegations of criminal wrongdoing or administrative misconduct by a person who is the head of any agency or component of the Department of Justice.” [5 U.S.C. § 8E(b)(4)]. Your office has previously classified the review of recusal decisions as an examination of “administrative misconduct.” [See, e.g. Findings of Misconduct by an FBI Senior Executive for Violating Federal Conflict of Interest Rules, Failure to Report Source of Spouse’s Income, and Related Misconduct (Feb. 15, 2017) (available at: Investigative Findings in Cases Involving Administrative Misconduct, <https://oig.justice.gov/reports/inv-findings.htm>)]. In fact, your report assesses Department attorney Bruce Ohr’s decision not to recuse himself from engaging with the FBI in connection with the Crossfire Hurricane matter, and ultimately concludes that federal ethics rules did not require him to recuse. [OIG FISA Report at 396- 97].

a. Will you commit to investigating Attorney General Barr’s decision not to recuse himself from overseeing the Mueller investigation?

I appreciate your longstanding support for the role of Inspectors General in holding agency officials accountable, and for my office in particular. As referenced during the hearing, Congress imposed limits on the DOJ OIG’s jurisdiction under section 8E(b)(3) of the Inspector General Act when it created the DOJ OIG in 1988. That section requires the OIG

to refer to DOJ's Office of Professional Responsibility (OPR) "allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice." As I have noted repeatedly in congressional correspondence to Members of this Committee and in testimony, this carve-out applies to all Department attorneys, including the Attorney General. Indeed, in seeking to have this jurisdictional limitation on the OIG removed in 2007, my predecessor as Inspector General testified to this very concern before the Senate Homeland Security and Governmental Affairs Committee following allegations of misconduct regarding Attorney General Gonzales' removal of numerous United States Attorneys. As then IG Fine noted, pursuant to Section 8E, the Attorney General directed OPR – an entity that reports directly to the Attorney General and the Deputy Attorney General – to investigate that matter despite it involving the Attorney General's and the Deputy Attorney General's conduct.

We thank the Committee for its recent mark-up and strong support for the Inspector General Access Act, which, if passed and signed into law, would allow the OIG to undertake such investigations, where appropriate, without the complicating jurisdictional analysis that we currently have to undertake each time we receive an allegation concerning a Department attorney, including the Attorney General.

I would note that, with regard to the FBI matter from February 2017 referenced in your question, the misconduct matter did not involve a DOJ lawyer. Additionally, with regard to the recusal issue concerning Mr. Ohr referenced in your question, although Mr. Ohr is a Department lawyer, he did not have any legal responsibilities in connection with the Crossfire Hurricane investigation – indeed he acknowledged that he had no responsibilities over the matter and was acting without the knowledge of his supervisors – and therefore the alleged misconduct did not "relate to the exercise of [his] authority" as an attorney to investigate, litigate, or provide legal advice in that matter. The OIG's jurisdiction over Department attorneys is well-established when their alleged misconduct is unrelated to their authorized duties as a lawyer for the Department.

With regard to your request regarding Attorney General Barr's recusal decision, in reviewing allegations of professional misconduct by an Attorney General, we are obligated by the IG Act to assess the scope of the OIG's jurisdiction in the context of section 8E. While we believe the request raises potential issues regarding the OIG's jurisdiction pursuant to Section 8E, we also noted that the Department has stated that Attorney General Barr consulted with Department ethics officials and was advised that he was not required to recuse himself. In the absence of any additional information, the OIG does not believe that there is a sufficient evidentiary basis to open an investigation, without reaching the issue of whether the OIG has jurisdiction over the matter.

b. Will you commit to investigating former acting Attorney General Matt Whitaker's decision to disregard advice from career ethics attorneys and to refuse to recuse himself from overseeing the Mueller investigation?

While we believe the request raises potential issues regarding the OIG's jurisdiction pursuant to Section 8E, we also note that the Department has stated that then acting Attorney General Whitaker consulted with Department ethics officials and was advised that he was not

required to recuse himself. In the absence of any additional information, the OIG does not believe that there is a sufficient evidentiary basis to open an investigation, without reaching the issue of whether the OIG has jurisdiction over the matter.

c. Will you commit to investigating Attorney General Barr's decision not to recuse himself from matters related to Ukraine, including the Department's conclusion that "no further action was warranted" in connection with the July 25 Trump- Zelensky call – the official summary of which contains multiple references to the Attorney General?

Although I cannot commit to opening an investigation based on the information available to my office on this subject, I will have my office reach out to your office to ensure that we fully understand the concerns expressed in your question.

6. You stated at the hearing that your office receives "anonymous allegations frequently" and "move[s] forward on [them] if we think they're sufficient to move forward on and predicated and have support."

a. Have any of your reports relied on information that your office received from anonymous sources?

Yes.

b. Have you included information from sources known to you, but who have requested confidentiality, in any of your reports? Have you done so without revealing the source's identity?

Section 7(b) of the Inspector General Act requires the OIG to protect the identity of any employee who provides information to the OIG, unless the Inspector General determines that disclosure of the identity is unavoidable during the course of an investigation. In accordance with section 7(b), my office has frequently written reports that have benefited from information provided by whistleblowers and other witnesses without revealing the source's identity.

c. Does the fact that a source has requested confidentiality diminish the accuracy or importance of the information that the source provided?

No. The accuracy or importance of the information provided by any complainant, witness, or other person depends on a multitude of case-specific factors unrelated to an individual's request for confidentiality, including whether the facts and circumstances reported are corroborated or consistent with other known information. As indicated above, my office has frequently written reports that have benefited from information provided by whistleblowers and other witnesses without revealing the source's identity, and prior to including such information, we take steps to ensure its accuracy and credibility.

7. In a December 10, 2019 statement, Christopher Steele's attorneys indicated that the night before your report was released, they were informed by your office that "previously redacted material had been unredacted and that it contained negative information about Christopher Steele," who "was given no opportunity to review, much less comment, on this material." The attorneys noted that the newly unredacted material included statements by Steele's "Primary Sub-Source" that "would be put in a very different light" had Steele been "given an opportunity to respond." [Bredhoff & Kaiser, Statement on Behalf of Christopher Steele and Orbis Business Intelligence, Dec. 10, 2019]. The redactions reportedly were removed after Attorney General Barr declassified materials at the eleventh hour. [New York Times, Barr Allows for Release of Additional Details About Ex-Spy Behind Steele Dossier, Dec. 9, 2019].

a. Has your office asked Steele to provide comments regarding the newly declassified material, as you would have had the material been unredacted earlier? If not, why not?

The OIG obtained the FBI's final classification markings on Sunday, December 8, 2019, the day prior to the public release of the OIG report. These final markings represented the views of the Department, the FBI, and other government agencies. With regard to whether the information was "declassified" or was determined by those agencies not to be classified, we refer you to those agencies.

In the final classification markings, a limited amount of information from sources other than Steele that referenced Steele and his election reporting was identified as not being classified or law enforcement sensitive, and therefore we included it in the public version of the OIG's report. We did not ask, and have not asked, Steele to provide comments regarding this information, from sources other than Steele, because our purpose in providing witnesses an opportunity to review portions of our draft report is not provide a witness with an opportunity to respond to another witness' testimony, but rather to: (a) ensure the accuracy of our recounting of the witness' own testimony to us, and (b) to provide a witness with an opportunity to respond to any findings that we have made regarding their conduct.

The OIG went to great lengths to ensure that Steele was provided with a full and fair opportunity to provide us with his views on the accuracy of the report's summary of the information that Steele had provided to the OIG, and to respond to our findings regarding Steele's actions. The FBI's final classification markings expanded the amount of information in our final report from sources other than Steele that could be made public, not the information in the report from Steele, which we had already provided Steele an opportunity to address. Accordingly, even if the material had been identified by the FBI as not being classified or law enforcement sensitive in its initial markings, we would not have asked Steele for his comments on it during his review of certain sections of the draft report.

b. When was your office informed that the material referenced in Steele's attorneys' statement would be declassified? What reason was given for the decision to declassify this material, after Mr. Steele had already reviewed and commented on the report? Who was responsible for that decision?

The OIG obtained the FBI's final classification markings on Sunday, December 8. The Department and FBI were responsible for the classification review of the information pertaining to this issue in our report. The Department and FBI did not provide an explanation to the OIG for its determinations regarding the final classification markings and did not advise the OIG whether the information had been "declassified" or had been determined not to be classified.

c. In 2019, how many times has Attorney General Barr declassified portions of an OIG report the day before the report's release, after the time period for relevant parties to provide comments has ended?

As noted above, we refer you to the Department and the FBI regarding whether the information was "declassified" or whether it was determined not to be classified. The OIG frequently receives final classification markings from the Department and its components close in time to a report's final release. In 2019, I do not recall an instance where the late receipt of classification markings impacted the OIG's process of allowing relevant parties a full and fair opportunity to provide the OIG with comments concerning a draft report.

Senator Grassley Questions for the Record

Examining the Inspector General's Report on Alleged Abuses of the Foreign Intelligence Surveillance Act

December 18, 2019

1. According to your report, Bruce Ohr told the FBI that Steele's reporting had gone to the Clinton campaign in November 2016. By January 11, 2017, key investigators knew the dossier was prepared in part for the DNC. And by February and March 2017, "it was broadly known" in the FBI and by senior Justice Department officials that Glenn Simpson was working for the Democrat Party. Your report states that the FBI didn't immediately press Steele about the actual funding source for his election reporting work. Why didn't they and should they have done so?

With regard to why the FBI did not do so, as noted on page 383 of the report, in footnote 506:

FBI staff told us that because they knew of the potential for political influences on the election reporting, they did not devote resources to determine precisely which organization or persons were sponsoring Steele's reporting. Consistent with what we were told, we found that the FBI did not focus much attention on seeking to identify the client of Fusion GPS that was funding Steele's research.

As further noted on page 155 of the report, former Deputy Attorney General Sally Yates told the OIG that the FBI's knowledge that Steele was conducting political opposition research was a "factor to consider" in her decision to sign the initial FISA application. Yates emphasized, as noted on page 155, that the FBI did not know on whose behalf Steele was conducting research.

2. According to your report, the Steele dossier was not the predicate for the FBI decision to open the Crossfire Hurricane investigation in July 2016 – that was solely due to the information received by the Australian diplomat about his conversations with George Papadopoulos. However, the report makes clear that the FISA warrant almost certainly would not have been sought without the Steele Dossier, stating that the dossier was "central" and "essential" to getting the FISA. The same day the FBI's Crossfire Hurricane team received the dossier reports, it began raising them with the FBI General Counsel's office for inclusion in a FISA application. One FBI attorney said the dossier "pushed" the determination of probable cause to support a warrant "over the line". A DOJ attorney said that without the Steele report on Page, he would have not thought they could establish probable cause.

a. How central was the issue of Mr. Steele's credibility in obtaining and renewing a FISA warrant on Carter Page?

As we described in Chapters Four and Five of our report, we found that the FBI did not have information corroborating the specific allegations against Carter Page in Christopher Steele's election reports when it relied upon them in the FISA applications. As noted on page 361, without corroboration, it was particularly important that the FISA applications articulate to the court the FBI's knowledge of Steele's background and its assessment of his reliability. However, we found that the FBI's source characterization statement of Steele in the FISA applications overstated the significance of Steele's past reporting to the FBI and was not approved by Steele's handling agent, as required by FBI policy.

b. Director Comey briefed Ranking Member Feinstein and me in March 2017 about the FISA applications, and he told us that the FBI continued to cite to the Steele dossier in its FISA materials

because Steele was reliable. But by January 2017, the FBI had learned from Steele’s “primary sub source” that his information was misstated and exaggerated. By the time Comey briefed us in March 2017 and vouched for Steele, did FBI officials have concerns about Steele’s credibility? Was Comey aware of those credibility issues in March 2017? Were you able to interview Comey about his knowledge regarding the reliability of Steele’s sub sources? If not, why not?

On page 188 of the FISA report, we stated, “Following the January interview with the Primary Sub-source, on February 15, 2017, Strzok forwarded by email to Priestap and others a news article referencing the Steele election reporting; Strzok commented that ‘recent interviews and investigation, however, reveal [Steele] may not be in a position to judge the reliability of his sub-source network.’” As stated on page 247 of our report, there were multiple recipients of Strzok’s email, including Comey’s Chief of Staff. Additionally, Strzok commented in the email that he wanted to get the information to them before Director Comey met with a particular Member of Congress. However, we did not find evidence that the email or its contents was forwarded directly to Comey.

We stated on page 246 of our report:

Comey told us that he did not know whether the team interviewed any of Steele's sub-sources. Because Comey decided not to have his security clearance reinstated for his OIG interview, we were unable to question him further or refresh his recollection with relevant, classified documentation.

3. According to your report, a senior DOJ official overseeing the Russia investigation first learned of Bruce Ohr's communications with the FBI and the fact he sat for interviews with the FBI through my letter to the FBI on January 4, 2018. Your report also said that senior officials exhibited significant management and supervision failures. Can you give other examples of senior-level officials who were unaware of key facts in this investigation? Who were these officials, and what should they have known about the investigative process that they didn't?

On pages 378-380 of our report, the OIG addressed the failure of FBI managers and supervisors in the chain of command for Crossfire Hurricane, including senior officials, who are identified on pages 81-83. Examples of senior-level officials being unaware of key facts in the investigation appear in various places throughout our report, including the extent of the Crossfire Hurricane team’s communications with Bruce Ohr described in Chapter Nine, information from another U.S. government agency concerning Carter Page’s prior status and discussions with that agency described in Chapters Five and Eight, and the findings of a formal FBI source validation review described in Chapter Six.

4. According to your report, the FBI’s “tipping point” for opening the Crossfire Hurricane investigation was a tip from a friendly foreign government about George Papadopoulos. The tip said that Papadopoulos:

...suggested the Trump team had received some kind of suggestion from Russia that it could assist this process with the anonymous release of information during the campaign that would be damaging to Mrs. Clinton (and President Obama).

According to your report, FBI officials said their evaluation of this information was “informed by the FBI’s ongoing cyber investigation involving Russia and the DNC hack.” But at the same time, there were also stories circulating in the news about Hillary Clinton’s use of a non-government server and email for official business.

a. Is it possible that the alleged offer to release damaging information could have been a reference to Hillary Clinton's use of a non-government server and email, or something else entirely, rather than hacked DNC emails?

Our report describes the FBI's view of and response to the information from the friendly foreign government. Our review did not encompass the FBI's cyber investigation involving Russia and the DNC hack. Accordingly, an assessment of whether the friendly foreign government information could have been interpreted differently by the FBI was not within the scope of our review.

b. Did FBI officials say whether or not they considered the possibility that the alleged offer of assistance referred to something other than the hacked DNC emails?

On pages 51-58, we describe the FBI's internal discussions regarding the friendly foreign government information concerning George Papadopoulos and the basis for opening the Crossfire Hurricane investigation. As we note on pages 53 and 54, senior FBI officials considered the friendly foreign government information in the context of a Russian Intelligence Service's hack of DNC emails.

c. If the damaging information referred to something other than the DNC emails, could or should that have changed the calculus on whether the FBI would have had a sufficient predicate to open a counterintelligence investigation?

The OIG is not in a position to assess what the FBI could or should have done in hypothetical scenarios.

5. Your report states that "basic and fundamental errors" were made in the FISA process that caused you to question the "FBI chain of command's management and supervision of the FISA process." Your report also notes that former Director Comey and former General Counsel Jim Baker chose not to request their security clearances be reinstated. That let them off the hook from talking about classified issues with you.

a. What kinds of questions would you have asked if they fully cooperated? To the extent your answer requires a classified response, please provide them to Senate Security.

On pages 75, 135, 247, and 291 of our report, we provide examples of questions we were unable to ask Comey and Baker due to their decisions not to have their security clearances reinstated for their interviews.

b. In footnote 20 of your report, you mentioned the need for testimonial subpoena authority. As you know, I've worked to try and authorize that authority. Can you explain why that authority would greatly assist your work?

A cornerstone of an OIG's responsibility when conducting an investigation, audit, or review is to gather and assess all relevant evidence. The OIG is able to do so with regard to documentary evidence because the Inspector General Act provides the OIG with access to all records in the Department's and its components' possession and also empowers the OIG to subpoena relevant records from third parties. However, the same is not true with regard to testimony from relevant witnesses. While the OIG can compel current Department employees to provide the OIG with testimony, we do not have that authority with regard to former Department employees, or third parties such as employees of Department contractors or grant recipients. Thus, if the OIG is investigating alleged serious misconduct by a

Department employee, or alleged whistleblower retaliation by that employee, the OIG is powerless to obtain the Department employee's highly relevant testimony if that employee retires or resigns from the Department during the course of, or prior to, our investigation. The same is true of alleged misconduct by a current or former employee of a Department contractor or grant recipient. This limitation on our ability to obtain relevant testimony has negatively impacted numerous OIG investigations, audits, and reviews, thereby impeding our efforts to hold wrongdoers accountable and deter future misconduct. Other OIGs face similar issues, which is why the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has identified testimonial subpoena authority for OIGs as one of its primary legislative priorities.

In connection with our FISA review, as we stated in footnote 20, the OIG would have directly benefited from the ability to subpoena former government and non-government individuals in the FISA review. In addition to being able to compel the testimony of the small number of individuals who refused to provide the OIG with testimony, the ability to subpoena witnesses would have expedited completion of the review, as multiple individuals only agreed to be interviewed at a late stage in the review.

6. Why is it important whether Christopher Steele spoke to the media and other people at the same time he was reporting to the FBI? Could those communications affect the reliability of Steele's information?

On pages 172-173 of our report, we noted that the FBI closed Steele as a CHS in November 2016 because he disclosed his relationship with the FBI to a journalist. We were told by Steele's handling agent that Steele's contacts with the media created risks for the FBI. As noted on page 173 of our report, the FBI viewed Steele's media relations as a control issue and not a problem affecting the reliability of his information.

7. According to your report, one of the reasons the FBI chose to rely on the dossier was that it appeared to contain information that was consistent with information about Papadopoulos that came from an "independent reporting stream." But in footnote 269 on Page 131 of the report, you also say that the investigative team had reason by early October 2016 before the first FISA application to believe that these "two independent reporting streams" supplying information on Trump campaign staff ties to Russians "could have connectivity". What is the potential significance for the FISA, and for the investigation generally, if there's overlap with these reporting streams?

During our review, FBI personnel told us that having two independent reporting streams providing the same or very similar corroborating information presents a stronger basis for probable cause when compared with relying on information that originates from just one source. For example, on page 269, the report notes, "[FBI] Officials told us that a significant fact in their consideration of the Steele information for the FISA application was that the Steele reporting on Carter Page appeared to be consistent with the information from the FFG that came from an independent reporting stream." The potential significance of having connectivity or overlap between two ostensibly independent reporting streams could indicate that they are not actually independent of each other and that one stream could influence the other or even be partially or fully the basis of the other stream of information.

8. Did you interview individuals or review any activities attributable to agencies outside the DOJ or FBI?

As we noted on page 11 of our report, the scope of the OIG's review did not include assessing the activities of agencies outside the Department of Justice or its components. However, as noted in our

report, we interviewed Department of State employee Kathleen Kavalec about her meeting with Christopher Steele in October 2016 (see pages 118-119) and a liaison from another U.S. government agency about Carter Page's status with the agency and her communications about that topic with the FBI OGC Attorney assigned to Crossfire Hurricane (see pages 247-256). In addition, we sought to interview Department of State employee Jonathan Winer, who declined our request for a voluntary interview.

9. Did you coordinate at all with U.S. Attorney John Durham and his team? If so, please explain.

The OIG met with U.S. Attorney Durham on a limited number of occasions during the course of the OIG's review, but did not coordinate our investigative efforts or the drafting of our report with him or his office.

10. Is there any subject you did not fully pursue, or individual you did not interview, that would fall under the scope of Durham's investigation?

The Department did not preclude the OIG from interviewing anyone or pursuing any area within our scope. We refer you to the Department for more information about U.S. Attorney Durham's investigation and any matters that may fall within its jurisdiction.

11. Does your report rule out any and all potential political bias in the conduct of the Crossfire Hurricane investigation, including the investigation of Carter Page?

The OIG did not find documentary or testimonial evidence that political bias or improper motivation influenced Assistant Director Priestap's decision to open the Crossfire Hurricane investigation. The OIG did not find documentary or testimonial evidence of political bias on the part of the case agents who assisted the National Security Division's Office of Intelligence in preparing the FISA applications of Carter Page, or the agents and supervisors who performed the Woods Procedures. However, as noted in our report at page 377, we also did not receive satisfactory explanations for the errors or missing information.

12. Footnote 461 states that a former FBI Confidential Human Source contacted an FBI agent in an FBI field office in late July 2016 to report information from "a colleague who runs an investigative firm...hired by two entities (the Democratic National Committee as well as another individual who was not named) to explore Donald Trump's longstanding ties to Russian entities." Was that investigative firm Fusion GPS or did the DNC hire another firm to peddle anti-Trump information to Obama's FBI? Who was the former FBI CHS?

The investigative firm referenced in footnote 461 of our report is Fusion GPS. The OIG is not at liberty to disclose the identity of a former FBI CHS. We refer you to the FBI for any information about the identity of the former FBI CHS.

13. On August 22, 2017, the Senate Judiciary Committee interviewed Glenn Simpson of Fusion GPS and asked him whether he gave Steele "directions as to what to research specifically." In response, Simpson stated, "I don't recall giving him specific instructions." Simpson also noted that his work related to President Trump focused on "a kind of holistic examination of Donald Trump's business record and his associations..." and his "business activities in Russia." In your report, you noted "Steele told the handling agent that he had been hired by an investigative firm, Fusion GPS, to collect information on the relationship between candidate Trump's businesses and Russia." Your report also noted that in May 2016, Simpson met Steele at a European airport and "inquired whether Steele could assist in determining Russia's actions related to the 2016 U.S. elections, whether Russia was trying to achieve a particular election outcome,

whether candidate Donald Trump had any personal and business ties in Russia, and whether there were any ties between the Russian government and Trump and his campaign.” In footnote 213, your report states that Fusion GPS retained Steele “to investigate and report, by way of preparing confidential Intelligence Memorandum, on Russian efforts to influence the U.S. Presidential election process in 2016 and on links between Russia and the then Republican candidate and now President Trump.” In order for the Committee to determine if Simpson provided fully truthful information during the course of his interview, I request that you provide the Committee a copy of your interview transcript with Steele.

We appreciate the important role of congressional oversight and the issue you raised in this question. We will follow up with your staff to discuss your request further.

14. Your report states that the FBI used a Confidential Human Source to record a conversation with a “high-level official of the Trump campaign” that was not Page or Papadopoulos. Further, your report stated that the FBI did not have a plan in place in case the FBI recorded information that was politically sensitive, related to the campaign, and protected by the First Amendment.

a. Who is the “high-level official”?

Due to privacy considerations, other than individuals named in our report, we respectfully decline to identify the names of other individuals in a public hearing record.

b. At the time of this recording, was the high-level official under any investigation, including any preliminary investigation?

As we state on page 326 of our report, the high-level official was not a subject of the Crossfire Hurricane investigation. We do not have additional information about this individual.

c. Did the FBI record information from the “high-level” official that was of a political nature related to the Trump campaign? If so, what did the FBI do with that information?

As stated on pages 328-29 of our report, the high-level campaign official made a few comments about the internal structure, organization, and functioning of the Trump campaign, and discussed some issues unrelated to the Crossfire Hurricane investigation, such as an internal campaign debate about Trump’s immigration strategy, efforts to reach out to minority groups and the impact of those efforts, and the campaign’s strategies for responding to questions about Trump’s decision not to release his tax returns. We found no evidence that any information from this consensual monitoring was put to any use by the Crossfire Hurricane team. We understand that the FBI typically maintains in its files the recordings of a CHS’s consensually monitored meetings.

d. Can you confirm that no one from the FBI shared such information with the Democrat Party or the Clinton campaign?

As stated on pages 328-329 of our report, we found no evidence that any information from this consensual monitoring was put to any use by the Crossfire Hurricane team, and determined that the statements made were not transcribed.

Senator Dick Durbin
Written Questions for Michael Horowitz
December 18, 2019

1. On December 9, U.S. Attorney John Durham took the extraordinary step of issuing a press statement in which he shared information about his ongoing investigation in order to challenge the conclusions of the Inspector General's report. Mr. Durham said that "while our investigation is ongoing, last month we advised the Inspector General that we do not agree with some of the report's conclusions as to predication and how the FBI case was opened." Who was the "we" in Mr. Durham's statement? In other words, who joined Mr. Durham in advising you that "we do not agree" with conclusions in your report?

The OIG would refer you to U.S. Attorney Durham for questions about the content of his statement and who he was referring to when he used the word "we" in his statement.

2. Did Attorney General Barr or representatives from Main Justice join Mr. Durham in advising that "we do not agree" with conclusions in your report?

Please refer to the response to question 1.

3. Did the Justice Department have the opportunity to provide a formal response to your report and have it incorporated into the report as an appendix, rather than issue statements to the press about your report?

Yes. Consistent with the OIG's ordinary process, the OIG provided the Department and the FBI the opportunity to provide a formal response to our report. The FBI provided such a response, which is included as an appendix. The Department did not provide a formal response.

4. In an interview with NBC on December 10, Attorney General Barr said of Mr. Durham's press statement "I think it was definitely appropriate because I think it was necessary to avoid public confusion." Does the Justice Manual authorize DOJ personnel to comment on the nature or progress of an ongoing investigation "to avoid public confusion"?

The portion of the Justice Manual addressing public statements about ongoing investigations can be found in section 1-7000, "Confidentiality and Media Contacts Policy."

Senate Judiciary Committee Hearing
“Examining the Inspector General’s Report on Alleged Abuses of the Foreign Intelligence
Surveillance Act”
Questions for the Record
for Michael Horowitz
Inspector General of the Department of Justice

Submitted December 18, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. Before the Department of Justice’s (DOJ) Office of the Inspector General (OIG) released its “Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation,” a number of claims were made about what the report would find.
 - a. On March 4, 2017, President Trump claimed that President Obama wiretapped his phones at Trump Tower the month before the election.¹ Is it accurate to say that the OIG investigation only found evidence that the FBI sought a wiretap of Carter Page, not President Trump or any other person?

The scope of the OIG’s review included the FBI’s decision to open the Crossfire Hurricane investigation and four related, individual cases; the FBI’s relationship with Christopher Steele and its receipt, use, and evaluation of Steele’s election reports; DOJ and the FBI’s compliance with legal requirements, and with applicable DOJ and FBI policies and procedures, in its FISA applications concerning Carter Page; issues relating to DOJ attorney Bruce Ohr; and the FBI’s use of confidential human sources in Crossfire Hurricane. The OIG found no evidence during its review that the FBI sought a Title III wiretap of Carter Page, then-candidate Donald Trump, President Trump, or any other person associated with the Trump campaign. The OIG report discusses in detail the court authorized FISA surveillance of former campaign advisor Carter Page.

- b. On May 18, 2018, President Trump claimed that “at least one FBI representative [was] implanted, for political purposes, into my campaign for president.”² Did the OIG investigation find any evidence that the FBI planted a confidential human source in the Trump campaign?

¹ Michael D. Shear & Michael S. Schmidt, *Trump, Offering No Evidence, Says Obama Tapped His Phones*, N.Y. TIMES, Mar. 5, 2017, at A1, available at <https://www.nytimes.com/2017/03/04/us/politics/trump-obama-tap-phones.html>.

² <https://twitter.com/realDonaldTrump/status/997474432443707393>

As stated on page 404 of our report, the OIG found no evidence that any of the FBI confidential human sources or undercover employees used in Crossfire Hurricane joined or participated in the Trump campaign.

- c. On July 23, 2018, President Trump claimed that “it was indeed the unverified and Fake Dirty [Steele] Dossier . . . which was responsible for starting the totally conflicted and discredited Mueller Witch Hunt.”³ Is it accurate to say that the OIG investigation found that the Steele dossier played no role in opening the Russia investigation? Is it also accurate to say that the OIG investigation found that political bias or other improper motivation played no role in opening the investigation?

In footnote 169 on page 56 of our report, we state that we found no evidence the Steele election reporting was known to or used by FBI officials involved in the decision to open the Crossfire Hurricane investigation. As stated on page 349 of our report, we did not find documentary or testimonial evidence that political bias or improper motivation influenced the decision made by the FBI’s then Counterintelligence Division Assistant Director E.W. “Bill” Priestap to open the Crossfire Hurricane investigation.

- d. On May 6, 2019, Senator Grassley asked in a floor speech whether “the Obama administration improperly use[d] the U.S. intelligence community to attempt to neutralize and denigrate a political opponent.” Did the OIG investigation find any evidence of that the Russia investigation was opened with the intent to “neutralize and denigrate a political opponent”?

As discussed on pages 347-349 of our report, the OIG concluded that the FBI had an authorized purpose, to obtain information about, or protect against, a national security threat or federal crime, when it opened the Crossfire Hurricane investigation in July 2016, and we found no documentary or testimonial evidence that political bias or improper motivation influenced the decision to open the investigation.

- e. On October 2, 2019, Senator Graham wrote a letter to the Prime Ministers of Australia, Italy, and the United Kingdom claiming that the U.S. law enforcement “receiv[ed] intelligence from an Italian ‘professor’ [Joseph Mifsud] who was directed to contact a low-level Trump campaign advisor, George Papadopoulos to gather intelligence on the campaign.” The OIG report states that “the OIG searched the FBI’s database of Confidential Human Sources (CHS), and did not find any records indicating that Mifsud was an FBI CHS, or that Mifsud’s discussion with Papadopoulos were part of

³ Linda Qiu, *Trump Again Falsely Claims Russia Investigation Started with Steele Dossier*, N.Y. TIMES, Jul. 23, 2018, <https://www.nytimes.com/2018/07/23/us/politics/fact-check-trump-russia-dossier-tweets.html>.

any FBI operation.”⁴ Is it fair to say that the OIG investigation did not find any evidence that the FBI directed Mifsud to contact George Papadopoulos? Is it also fair to say that the FBI did not receive any intelligence from Mifsud?

As stated on pages 312-13 of our report, the FBI’s Delta database, which includes information on FBI CHSs, contains no evidence that Mifsud has ever acted as an FBI CHS, and none of the witnesses we interviewed or documents we reviewed provided any information to support such an allegation.

With respect to whether the FBI received “any intelligence” from Mifsud, we note that, as stated on page 193 of Volume I of *The Special Counsel’s Report*, FBI investigators interviewed Mifsud on February 10, 2017. We refer you to the FBI regarding whether the FBI received “any intelligence” from Mifsud.

- f. In that same letter, Senator Graham claimed that “an Australian diplomat . . . was also directed to contact Papadopoulos and relay information obtained from Papadopoulos regarding the campaign to the Federal Bureau of Investigation.”⁵ Did the OIG investigation find any evidence that the FBI directed an Australian diplomat to contact George Papadopoulos?

On pages 50-59 of our report, we describe the circumstances of the FBI’s receipt of the friendly foreign government information concerning George Papadopoulos and its decision to open Crossfire Hurricane. The OIG did not find any evidence that the FBI directed an Australian diplomat to contact George Papadopoulos.

- g. On October 16, 2019, President Trump said, “The IG report is going to come out soon, and we’ll see what happens. . . . But I predict you will see things that you don’t even believe, the level of corruption . . . whether it’s President Obama himself.”⁶ Did the OIG investigation find any evidence that President Obama was involved in initiating or continuing the Russia investigation?

The officials involved in the decision to open the Crossfire Hurricane investigation are discussed on pages 51-58 of our report. Testimony from senior Department and FBI officials concerning the extent to which they had briefings or discussions with the White House concerning Crossfire Hurricane is described in Chapter

⁴ Office of the Inspector General, U.S. Department of Justice, Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation 51 n.164 (2019), [available at](#)

⁵ Letter from Senator Lindsey Graham to His Excellency Scott Morrison, Prime Minister of Australia; His Excellency Giuseppe Conte, Prime Minister of Italy; and His Excellency Boris Johnson, Prime Minister of the United Kingdom, Oct. 2, 2019, [available at https://www.judiciary.senate.gov/imo/media/doc/LOG%20to%20Australia%20Italy%20UK.pdf](https://www.judiciary.senate.gov/imo/media/doc/LOG%20to%20Australia%20Italy%20UK.pdf)

⁶ Gregg Re & Jake Gibson, *IG report on possible Russia investigation is still in declassification process: source*, FOX NEWS, Oct. 16, 2019, <https://www.foxnews.com/politics/horowitz-russia-investigation-misconduct-declassification-process>.

Three of our report (see pages 76-77). This information does not indicate that President Obama was involved in initiating the Crossfire Hurricane investigation. The broader Russia election interference was outside the scope of the OIG's review.

2. On December 4, 2019, the *Washington Post* reported that the OIG had contacted U.S. Attorney John Durham to request that Mr. Durham provide any information he had that was relevant to the report.⁷ Mr. Durham “informed [the IG’s] office that his investigation had not produced any evidence that might contradict the inspector general’s findings.” The Post indicated that this exchange was “noted in a draft of [the IG’s] forthcoming report on the Russia investigation.” However, the final draft of the report does not reflect any consultation with or feedback provided by Mr. Durham.
 - a. Is there anything in the *Washington Post* report of December 4 that is incorrect? Specifically, was the OIG informed that Durham’s investigation had not produced any evidence that might contradict your findings?

As a general practice, the OIG provides the Department and its components with its draft report for, among other things, classification review and to ensure the information is accurate. The OIG considers any feedback that may be provided and the OIG then determines whether to make any edits to the report to ensure that it is accurate. To ensure the OIG can continue to receive candid feedback that ultimately improves the quality and accuracy of our reports, the OIG respectfully declines to comment on prior draft reports and the rationale for edits made during this review process.

- b. In your testimony you stated that your office had shown a draft of the report to Mr. Durham and that he had provided comments. The final report does not describe any interaction between the OIG and Mr. Durham. Why is there no mention of Mr. Durham in the final report?

Please refer to the response to question 2a. In connection with our accuracy review process, the OIG often receives comments concerning our draft report from various Department or component personnel, and our general practice is not to detail in our final report the names of all Department or component employees who reviewed the draft report and provided the OIG with comments.

⁷ Matt Zapotosky & Devlin Barrett, *Barr’s handpicked prosecutor tells inspector general he can’t back right-wing theory that Russia case was U.S. intelligence setup*, WASH. POST, Dec. 4, 2019, available at https://www.washingtonpost.com/national-security/barrs-handpicked-prosecutor-tells-inspector-general-he-cant-back-right-wing-theory-that-russia-case-was-us-intelligence-setup/2019/12/04/17e084dc-16a9-11ea-9110-3b34ce1d92b1_story.html

3. On September 6, it was reported that the DOJ had launched an investigation into whether four automakers had violated federal antitrust law by agreeing to follow the emissions program set forth in the framework with California. The DOJ's Antitrust Division Manual outlines the policies and procedures governing these investigations, including the type and amount of evidence needed to open an investigation. Under what circumstances could OIG examine whether a DOJ component has followed its written policies and procedures for the initiation of an investigation?

The OIG's jurisdiction to review allegations of misconduct by Department lawyers when acting in their capacity as lawyers is limited by Section 8E of the Inspector General Act. As a general matter, the Inspector General Act requires the OIG to refer such allegations to the Department's Office of Professional Responsibility (OPR). With this jurisdictional limitation in mind, the OIG continues to assess the concerns raised by you and other offices about the decision to investigate the four automakers, in coordination with OPR, and we will continue to keep you informed on our assessment of these issues.

4. During Brett Kavanaugh's confirmation hearings, the FBI investigated alleged sexual misbehavior by the nominee. As part of this investigation, the Bureau told the public to submit relevant information to its "tip line." However, many individuals who called the "tip line" were never contacted by the FBI.⁸
 - a. Has OIG ever done oversight over the FBI's "tip line"?

The OIG has not previously conducted an audit or review of the FBI's "tip line."

- b. Are there FBI and DOJ policies and procedures regarding "tip lines" that provide a cognizable standard against which OIG could investigate FBI's actions?

As we have not previously conducted an audit or review of the FBI's "tip line," we would respectfully refer you to the FBI for this information.

5. The DOJ has policies limiting public disclosures about ongoing investigations. For example, Section 1-7.400 of the Justice Manual provides that, in general, "DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are publicly filed." Federal regulations also provide that, "Disclosures should include only incontrovertible, factual matters, and should not include subjective observations."⁹ There is also a longstanding policy memorandum that states: "[P]olitics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges. Law enforcement officers and prosecutors may never

⁸ See, e.g., Seung Min Kim, *Senator told FBI last fall of new information about Kavanaugh*, WASH. POST, Sept. 16, 2019, available at https://www.washingtonpost.com/politics/senator-says-fbi-did-not-investigate-allegation-against-kavanaugh/2019/09/16/a881f584-d883-11e9-adff-79254db7f766_story.html

⁹ 28 C.F.R. § 50.2.

select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party.”

- a. In your report about activities leading up to the 2016 election, you criticized Jim Comey for not following DOJ policies governing actions that may interfere with an election. DOJ agreed that it needed to create clear policies governing “the taking of overt investigative steps, indictments, public announcements, or other actions that could impact an election.”¹⁰ As of September 30, 2019, this recommendation was unresolved. Has the DOJ developed and implemented this policy since then?

No. This recommendation remains open. The recommendation is resolved, meaning that the Department has agreed to implement it. Given that it remains open, the OIG will continue to engage with the Department until it is implemented.

- b. On December 10, 2019, Attorney General Barr told NBC that U.S. Attorney John Durham's ongoing investigation into the origins of the Russia investigation will be “reaching an important watershed, perhaps, in late spring, early summer” of 2020—in the middle of the election season. If Barr decided to authorize the Durham investigation because of political considerations, would that be improper? If Barr’s decision about when and whether to announce the findings of Durham’s investigation is politically motivated, would that be improper?

As I stated in testimony before the Committee, politically motivated investigations undermine the rule of law and are improper.

¹⁰ Office of the Inspector General, U.S. Department of Justice, A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election xiv (2018), [available at https://www.justice.gov/file/1071991/download](https://www.justice.gov/file/1071991/download).

**Questions for the Record for Inspector General Michael E. Horowitz
Senator Mazie K. Hirono**

1. In May 2019, Attorney General Barr tapped U.S. Attorney John Durham to investigate the origins of Special Counsel Mueller’s probe into Russian interference in the 2016 election. Attorney General Barr is reportedly closely overseeing this inquiry, which appears to have shifted from an administrative review to a criminal probe. Within hours of your release of your report, both the Attorney General and Mr. Durham issued public statements that challenged the findings in your report. Neither had submitted a written response to your report like FBI Director Wray had done, even though both had been given an opportunity to review the report and respond prior to it being published. At the hearing, you testified that you discussed the report with Mr. Durham before it was published, but nothing he provided changed your conclusions.

- a. How many reports have you issued as Inspector General?

The OIG has issued hundreds of reports since I was sworn in as Inspector General on April 16, 2012.

- b. Are you aware of any other instance in which an Attorney General has declined to provide an official response, but then issued a public statement and gave a TV interview disputing key findings of your report soon after the report’s release?

As I stated at the hearing in response to a similar question from Senator Leahy, I cannot recall another situation when this occurred during my tenure as Inspector General.

- c. Under 28 CFR 45.11, the Justice Department has to report to you “[a]ny investigation of allegations of criminal misconduct against any Department employee.” Has Attorney General Barr or someone in DOJ reported any such investigations to you related to Mr. Durham’s probe into the origins of the Russia investigation?

Consistent with Department policy and the OIG’s ordinary practice, we respectfully decline to confirm or deny the existence of ongoing investigations.

2. In 2015, you testified before this Committee that “[w]histleblowers perform an important service to their agency and the public when they come forward with information about potential wrongdoing, and they must never be subject to reprisal for doing so. We need to do all we can to foster and support a culture where Department employees are encouraged to report . . . misconduct.”

Do you agree that threatening to reveal the identity of a whistleblower who lawfully reports misconduct could not only intimidate that whistleblower, but also deter others who may have information about misconduct from coming forward?

Yes, any threat to reveal the identity of a whistleblower could have a chilling effect on future disclosures of wrongdoing.

3. As you are aware, a whistleblower lawfully filed a complaint on August 12, 2019, with the Inspector General of the Intelligence Community, who determined that the complaint appeared “credible” and involved a matter of “urgent concern.” The House then followed up on this complaint and conducted an investigation that involved 17 witnesses, including those that directly witnessed the misconduct identified in the whistleblower’s complaint – that the President used the power of his office to solicit foreign interference in the 2020 election for the president’s personal benefit.

But the President and his allies have repeatedly attacked the whistleblower and tried to reveal his or her identity, despite the fact that the whistleblower’s lawyer has conveyed “serious concerns for [the whistleblower’s] personal safety.”

- a. Do you think it is ever appropriate to reveal the identity of a whistleblower in retaliation for reporting abuse and misconduct?

No, the identity of a whistleblower should not be revealed as a form of retaliation for bringing forward information that the whistleblower reasonably believes evidences waste, fraud, abuse, or misconduct.

- b. When you receive seemingly credible information of serious misconduct from a whistleblower that she has not witnessed first-hand, do you still investigate that matter?

The OIG reviews allegations of waste, fraud, abuse, or misconduct it receives, and determines, based on the details provided and the evident steps that could be taken to assess the allegations, whether to investigate further. The OIG applies that same standard when receiving allegations from a whistleblower who does not have first-hand knowledge.

4. On September 3, 2019, DOJ’s Office of Legal Counsel (OLC) issued an opinion that effectively overruled the determination of the Inspector General of the Intelligence Community that the Ukraine whistleblower complaint involved an “urgent concern” that was legally required to be sent to Congress. As Chair of the Council of the Inspectors General on Integrity and Efficiency, you signed a letter on behalf of 67 Inspectors General urging OLC to withdraw or modify its opinion because it “creates a chilling effect on effective oversight and is wrong as a matter of law and policy.”

- c. Can you explain why second-guessing Inspectors General to block transmission of whistleblowers’ concerns to Congress would have a chilling effect on whistleblowers coming forward?

As stated in CIGIE’s position letter to the OLC before issuance of the OLC opinion:

If intelligence community employees and contractors believe that independent IG determinations may be second guessed, effectively blocking the transmission of their concerns to Congress and raising questions about the protections afforded to

them, they will lose confidence in this important reporting channel and their willingness to come forward with information will be chilled. More generally, this concern is not limited to the intelligence community but will have a chilling effect that extends to employees, contractors, and grantees in other parts of the government, who might not consider it worth the effort and potential impact on themselves to report suspected wrongdoing if they think that their efforts to disclose information will be for naught or, worse, that they risk adverse consequences for coming forward when they see something they think is wrong.

- d. What steps have you taken to encourage whistleblowers within the Justice Department, including the FBI, to come forward and ensure that they are protected from retaliation?

During my tenure as DOJ Inspector General, one of my highest priorities has been to educate DOJ employees, and DOJ grantees and contractors, about the importance of whistleblowing, and to protect those who blow the whistle from retaliation. Individuals who bring information about waste, fraud, abuse, and gross mismanagement to our offices should be commended for working within the laws, rules, and regulations that have long existed to encourage and protect whistleblowers, and for making government work better for the American public. As DOJ Inspector General, I have taken several steps to achieve these goals.

In 2012, shortly after my arrival as Inspector General, I established a Whistleblower Ombudsperson Program within my office, prior to the Whistleblower Protection Enhancement Act's requirement that OIGs have such a position. To emphasize the importance of this program, I assigned a senior attorney from my Immediate Office, and he continued in this position after he became the Deputy Inspector General. After his departure, I was able to fill the role with another member of my senior staff, who previously served as the Deputy and Acting Special Counsel at the Office of Special Counsel (OSC). As part of this program, we enhanced our internal training and education efforts, and as a result the OIG was certified by OSC in the fall of 2013 pursuant to 5 U.S.C. § 2302. As leaders in this critical area, my office worked with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and OSC to establish the first-ever IG Community working group on whistleblower protection and education. The working group meets quarterly, and is often joined by congressional and nongovernment stakeholders and the OSC to discuss approaches to education, outreach, and enforcement of whistleblower laws.

In addition to our Community-wide efforts to promote best practices in whistleblower education and outreach, we have taken a number of steps to empower DOJ employees, contractors, and grantees to make lawful disclosures of wrongdoing. For example, in 2018, we improved our

Whistleblower Protection webpage, with updated information for DOJ employees, and a training video that answers questions that would-be whistleblowers need to know, like “what happens when you file a retaliation complaint with the OIG,” and “how do I disclose classified information.” We also requested and received additional resources from Congress to hire Investigative Counsels to conduct reprisal investigations, in particular for employees of the Federal Bureau of Investigation, who unlike most federal employees do not have the right to file retaliation complaints with OSC.

We have also sought opportunities in individual cases to expand our training and outreach efforts, and to ensure Department components fully comply with theirs. For example, the OIG recently completed a whistleblower reprisal investigation that found that a Federal Bureau of Prisons (BOP) contractor retaliated against a contractor employee. During the investigation, we also found that the BOP and the contractor failed to comply with legal requirements to inform all contractor employees in writing of their whistleblower protections under 41 U.S.C. § 4712 (§ 4712). Accordingly, the OIG issued a public report in January 2020 recommending that BOP take steps to inform its contractors and any grantees of the whistleblower protections that federal law provides, and that those contractors and any grantees take appropriate actions to notify their employees about whistleblower protections and to conform their internal policies to federal law. The OIG issued another public report in 2018 after an investigation found the written policies of a United States Marshals Service contractor were inconsistent with statutory whistleblower protections for employees of contractors in § 4712 and could potentially chill whistleblowing. We recommended the USMS ensure that its contractors, subcontractors, and grantees inform their employees in writing of the rights and remedies provided by § 4712, as required by the law. We will continue our efforts to identify and remedy instances when DOJ employees are not appropriately and accurately informed of these rights. Finally, in certain situations the OIG has decided not to investigate allegations referred to us by DOJ components because we determined the referral may have been based on a protected disclosure and could result in a retaliatory investigation. In these situations, we have sent a formal memorandum to the referring DOJ component, informing it of our decision not to investigate and noting that we would consider any action taken against the employee a potential violation of whistleblower protection laws.

5. In your report, you recommended that the Office of Professional Responsibility (OPR) should review some of your findings. Last month, I asked OPR to investigate the Attorney General’s actions in initiating and closely overseeing the reportedly criminal probe into the origins of the Russia investigation. I raised concerned that the Attorney General is using the weighty powers of the Justice Department to further the President’s personal and political goals. I copied you on this letter.
 - a. Have you discussed this request with OPR?

Our general practice is to consult with OPR about allegations that may fall within the jurisdiction of the OIG or OPR, and we have consulted with OPR about your letter, consistent with this practice.

- b. Will you consider coordinating with OPR with regard to my request as you have done with other investigations in the past, such as your report with OPR that found that Bradley Schlozman, who supervised the Voting Section of the Civil Rights Division during the George W. Bush administration, “illegally recruited new attorneys into the Voting Section and other parts of the Division based on their conservative affiliations”?

It is my view that conducting a joint investigation with OPR potentially compromises the independence of the investigation because OPR does not have the same statutory independence as the OIG. For that reason, I am reluctant generally to conduct any such joint investigation. I note that the circumstances that gave rise to the prior joint investigations conducted by OIG with OPR were unusual. If you would like to discuss this issue further, I am happy to meet with you.

6. At the hearing, I asked you about my prior requests for investigations. You receive many requests from Members of Congress, and I know it is not feasible to investigate all of these requests. For example, your office has spent considerable time and resources on thoroughly investigating the FBI’s conduct in opening the Russia investigation.

What factors do you consider or what standard do you apply in deciding which investigation requests to accept?

The OIG considers many factors when determining whether to initiate an investigation of allegations of waste, fraud, abuse, or other misconduct. Such factors include but are not limited to: whether the complaint alleges violations of civil rights or criminal statutes, or involves a high level government official; whether the allegations involve a threat to public safety; and the seriousness of the alleged misconduct or wrongdoing.

7. You noted at the hearing that your office lacks jurisdiction to investigate the “conduct of lawyers, in their capacity as lawyers.” During the Obama administration, you looked into decisions by attorneys in the Justice Department’s Civil Rights Division, including the decision not to prosecute certain claims of voter intimidation by the New Black Panther Party. Several Republican Members of Congress had asked you to look in to this matter. Your report found there was “insufficient support for a conclusion that Division leadership in either the prior or current administration improperly refused to enforce the voting rights laws on behalf of any particular group of voters, or that either administration used the enforcement of the voting laws to seek improper partisan advantage.”
 - a. What was your basis for undertaking this investigation of attorney conduct in the Obama administration?

The OIG initiated this review prior to my tenure as Inspector General, but I have reviewed relevant correspondence between the OIG and the then Chairman of the House Commerce, Science, and Justice Appropriations Subcommittee regarding the then Chairman’s multiple requests that the OIG review the decision by Department lawyers to dismiss the New Black Panther Party case. On each occasion, the OIG informed the then Chairman that it was unable to undertake the requested review in light of the limitation on the OIG’s jurisdiction found in Section 8E of the Inspector General Act. Instead, the Department’s Office of Professional Responsibility (OPR) conducted a review of the allegations regarding the handling of the case by Department lawyers. As noted on page 2 of the OIG report, “A Review of the Operations of the Voting Section of the Civil Rights Division:”

[T]his office received several letters starting in July 2009 from Members of Congress, including Representatives Lamar Smith and Frank R. Wolf, who requested that the Office of the Inspector General (OIG) investigate the Department’s decision-making in the [New Black Panther Party] matter. In his responses to those congressional requests, then-Inspector General Glenn A. Fine declined to initiate such an investigation, noting that the OIG’s governing statute did not authorize the OIG to investigate allegations of misconduct relating to Department attorneys’ exercise of their authority in handling of litigation or legal decisions and that the allegations raised in their letters therefore fell within the exclusive jurisdiction of the Department’s Office of Professional Responsibility (OPR). The OIG also referred the matter to OPR for its review. In August 2009, OPR told the House Judiciary Committee in a letter that it had initiated a review into the NBPP matter.

Separately, the OIG initiated a review of, among other things, various systemic concerns that we had received, including from the then Chairman, regarding the management of the Voting Rights Section. As noted on page 3 of the OIG report, then Inspector General Fine informed the Chairman at the time the systemic review was opened that the scope of the review would be “focused more broadly on the overall enforcement of civil rights laws by the Voting Section rather than a single case.” The report further explains the rationale provided to the Chairman:

In your recent letters you have also identified broader issues that go beyond the Department’s handling of the New Black Panther Party litigation. Through this letter I want to inform you that the OIG plans to initiate a review of the enforcement of civil rights laws by the Voting Section of the Department’s Civil Rights Division. This review will examine, among other issues, the types of cases brought by the Voting Section and any changes in these types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section has enforced the civil rights laws in a non-discriminatory manner; and whether any Voting Section employees have been harassed for participating in the investigation or prosecution of particular matters.

Accordingly, when the OIG conducted this review, the OIG did not examine or opine upon the legal decisions made by Department attorneys. It was not an investigation of attorney conduct. Rather, as noted on page 13 of the referenced review, the OIG examined the types of cases brought by the Voting Section and any changes in the types of cases over time; any changes in Voting Section enforcement policies or procedures over time; whether the Voting Section had enforced the civil rights laws in a non-discriminatory manner; and whether any Voting Section employees had been harassed for participating in the investigation or prosecution of particular matters.

- b. Are you currently looking into any claims similar to this type of claim, particularly involving leadership in the Department of Justice, under the Trump administration?

The OIG's Ongoing Work page provides a list of all ongoing reviews of Department programs and operations, including systemic reviews of DOJ policies, implementation of those policies, and the DOJ performance by component. For example, the OIG is finalizing a review of the Department's planning and implementation of the Zero Tolerance Policy, which was issued in April 2018. Like the Voting Section review, the Zero Tolerance Policy review will not assess the wisdom of the legal advice provided by Department attorneys who formulated and implemented the policy, or the conduct of Department attorneys in their handling of immigration enforcement prosecutions. Rather, the review will assess the role of the Department's leadership in planning and executing the policy, and make recommendations for improving such efforts, consistent with the OIG's role under the Inspector General Act, and the statutory allocation of jurisdiction between OIG and OPR.

- c. I'm very concerned that the Justice Department under Attorney General Barr has become highly politicized. Are you investigating any matter related to politicized decisions in the Justice Department by the Trump administration?

It is the OIG's practice not to confirm or deny the existence of any investigations. Our Ongoing Work page, referenced in response to question 7b, provides a list of ongoing reviews of Department programs and operations. This list does not include ongoing investigations.

Michael Horowitz
Inspector General
U.S. Department of Justice
Questions for the Record
Submitted December 18, 2019

QUESTIONS FOR SENATOR BOOKER

1. On December 9, 2019, your office released the report at the center of this hearing, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*.¹ This report was the culmination of a 19-month investigation in which your team conducted more than 170 interviews of more than 100 individuals and reviewed more than 1 million documents.²

Would you consider your investigation and review thorough?

Yes. As stated in our report, the OIG examined more than one million documents that were in the Department's and FBI's possession and conducted over 170 interviews involving more than 100 witnesses. We describe the scope of the review in Chapter One.

2. According to the Congressional Research Service, “Statutory inspectors general (IGs) are intended to be independent, nonpartisan officials who prevent and detect waste, fraud, abuse, and mismanagement within federal departments and agencies.”³ Over the years, Congress has sought to help increase the independence of inspectors general to protect them from undue influence.⁴ Additionally, the Council of the Inspectors General on Integrity and Efficiency (CIGIE) has written, “In all matters relating to inspection work, the inspection organization and each individual inspector should be free both in fact and appearance from personal, external, and organizational impairments to independence.”⁵
 - a. Why is the independence of an inspector general and his or her office an important element of any investigation?

The independence of an OIG is essential for both conducting its oversight work and sustaining the credibility of that work. Our statutory independence allows OIGs the discretion and authority to initiate and conduct our audits, reviews, and investigations without interference, and to obtain access to all records that an OIG needs to complete its oversight

¹ OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI'S CROSSFIRE HURRICANE INVESTIGATION (Dec. 2019), <https://www.justice.gov/storage/120919-examination.pdf>.

² *Id.* at i.

³ KATHRYN A. FRANCIS, CONG. RESEARCH SERV., R45450, STATUTORY INSPECTORS GENERAL IN THE FEDERAL GOVERNMENT: A PRIMER 1 (Jan. 3, 2019), <https://www.crs.gov/reports/pdf/R45450>.

⁴ *Id.* at 3-10.

⁵ COUNCIL OF THE INSPECTORS GEN. ON INTEGRITY & EFFICIENCY, QUALITY STANDARDS FOR INSPECTION AND EVALUATION 2 (Jan. 2012), <https://ignet.gov/sites/default/files/files/iestds12.pdf>.

work. The Inspector General Act also requires OIGs to report their findings publicly (consistent with any legal limitations), as well as to Congress and respective agencies. This transparency helps ensure greater accountability, and that any recommendations that OIGs make are implemented in a timely fashion.

- b. Do you believe that your office’s inquiry into the Federal Bureau of Investigation’s (FBI) Crossfire Hurricane investigation was independent, in line with the standards set out in CIGIE’s *Quality Standards for Investigations*?

Yes. CIGIE’s *Quality Standards for Investigations* identifies “independence” as a general standard for investigative organizations, and defines this standard as “all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude.” The OIG’s FISA review was in line with this standard.

3. Pete Williams of NBC News interviewed Attorney General William Barr on December 10, 2019, about your investigation, and in the interview Attorney General Barr said, “[I]n one area I do disagree with the IG, and that was whether there was sufficient predication to open a full-blown counterintelligence investigation, specifically using the techniques that they did, to collect intelligence about the Trump campaign.”⁶

- a. Are you aware of any circumstance in which an Attorney General did not submit a formal response to the findings and recommendations of an investigation by the Office of the Inspector General, but then later expressed disagreement with the findings via a press release or an interview on national television?

As I stated at the hearing in response to a similar question from Senator Leahy, I cannot recall another situation when this occurred during my tenure as Inspector General.

- b. FBI Director Christopher Wray submitted a formal response to your investigation’s findings and recommendations, which is attached as Appendix 2 to your report.⁷ Is that the normal and proper channel for an agency to submit views and comments on Office of the Inspector General reports?

The OIG’s standard practice is to share draft reports with Department components prior to public release for an accuracy and sensitivity review. As part of that process, for most reports, the OIG requests and includes a component’s formal response into the OIG final report.

⁶ Tim Hains, *Full Interview: AG Bill Barr Criticizes Inspector General Report on the Russia Investigation*, REALCLEARPOLITICS (Dec. 11, 2019), https://www.realclearpolitics.com/video/2019/12/11/full_interview_ag_bill_barr_criticizes_inspector_general_report_on_the_russia_investigation.html.

⁷ OFFICE OF THE INSPECTOR GEN., *supra* note 1, at 424.

- c. Did Attorney General Barr submit any response to your office directly, whether formally or informally, regarding your investigation’s findings and recommendations?

The Department did not submit a response to our report.

4. When you testified before the Senate Judiciary Committee, Ranking Member Dianne Feinstein asked you about the rights of whistleblowers.⁸ She asked you, “Should the Ukraine whistleblower’s confidentiality be breached, and that person identified publicly?”⁹ You did not directly answer that question. You said, “[W]histleblowers have a right to expect complete full confidentiality in all circumstances. It’s in the law in the IG Act that Congress wrote, and it’s a very important provision.”¹⁰
 - a. Do you think the whistleblower in the intelligence community should have his/her confidentiality breached?

As I indicated at the hearing, the importance of confidentiality in protecting those who provide information to Inspectors General is memorialized in law enacted by Congress. Specifically, section 7(b) of the Inspector General Act states that an Inspector General “shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.” Moreover, Section 5(e)(5) of the Inspector General Act specifies that Inspectors General may “not provide to Congress or the public any information that reveals the personally identifying information of a whistleblower” without the whistleblower’s consent. Given the important role that whistleblowers play in uncovering evidence of government waste, fraud, and abuse, I believe it is critical that anyone with knowledge of a whistleblower’s identity adhere to the restrictions that Congress has placed on IGs so that whistleblowers are not deterred from stepping forward with important information. This principle applies to all whistleblowers, including those in the Intelligence Community, and has been recognized by senior Members of Congress on a bipartisan basis. For example, in an October 22, 2019, letter to the DOJ Office of Legal Counsel (OLC) that I co-authored with 67 other IGs, we referenced a statement by Senator Charles Grassley, Chairman and co-founder of the U.S. Senate’s Whistleblower Caucus, noting that whistleblowers, including the Intelligence Community whistleblowers, “ought to be heard out and protected” and “we should always work to

⁸ *Examining the Inspector General’s Report on Alleged Abuses of the Foreign Intelligence Surveillance Act: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. (2019) [hereinafter *Hearing*] (questioning of Sen. Dianne Feinstein, Ranking Member), available at <https://plus.cq.com/doc/congressionaltranscripts-5794094>.

⁹ *Id.*

¹⁰ *Id.* (testimony of Michael Horowitz, Inspector Gen., U.S. Dep’t of Justice).

respect whistleblowers' requests for confidentiality.” Similarly, Senator Mark Warner, Vice Chairman of the Senate Select Committee on Intelligence, noted that intelligence community leaders have a responsibility to protect any “individual within the intelligence community who steps forward to lawfully report illegal or unethical behavior within the federal government.”

- b. Is it appropriate for a Member of Congress to publicly state the identity of the person he or she believes is the whistleblower?

See my response to question 4a regarding the importance of maintaining the confidentiality of a whistleblower's identity.

- c. Is it appropriate for members of the Executive Branch to publicly harass and/or disparage whistleblowers?

Whistleblowers should never suffer any form of retaliation for bringing forward information that they reasonably believe evidences waste, fraud, abuse, or misconduct. Indeed, to the extent that public harassment or disparagement impacts a whistleblower's working conditions, it may violate the Whistleblower Protection Act.

5. Shortly after your report was released, President Trump stated, “This was an overthrow of government, this was an attempted overthrow—and a lot of people were in on it.”¹¹

The next day, President Trump referenced your report and claimed that the FBI had launched the investigation into individuals associated with the 2016 Trump campaign to “hurt us politically,” and he suggested that the investigation was a “political hit job.”¹²

In fact, your report concluded that there was no evidence of “political bias or improper motivation” in the FBI's key investigative decisions.¹³

- a. Does your report contain any support for the claim that the investigation was an “attempted” “overthrow of government”?

The scope of the OIG's review included the FBI's decision to open the Crossfire Hurricane investigation and four related, individual cases; the FBI's relationship with Christopher Steele and its receipt, use, and evaluation of Steele's election reports; DOJ and the FBI's compliance with legal requirements, and with applicable DOJ and FBI policies and

¹¹ Aaron Rupar, *Trump's Comments About the IG Report Turn Reality on Its Head*, VOX (Dec. 9, 2019), <https://www.vox.com/2019/12/9/21003475/trump-it-report-horowitz-overthrow-lies>.

¹² Morgan Chalfant, *Trump Rails Against FBI, Impeachment During Pennsylvania Rally*, HILL (Dec. 10, 2019), <https://thehill.com/homenews/administration/474014-trump-rails-against-fbi-impeachment-during-pennsylvania-rally>.

¹³ OFFICE OF THE INSPECTOR GEN., *supra* note 1, at iii-iv.

procedures, in its FISA applications concerning Carter Page; issues relating to DOJ attorney Bruce Ohr; and the FBI's use of confidential human sources in Crossfire Hurricane. We concluded that the opening of Crossfire Hurricane was in compliance with Department and FBI policies, and we did not find documentary or testimonial evidence that political bias or improper motivation influenced the decision. We also found that the FBI's use of confidential human sources received the necessary approvals under then-existing Department and FBI policies, and we did not find documentary or testimonial evidence that political bias or improper motivation influenced the FBI's decision to conduct these operations. Concerning the Carter Page FISA applications, we identified 17 significant inaccuracies and omissions that were not shared with, and consequently considered by, the Department decision makers who supported the applications or the court who approved the requested FISA authorizations. We stated that we did not find documentary or testimonial evidence of intentional misconduct on the part of the case agents who assisted the applications' preparation or performed the so-called Woods procedures, but we also stated that we did not receive satisfactory explanations for the errors or missing information.

- b. Does your report contain any support for the claim that the investigation was a "political hit job"?

We describe the report's significant findings in response to question 5a.

6. At the hearing, Ranking Member Feinstein asked you whether Attorney General Barr and U.S. Attorney John Durham had "share[d] whatever evidence they had that might be relevant to your investigation."¹⁴ You said, "None of the discussions change our findings here."¹⁵ In response to a follow-up question from Ranking Member Feinstein about whether "Barr or Durham present[ed] anything that altered your findings,"¹⁶ you answered, "No."¹⁷

To be clear, did Attorney General Barr or U.S. Attorney Durham offer you *any* relevant evidence that had not already been considered by your office?

I cannot provide specific information about evidence or information that was discussed because U.S. Attorney Durham's investigation is ongoing; however, I reiterate my answer from the hearing that these discussions did not change the finding of our review.

¹⁴ *Hearing, supra* note 8 (questioning of Sen. Feinstein).

¹⁵ *Hearing, supra* note 8 (testimony of Inspector Gen. Horowitz).

¹⁶ *Hearing, supra* note 8 (questioning of Sen. Feinstein).

¹⁷ *Hearing, supra* note 8 (testimony of Inspector Gen. Horowitz)