

Weinsheimer, Bradley (NSD)

From: Weinsheimer, Bradley (NSD)
Sent: Monday, March 5, 2018 4:52 PM
To: Lasseter, David F. (OLA)
Cc: Evans, Stuart (NSD); Colborn, Paul P (OLC); Shapiro, Elizabeth (CIV); Johnson, Joanne E. (OLA)
Subject: Goodlatte draft response
Attachments: Leahy.pdf; Goodlatte FISC draft response (v5).docx

Attached is the current version of our draft response. Thanks, Brad.

G. Bradley Weinsheimer
Director, Risk Management and Senior Counsel
National Security Division
Bradley.weinsheimer@usdoj.gov

(b) (6)

Cutrona, Danielle (OAG)

From: Cutrona, Danielle (OAG)
Sent: Tuesday, March 20, 2018 8:04 PM
To: Gannon, Curtis E. (OLC)
Attachments: 2018-03-15 CEG LG JC TT to AG DAG (Special Counsel).pdf; ATT00001.txt

<https://www.grassley.senate.gov/sites/default/files/judiciary/upload/2018-03-15%20CEG%20LG%20JC%20TT%20to%20AG%20DAG%20%28Special%20Counsel%29.pdf>

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director
JENNIFER DICKER, Democratic Chief Counsel and Staff Director

March 15, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Sessions and Deputy Attorney General Rosenstein:

As you know, the Department of Justice Inspector General currently is reviewing the Department's and the Federal Bureau of Investigation's handling of the Clinton email investigation.¹ Recently, the Attorney General requested that he also review questions about the Department's and the FBI's actions in seeking a Foreign Intelligence Surveillance Act (FISA) warrant against former Trump Campaign advisor Carter Page.² On February 28, based on reviews of related documents and facts gathered thus far in the Committee's oversight work, Chairman Grassley and Chairman Graham also requested that the Inspector General broadly review more than 30 classified and unclassified questions related to the FBI and the Department's handling of the so-called Trump/Russia investigation and related matters prior to the appointment of Special Counsel Robert Mueller.³ For reference, we have attached the unclassified portion of that referral.

¹ Press Release, Office of the Inspector General, U.S. Dep't of Justice, *DOJ OIG Announces Initiation of Review* (Jan. 12, 2017).

² Kelly Cohen, Jeff Sessions responds to Nunes memo release: 'No department is perfect', *WASHINGTON EXAMINER* (Feb. 2, 2018); Josh Gerstein, Sessions: Justice Department watchdog investigating GOP Russia memo claims, *POLITICO* (Feb. 27, 2018).

³ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Michael Horowitz, Inspector General, U.S. Dep't of Justice (Feb. 28, 2018) (Unclassified Letter attached as Exhibit 1).

The January 4, 2018 referral of Christopher Steele requested that the Justice Department reconcile the statements he made in British libel litigation against him with contrary statements he reportedly made to the FBI, as described in the FISA application. The referral took no position as to which were true, but asked the Justice Department whether Mr. Steele misrepresented the facts to the FBI and whether the FBI inaccurately reported the facts to the court. Based on the release of the memorandum drafted by the minority staff of the House Permanent Select Committee on Intelligence, the FBI has now provided a further un-redacted version of that referral memorandum, also attached here.⁴ The new version provides the public for the first time the actual quote from the FISA application that we flagged for the Justice Department as inconsistent with claims made in the British libel litigation filings.

The attached request to the Inspector General asked that he investigate issues surrounding the application and renewals of the FISA warrant. It also requested that he review potential improprieties in the FBI's relationship with Christopher Steele, the potential conflicts of interest posed by the involvement of high-ranking DOJ official Bruce Ohr in serving as the cut-out between the FBI and Mr. Steele after the FBI terminated its formal relationship with him, apparent unauthorized disclosures of classified information to the press, the FBI and DOJ's handling of the investigation of Lt. Gen. Michael Flynn, and other matters.

We have the utmost confidence in the Inspector General's integrity, fairness, and impartiality, and trust that he will complete these reviews in a thorough, unbiased, and timely fashion. However, by statute, the Inspector General does not have the tools that a prosecutor would to gather all the facts, such as the ability to obtain testimony from essential witnesses who are not current DOJ employees. Thus, we believe that a special counsel is needed to work with the Inspector General to independently gather the facts and make prosecutorial decisions, if any are merited. The Justice Department cannot credibly investigate itself without these enhanced measures of independence to ensure that the public can have confidence in the outcome.

To ensure that the appointment of a special counsel rests on a clear, well-defined predicate and scope, and to give the American people the fullest possible confidence in his or her independence and authority, we believe that the appointment should specifically cite, rely on, and follow the Department's regulations governing such an appointment, including specifically 28 C.F.R. §§ 600.1-600.4.⁵

⁴ Memorandum from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Christopher A. Wray, Director, Federal Bureau of Investigation (Jan. 4, 2018) (Exhibit 2).

⁵ See 28 C.F.R. § 600 *et seq.*; If you determine that a special counsel appointment would not be necessary or appropriate under the Department's regulations, we urge you to designate a disinterested U.S. Attorney or other Justice Department prosecutor with no actual or apparent conflicts to work cooperatively with the Inspector General in his review and ensure that he has access to grand jury process and other prosecutorial tools necessary to guarantee a thorough, complete, and independent review in which the public can have total confidence.

If you are unwilling to take this step, please send us a detailed reply explaining why not.
We look forward to your response.

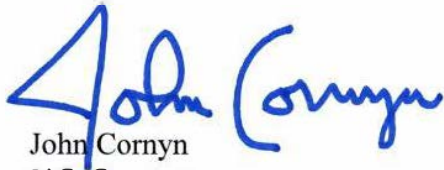
Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Lindsey O. Graham
Chairman
Subcommittee on Crime and Terrorism



John Cornyn
U.S. Senator



Thom Tillis
U.S. Senator

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-4675

February 28, 2018

VIA ELECTRONIC TRANSMISSION

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001



Dear Inspector General Horowitz:

We respectfully request that you conduct a comprehensive review of potential improper political influence, misconduct, or mismanagement in the conduct of the counterintelligence and criminal investigations related to Russia and individuals associated with (1) the Trump campaign, (2) the Presidential transition, or (3) the administration prior to the appointment of Special Counsel Robert Mueller.

Over the past year, the Department of Justice has made a number of documents relating to these issues available for review by the Chair and Ranking Member of the Senate Judiciary Committee and its Subcommittee on Crime and Terrorism. These documents have raised several serious questions about the propriety of the FBI's relationship with former British Intelligence agent Christopher Steele, including its use of allegations compiled by Mr. Steele for Fusion GPS and funded by Perkins Coie on behalf of the Democrat National Committee and the Clinton campaign. These documents also raise questions about the role of Bruce Ohr, a senior Justice Department official whose wife worked for Fusion GPS, in continuing to pass allegations from Steele and Fusion GPS to the FBI after the FBI had terminated Mr. Steele as a source.

Following the President's declassification of the memorandum prepared by the House Permanent Select Committee on Intelligence majority staff,¹ and its subsequent public release, the existence of these documents is now unclassified:

¹ Letter from Donald J. Trump, President of the United States to Devin Nunes, Chairman, House Permanent Select Committee on Intelligence (Feb. 2, 2018); see also Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the

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1. An October 2016 Foreign Intelligence Surveillance Act (FISA) application relying significantly on Mr. Steele's allegations and credibility to seek surveillance of Carter Page;²
2. Three renewal FISA applications—dated January, April, and June of 2017—similarly relying on Mr. Steele's allegations and credibility to seek approval to surveil Mr. Page;³
3. A Human Source Validation Report relating to Mr. Steele;⁴
4. Numerous FD-302s demonstrating that Department of Justice official Bruce Ohr continued to pass along allegations from Mr. Steele to the FBI after the FBI suspended its formal relationship with Mr. Steele for unauthorized contact with the media, and demonstrating that Mr. Ohr otherwise funneled allegations from Fusion GPS and Mr. Steele to the FBI;⁵
5. Spreadsheets summarizing the details of interactions between Mr. Steele and the FBI, including the dates of contacts, the subject-matter of those contacts, and information relating to whether and when any payments may have been made; and
6. Form 1023s and other documents memorializing contacts between the FBI and Mr. Steele.⁶

Additional relevant documents to which the Committee was provided access to review cannot be identified in this unclassified letter. Thus, those documents are detailed more fully in the attached classified memorandum.

We request that your office review all of these documents as soon as possible. We also request that your office examine the following issues, as well as those contained in the attached classified memorandum. Finally, we request that you report to Congress, and to the greatest extent possible, the public, on your recommendations and factual findings in a manner sufficient to answer these questions:

Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Christopher A. Wray, Director, Federal Bureau of Investigation (Jan. 4, 2018) and attached Memorandum re: Referral of Christopher Steele for Potential Violation of 18 U.S.C. § 1001 (version of Memorandum cleared by the FBI as unclassified following the President's declassification of the HPSCI majority staff memorandum), *available at*:

[https://www.judiciary.senate.gov/imo/media/doc/2018-02-06%20CEG%20LC%20to%20DOJ%20FBI%20\(Unclassified%20Steele%20Referral\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-02-06%20CEG%20LC%20to%20DOJ%20FBI%20(Unclassified%20Steele%20Referral).pdf).

² Page FISA Application and Order (Oct. 21, 2016).

³ First Page FISA Renewal Application and Order (Jan. 12, 2017); Second Page FISA Renewal Application and Order (Apr. 7, 2017); Third Page FISA Renewal and Order (June 29, 2017).

⁴ Human Source Validation Report, (Nov. 14, 2016).

⁵ Ohr FD-302 12/19/16 (interview date 1/22/16); Ohr FD-302 12/19/16 (interview date 12/5/16); Ohr FD-302 12/19/16 (interview date 12/12/16); Ohr FD-302 12/27/16 (interview date 12/20/16); Ohr FD-302 1/27/17 (interview date 1/27/17); Ohr FD-302 1/31/17 (interview date 1/23/17); Ohr FD-302 1/27/17 (interview date 1/25/17); Ohr FD-302 2/8/17 (interview date 2/6/17); Ohr FD-302 2/15/17 (interview date 2/14/17); Ohr FD-302 5/10/17 (interview date 5/8/17); Ohr FD-302 5/12/17 (interview date 5/12/17); Ohr FD-302 5/16/17 (interview date 5/15/17).

⁶ FD-1023s documenting Mr. Steele's statements to the FBI.

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1. Who in the Department of Justice or the FBI knew that Christopher Steele's work ultimately was funded by the Democratic National Committee (DNC) and the Clinton Campaign? When did each individual learn that information?
2. Why didn't the Foreign Intelligence Surveillance Act (FISA) warrant for Carter Page, or any of its subsequent renewals, more specifically disclose the source of funding for Steele's claims?
3. What connections are there between Mr. Steele and the Russian government or Russian intelligence community? Has Mr. Steele ever been paid directly or indirectly by the Russian government, Russian intelligence community, or other Russian sources?
4. Was any consideration given to providing more information about the funding source than actually appears in the warrant and in its renewals? If not, why not?
5. What were Mr. Steele's motivations in distributing the dossier and the information in the dossier after President Trump won the election? Were these efforts coordinated in any way with employees of the FBI or DOJ?
6. Pursuant to the procedures in Rule 9(a) of the Foreign Intelligence Surveillance Court's Rules of Procedure, did the FBI or Justice Department provide the Foreign Intelligence Surveillance Court (FISC) with a proposed FISA application targeting Mr. Page while he was still affiliated with the Trump campaign? Did the FISC notify the DOJ that the warrant application was insufficient as written and required additional information? If so, why? Was the draft warrant returned with any specific feedback? If so, what was the feedback? Was the dossier information included in any draft warrant applications that might have been provided to the court? If not, when was the dossier information first presented to the court, either in draft or final form?
7. Were Page's departure from his role on the campaign's National Security Working Group and the timing of the application connected in any way?
8. Did the FISA order allow the FBI to obtain emails Page sent prior to the order, during the time he was affiliated with the Trump campaign? If so, were any Obama political appointees able to read internal Trump campaign emails before the election? During the transition period? If so, who, when, and for what purpose?
9. What department standards, rules, regulations, or policies, if any, govern the use of privately or politically funded intelligence gathering as a predicate for a FISA application? Are those standards, rules, regulations, or policies adequate to

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ensure the ultimate political and financial motivations behind the work are adequately shared and disclosed? Were those standards, rules, regulations, or policies followed in connection with the use of the Steele dossier information in the FISA application for Carter Page or in any other context where the dossier information was relied upon?

10. Do the so-called "Woods Procedures" adequately address how to evaluate potential credibility concerns when using privately or politically funded intelligence in FISA warrant applications?⁷
11. Do the Woods Procedures adequately ensure that unverified and uncorroborated information is not used to obtain FISA warrants targeting American citizens?
12. Did the FBI properly follow the Woods Procedures in obtaining the Page FISA warrant or any of its renewals, including those procedures designed to prevent reliance on unverified or uncorroborated information?
13. How many people at the FBI and the Department of Justice reviewed and approved the Page FISA warrant and renewal applications? Did anyone ever raise any concerns with its accuracy or sufficiency?
14. Did anyone express any concerns about the propriety of presenting unverified, uncorroborated claims from the Steele dossier as the basis for a FISA warrant on an American citizen?
15. Which specific dossier claims presented in the FISA application, if any, had the FBI independently verified at the time they were first presented to the court? Which claims, if any, had been verified by the time each of the renewal applications was filed?
16. Who leaked classified information about the Page FISA warrant to the *Washington Post* while the warrant was active?⁸ Why?
17. Chairman Grassley wrote to former Director Comey nearly a year ago requesting him to resolve apparent material discrepancies between information he provided in a closed briefing and information contained in classified documents. Specifically, what Mr. Comey disclosed in a private briefing to the Chairman and Ranking Member Feinstein about the timeline of the FBI's interactions with Mr. Steele appeared inconsistent with information contained in FISA applications the

⁷ Memorandum from the Office of the General Counsel, National Security Law Unit, Federal Bureau of Investigation to All Field Offices, *Foreign Intelligence Surveillance Act Procedures to Ensure Accuracy* (Apr. 5, 2001), available at: <https://fas.org/irp/agency/doj/fisa/woods.pdf>.

⁸ Ellen Nakashima, Devlin Barrett and Adam Entous, *FBI obtained FISA warrant to monitor Trump adviser Carter Page*, WASHINGTON POST (Apr. 11, 2017).

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Chairman and Ranking Member later reviewed.⁹ No explanation for the inconsistencies has ever been provided. It is unclear whether this was a deliberate attempt to mislead the Oversight Committee about whether the FBI's communications with Mr. Steele about the Trump allegations began before or after the FBI opened the investigation.

What is the reason for the difference between what Mr. Comey told the Chairman and Ranking Member in March 2017, and what appears in the FISA application?¹⁰ Did Director Comey intentionally mislead the Committee? Why did the FBI never respond to Chairman Grassley's questions about the inconsistencies? Did the Chairman's letter first alert the FBI to the inconsistencies? Did the FBI seek to correct them in any way? Did anyone block or delay a response to the Chairman on this issue? If so who, and why? Has Mr. Comey provided any other information to congressional committees, Members, or staff, in public testimony or in private briefings, that is inconsistent with the classified documents produced by the FBI in response to congressional inquiries related to the 2016 election?

18. Was Peter Strzok aware of Steele's claims when he opened the so-called Trump/Russia counterintelligence investigation? Did Mr. Steele's claims play any role in the decision to open this investigation, despite the stated basis of foreign intelligence regarding George Papadopoulos? Was there any discussion at the FBI about whether to cite to Steele's information in opening the investigation?
19. To what extent did Mr. Steele's information form any part of the basis for the FBI to expand its investigation from Mr. Papadopoulos to Mr. Page, Lt. Gen. Michael Flynn, and Mr. Manafort?
20. Have Mr. Steele's sources or sub-sources who are described in the dossier, or in any "intelligence reports" compiled by Mr. Steele or his company related to the 2016 election, received any payments directly or indirectly from Mr. Steele, Orbis International, any of Mr. Steele's other sources, or any Russian source?
21. Was anyone in the Justice Department, including senior leadership, aware that Mr. Ohr continued to pass information from Steele and Fusion GPS to the FBI even after Steele was suspended, and terminated, as a source? Who? Were those people aware that Mr. Ohr's wife worked for Fusion? If so, how and when did they become aware?

⁹ Letter from Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary to James B. Comey, Jr., Director, Federal Bureau of Investigation (Apr. 28, 2017).

¹⁰ The specific inconsistencies are described in the classified attachment.

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22. Was anyone in the senior leadership of the FBI aware that Mr. Ohr continued to pass information from Steele and Fusion GPS to the FBI after Steele was terminated as a source? Who? Were those people aware that Mr. Ohr's wife worked for Fusion? If so, how and when did they become aware?
23. Did Mr. Ohr ever seek ethics advice from DOJ about his participation in this investigation in light of his wife's employment with Fusion? In light of his becoming a fact witness in a case over which his office (ODAG) likely had supervisory authority? From whom did he seek advice? If so, was he properly advised and to what extent did he follow it?
24. Was it proper for Mr. Ohr to continue to pass information from Steele and Fusion to the FBI after it had suspended, and later terminated, Steele as a source? Why was that fact not disclosed to the FISC? Should it have been? Why was Mr. Ohr's wife's work on behalf of Fusion not disclosed to the FISC?
25. Why did the FBI and the Justice Department fail to disclose Steele's personal bias to the FISC? Specifically, Mr. Ohr informed the FBI that Steele himself was "desperate" to prevent Trump from being elected president. Why was this information withheld from the FISC? Should it have been disclosed in the renewal applications to correct any previous assessments or characterizations about Steele's motivations, as distinct from his client's (Fusion) and funders' (DNC/Clinton campaign)?
26. Who at the Department of Justice or the FBI was aware that Fusion was the subject of a Foreign Agents Registration Act (FARA) complaint alleging that it failed to register as a foreign agent for its work on behalf the Katsyov family to undermine Magnitsky Act sanctions against Russia?¹¹
27. Was anyone involved in the decision to use Steele's dossier information in the FISA application aware that Steele's client, Fusion GPS, was accused of being an unregistered foreign agent for Russian interests at the time? Should that information have been shared with those working in the FISA application and disclosed to the FISC at the time? If so, then why wasn't it?
28. Did the FBI provide a defensive briefing to alert then-candidate Trump or any Trump campaign officials to the FBI's counterintelligence concerns about Carter Page, George Papadopoulos, or Paul Manafort? If not, to what extent was such a briefing considered and rejected as a potential way to thwart Russian attempts to

¹¹ See, e.g., Letter from Chairman Charles E. Grassley, Chairman, U.S. Sen. Comm. on the Judiciary and Lindsey O. Graham, Chairman, Subcomm. on Crime and Terrorism, U.S. Sen. Comm. on the Judiciary to Rod J. Rosenstein, Deputy Attorney General, U.S. Dep't of Justice and Andrew McCabe, Acting Director, Federal Bureau of Investigation (June 27, 2017).

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interfere with the 2016 election? If it was rejected as an option, why was it rejected and did that decision comply with any standards, rules, or regulations that govern the use of defensive briefings as a counterintelligence tool? Are the existing standards and guidelines for providing defensive briefings adequate to ensure that senior government officials or major party candidates are adequately warned if individuals surrounding them may be targets of foreign intelligence operations? If not, how should those standard and guidelines be improved?

29. In congressional testimony, Mr. Comey claimed that the FBI briefed then President-Elect Trump about the Steele dossier because the FBI had received word that the media was about to report on the dossier.¹² However, subsequent media reporting made clear that the media generally had found the dossier's unverified allegations unreportable, and CNN only broke the story on the dossier because Mr. Comey briefed the President-Elect about it.¹³ Thus, there is a question as to whether the FBI included the dossier in the briefing, and possibly leaked that it had done so, in order to provide the media a pretext to report on the dossier.

This question arises against the backdrop of an apparent broader pattern of FBI leaks about high-profile investigative matters. Text messages recently produced to the Committee by the Department for example show high-level FBI officials apparently communicating with reporters. Those messages also show that the FBI at least considered using the briefing for the purpose of carrying out a counterintelligence assessment of the attendees.

Did anyone from the FBI or the Department of Justice leak to the media the fact that officials briefed the President-Elect about the contents of the dossier? Did anyone from the FBI or the Department of Justice inform Mr. Steele or anyone associated with Fusion GPS that they briefed the President-Elect about the contents of the dossier? Did the FBI use the briefing to develop a counterintelligence assessment of its attendees?

30. Who leaked to the press the presumably classified contents of the publicly reported call between the Russian ambassador and Michael Flynn?¹⁴ Has anyone been held accountable, and if not, why not?

¹² Testimony of James B. Comey, Jr., Senate Select Committee on Intelligence (June 8, 2017).

¹³ Evan Perez, Jim Sciutto, Jake Tapper, and Carl Bernstein, *Intel chiefs presented Trump with claims of Russian efforts to compromise him*, CNN (Jan. 12, 2017), <https://www.cnn.com/2017/01/10/politics/donald-trump-intelligence-report-russia/index.html>.

¹⁴ David Ignatius, *Why did Obama dawdle on Russia's hacking?*, WASHINGTON POST (Jan. 12, 2017), https://www.washingtonpost.com/opinions/why-did-obama-dawdle-on-russias-hacking/2017/01/12/5f878a0d-90c1-1e6-9a36-1d296534b31c_story.html?utm_term=.81bc5cd1cefa; Andrew McCarthy, *Make the Flynn Tape Public*,

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31. On January 24, 2017, before Lt. Gen. Flynn resigned as National Security Advisor, he was interviewed by FBI agents about phone calls he had with former Russian Ambassador Sergei Kislyak. On December 1, 2017, Lt. Gen. Flynn pled guilty to lying to them.¹⁵ Recent news reports, however, state that former FBI Director Comey previously told congressional investigators that those agents neither believed that Lt. Gen. Flynn had lied, nor that “any inaccuracies in his answers were intentional.”¹⁶

Was the interview conducted by the FBI agents on January 24, 2017 part of a criminal investigation or a counterintelligence investigation? Did the FBI agents who interviewed Lt. Gen. Flynn believe that he lied to them or intentionally misled them? Did the FBI agents document their interview with Lt. Gen. Flynn in one or more FD-302s? What were the FBI agents’ conclusions about Lt. Gen. Flynn’s truthfulness, as reflected in the FD-302s? Were the FD-302s ever edited? If so, by whom? At who’s direction? How many drafts were there? Are there material differences between the final draft and the initial draft(s) or the agent’s testimony about the interview?

What information did the FBI present to the DOJ regarding this interview, or any other investigative steps involving Lt. Gen. Flynn, and when? What, if anything, did the DOJ do with this information?

In addition to these questions, please report on the issues raised in the classified attachment and in our classified referral of Christopher Steele.

Thank you for your attention to this matter. If you have any questions please contact Patrick Davis or DeLisa Lay of Chairman Grassley’s staff at (202) 224-5225.


Charles E. Grassley
Chairman
Committee on the Judiciary

Sincerely,


Lindsey O. Graham
Chairman
Subcommittee on Crime and Terrorism

NATIONAL REVIEW (Feb. 15, 2017), <http://www.nationalreview.com/article/444934/michael-flynn-russia-release-tape-call-russian-ambassador>.

¹⁵ Plea Agreement, *U.S. v. Michael T. Flynn*, 1:17-cr-232 (D.D.C. Dec. 1, 2017), <https://www.justice.gov/file/1015121/download>; Criminal Information, *U.S. v. Michael T. Flynn*, 1:17-cr-232 (Nov. 30, 2017), <https://www.justice.gov/file/1015026/download>.

¹⁶ Byron York, Comey told Congress FBI agents didn’t think Michael Flynn lied, WASHINGTON EXAMINER (Feb. 12, 2018), <http://www.washingtonexaminer.com/byron-york-comey-told-congress-fbi-agents-didnt-think-michael-flynn-lied/article/2648896>; see also Andrew McCarthy, The Curious Michael Flynn Guilty Plea, NATIONAL REVIEW (Feb. 13, 2018), <http://www.nationalreview.com/article/456379/michael-flynn-guilty-plea-questions-raised-about-fbi-robert-mueller-investigation>.

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[REDACTED]
(UNCLASSIFIED when separated from attachments)

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary

The Honorable Sheldon Whitehouse
Ranking Member
Subcommittee on Crime and Terrorism

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation

The Honorable Richard Burr
Chairman
Senate Select Committee on Intelligence

The Honorable Mark Warner
Vice Chairman
Senate Select Committee on Intelligence

The Honorable Devin Nunes
Chairman
House Permanent Select Committee on Intelligence

The Honorable Adam Schiff
Ranking Member
House Permanent Select Committee on Intelligence

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MEMORANDUM

(U) FROM: Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary
Lindsey O. Graham, Chairman, Subcommittee on Crime and Terrorism,
U.S. Senate Committee on the Judiciary

TO: The Honorable Rod J. Rosenstein, Deputy Attorney General, U.S.
Department of Justice

The Honorable Christopher A. Wray, Director, Federal Bureau of
Investigation

RE: Referral of Christopher Steele for Potential Violation of 18 U.S.C. § 1001

(U) As you know, former British Intelligence Officer Christopher Steele was hired by the private firm Fusion GPS in June 2016 to gather information about “links between Russia and [then-presidential candidate] Donald Trump.”¹ Pursuant to that business arrangement, Mr. Steele prepared a series of documents styled as intelligence reports, some of which were later compiled into a “dossier” and published by *BuzzFeed* in January 2017.² On the face of the dossier, it appears that Mr. Steele gathered much of his information from Russian government sources inside Russia.³ According to the law firm Perkins Coie, Mr. Steele’s dossier-related efforts were funded through Fusion GPS by that law firm on behalf of the Democratic National Committee and the Clinton Campaign.⁴

(U) In response to reporting by the *Washington Post* about Mr. Steele’s relationship with the FBI relating to this partisan dossier project, the Judiciary Committee began raising a series of questions to the FBI and the Justice Department about these matters as part of the Committee’s constitutional oversight responsibilities.⁵

(U) The FBI has since provided the Committee access to classified documents relevant to the FBI’s relationship with Mr. Steele and whether the FBI relied on his dossier work. As explained in greater detail below, when information in those classified documents is evaluated in light of sworn statements by Mr. Steele in British litigation, it appears that either Mr. Steele lied to the FBI or the British court, or that the classified documents reviewed by the Committee contain materially false statements.

¹ (U) Defence, *Gubarev et. Al v. Orbis Business Intelligence Limited and Christobpher Steele*, Claim No. HQ17D00413, Queen’s Bench (Apr. 4, 2017), para. 9 [Hereinafter “Steele Statement 1”] [Attachment A].

² (U) *Id.* at para. 10; Ken Bensinger, Miriam Elder, and Mark Schoofs, *These Reports Allege Trump Has Deep Ties to Russia*, BUZZFEED (Jan. 10, 2017).

³ (U) *Id.*

⁴ (U) Adam Entous, Devlin Barrett and Rosalind S. Helderman, *Clinton Campaign, DNC Paid for Research that Led to Russia Dossier*, THE WASHINGTON POST (Oct. 24, 2017).

⁵ (U) Tom Hamburger and Rosalind S. Helderman, *FBI Once Planned to Pay Former British Spy who Authored Controversial Trump Dossier*, THE WASHINGTON POST (Feb. 28, 2017).

[REDACTED]

[REDACTED]

(U) In response to the Committee's inquiries, the Chairman and Ranking Member received a briefing on March 15, 2017, from then-Director James B. Comey, Jr.

[REDACTED] That briefing addressed the Russia investigation, the FBI's relationship with Mr. Steele, and the FBI's reliance on Mr. Steele's dossier in two applications it filed for surveillance under the Foreign Intelligence Surveillance Act (FISA). Then, on March 17, 2017, the Chairman and Ranking Member were provided copies of the two relevant FISA applications, which requested authority to conduct surveillance of Carter Page. Both relied heavily on Mr. Steele's dossier claims, and both applications were granted by the Foreign Intelligence Surveillance Court (FISC). In December of 2017, the Chairman, Ranking Member, and Subcommittee Chairman Graham were allowed to review a total of four FISA applications relying on the dossier to seek surveillance of Mr. Carter Page, as well as numerous other FBI documents relating to Mr. Steele.

[REDACTED] In the March 2017 briefing with then-Director Comey, he stated that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) Similarly, in June 2017, former FBI Director Comey testified publicly before the Senate Select Committee on Intelligence that he had briefed President-Elect Trump on the dossier allegations in January 2017, which Mr. Comey described as "salacious" and "unverified."⁶

[REDACTED] When asked at the March 2017 briefing why the FBI relied on the dossier in the FISA applications absent meaningful corroboration—and in light of the highly political motives surrounding its creation—then-Director Comey stated that the FBI included the dossier allegations about Carter Page in the FISA applications because Mr. Steele himself was considered reliable due to his past work with the Bureau.

[REDACTED] Indeed, the documents we have reviewed show that the FBI took important investigative steps largely based on Mr. Steele's information—and relying heavily on his credibility. Specifically, on October 21, 2016, the FBI filed its first warrant application under FISA for Carter Page. This initial application relies in part on alleged past Russian attempts to recruit Page years ago. That portion is less than five pages. The bulk of the application consists of allegations against Page that were disclosed to the FBI by Mr. Steele and are also outlined in the Steele dossier. The application appears to contain no additional information corroborating the dossier allegations against Mr. Page, although it does cite to a news article that appears to be sourced to Mr. Steele's dossier as well.

⁶ (U) Statement of James B. Comey, Jr., Hearing of the U.S. Sen. Select Comm. on Intelligence (June 8, 2017).

[REDACTED]

[REDACTED] The FBI discussed the reliability of this unverified information provided by Mr. Steele in footnotes 8 and 18 of the FISA warrant application. First, the FBI noted to a vaguely limited extent the political origins of the dossier. In footnote 8 the FBI stated that the dossier information was compiled pursuant to the direction of a law firm who had hired an “identified U.S. person”—now known as Glenn Simpson of Fusion GPS—“to conduct research regarding [Trump’s] ties to Russia.” The FBI further “speculate[d]” that Mr. Simpson “was likely looking for information that could be used to discredit [Trump’s] campaign.” The application failed to disclose that the identities of Mr. Simpson’s ultimate clients were the Clinton campaign and the DNC.

[REDACTED] The FBI stated to the FISC that “based on [Steele’s] previous reporting history with the FBI, whereby [Steele] provided reliable information to the FBI, the FBI believes [Steele’s] reporting to be credible.” In short, it appears the FBI relied on admittedly uncorroborated information, funded by and obtained for Secretary Clinton’s presidential campaign, in order to conduct surveillance of an associate of the opposing presidential candidate. It did so based on Mr. Steele’s personal credibility and presumably having faith in his process of obtaining the information.

(U) But there is substantial evidence suggesting that Mr. Steele materially misled the FBI about a key aspect of his dossier efforts, one which bears on his credibility.

[REDACTED] In the October 2016 FISA application, and in each of the three renewals, after relaying Steele’s dossier allegations against Carter Page, the FBI states: “[Steele] told the FBI that he/she only provided this information to the business associate [Fusion GPS] and the FBI.”⁷ (emphasis added). Indeed, the FISA renewal application in January 2017 notes that Steele had received [REDACTED]

[REDACTED] Yet the FISA applications note the existence of a news article dated September 23, 2016, which in particular contained some of the same dossier information about Mr. Page compiled by Mr. Steele and on which the FBI relied in its application. While not explicitly stated, this is presumably the article by Michael Isikoff of *Yahoo News*, titled “U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin.” After noting that Mr. Steele had claimed to the FBI he had only provided this information to the FBI and Mr. Simpson, the application attempts to explain away the inconsistency between Mr. Steele’s assertion to the FBI and the existence of the article, apparently to shield Mr. Steele’s credibility on which it still relied for the renewal request. The application to the FISC said: “Given that the information contained in the September 23rd news article generally matches the information about Page that [Steele] discovered doing his/her research, [REDACTED] [REDACTED] [REDACTED]

⁷ [REDACTED] The FBI has failed to provide the Committee the 1023s documenting all of Mr. Steele’s statements to the FBI, so the Committee is relying on the accuracy of the FBI’s representation to the FISC regarding those statements.

[REDACTED]

[REDACTED] *The FBI does not believe* that [Steele] directly provided this information to the press” (emphasis added).

[REDACTED] In footnote 9 of its January 2017 application to renew the FISA warrant for Mr. Page, the FBI again addressed Mr. Steele’s credibility. At that time, the FBI noted that it had suspended its relationship with Mr. Steele in October 2016 because of Steele’s “unauthorized disclosure of information to the press.” The FBI relayed that Steele had been bothered by the FBI’s notification to Congress in October 2016 about the reopening of the Clinton investigation, and as a result “[Steele] independently and against the prior admonishment from the FBI to speak only with the FBI on this matter, released the reporting discussed herein [dossier allegations against Page] to an identified news organization.” However, the FBI continued to cite to Mr. Steele’s past work as evidence of his reliability, and stated that “the incident that led to the FBI suspending its relationship with [Mr. Steele] occurred after [Mr. Steele] provided” the FBI with the dossier information described in the application. The FBI further asserted in footnote 19 that it did not believe that Steele directly gave information to *Yahoo News* that “published the September 23 News Article.”

[REDACTED] So, as documented in the FISA renewals, the FBI still seemed to believe Mr. Steele’s earlier claim that he had only provided the dossier information to the FBI and Fusion—and not to the media—prior to his October media contact that resulted in the FBI suspending the relationship. Accordingly, the FBI still deemed the information he provided prior to the October disclosure to be reliable. After all, the FBI already believed Mr. Steele was reliable, he had previously told the FBI he had not shared the information with the press – and lying to the FBI is a crime. In defending Mr. Steele’s credibility to the FISC, the FBI had posited an innocuous explanation for the September 23 article, based on the assumption that Mr. Steele had told the FBI the truth about his press contacts. The FBI then vouched for him twice more, using the same rationale, in subsequent renewal applications filed with the Foreign Intelligence Surveillance Court in April and June 2017.

(U) However, public reports, court filings, and information obtained by the Committee during witness interviews in the course of its ongoing investigation indicate that Mr. Steele not only provided dossier information to the FBI, but also to numerous media organizations **prior to** the end of his relationship with the FBI in October 2016.⁸

(U) In Steele’s sworn court filings in litigation in London, he admitted that he “gave off the record briefings to a small number of journalists about the pre-election memoranda [*i.e.*, the dossier] in late summer/autumn 2016.”⁹ In another sworn filing in that case, Mr. Steele further

⁸ (U) See Steele Statement 1; Defendants’ Response to Claimants’ Request for Further Information Pursuant to CPR Part 18, *Gubarev et. Al v. Orbis Business Intelligence Limited and Christopher Steele*, Claim No. HQ17D00413, Queen’s Bench (May 18, 2017), [Hereinafter “Steele Statement 2”] [Attachment B]; Tom Hamburger and Rosalind S. Helderman, *FBI Once Planned to Pay Former British Spy who Authored Controversial Trump Dossier*, THE WASHINGTON POST (Feb. 28, 2017); Simpson Transcript, on File with Sen. Comm. on the Judiciary.

⁹ (U) Steele Statement 1 at para. 32.

[REDACTED]

stated that journalists from “the New York Times, the Washington Post, **Yahoo News**, the New Yorker, and CNN” were “briefed **at the end of September 2016 by [Steele]** and Fusion at Fusion’s instruction.”¹⁰ The filing further states that Mr. Steele “subsequently participated in further meetings at Fusion’s instruction with Fusion and the New York Times, the Washington Post, and Yahoo News, which took place mid-October 2016.”¹¹ According to these court filings, “[t]he briefings involved the disclosure of limited intelligence regarding indications of Russian interference in the US election process and the possible co-ordination of members of Trump’s campaign team and Russian government officials.”¹² In his interview with the Committee, Glenn Simpson of Fusion GPS confirmed this account by Mr. Steele and his company as filed in the British court.¹³

[REDACTED] The first of these filings was publicly reported in the U.S. media in April of 2017, yet the FBI did not subsequently disclose to the FISC this evidence suggesting that Mr. Steele had lied to the FBI. Instead the application still relied primarily on his credibility prior to the October media incident.

[REDACTED] The FBI received similar information from a Justice Department official, Bruce Ohr, who maintained contacts with Mr. Simpson and Mr. Steele about their dossier work, and whose wife also worked for Fusion GPS on the Russia project. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He also noted in the same interview that Mr. Steele was “desperate” to see that Mr. Trump was not elected president.¹⁶ None of the information provided by Mr. Ohr in his interviews with the FBI was included in the FISA renewal applications, despite its relevance to whether Mr. Steele had lied to the FBI about his contacts with the media as well as its broader relevance to his credibility and his stated political motive.

¹⁰ (U) Steele Statement 2 at para. 18. (emphasis added).

¹¹ [REDACTED] *Id.* The filing also apparently described the media contact that resulted in the FBI’s suspension of its relationship with Mr. Steele, stating: “In addition, and again at Fusion’s instruction, in late October 2016 the Second Defendant briefed a journalist from Mother Jones by Skype.”

¹² (U) *Id.*

¹³ (U) Simpson Transcript, On File with the Sen. Comm. on the Judiciary at 205-07.

¹⁴ [REDACTED] Ohr FD-302 (Nov. 22, 2016).

¹⁵ [REDACTED] Ohr FD-302 (Dec. 12, 2016).

¹⁶ [REDACTED] Ohr FD-302 (Nov. 22, 2016).

[REDACTED]

[REDACTED] Whether Mr. Steele lied to the FBI about his media contacts is relevant for at least two reasons. First, it is relevant to his credibility as a source, particularly given the lack of corroboration for his claims, at least at the time they were included in the FISA applications. Second, it is relevant to the reliability of his information-gathering efforts.

(U) Mr. Steele conducted his work for Fusion GPS compiling the “pre-election memoranda” “[b]etween June and early November 2016.”¹⁷ In the British litigation, Mr. Steele acknowledged briefing journalists about the dossier memoranda “in late summer/autumn 2016.”¹⁸ Unsurprisingly, during the summer of 2016, reports of at least some of the dossier allegations began circulating among reporters and people involved in Russian issues.¹⁹ Mr. Steele also admitted in the British litigation to briefing journalists from the *Washington Post*, *Yahoo News*, the *New Yorker*, and *CNN* in September of 2016.²⁰ Simply put, the more people who contemporaneously knew that Mr. Steele was compiling his dossier, the more likely it was vulnerable to manipulation. In fact, in the British litigation, which involves a post-election dossier memorandum, Mr. Steele admitted that he received and included in it *unsolicited*—and unverified—allegations.²¹ That filing implies that he similarly received unsolicited intelligence on these matters prior to the election as well, stating that Mr. Steele “*continued to receive unsolicited intelligence* on the matters covered by the pre-election memoranda after the US Presidential election.”²²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) One memorandum by Mr. Steele that was not published by *Buzzfeed* is dated October 19, 2016. The report alleges [REDACTED], as well as [REDACTED]. Mr. Steele’s memorandum states that his company “received this report from [REDACTED] US State Department,” that the report was the second in a series, and that the report was information that came from a foreign sub-source who “is in touch with [REDACTED], a contact of [REDACTED], a friend of the Clintons, who passed it to [REDACTED].” It is troubling enough that the Clinton Campaign funded Mr. Steele’s work, but that these Clinton associates were contemporaneously feeding Mr. Steele allegations raises additional concerns about his credibility.

¹⁷ (U) Steele Statement 1 at para. 9.

¹⁸ (U) Steele Statement 1 at para. 32.

¹⁹ (U) Ahkmetshin Transcript, On File with the Sen. Comm. on the Judiciary (Mr. Ahkmetshin informed the Committee that he began hearing from journalists about the dossier before it was published, and thought it was the summer of 2016).

²⁰ (U) Steele Statement 2 at para. 18 (emphasis added).

²¹ (U) Steele Statement 1 at para. 18 and 20c.

²² (U) *Id.*; see Steele Statement 2 at 4 (“Such intelligence was not actively sought, it was merely received.”)

[REDACTED]

[REDACTED]

[REDACTED] Simply put, Mr. Steele told the FBI he had not shared the Carter Page dossier information beyond his client and the FBI. The Department repeated that claim to the FISC. Yet Mr. Steele acknowledged in sworn filings that he did brief *Yahoo News* and other media organizations about the dossier around the time of the publication of the *Yahoo News* article that seems to be based on the dossier.

(U) On September 23, 2016, *Yahoo News* published its article entitled “U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin.”²³ That article described claims about meetings between Carter Page and Russians, including Igor Sechin. Mr. Sechin is described in the article as “a longtime Putin associate and former Russian deputy prime minister” under sanction by the Treasury Department in response to Russia’s actions in the Ukraine.²⁴ The article attributes the information to “a well-placed Western intelligence source,” who reportedly said that “[a]t their alleged meeting, Sechin raised the issue of the lifting of sanctions with Page.”²⁵ This information also appears in multiple “memoranda” that make up the dossier.²⁶

(U) In sum, around the same time *Yahoo News* published its article containing dossier information about Carter Page, **Mr. Steele and** Fusion GPS had briefed *Yahoo News* and other news outlets about information contained in the dossier.

[REDACTED] These facts appear to directly contradict the FBI’s assertions in its initial application for the Page FISA warrant, as well as subsequent renewal applications. The FBI repeatedly represented to the court that Mr. Steele told the FBI he did *not* have unauthorized contacts with the press about the dossier prior to October 2016. The FISA applications make these claims specifically in the context of the September 2016 *Yahoo News* article. But Mr. Steele has admitted—publicly before a court of law—that he *did* have such contacts with the press at this time, and his former business partner Mr. Simpson has confirmed it to the Committee. Thus, the FISA applications are either materially false in claiming that Mr. Steele said he did not provide dossier information to the press prior to October 2016, or Mr. Steele made materially false statements to the FBI when he claimed he only provided the dossier information to his business partner and the FBI.

[REDACTED] In this case, Mr. Steele’s apparent deception seems to have posed significant, material consequences on the FBI’s investigative decisions and representations to the court. Mr. Steele’s information formed a significant portion of the FBI’s warrant application, and the FISA application relied more heavily on Steele’s credibility than on any independent verification or corroboration for his claims. Thus the basis for the warrant authorizing surveillance on a U.S. citizen rests largely on Mr. Steele’s credibility. The Department of Justice has a responsibility to

²³ (U) Michael Isikoff, *U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin*, YAHOO NEWS (Sept. 23, 2016).

²⁴ (U) *Id.*

²⁵ (U) *Id.*

²⁶ (U) Bensinger *et. al*, BUZZFEED.

[REDACTED]

determine whether Mr. Steele provided false information to the FBI and whether the FBI's representations to the court were in error.

(U) Accordingly, we are referring Christopher Steele to the Department of Justice for investigation of potential violation(s) of 18 U.S.C. § 1001.

Sent from my iPhone

Gannon, Curtis E. (OLC)

From: Gannon, Curtis E. (OLC)
Sent: Wednesday, March 21, 2018 11:33 AM
To: Cutrona, Danielle (OAG)
Cc: Whitaker, Matthew (OAG); Flores, Sarah Isgur (OPA); Barnett, Gary E. (OAG); Boyd, Stephen E. (OLA)
Subject: RE: Assistance
Attachments: DOJ Letter to BG and TG Re Second Special 3.20.18 + olc.docx

Here are some minor suggested line edits from Steve and me. I'm happy to discuss if you're wondering about the motivation behind any of them.

Thanks,

Curtis

From: Cutrona, Danielle (OAG)
Sent: Tuesday, March 20, 2018 7:46 PM
To: Gannon, Curtis E. (OLC) <(b) (6)>
Cc: Whitaker, Matthew (OAG) <mwhitaker@jmd.usdoj.gov>; Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Barnett, Gary E. (OAG) <gebarnett@jmd.usdoj.gov>; Boyd, Stephen E. (OLA) <seboyd@jmd.usdoj.gov>
Subject: Assistance

Curtis,

If you have time tonight or tomorrow, can you please take a look at the attached draft response letter? I'm attaching the incoming letter for convenience. Please let us know if you have any comments or questions. Thanks in advance,
Danielle