

## **CHAPTER TWELVE: TEXT MESSAGES, INSTANT MESSAGES, USE OF PERSONAL EMAIL, AND ALLEGED IMPROPER DISCLOSURES OF NON- PUBLIC INFORMATION**

This Chapter discusses text messages from FBI-issued mobile devices and instant messages exchanged on FBI systems that raised concerns of potential bias. We describe key text messages and instant messages we identified during our review, as well as explanations for these messages that the involved employees offered during their OIG interviews. We also identified instances where FBI employees, including Comey and Strzok, used personal email accounts to conduct official government business. Lastly, we discuss allegations that Department and FBI employees improperly disclosed non-public information.

### **I. Text Messages and Instant Messages**

During the course of our review, we requested and received text messages from FBI-issued mobile devices and instant messages exchanged on the FBI Net and SCINet Lync applications for FBI personnel involved in the Midyear investigation.<sup>192</sup> We also requested text messages for Department personnel involved in the Midyear investigation, but were informed that the Department does not retain text messages for more than 5 to 7 days.<sup>193</sup> The OIG previously expressed concerns in a 2015 report about the text message retention practices of the Department's four law enforcement components, and we recommend that ODAG consider taking steps to improve the retention and monitoring of text messages Department-wide.<sup>194</sup>

After receiving FBI text messages and instant messages responsive to keywords we provided to the FBI, we identified messages for certain FBI personnel

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<sup>192</sup> FBI Net is the FBI's computer system for information classified at the Secret level, while its SCINet system handles Top Secret and compartmented information.

<sup>193</sup> After reviewing a draft of this report, the Midyear prosecutors told the OIG that they did not use text messages, and that the only text messages they received were from the Midyear agents about logistical arrangements.

<sup>194</sup> In March 2015, the OIG issued a report pertaining to the handling of sexual harassment allegations by the Department's four law enforcement components, the FBI, the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the U.S. Marshal's Service (USMS). In that report, we noted that all four components had weaknesses detecting sexually explicit text messages and images, and that two components did not archive text messages sent and received by its employees. We therefore recommended that all four law enforcement components, in coordination with ODAG, should (1) acquire and implement technology and establish procedures to effectively preserve text messages and images for a reasonable period of time, and should make that information available to misconduct investigators and for discovery purposes; and (2) take concrete steps to acquire and implement technology to proactively monitor text message and image data for potential misconduct. See U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components*, Evaluation and Inspections Division Report 15-04 (March 2016), <https://go.usa.gov/xQGz4> (accessed May 9, 2018).

that raised concerns about potential bias. We then obtained all text messages and instant messages for those FBI personnel for the entire period of the Midyear investigation through July 1, 2017, to capture post-election discussions. We identified communications from five different FBI employees that we discuss in this section.<sup>195</sup>

First, we identified text messages exchanged between DAD Peter Strzok and Lisa Page, Special Counsel to former Deputy Director Andrew McCabe, on their FBI-issued cell phones. These text messages included political opinions about candidates and issues involved in the 2016 presidential election, including statements of hostility toward then candidate Trump and statements of support for candidate Clinton. Several of their text messages also appeared to mix political opinions with discussions about the Midyear and Russia investigations, raising a question as to whether Strzok's and Page's political opinions may have affected investigative decisions. In addition to being involved in the Midyear and Russia investigations, both Page and Strzok were also briefly assigned to the investigation conducted by Special Counsel Robert Mueller III.

Next, we identified instant messages exchanged on FBI Net involving Agent 1 and Agent 5. As noted previously, Agent 1 was assigned to the Midyear investigative team and was one of the four case agents. Agent 5 was assigned to the Midyear filter team. We discussed in Chapter Five a number of Agent 1's instant messages that expressed opinions that were critical of the conduct and quality of the Midyear investigation. In addition to those messages, we identified two instant message exchanges involving Agent 1 that appeared to combine a discussion of politics with a discussion of the Midyear investigation. We also identified instant messages between Agent 1 and Agent 5 that expressed support for candidate Clinton and hostility toward first candidate and then President Trump.

Finally, we identified instant messages sent on FBI Net by FBI Attorney 2. FBI Attorney 2 was assigned to the Midyear investigation, the Russia investigation, and the Special Counsel investigation. We found instant messages in which FBI Attorney 2 discussed political issues, including three instant message exchanges that raised concerns of potential bias.

In this section, we describe key text messages and instant messages we identified during our review, as well as explanations for these messages that the employees offered during their OIG interviews.

#### **A. Text Messages between Lisa Page and Peter Strzok**

Peter Strzok is an experienced counterintelligence agent who was promoted to Deputy Assistant Director (DAD) of the Espionage Section in September 2016.

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<sup>195</sup> We identified other text messages and instant messages in which FBI employees involved in the Midyear investigation discussed political issues and candidates. This Chapter does not include a discussion of every political text message or instant message that we identified. Instead, we discuss only those messages that we found raised the most significant questions of potential bias or improper motivation based on their content, timing, or the individuals involved.

As described in the previous chapters, Strzok was assigned to the Midyear investigation in August 2015 and was responsible for supervising the investigation on a daily basis. Page was named counsel to then Deputy Director Andrew McCabe in February 2016, and served as his liaison to the Midyear investigative team from February 2016 forward.

In addition to their roles in the Midyear investigation, both Page and Strzok were involved in the FBI investigation into the Russian government's efforts to interfere in the 2016 presidential election.<sup>196</sup> Strzok was assigned to lead the Russia investigation in late July 2016.<sup>197</sup> Page also worked on the Russia investigation, and told us that she served the same liaison function as she did in the Midyear investigation. Both Page and Strzok accepted invitations to work on the Special Counsel staff in 2017. Page told the OIG that she accepted a 45-day temporary duty assignment but returned to work in the Deputy Director's office at the FBI on or around July 15, 2017. Strzok was removed from the Special Counsel's investigation on approximately July 28, 2017, and returned to the FBI in another position, after the OIG informed the DAG and Special Counsel of the text messages discussed in this report on July 27, 2017.

As noted above, after finding responsive text messages between Page and Strzok that appeared to intermingle political comments with discussions of the Midyear investigation, the OIG obtained from the FBI all text messages between Strzok and Page from their FBI-issued phones for the entire period of the Clinton email server investigation as well as the period of the Russia investigation during which Strzok and Page worked on it. The OIG received more than 40,000 unique text messages between Strzok and Page in response to these requests.<sup>198</sup> The FBI did not provide any text messages for the period from December 15, 2016, to May 17, 2017, because of issues with the data collection and preservation software used on the FBI's Samsung S5 mobile devices. However, OIG forensic agents obtained the phones used by Strzok and Page, and recovered a large number of the text

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<sup>196</sup> On March 20, 2017, then Director Comey testified before Congress that the FBI began an investigation in late July 2016 into "the Russian government's efforts to interfere in the 2016 presidential election," including "investigating the nature of any links between individuals associated with the Trump campaign and the Russian government and whether there was any coordination between the campaign and Russia's efforts."

<sup>197</sup> Supervision of the Russia investigation was briefly transitioned from Strzok to another Counterintelligence Division DAD in early 2017. However, AD Priestap told us that FBI leadership decided to keep Strzok involved in the Russia investigation and he was therefore reassigned back to it.

<sup>198</sup> The FBI produced 73,900 text messages between Strzok and Page from the period June 30, 2015, to December 1, 2016; 1,368 text messages from the period December 1 to December 14, 2016; and 2,054 text messages from the period May 18 to July 1, 2017. However, these included significant numbers of duplicates. We estimate that the number of unique text messages exchanged between Strzok and Page exceeded 40,000. The FBI pulled the majority of these text messages from Page's archives, as Strzok's text messages were not consistently preserved due to compatibility problems between the FBI's text message preservation software and the Samsung S5 cell phones used by the FBI. Issues related to the preservation of text messages affected a large number of FBI employees, and OIG forensic agents determined that the failure to preserve Strzok's text messages resulted from this compatibility issue, not from the actions of any FBI employee, including Strzok. Text message preservation resumed in May 2017, after Page received a Samsung S7 phone.

messages from this “gap” period. For the gap period, the OIG recovered 9,311 text messages from Strzok’s phone and 10,760 text messages from Page’s phone, some of which were duplicates or text messages exchanged with other people. Although the number and frequency of text messages is generally consistent with previous time periods, we cannot definitively say that our forensic recovery captured every text message exchanged between Page and Strzok during the gap period.<sup>199</sup>

The text messages between Page and Strzok covered a wide range of topics. For example, we identified a large number of routine work-related communications. Many of the text messages were of a personal nature, including discussions about their families, medical issues, and daily events, and reflected that Strzok and Page were communicating on their FBI-issued phones as part of an extramarital affair. We found that this relationship was relevant to the frequency and candid nature of the text messages and their use of FBI-issued phones to communicate. Some of these text messages expressed political opinions about candidates and issues involved in the 2016 presidential election, including statements of hostility toward candidate Trump and statements of support for candidate Clinton.

We identified three categories of text messages that raised concerns about potential bias in FBI investigations. The first were text messages of a political nature commenting on Trump and Clinton. We specifically highlight these text messages because Strzok and Page played important roles in investigations involving both Trump and Clinton, and the exchange of these text messages on an FBI-issued device potentially created an appearance of bias. The second category we identified were text messages that combined expressions of political sentiments with a discussion of the Midyear investigation, potentially indicating or creating the appearance that investigative decisions were impacted by bias or improper considerations. The third category raised similar questions with respect to the Russia investigation. We also include a fourth category of text messages that have received significant public attention. These messages are included to provide context and further explanation as to their meaning, and do not necessarily implicate potential bias in either the Midyear or Russia investigations. Examples of these four categories of text messages are discussed below.<sup>200</sup> We also include

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<sup>199</sup> The OIG is preparing a separate report on its text message recovery efforts and findings.

<sup>200</sup> This Chapter includes the text messages we found most relevant to our review. However, Page and Strzok sent other text messages about candidates and issues involved in the 2016 presidential election, unrelated to the Midyear or Russia investigations, and also sent numerous text messages, both positive and negative, about other public and government officials from both political parties. These included former Maryland Governor Martin O’Malley (“And Martin O’Malley’s a douche,” October 14, 2015), Congressman Paul Ryan (“And I hope Paul Ryan fails and crashes in a blaze of glory,” November 1, 2015), Ohio Governor John Kasich (“Poor Kasich. He’s the only sensible man up there,” “Exactly re Kasich. And he has ZERO appeal,” March 4, 2016), former Attorney General Eric Holder (“Oh God, Holder! Turn [the television] off turn it off turn it off!!!!” “Yeah, I saw him yesterday and booed at the tv,” July 27, 2016), and others. Page and Strzok told us that these additional text messages were relevant because they reflected that Trump was not singled out by them for criticism or criticized for partisan reasons.

explanations provided by Page and Strzok during their OIG interviews about these text messages.

## 1. Text Messages Commenting on Trump or Clinton

In this section, we highlight examples of text messages of a political nature commenting on Trump and Clinton. We include explanations provided by Page and Strzok about their use of FBI-issued phones in general and their use of FBI-issued phones for political discussions. The sender of each text message is identified after the date.

- August 16, 2015, Strzok: “[Bernie Sanders is] an idiot like Trump. Figure they cancel each other out.”<sup>201</sup>
- February 12, 2016, Page: “I’m no prude, but I’m really appalled by this. So you don’t have to go looking (in case you hadn’t heard), Trump called him the p-word. The man has no dignity or class. He simply cannot be president. With a Slur for Ted Cruz, Donald Trump Further Splits Voters <http://nyti.ms/1XoICkO>.”
- February 12, 2016, Strzok: “Oh, [Trump’s] abysmal. I keep hoping the charade will end and people will just dump him. The problem, then, is Rubio will likely lose to Cruz. The Republican party is in utter shambles. When was the last competitive ticket they offered?”
- March 3, 2016, Page: “God trump is a loathsome human.”
- March 3, 2016, Strzok: “Omg [Trump’s] an idiot.”
- March 3, 2016, Page: “He’s awful.”
- March 3, 2016, Strzok: “God Hillary should win 100,000,000-0.”
- March 3, 2016, Page: “Also did you hear [Trump] make a comment about the size of his d\*ck earlier? This man cannot be president.”
- March 12, 2016: Page forwarded an article about a “far right” candidate in Texas, stating, “[W]hat the f is wrong with people?” Strzok replied, “That Texas article is depressing as hell. But answers how we could end up with President trump.”
- March 16, 2016, Page: “I cannot believe Donald Trump is likely to be an actual, serious candidate for president.”
- June 11, 2016, Strzok: “They fully deserve to go, and demonstrate the absolute bigoted nonsense of Trump.”
- July 18, 2016, Page: “...Donald Trump is an enormous d\*uche.”

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<sup>201</sup> All text messages produced to the OIG reflected Greenwich Mean Time. As a result, some text messages sent late at night bore the wrong date. We have corrected times and, where necessary, dates in this report to reflect the Eastern Time Zone. In addition, some text messages used emojis and other formatting symbols, which we omitted unless they affected the meaning of the text message. We also excluded other intervening text messages that did not contribute to understanding the highlighted text messages.

- July 19, 2016, Page: "Trump barely spoke, but the first thing out of his mouth was 'we're going to win soooo big.' The whole thing is like living in a bad dream."
- July 21, 2016, Strzok: "Trump is a disaster. I have no idea how destabilizing his Presidency would be."
- August 26, 2016, Strzok: "Just went to a southern Virginia Walmart. I could SMELL the Trump support...."
- September 26, 2016, Page: Page sent an article to Strzok entitled, "Why Donald Trump Should Not Be President," stating, "Did you read this? It's scathing. And I'm scared."
- October 19, 2016, Strzok: "I am riled up. Trump is a fucking idiot, is unable to provide a coherent answer."
- November 3, 2016, Page: "The nyt probability numbers are dropping every day. I'm scared for our organization."
- November 3, 2016, Strzok: "[Jill] Stein and moron [Gary] Johnson are F'ing everything up, too."
- November 7, 2016, Strzok: Referencing an article entitled "A victory by Mr. Trump remains possible," Strzok stated, "OMG THIS IS F\*CKING TERRIFYING."
- November 13, 2016, Page: "I bought all the president's men. Figure I needed to brush up on watergate."<sup>202</sup>

Both Strzok and Page agreed to multiple voluntary interviews with the OIG regarding, among other things, their text messages. The OIG asked Strzok and Page each to comment in general on the text messages. Strzok explained that the text messages reflected his "personal opinion talking to a friend." He stated that ingrained in FBI culture was a "bright and inviolable line between what you think personally and belief and the conduct of your official business," and that the political opinions he expressed in the text messages "never transited into the official realm. In any way. Not in discussions, not in acts." Strzok acknowledged that "it was dumb to do that all on a government device," but distinguished his private exchanges with Page from a more public forum where expressing such views might call into question the integrity of an FBI investigation. When questioned about the possibility that exchanges on his government device could be hacked, obtained by the media, or otherwise exposed to the public, he acknowledged that "I can envision a number of scenarios" where it could impact an investigation.

Strzok stated most people would have no idea of his partisan affiliation and that "[i]t was a point of pride on Midyear that we absolutely conducted that

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<sup>202</sup> Among the text messages forensically recovered by the OIG in May 2018 was another exchange about "All the President's Men." On March 14, 2017, Page texted, "Finally two pages away from finishing atpm. Did you know the president resigns in the end?! ☺" Strzok replied, "What?!?! God, that we should be so lucky."

investigation and pursued the truth in a manner that was protected from bias or influence and was simply apolitical.” He further stated, “I did not either in Midyear or any other case act in a vacuum.... I had subordinates, I had peers, I had supervisors,” and that none of these people would say that he had acted in a biased manner in carrying out his official duties.

Page told us that these text messages reflected her personal opinions regarding candidate Trump’s fitness to be president and her preference for Clinton, but that she did not allow her political views to impact investigative steps on the Midyear investigation. She stated, “Because I was on the Clinton investigation, I actually felt extremely constrained from talking to anyone about politics at all.... And so, Pete being a good friend, it was in a way a, like a safe place to sort of have a conversation about what was...the normal sort of news of the day because...we both knew that we weren’t, it wasn’t impacting anything that we were doing.” She pointed out that many of the text messages in question were sent after the Midyear investigation was effectively concluded on July 5, 2016, at which point she said she personally felt less constrained to express an opinion. Page stated that she was “responsible for no single decision at all with respect to the case,” but that her role was rather to communicate information between FBI executive leadership and the investigative team. She also said she was not the sole source of information to executive leadership.

When asked about using her FBI-issued phone for these exchanges, Page told us, “[T]he predominant reason that we communicated on our work phones was because we were trying to keep our affair a secret from our spouses.” Page also said, “I guess I didn’t feel like I was doing anything wrong. I’m an American. We have the First Amendment. I’m entitled to an opinion.... I saw it as, I still see it as so separate from the investigative activity we were taking in the, in Midyear that I didn’t, didn’t really think about it, to be honest with you.”

## **2. Text Messages Discussing Political Sentiments and the Midyear Investigation**

In this section, we highlight examples of text messages that appear to combine expressions of political sentiments with discussion of the Midyear investigation. We provide background and context where possible to assist in understanding the text messages. We also include the explanations provided by Page and Strzok about these text messages.

**February 24, 2016:** In connection with a discussion about how many people from the FBI and Department should be present during a potential interview of former Secretary Clinton, Page stated in a February 24, 2016 text message to Strzok, “One more thing: she might be our next president. The last thing you need us going in there loaded for bear. You think she’s going to remember or care that it was more doj than fbi?” Strzok replied, “Agreed....” Page sent similar text messages to McCabe and another FBI employee around the same time, adding that having a larger number in the room “is not operationally necessary” and that “[t]his is as much about reputational protection as anything.” These text messages occurred at almost the midpoint of the Midyear investigation, before Clinton’s

interview was formally scheduled. Ultimately, Clinton was interviewed on July 2, 2016, and there were three FBI and five Department officials in the room. Page did not attend the interview.

Both Page and Strzok told the OIG that these messages did not reflect that the FBI took into account the likelihood that former Secretary Clinton would be president when conducting her interview. Page told us that her text message was advocating that the FBI should “follow the practice we always, always follow” with respect to who would attend Clinton’s interview, “and not do something that might otherwise negatively impact [Clinton’s] thinking or her feeling about the FBI in general.” She stated that having fewer people present in an interview is generally better for building rapport and ensuring that the right people are asking the questions, and that by “loaded for bear” she meant having a large number of interviewers in the room, which might look “like we’re trying to intimidate” Clinton. Strzok told us he did not interpret Page’s text message to suggest that the FBI should treat Clinton differently “because she might be the next president,” and he stated that he was certain he “made no decision based on anything [Clinton] might be or become or have done.”

**July 26, 2016:** Strzok and Page exchanged a series of text messages on July 26, 2016, while they appeared to be watching television coverage of the Democratic National Convention. In the course of this exchange, Page texted, “Yeah, it is pretty cool. [Clinton] just has to win now. I’m not going to lie, I got a flash of nervousness yesterday about trump. The sandernistas have the potential to make a very big mistake here....” Strzok responded, “I’m not worried about them. I’m worried about the anarchist Assanges who will take fed information and disclose it to disrupt. We’ve gotta get the memo and brief and case filing done.”

Strzok told us that “the memo” he was referring to was the closing Letterhead Memorandum (LHM) summarizing the Clinton email server investigation. Strzok said he was not certain what the “brief and case filing” referred to, but speculated these could have related to a FOIA filing. When asked if his text message meant that the LHM needed to be completed because he was worried about Trump and wanted Clinton to win, Strzok said, “No, not at all.” He described this exchange as a “discussion that is purely in that private, personal realm about beliefs and opinions that are personal opinions intermixed [with discussion of work tasks] because, as a work colleague, there are a lot of things going on, and they do get intermixed.” Strzok stated that mixing work and personal communications in the same text message exchange, on the same device, was “dumb” and acknowledged that it could create a perception issue. He again emphasized that he never took any investigative step designed to help or hurt Clinton or Trump.

Page told us that she was not sure what the “memo and brief and case filing” referred to but that it might have been a related classified issue. She stated that she did not read Strzok’s text message to connect the need to “get the memo and brief and case filing done” with his political preferences. Rather, Page stated that she thought that the use of “fed” in the text message may have been an erroneous auto-correction of an unclassified acronym of a codename and that Strzok was



referring to concerns about leaks by actors like Assange (Wikileaks) “who will leak classified information.”

### **3. Text Messages Discussing Political Sentiments and the Russia Investigation**

In this section, we highlight examples of text messages that appear to combine expressions of political sentiments with discussion of the Russia investigation. We provide background and context where possible to assist in understanding the text messages. We also include the explanations provided by Page and Strzok about these text messages.

**July 31, 2016:** In connection with formal opening of the FBI’s Russia investigation, Strzok texted Page: “And damn this feels momentous. Because this matters. The other one did, too, but that was to ensure we didn’t F something up. This matters because this MATTERS. So super glad to be on this voyage with you.”

Strzok told us the “other one” referred to in the text message was the Midyear investigation. He said his text message was comparing and contrasting the Midyear investigation with the Russia investigation, and reflected his view that “if there is criminal activity there [in Midyear], it is comparatively limited, versus allegations [in the Russia investigation] which are of the most extraordinarily, potentially grave conduct.” He said that his assessment of the significance of the Russia investigation was not affected by his personal feelings toward Trump and that it would be the same if another campaign were involved.

**August 6, 2016:** In an exchange on August 6, 2016, Page forwarded Strzok a news article relating to Trump’s criticism of the Khans (the Gold Star family who appeared at the Democratic National Convention) and stated, “Jesus. You should read this. And Trump should go f himself.” Strzok responded favorably to the article and added, “And F Trump.” Page replied, “So. This is not to take away from the unfairness of it all, but we are both deeply fortunate people.” She then sent another text message, “And maybe you’re meant to stay where you are because you’re meant to protect the country from that menace. To that end, read this:” and forwarded a David Brooks column from the New York Times about Trump “enablers” in the Republican Party who had not opposed Trump. Strzok responded, “Thanks. It’s absolutely true that we’re both very fortunate. And of course I’ll try and approach it that way. I just know it will be tough at times. I can protect our country at many levels, not sure if that helps...”

When asked to explain what she meant by “you’re meant to protect the country from that menace,” Page began by stating, “I was totally appalled that the President would insult the father of a dead service member.... And just find that unconscionable and disgusting and cruel.” She also stated that the “menace” was “the potential threat to national security that Trump or his people pose if [the] predication [for the Russia investigation] is true.” Strzok told us that he did not interpret Page’s reference to “protect the country from that menace” to refer to Trump. He stated, “I take menace a little differently. I take, I take the menace as, again, I view any foreign interference with our electoral process to be a threat, to

be a violation of law.... So when I see menace, I, you know, is that Trump, is that Russian interference, is it the combination of the two?"

**August 8, 2016:** In a text message on August 8, 2016, Page stated, "[Trump's] not ever going to become president, right? Right?!" Strzok responded, "No. No he's not. We'll stop it."<sup>203</sup>

When asked about this text message, Strzok stated that he did not specifically recall sending it, but that he believed that it was intended to reassure Page that Trump would not be elected, not to suggest that he would do something to impact the investigation. Strzok told the OIG that he did not take any steps to try to affect the outcome of the presidential election, in either the Midyear investigation or the Russia investigation. Strzok stated that had he—or the FBI in general—actually wanted to prevent Trump from being elected, they would not have maintained the confidentiality of the investigation into alleged collusion between Russia and members of the Trump campaign in the months before the election. Page similarly stated that, although she could not speak to what Strzok meant by that text message, the FBI's decision to keep the Russia investigation confidential before the election shows that they did not take steps to impact the outcome of the election.

**August 15, 2016:** In a text message exchange on August 15, 2016, Strzok told Page, "I want to believe the path you threw out for consideration in Andy's office—that there's no way he gets elected—but I'm afraid we can't take that risk. It's like an insurance policy in the unlikely event you die before you're 40...." The "Andy" referred to in the text message appears to be FBI Deputy Director Andrew McCabe. McCabe was not a party to this text message, and we did not find evidence that he received it.

In an interview with the OIG, McCabe was shown the text message and he told us that he did not know what Strzok was referring to in the message and recalled no such conversation. Page likewise told us she did not know what that text message meant, but that the team had discussions about whether the FBI would have the authority to continue the Russia investigation if Trump was elected. Page testified that she did not find a reference in her notes to a meeting in McCabe's office at that time.

Strzok provided a lengthy explanation for this text message. In substance, Strzok told us that he did not remember the specific conversation, but that it likely was part of a discussion about how to handle a variety of allegations of "collusion between members of the Trump campaign and the government of Russia." As part of this discussion, the team debated how aggressive to be and whether to use overt investigative methods. Given that Clinton was the "prohibitive favorite" to win,

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<sup>203</sup> Although we received Page's August 8 text message to Strzok from the FBI as part of its production of text messages in 2017, Strzok's response to Page was not among those preserved by the FBI's text message preservation software, and therefore was not produced to us. The OIG's Cyber Investigations Office recovered this text message, along with others, in May 2018 through forensic analysis of a folder found on Page's and Strzok's Samsung S5 devices.

Strzok said that they discussed whether it made sense to compromise sensitive sources and methods to “bring things to some sort of precipitative conclusion and understanding.” Strzok said the reference in his text message to an “insurance policy” reflected his conclusion that the FBI should investigate the allegations thoroughly right away, as if Trump were going to win. Strzok stated that Clinton’s position in the polls did not ultimately impact the investigative decisions that were made in the Russia matter.

**May 18, 2017:** Mueller was appointed Special Counsel on May 17, 2017. The next day Strzok and Page exchanged text messages in a discussion of whether Strzok should join the Special Counsel’s investigation. Strzok wrote: “For me, and this case, I personally have a sense of unfinished business. I unleashed it with MYE. Now I need to fix it and finish it.” Later in the same exchange, Strzok, apparently while weighing his career options, made this comparison: “Who gives a f\*ck, one more A[ssistant] D[irector]...[versus] [a]n investigation leading to impeachment?”<sup>204</sup> Later in this exchange, Strzok stated, “you and I both know the odds are nothing. If I thought it was likely I’d be there no question. I hesitate in part because of my gut sense and concern there’s no big there there.”

Strzok acknowledged that his text messages could be read to suggest that Strzok held himself responsible for Trump’s victory and Clinton’s defeat because of the Midyear investigation and that he viewed the Russia investigation as providing him an opportunity to “fix” this result by working on an investigation that could result in the impeachment of President Trump. However, Strzok said he strongly disagreed with this interpretation and provided a lengthy explanation for these statements. Strzok said that he wanted to “finish” the Russia investigation rather than be reassigned midway through and lose the institutional knowledge of issues being investigated by the Special Counsel. He further stated that he was referring to Russia’s use of the Midyear investigation in its election interference efforts. Strzok explained, “[I]t wasn’t so much the investigation about Midyear, but then how it played into, how it was being portrayed in the political environment, how it was being leveraged by the government of Russia and all the social media disseminations.... [W]e then came to see all this kind of overlap and replaying of events with regard to the involvement of Russia, and certainly the back-and-forth with some elements of the Trump campaign.” When asked what he wanted “to fix,” Strzok identified the misperception that “Russia wasn’t involved,” given that “Russia did interfere with our elections.”

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<sup>204</sup> Strzok expressed similar sentiments in an email to Page using his FBI UNET (unclassified) account. On May 22, 2017, at a time when Page was working for the Special Counsel but Strzok had not yet joined the Special Counsel investigation, Page forwarded Strzok a Washington Post article entitled, “Trump asked intelligence chiefs to push back against FBI collusion probe after Comey revealed its existence.” Strzok responded saying, “Yup. Assuming you/team will do it via Mueller?” When Page confirmed this, Strzok responded, “God I suddenly want on this. You know why.” Page replied that she would leave the Special Counsel investigation and “happily” return to her work at the FBI if Strzok really wanted to join the investigation. Strzok responded, “I’m torn. I think – know – I’m more replaceable than you are in this. I’m the best for it, but there are others who can do OK. You are different and more unique. This is yours. Plus, leaving a S[pecial] C[ounsel] (having been an SC) resulting in an impeachment as an attorney is VERY different than leaving as an investigator....”

When asked to explain his comment about working on an investigation “leading to impeachment?” Strzok denied that he had already prejudged the Russia investigation. He described himself as a person:

[W]ho has had access to the information about the, all of these cases and all of the ins and outs of what the allegations [in the Russia investigation] are. And that he has both, as it matters as a public servant, he has a professional concern about the allegations.... And he is concerned on the impact of the national security of the United States. He finds that he has an expertise and a competence in this line of work, and he feels compelled and driven to pursue that and pursue those facts where they lay.

He stated further that his professional actions, including on the staff of the Special Counsel, were not affected by political bias.

We also asked Strzok about his “no big there there” message.” Strzok stated:

As I looked at the predicated information, as I looked at the facts as we understood them from...the allegations that Russia had these emails, and offered to members of the Trump campaign to release them. As we looked at the various actors, the question [was,]...was that part of a broad, coordinated effort, or was that simply a bunch of opportunists seeking to advance their own or individual agendas...which of that is it?

...My question [was] about whether or not this represented a large, coordinated conspiracy or not. And from that, as I looked at what would give me professional fulfillment, what I thought would be the best use of my skills and talents for the FBI and for the United States, whether to take, which path to take.

Page stated that she understood Strzok’s reference to “unfinished business” that he had “unleashed” and needed “to fix and finish” to be “a reflection of our Director having been fired,” and “the purported reason for why the Director was fired was his mishandling of the Midyear investigation, and the work force was, you know, in mutiny, and it was all about Midyear.” She disagreed with the suggestion that Strzok felt responsible for Clinton’s defeat in the election. She said she interpreted Strzok’s reference to impeachment to mean he wanted to be involved in the Russia investigation because it was so important “it *might* lead to impeachment,” not because “it *will* lead to impeachment.”<sup>205</sup> (Emphasis added). In response to the OIG’s question as to whether Strzok’s text messages made it appear that he was biased against Trump from the beginning of the Special Counsel investigation, Page acknowledged that the text messages could be read that way,

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<sup>205</sup> Strzok gave a similar explanation for the email he sent to Page referencing a Special Counsel investigation “resulting in an impeachment.” He stated, “[W]hile it says that, I think my sense was very much, you know, where it could result in an impeachment. I am, again, was not, am not convinced or certain that it will....”

but stated, “[T]hat’s just not how I read it.” She stated, “He wants to finish the Russia investigation to do, right, this President fired the Director. This President’s team is being investigated for potentially colluding with the Russians in the 2016 election. So, [he] want[s] to finish [his] involvement.”

#### 4. Other Notable Text Messages

In this section, we briefly discuss other text message exchanges between Page and Strzok that have received significant public attention.

**April 1, 2016:** On April 1, 2016, Page sent the following text message to Strzok: “So look, you say we text on that phone when we talk about hillary because it can’t be traced, you were just venting bc you feel bad that you’re gone so much but it can’t be helped right now.” Page told us that this was an example of why she and Strzok used their work phones to conceal their affair from their spouses. Page stated, “[T]hat [text message] follows us communicating personally on our personal phones, and his wife inquiring what it is he was doing. And so my saying, tell her we’re talking about Hillary is not in fact because we were talking about Hillary, but coming up with an explanation for him to provide his wife with respect to why we were on that phone.”

**June 30, 2016:** On June 30, 2016, Strzok sent the following text message to Page: “...Just left Bill... He changed President to ‘another senior government official.’” Based on context, Strzok told us “Bill” referred to Priestap. Strzok stated:

My recollection is that the early Comey speech drafts included references to emails that Secretary Clinton had with President Obama and I think there was some conversation about, well do we want to be that specific? Is there some, out of deference to executive communications, do we want to do that? And I remember that discussion occurring. I remember the decision was made to take it out. I know I was not the person who did it.

Strzok told us that he saw no indication that this decision was done “to curry favor or to influence anything.” Page told us that she could not remember the discussion referenced in this text message. We also discuss this change to Comey’s July 5 statement in Chapter Six.

**July 24, 2016:** On July 24, 2016, before the Russia investigation was formally opened, Page and Strzok exchanged numerous text messages in which they discuss U.S. District Court Judge Rudolph “Rudy” Contreras. Judge Contreras is also a current member of the Foreign Intelligence Surveillance Court (FISC). They discuss, among other things, Strzok hosting a social gathering and inviting Contreras. They also discuss whether Contreras would “have to recuse himself” on “espionage FISA” cases given “his friend oversees them.” We asked Strzok about this exchange and his relationship with Contreras. Strzok stated that he considered Contreras a friend and explained that they met years ago when their children attended the same elementary school. Strzok stated that this text message

exchange reflected that “it had been a while since he had seen” Contreras and he was telling Page that it would nice to see Contreras and find out how he was doing. Strzok continued:

What it was not, and I will say this in response to, again, a lot of the speculation I’ve seen. At no time did I ever with Judge Contreras think of or in actuality reach out for the purpose of discussing any case or trying to get any decision, provide any information, or otherwise influence him with regard to any investigative matter that I or others were involved with.

Strzok told us that Judge Contreras “knew that [Strzok] worked or may have worked national security matters for the FBI,” but knew nothing about the specifics of Strzok’s job or any of the cases he worked. Strzok stated that he never discussed specifics of any investigation with Judge Contreras. Strzok also told us that the social gathering discussed in this text message exchange never occurred.

We also asked Strzok about the recusal discussion reflected in the text messages. Strzok stated:

[This] came up in the context of now that he was on the FISC and that we did have a relationship, the question about, from an ethical perspective and doing the right thing from an ethical perspective, where the lines of either notifying the court and/or either his recusal or my recusal with regard to matters that might bring us in contact with each other on the professional side.

And so the discussion which then came up...was, whether in the context of being the head of the Counterespionage Section, were there, noticing the court or at a minimum noticing [the Department’s National Security Division Office of Intelligence] of that personal relationship to allow the court to make the appropriate decision, or, you know, the, the conglomeration of all of us to make the appropriate ethical decision of whether or not to do was the substance of this discussion. But all of this discussion is a consideration of doing the right, appropriate, ethical thing. It is the polar opposite of what is being suggested by some. This is, this is the flip side of that saying we want to make sure we’re absolutely doing the right thing. And by the way...Judge Contreras is thoughtful and extraordinarily conscientious about ethics and doing the right thing. So this is, if anything, and what is particularly personally aggravating to me is this speaks highly to him as a person, to us as the way we were thinking about it. And it’s being absolutely twisted in the, the complete opposite direction.

Strzok told us that this text message exchange was not about any particular case and represented a more general concern of what he should do.

**September 2, 2016:** On September 2, 2016, Page and Strzok exchanged the following text messages. The sender of each message is identified after the timestamp.

09:41:30, Strzok: "Checkout my 9:30 mtg on the 7th"

09:42:40, Page: "I can tell you why you're having that meeting."

09:42:46, Page: "It's not what you think."

09:49:39, Strzok: "TPs for D?"

09:50:29, Page: "Yes, bc potus wants to know everything we are doing."

09:55:21, Strzok: "I'm sure an honest answer will come out of that meeting...."

This text message exchange occurred during the period in which Midyear was effectively closed—after Comey's July 5 announcement and prior to the discovery of Midyear-related emails on the Weiner laptop in late September. Strzok told us that these text messages referenced a request by the White House to get a "comprehensive idea across the U.S. Intelligence Community" about the scope of Russian interference activities and details of what Russia was doing. Strzok stated that this was "strictly limited to Russian actors" and he did not believe any investigations of U.S. persons were part of this request. Page stated that this exchange had "nothing to do with the Clinton email investigation."

**November 9, 2016:** The day after the presidential election, on November 9, 2016, Page sent the following text message to Strzok: "Are you even going to give out your calendars? Seems kind of depressing. Maybe it should just be the first meeting of the secret society." We asked Page about this message. Page stated that the "calendars" referenced in this text message were "funny and snarky" calendars of Russian President Vladimir Putin in different poses, such as "holding a kitten." Page told us that Strzok had previously purchased these calendars as "dark gallows humor." Page stated that the reference to the "secret society" was also a "dark sort of" humor about Trump winning the election and concerns she and Strzok had about Trump. Page continued:

And so, we somewhat with dark humor, but also somewhat, you know, with real concern as, of course, our Director actually gets fired, talk about, like, well, when he shuts down the, when he finds out about the investigation and shuts down the FBI, you know, we'll form a secret society so we can like continue the investigation. So that's just, that's obviously not real. I mean, that's just us being, you know, sort of snarky. But that's a, that's a joke. I mean, a reflection of that sort of joke.

Strzok stated that he "took and certainly believed [this text message] to be a joke." Strzok explained:

I had gotten a bunch of Putin 2017 calendars where he is in various, glorious displays of Russian patriotism for each month. And we were going to give it out to the, kind of the, the closer senior members of the [Russia investigation] team, just to, you know, hey, we made it to, to Election Day just as like, you know, thanks for your hard work because people, you know, had been truly working very hard....

To give that out and, you know, and Lisa, you know, saying, God, you know, and the thought was, you know, give it out like right around the election. And then my, my take of Lisa's, and I think the everyman, commonsense take of this is that it's like, God, you know, is that something you would want to, you know, want to do right now? And, you know, the secret society is entirely in jest.

## **B. Instant Messages between Agent 1 and Agent 5**

Agent 1 is an experienced counterintelligence agent and was assigned to the Midyear investigative team from August 2015 through the conclusion of the investigation. Agent 1 was one of four agents responsible for the day-to-day activities of the Midyear investigation. Agent 1's duties included conducting witness interviews and Agent 1 was one of the two agents who interviewed former Secretary Clinton on July 2. Agent 5 is also an experienced counterintelligence agent and was a member of the Midyear filter team. As a member of the filter team, Agent 5 was responsible for identifying privileged communications among the materials obtained by the FBI to ensure that they were not reviewed by the investigative team. Neither Agent 1 nor Agent 5 was assigned to the FBI's Russia investigation or the Special Counsel investigation.

As noted previously, we identified instant messages sent by Agent 1, often to Agent 5, that expressed opinions critical of the conduct and quality of the Midyear investigation. We discussed these message in Chapter Five. In addition to those messages, we identified two instant message exchanges that appeared to combine a discussion of politics with a discussion of the Midyear investigation. We also identified instant messages between Agent 1 and Agent 5 that expressed support for Clinton and hostility toward Trump. We discuss these messages in this section, along with explanations provided by Agent 1 and Agent 5. Because it is relevant to their explanations, we note that Agent 1 and Agent 5, who are now married, were in a personal relationship that predated their assignment to the Midyear investigation.

### **1. Instant Messages Referencing the Midyear Investigation**

On July 6, 2016, the day after Comey's Midyear declination announcement, Agent 1 and an FBI employee not involved with Midyear exchanged messages about the investigation. During the course of this discussion, Agent 1 described the prior weekend's activities, which included the interview of Clinton. A portion of this



instant message exchange follows. The sender of each message is noted after the timestamp.<sup>206</sup>

15:07:41, Agent 1: "...I'm done interviewing the President – then type the 302. 18 hour day..."

15:13:32, FBI Employee: "you interviewed the president?"

15:17:09, Agent 1: "you know – HRC" [Hillary Rodham Clinton]

15:17:18, Agent 1: "future pres"

15:17:22, Agent 1: "Trump cant win"

15:17:31, Agent 1: "demographics dont line up"

15:17:37, Agent 1: "America has changed"

We asked Agent 1 if he thought of Clinton as the next president while conducting the Midyear investigation. Agent 1 stated, "I think my impression going into the election in that personal realm is that all of the polls were favoring Hillary Clinton." We asked Agent 1 if he treated Clinton differently because of this assumption. Agent 1 stated, "Absolutely not. I think the message they said that our leadership told us and our actions were to find whatever was there and whatever, whatever that means is what it means."

Comey sent the first letter to Congress about the Weiner laptop discovery on October 28, 2016. Agent 1 and Agent 5 exchanged instant messages about the letter and Trump's reaction to it later that day. The sender of each messages is noted after the timestamp.

13:46:48, Agent 5: "jesus christ... Trump: Glad FBI is fixing 'horrible mistake' on clinton emails... for fuck's sake."

13:47:27, Agent 5: "the fuck's sake part was me, the rest was Trump."

13:49:07, Agent 1: "Not sure if Trump or the fifth floor is worse..."

13:49:22, Agent 5: "I'm so sick of both..."

13:50:25, Agent 5: "+o( TRUMP"<sup>207</sup>

13:50:30, Agent 5: "+o( Fifth floor"

13:50:34, Agent 5: "+o( FBI"

13:50:44, Agent 5: "+o( Average American public"

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<sup>206</sup> All instant messages produced to the OIG reflected Greenwich Mean Time. We have corrected times to the Eastern Time Zone as a result. In addition, some instant messages contained emojis, which we omitted unless they affected the meaning of the message. We also do not include other intervening instant messages unless they contribute to understanding the highlighted messages.

<sup>207</sup> The symbol used in these messages is a "sick face" emoticon. See IM Emoticons, at <http://sheet.shiar.nl/emoji> (last accessed April 28, 2018).

We asked both Agent 1 and Agent 5 about these messages. Agent 1 and Agent 5 both stated the reference to "fifth floor" referred to the location of the FBI WFO's Counterintelligence Division. Agent 1 continued: "Again, you know, I think a general, general theme in a lot of this is some personal comment, or, you know, complaining about common topics and leadership and, and venting." Agent 5 also described this as general complaining to Agent 1 and also as an example of her being "very tired of working" these types of cases. Agent 5 also noted that she was not involved in the review of the Weiner laptop.

## **2. Instant Messages Commenting on Trump or Clinton**

On August 29, 2016, Agent 1 and Agent 5 exchanged the following instant messages as part of a discussion about their jobs. The sender of each message is noted after the timestamp.

10:39:49, Agent 1: "I find anyone who enjoys [this job] an absolute fucking idiot. If you dont think so, ask them one more question. Who are you voting for? I guarantee you it will be Donald Drumpf."

10:40:13, Agent 5: "i forgot about drumpf..."

10:40:27, Agent 5: "that's so sad and pathetic if they want to vote for him."

10:40:43, Agent 5: "someone who can't answer a question"

10:40:51, Agent 5: "someone who can't be professional for even a second"

On September 9, 2016, Agent 1 and Agent 5 exchanged the following instant messages.

08:56:43, Agent 5: "i'm trying to think of a 'would i rather' instead of spending time with those people"

08:56:54, Agent 1: "stick your tongue in a fan??"

08:56:58, Agent 5: "i would rather have brunch with trump"

08:57:03, Agent 1: "ha"

08:57:15, Agent 1: "french toast with drumpf"

08:57:19, Agent 5: "i would rather have brunch with trump and a bunch of his supporters like the ones from ohio that are retarded"

08:57:23, Agent 5: " :) "

Agent 5 told the OIG these instant messages "referenced TV programming and commentary that Agent 1 and Agent 5 had recently viewed together." Agent 5 continued, "The reference was not a general statement about a particular part of the country, rather it was in jest and pertained to individuals' inability to articulate any reason why they so strongly favored one candidate over another."

On Election Day on November 8, 2016, Agent 1 and Agent 5 exchanged the following instant messages.

14:21:10, Agent 1: "You think HRC is gonna win right? You think we should get nails and some boards in case she doesnt"

14:21:56, Agent 5: "she better win... otherwise i'm gonna be walking around with both of my guns."

14:22:05, Agent 5: "and likely quitting on the spot"

14:28:43, Agent 1: "You should know;....."

14:28:45, Agent 1: "that"

14:28:50, Agent 1: "I'm....."

14:28:56, Agent 1: "with her."

14:28:58, Agent 1: "ooooooooooooooooooooo"

14:29:02, Agent 1: "show me the money"

14:29:03, Agent 5: "<:o)"

14:29:14, Agent 5: "screw you trump"

14:19:18, Agent 5: "wheeeeeeeeeeeeeeeeeeeeeeeeeeeeeee!"

14:29:32, Agent 5: "go baby, go! let's give her Virginia"

14:30:03, Agent 1: "not to my country. You just cant get up and try to appeal to all the worst things in humans and fool my country...."

14:30:12, Agent 1: "Just 49% of us....."

14:30:25, Agent 5: "let's hope it's 49% or less..."

14:30:31, Agent 5: "we'll find out..."

In a December 6, 2016 exchange, Agent 5 complained to Agent 1 about being required to be on call on the day of the presidential inauguration. In the middle of expressing displeasure about this, Agent 5 sent a message to Agent 1 that stated, "fuck trump." On February 9, 2017, in the context of an FBI employee receiving a presidential award for public service, Agent 5 messaged, "...I think now that trump is the president, i'd refuse it. it would be an insult to even be considered for it."

We asked Agent 1 and Agent 5 about their use of instant messaging generally and about these messages in particular. As mentioned in Chapter Five, Agent 1 told us that he believed that instant messages were not retained by the FBI and therefore used less caution with those communications than he would have with other types of communications, such as email or text messages.<sup>208</sup> Agent 5

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<sup>208</sup> Agent 1 explained the reason for his belief that the instant messages were not retained, stating, "So my understanding of [instant messaging] in the FBI is that it was implemented about four or five years ago, roughly. Because I did internal investigations, at the time I was on the espionage

also made this point, stating that she considered these exchanges as a private “outlet” to Agent 1. Both Agent 1 and Agent 5 apologized for their use of instant messaging in this manner and told us that they were embarrassed.

We asked Agent 1 whether he believed these political discussions raised questions about the integrity or reliability of the Midyear investigation. Agent 1 stated:

I don't based on knowing my actions. I guess I would kind of repeat what I said before. Yes, I, I have personal, a personal life, private opinions, private views. I think what happened here is that I used instant message and chat like it was my home.

...I like the job of fact-finding and having it lead you where you go. I don't start any day with an endgame in mind of let it, let it go to, go to that. That's the way I think I act, that's how I think I've acted over my whole career. That's how I, that's how I know I acted in, in this case.

Yeah, I think that, I understand your question because it's an FBI system. I just unfortunately did not view it that way and did not use it that way. I used it as, as, you know, some of my worst hits here, as a, a way to relieve stress, as a way to be jocular, as a way to exaggerate, as a way to blow off steam, as a, you know, potentially get sympathy from, and then, you know, it was compounded by frustrations from other people coming to me for answers for why certain people got elected, and is it our fault, and, so I think there was a, kind of a cocktail of, of stress in this case that came out on this system like it was a conversation.

So I, I don't, I don't think so based on knowing my actions and what I did knowing the actions of the people around me.

We also asked Agent 1 whether his personal beliefs impacted his investigative actions in Midyear. Agent 1 responded:

[I]n no way do I think it, it impacted my view. I guess the best way is almost like a, it's almost like you switch on your, when, when we did our morning meetings, it was what do we have and where do we go next? It, it was just like almost, you know, like there's a, there's the professional side, the do your job side, and there's a personal side. And I think a lot of this falls into the personal side.

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squad, my awareness was that it was not logged by the FBI because I tried to get those records for internal investigations.” Agent 5 stated the she also had requested instant messages in prior internal investigations and been told that they were not preserved. Agents 1 and 5 told the OIG that they learned in April 2017 that the FBI had retained instant messages since February 2015, as the result of receiving a memorandum about preservation and criminal discovery obligations stemming from the FBI's instant messaging system. The FBI email distributing this memorandum advised employees that the FBI began preserving instant messages in February 2015 and stated, “Lync should not be used for substantive communications.”

...It was only to try to do the right thing.... That's, that's the only thing, the only thought process in my head when I was, when I was doing my job.

We asked Agent 5 how she would respond to someone who read these messages and concluded the opinions expressed in them impacted the Midyear investigation. Agent 5 stated:

Well, I can see someone who doesn't know us at all saying the same, wondering, I guess, if [our political beliefs] could have impacted [the Midyear investigation]. I can tell you in no way did my political or what I understand of [Agent 1], no political anything is going to interfere with us doing our job as professionals.

I can see me going into these rants. I can see me ranting in some of these, and, you know, again, I think all of these are very personal, off-the-cuff...these are personal, private messages. I mean, you could probably even see the difference between, if you've seen anything in my [career] that I put to the file...for, you know, case-related things. I am very thorough, methodical, and I think through everything when I'm typing it. I don't even cut corners with acronyms. I, I treat that extremely seriously in my [career], and even before I became an agent.

So I, I would tell that person that part of being a professional, part of the oath that I swore here to work, I...uphold it. And I upheld it at this point. I, I do have personal beliefs and personal opinions. You know, I expressed some of those. Some of them come out in frustration. Some of them come out in jokes. I can see us quoting things kind of just to make us smile, you know, make us feel better, you know, after sometimes tough days. And...I would say in, in no way has it ever or would it ever affect the way I, I handle any investigation, any case, any professional work that I, that I put forward.

### **C. FBI Attorney 2 Instant Messages**

FBI Attorney 2 was assigned to the Midyear investigation early in 2016. FBI Attorney 2 was not the lead FBI attorney assigned to Midyear and he told us he provided support to the investigation as needed. FBI Attorney 2 told us that he was also assigned to the investigation into Russian election interference and was the primary FBI attorney assigned to that investigation beginning in early 2017. FBI Attorney 2 told us that he was then assigned to the Special Counsel investigation once it began. FBI Attorney 2 left the Special Counsel's investigation and returned to the FBI in late February 2018, shortly after the OIG provided the Special Counsel with some of the instant messages discussed in this section.

We identified instant messages on FBINet involving FBI Attorney 2 that discussed political issues. Most of these exchanges appeared to be jokes or attempts at humor, often involving Trump. We asked FBI Attorney 2 in general

about the use of FBI instant messaging in this manner. FBI Attorney 2 told us that, in general, he regretted his use of instant messaging in this manner and noted "it's not something that I did routinely." He described these messages as "commentary" on recent political events and not connected to decisions or activities in investigations. FBI Attorney 2 stated that almost all of these messages were sent to co-workers he "considered to be" friends and he "was talking to them in that capacity," and "[n]ot in a professional capacity." FBI Attorney 2 reiterated that these messages or views had "absolutely" no impact on his work on investigations. He stated:

I, like most people, have particular views on, on politics. I'm a bit of a news junkie when it comes to government. It's one of the main reasons I, I joined the federal workforce is because I've always found it so fascinating and interesting.

But when it came to doing my work, I never injected this, this type of, of color commentary or this type of water cooler type talk into that. I, I maintained impartiality and just tried to work through the issues individually as they came through. So if they needed some assistance on a warrant or some assistance on, you know, potentially pursuing contacts with another government agency or something like that, like, I just, I assisted with the process more like, kind of like an XO type role I guess.

Among the general discussion of political issues by FBI Attorney 2, we identified three instant message exchanges that raised concerns of potential bias. The first of these exchanges was on October 28, 2016, shortly after Comey's October 28 letter to Congress that effectively announced the reopening of the Midyear investigation. FBI Attorney 2 sent similar messages to four different FBI employees. The timestamps of these messages are included below. The messages stated:

13:44:42, to FBI Employee 1: "I mean, I never really liked the Republic anyway."

13:44:52, to FBI Employee 2: "I mean, I never really liked the Republic anyway."

14:01:52, to FBI Employee 3: "As I have initiated the destruction of the republic.... Would you be so kind as to have a coffee with me this afternoon?"

15:28:50, to FBI Employee 4: "I'm clinging to small pockets of happiness in the dark time of the Republic's destruction"

FBI Attorney 2 described these messages as reflecting his surprise and frustration that the FBI "was essentially walking into a landmine in terms of injecting itself [into the election] at that late in the process." FBI Attorney 2 continued:

I think that, that there is some distinguishment between my frustration at the way that the Bureau is operating itself in October in

terms of, of wading into the process at that point.... But, I think that there is a distinguishment between having reservations about the way that we were operating and just expressing the frustration about, about us coming into the process. It's like, in terms of, of, you know, what's not in here too is like, you know, we, at that point we had investigation, the Russia investigation was ongoing as well. And that information was obviously kept close hold and was not released until March. So, you know, it, it was just kind of frustration that we weren't handling both of them the same way with, with that level I guess.

FBI Attorney 2 described the "destruction" language as "hyperbolic" and "off-the-cuff commentary to friends."

The second exchange we identified occurred on November 9, 2016, the day after the presidential election. FBI Attorney 2 and another FBI employee who was not involved in the Midyear investigation exchanged the following instant messages. Note that the sender of the instant message is identified after the timestamp and intervening messages that did not contribute to the understanding of this exchange are not included.

09:38:14, FBI Attorney 2: "I am numb."

09:55:35, FBI Employee: "I can't stop crying."

10:00:13, FBI Attorney 2: "That makes me even more sad."

10:43:20, FBI Employee: "Like, what happened?"

10:43:37, FBI Employee: "You promised me this wouldn't happen. YOU PROMISED."

10:43:43, FBI Employee: "Okay, that might have been a lie..."

10:43:46, FBI Employee: "I'm very upset."

10:43:47, FBI Employee: "haha"

10:51:48, FBI Attorney 2: "I am so stressed about what I could have done differently."

10:54:29, FBI Employee: "Don't stress. None of that mattered."

10:54:31, FBI Employee: "The FBI's influence."

10:59:36, FBI Attorney 2: "I don't know. We broke the momentum."

11:00:03, FBI Employee: "That is not so."

11:02:22, FBI Employee: "All the people who were initially voting for her would not, and were not, swayed by any decision the FBI put out. Trump's supporters are all poor to middle class, uneducated, lazy POS that think he will magically grant them jobs for doing nothing. They probably didn't watch the debates, aren't fully educated on his policies, and are stupidly wrapped up in his unmerited enthusiasm."

11:11:43, FBI Attorney 2: "I'm just devastated. I can't wait until I can leave today and just shut off the world for the next four days."

11:12:06, FBI Employee: "Why are you devastated?"

11:12:18, FBI Employee: "Yes, I'm not watching tv for four years."

11:14:16, FBI Attorney 2: "I just can't imagine the systematic disassembly of the progress we made over the last 8 years. ACA is gone. Who knows if the rhetoric about deporting people, walls, and crap is true. I honestly feel like there is going to be a lot more gun issues, too, the crazies won finally. This is the tea party on steroids. And the GOP is going to be lost, they have to deal with an incumbent in 4 years. We have to fight this again. Also Pence is stupid."

11:14:58, FBI Employee: "Yes that's all true."

11:15:01, FBI Attorney 2: "And it's just hard not to feel like the FBI caused some of this. It was razor thin in some states."

11:15:09, FBI Employee: "Yes it was very thin."

11:15:23, FBI Attorney 2: "Plus, my god damned name is all over the legal documents investigating his staff."

11:15:24, FBI Employee: "But no I absolutely do not believe the FBI had any part."

11:15:33, FBI Attorney 2: "So, who knows if that breaks to him what he is going to do."

We asked FBI Attorney 2 about this exchange. FBI Attorney 2 stated, "I'd say that we're just discussing our personal feelings on [the outcome of the election] between friends, yeah." When asked about the FBI employee meant by "[y]ou promised me this wouldn't happen," FBI Attorney 2 told us that he "did not promise [the employee] anything," and stated, "I think, again, it's just kind of the way that [the employee] and I converse. We tend to exaggerate some statements back and forth to one another." We also asked FBI Attorney 2 what he meant by "I am so stressed about what I could have done differently." FBI Attorney 2 replied:

That was a, that was a reference to, again, just in terms of the way that we opened or how long it took us to open [in October]. You know, with the, with the knowledge that the information was there [on the Weiner laptop], why we didn't work on it to, to gain access sooner, as opposed to later because it was a, a bit of a, of a gap between us learning of the information in New York and, and officially getting the case reopened again....

Just in terms of like what I could have done to, to either have accelerated the process or to, like how I expressed to [FBI Attorney 1] that I didn't know if this was the correct way for the Bureau to be doing this notification, et cetera. Whether, you know, I could have said something differently to her that would have resonated in, or, or



would have been part of the discussion. But I wasn't anywhere near the, the room deciding on these factors....

It was just kind of like a discussion on how I could have either moved the process along more quickly or more efficiently at a, at a more, at an earlier time, or whatnot.

When asked if he thought earlier action on the Weiner laptop would have alleviated the need to send the letter to Congress, FBI Attorney 2 stated:

Well, not, not, I don't think that that would have alleviated the need for the letter in the Director's eyes. But if we would have opened a few weeks earlier, as opposed to at that time, two weeks before the election, I think it, you know, it would have given more time for the FBI's actions and, and required and, and necessary investigation to, to occur to allow the, the public a chance to make their own decision-making.

FBI Attorney 2 again reiterated that his "personal political feelings or beliefs...in no way impacted" his work on the Midyear or Russia investigations.

The third exchange we identified was on November 22, 2016. FBI Attorney 2 sent an instant message to FBI Attorney 1 commenting on the amount of money the subject of an FBI investigation had been paid while working on the Trump campaign. FBI Attorney 1 responded, "Is it making you rethink your commitment to the Trump administration?" FBI Attorney 2 replied, "Hell no." and then added, "Viva le resistance." FBI Attorney 1 responded that Trump was "going to eliminate all of our pensions in order to pay for people like" the person discussed in the instant message exchange, and FBI Attorney 1 and FBI Attorney 2 then began a discussion of federal pension and retirement issues.

We asked both FBI Attorney 2 and FBI Attorney 1 about this exchange. FBI Attorney 2 stated:

So, this is in reference to an ongoing subject. And then following that, like I interpreted [FBI Attorney 1's] comment to me as being, you know, just her and I socially and as friends discussing our particular political views, to which I see that as more of a joking inquiry from her. It's not something along the lines of where I'm not committed to the U.S. Government. I obviously am and, you know, work to do my job very well and to continue to, to work in that capacity. It's just the, the lines bled through here just in terms of, of my personal, political view in terms of, of what particular preference I have. But, but that doesn't have any, any leaning on the way that I, I maintain myself as a professional in the FBI.

We asked FBI Attorney 2 if "Viva le resistance" signaled he was going to fight back against President Trump. FBI Attorney 2 responded:

That's not what I was doing.... I just, again, like that, that's just like the entire, it's just my political view in terms of, of my preference. It wasn't something along the lines of, you know, we're taking certain actions in order to, you know, combat that or, or do anything like that. Like that, that was not the intent of that. That was more or less just like, you know, commentary between me and [FBI Attorney 1] in a personal friendship capacity where she is just making a joke, and I'm responding. Like, it's not something that, that I personally believe in that instance.

FBI Attorney 2 acknowledged that both he and FBI Attorney 1 were assigned to the Russia investigation at this point in time and he "can understand the, the perception issues that come from" this exchange.

FBI Attorney 1 stated that she and FBI Attorney 2 were friends and often had discussions unrelated to work. She acknowledged that that this was "not the right place to make those kind of comments." We asked FBI Attorney 1 what she meant by the message, "Is it making you rethink your commitment to the Trump administration?" She stated, "I think what I meant was are you going to leave the government and start working to get more money." We also asked FBI Attorney 1 what she understood FBI Attorney 2 to mean when he messaged, "Viva le resistance." FBI Attorney 1 told us, "I think it was a joke obviously. But I think it was intended to say that, you know, he was committed to continuing to work for the Bureau, for these cases." FBI Attorney 1 stated that nothing about this exchange affected her work on the Russia investigation.

#### **D. Analysis**

The conduct of the five FBI employees described in sections A, B, and C of this Chapter has brought discredit to themselves, sowed doubt about the FBI's handling of the Midyear investigation, and impacted the reputation of the FBI. As described in Chapter Five, our review did not find documentary or testimonial evidence directly connecting the political views these employees expressed in their text messages and instant messages to the specific investigative decisions we reviewed in Chapter Five. Nonetheless, the conduct by these employees cast a cloud over the FBI Midyear investigation and sowed doubt the FBI's work on, and its handling of, the Midyear investigation. Moreover, the damage caused by their actions extends far beyond the scope of the Midyear investigation and goes to the heart of the FBI's reputation for neutral factfinding and political independence.

We were deeply troubled by text messages sent by Strzok and Page that potentially indicated or created the appearance that investigative decisions were impacted by bias or improper considerations. Most of the text messages raising such questions pertained to the Russia investigation, which was not a part of this review. Nonetheless, when one senior FBI official, Strzok, who was helping to lead the Russia investigation at the time, conveys in a text message to another senior FBI official, Page, that "we'll stop" candidate Trump from being elected—after other extensive text messages between the two disparaging candidate Trump—it is not only indicative of a biased state of mind but, even more seriously, implies a

willingness to take official action to impact the presidential candidate's electoral prospects. This is antithetical to the core values of the FBI and the Department of Justice. Moreover, as we describe in Chapter Nine, in assessing Strzok's decision to prioritize the Russia investigation over following up on the Midyear-related investigative lead discovered on the Weiner laptop in October 2016, these text messages led us to conclude that we did not have confidence that Strzok's decision was free from bias.

Each of the five employees expressed remorse about using FBI devices and systems for these discussions, and each also stated that they intended these messages to be private conversations. Several of the employees also expressed the belief that their messages would not be preserved or would be exempt from public disclosure under FOIA. We found this reliance on the "private" nature of these messages to be misplaced. Because these messages were exchanged on government systems and devices, they were never "private." Every Department employee sees a notice each time he or she logs onto the Department's network informing him or her that there is no reasonable expectation of privacy in communications exchanged on government systems.<sup>209</sup> We recommend that the FBI add a similar warning banner to all of the FBI's mobile phones and devices.

Indeed, rather than being "private" communications, these messages were at all times potentially subject to being reviewed by others (including the OIG) and to being disclosed to the public. This point seems even more obvious in light of the significant congressional and public interest generated by the Midyear and Russia investigations. The employees exchanging text messages and instant messages are trained law enforcement agents or attorneys, and should have known that these messages were potentially subject to release in response to FOIA requests, subject to disclosure in civil litigation, or discoverable as impeachment evidence even in the absence of the OIG investigation.<sup>210</sup> We note that these messages also

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<sup>209</sup> After reviewing a draft of the report, Page told the OIG that the Samsung phones used by the FBI do not include any such warning banner. The OIG confirmed with the FBI that this is accurate. However, the notice on the FBI's computer system applies to "all devices [or] storage media attached to this network or to a computer on this network," and alerts users that they "have no reasonable expectation of privacy regarding any communication transmitted through or data stored on this information system. At any time the government may monitor, intercept, search and/or seize data transmitted through or data stored on this information system." In addition, a recent Department training stated, "DOJ systems are not your personal systems. That means you have no reasonable expectation of privacy about maintaining any personal information, data, or applications on Department systems, networks, or devices." Department of Justice, Office of the Chief Information Officer, 2018 Annual DOJ Cybersecurity Awareness Training, at 14.

<sup>210</sup> For example, FBI Records Management Training warns FBI employees to be careful about what they say in emails and text messages:

Remember, that emails and texts messages should be treated the same way as paper correspondence. So be aware of what you write. It may be released through FOIA, and be made widely available one day.

Of course, many of our records also end up in court. In civil cases, the FBI must turn over all relevant evidence, including emails and text messages. While all documents are viewed for privilege and redacted prior to release, there is no claim of privilege covering inappropriate or embarrassing statements. Such as, the governor is a block

potentially implicate the FBI's or prosecutors' disclosure obligations in any prosecutions resulting from the investigations at issue.<sup>211</sup>

We do not question that the FBI employees who sent these messages are entitled to their own political views. Indeed, federal statutes and regulations explicitly protect the right of federal employees to “express...opinion[s] on political subjects and candidates” and to “exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation”—provided such expression “does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.”<sup>212</sup> While these employees did not give up their First Amendment rights when they became employed by the FBI, Supreme Court decisions make clear that the FBI retains the authority—particularly as a law enforcement agency—to impose

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head. Although what we turn over in criminal cases can be more targeted, such as witness statements and exculpatory and impeachment evidence. Just as in civil cases, emails and text messages that fit into one of these categories must be turned over regardless whether they are embarrassing or worded inappropriately....

Even though it's a casual medium, we can't take a casual attitude towards email. All email, even a text or a PIN message, can be instantly copied, archived, filed, and disseminated. Just like a memo or a 302, emails reflect on the professionalism of the employee, and potentially the FBI as a whole. Inappropriate, offensive language, ill-advised humor, off-color references, and poorly thought out remarks have no place in any FBI communication. And it doesn't matter if that communication was intended as a record or a non-record.

<sup>211</sup> See USAM § 9-5.001, Policy Regarding Disclosure of Exculpatory and Impeachment Information; see also *United States v. Johnson*, 14-CR-00412-TEH, 2015 WL 2125132, at 3-4 (N.D. Cal. May 6, 2015) (ordering the disclosure of racist text message(s) sent or received by a police officer involved in maintaining a crime scene); *Linetsky v. City of Solon*, Case No. 1:16-CV-52, 2016 WL 5402615 (N.D. Ohio Sept. 28, 2016) (ordering an assistant prosecutor to produce in discovery all text messages between the prosecutor and law enforcement personnel pertaining to the plaintiff's prior criminal case); *United States v. Marcus Mumford*, Case No. 3:17-CR-0008-JCC, 2017 WL 652448, at 2-3 (D. Ore. Feb. 16, 2017) (finding, during prosecution of Ammon Bundy's attorney in connection with a scuffle with U.S. Deputy Marshals, that “the Marshals' government issued cell phones are subject to discovery and should any texts reveal hostility towards Defendant or in any way casts doubt on their credibility, they must be produced.”).

<sup>212</sup> 5 U.S.C. §§ 7321, 7323(c); 5 C.F.R. § 734.402. FBI policy similarly provides that FBI employees retain the right to participate in various specified political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office. The list of political activities includes the right of an FBI employee to “[e]xpress his or her opinion as an individual privately and publicly on political subjects and candidates,” and to “otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.” FBI Office of Integrity and Compliance, FBI Ethics and Integrity Program Policy Directive and Policy Guide, § 7.4.2 (Feb. 2, 2015).

certain restrictions on its employees' speech in the interest of providing effective and efficient government.<sup>213</sup>

We believe the messages discussed in this chapter—particularly the messages that intermix work-related discussions with political commentary—potentially implicate provisions in the FBI's Offense Code and Penalty Guidelines, which provides general categories of misconduct for which FBI employees may be disciplined. This includes the provisions relating to Offense Codes 1.7 (Investigative Deficiency – Misconduct Related to Judicial Proceedings), 3.6 (Misuse of Government Computer(s)), 3.11 (Misuse of Government Property, Other), 5.21 (Unprofessional Conduct – Off Duty), and 5.22 (Unprofessional Conduct – On Duty).<sup>214</sup> However, we did not identify any prior FBI misconduct investigations under these provisions that involved a similar fact pattern or similar issues.<sup>215</sup>

At a minimum, we found that the employees' use of FBI systems and devices to send the identified messages demonstrated extremely poor judgment and a gross lack of professionalism. This is not just because of the nature of the messages, but also because many of the messages commented on individuals (Clinton and Trump) who were inextricably connected to the Midyear and Russia investigations. The FBI is charged with the investigation of many important and sensitive matters, including some that generate intense public interest and debate. It is essential that the public have confidence that the work of the FBI is done without bias or appearance of partiality, and that those engaged in it follow the

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<sup>213</sup> The Supreme Court has held that public employees do not forfeit their right to freedom of speech by virtue of their public employment. See *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). However, when a citizen enters government service, he accepts certain limitations on his First Amendment rights. See *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). In *Pickering*, the Supreme Court recognized that a public employer has an interest in regulating the speech of its employees. The Court strove to “arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer in promoting the efficiency of the public services it performs through its employees.” To strike this balance, the Supreme Court has set forth a two-step inquiry to determine whether a public employee's speech is entitled to protection. See *Lane v. Franks*, 134 S.Ct. 2369, 2378 (2014). First, the court must determine the threshold question of whether the employee spoke as a private citizen on a matter of public concern. See *Garcetti*, 547 U.S. at 418. If not, the employee has no First Amendment claim. If so, the second step is to establish “whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public.” *Id.*

<sup>214</sup> These messages may also implicate other Department-wide Rules, such as Department of Justice Information Technology Security Rules of Behavior for General Users Version 10 (January 1, 2017).

<sup>215</sup> In 2012, “racy texts” exchanged between two FBI agents and an FBI informant were used to impeach the agents in the prosecutions of several defendants for violations of the Foreign Corrupt Practices Act. According to a Washington Post article about the case, which ended without convictions, the foreman of the jury stated that the “texts were one of many things that point[ed] to an absolutely amateurish operation” by the government. See Del Quentin Wilbur, *Racy Texts Hurt Justice's Largest Sting Operation Targeting Foreign Bribery*, WASH. POST, Feb. 13, 2013. This case and the Washington Post article about the impact of the text messages are used in the Department's training on electronic discovery as an example of what not to say in text messages. However, the OIG learned that the agents involved in that case were not investigated or disciplined for misconduct, and that their text messages were handled as a performance issue. Both agents remain employed by the FBI.

facts and law wherever they may lead and without any agenda or desired result other than to see that justice is done.

Although we found no documentary or testimonial evidence directly connecting the political views these employees expressed in their text messages and instant messages to the specific Midyear investigative decisions we reviewed in Chapter Five, the messages cast a cloud over the FBI investigations to which these employees were assigned. Ultimately, the consequences of these actions impact not only the senders of these messages but also others who worked on these investigations and, indeed, the entire FBI.

We therefore refer this information to the FBI for its handling and consideration of whether the messages sent by the five employees listed above violates the FBI's Offense Code of Conduct.

Additionally, we recommend that the FBI (1) assess whether it has provided adequate training to employees about the proper use of text messages and instant messages, including any related discovery obligations, and (2) consider whether to provide additional guidance about the allowable uses of FBI devices for any non-governmental purpose, including guidance about the use of FBI devices for political conversations.

## **II. Use of Personal Email**

As mentioned above, we identified several instances in which Comey and Strzok used personal email accounts for official government business. When questioned, Page also told us she used personal email for work-related matters at times. We briefly discuss these issues below.

On September 21, 2016, the Department issued a Policy Statement detailing the records retention policy for email communications. The Policy Statement contained the following guidance for the use of personal email accounts:

In general, DOJ email users should not create or send record emails or attachments using non-official email accounts. However, should exigent circumstances require the use of a personal account to conduct DOJ business, the DOJ email user must ensure that the communicated information is fully captured in a DOJ recordkeeping system within 20 days. If sending the email from a non-official account, the email user must copy his or her DOJ email address as a recipient. If receiving a DOJ business-related email on a non-official account, the DOJ email user must forward the business-related email to his or her DOJ email account. Once the user has ensured the capture of the email information in the DOJ account, the DOJ email should be removed from the non-official account.

See DOJ Policy Statement, Electronic Mail and Electronic Messaging Records Retention (approved on September 21, 2016).

## A. Comey

We identified numerous instances in which Comey used a personal email account (a Gmail account) to conduct FBI business. We cite five examples of such use in this section and include information provided by Comey and Rybicki about Comey's use of a personal email account.

On November 8, 2016, Comey forwarded to his personal email account from his unclassified FBI account a proposed post-election message for all FBI employees that was entitled "Midyear thoughts." This document summarized Comey's reasoning for notifying Congress about the reactivation of the Midyear investigation. In late December 2016, Comey forwarded to his personal email account from his unclassified FBI account multiple drafts of a proposed year-end message to FBI employees. On December 30, 2016, Comey forwarded to his personal email account from his unclassified FBI account proposed responses to two requests for information from the Office of Special Counsel.<sup>216</sup> The forwarded email included two attachments: (1) a certification for Comey to sign; and (2) a list of FBI employees with information responsive to this request, including their titles, office, appointment status, contact information, and duty hours. On January 6, 2017, Comey forwarded to his personal email account from his unclassified FBI account an email from Rybicki to Kortan highlighting language that needed to be corrected in a Wall Street Journal article. In mid-March 2017, Comey sent from his personal email account to his own and Rybicki's unclassified FBI accounts multiple drafts of Comey's proposed opening statement for his March 20, 2017 testimony to the House Intelligence Committee.

We asked Comey about his use of personal email for FBI business and showed him the November 8, 2016 email with Rybicki as an example. Comey stated:

I did not have an unclass[ified] FBI connection at home that worked. And I didn't bother to fix it, whole 'nother story, but I would either use my BlackBerry, must have been or Samsung...my phone, I had two phones—a personal phone and a government phone. Or if I needed to write something longer, I would type it on my personal laptop and then send it to Rybicki, usually I copied my own address.... Yeah. And so I would use, for unclassified work, I would use my personal laptop for word processing and then send it into the FBI.

We asked Comey if he had any concerns about conducting FBI business on his personal laptop or personal email. Comey stated that he did not and explained:

Because it was incidental and I was always making sure that the work got forwarded to the government account to either my own account or Rybicki, so I wasn't worried from a record-keeping perspective and it

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<sup>216</sup> This refers to the federal agency responsible for investigating violations of the Hatch Act, not to Special Counsel Robert Mueller III.

was, because there will always be a copy of it in the FBI system and I wasn't doing classified work there, so I wasn't concerned about that.

Comey stated that he did not use his personal email or laptop for classified or sensitive information, such as grand jury information. Comey told us that he only used his personal email and laptop "when I needed to word process an unclassified [document] that was going to be disseminated broadly, [such as a] public speech or public email to the whole organization." We asked Comey if the use of personal email in this manner was in accordance with FBI regulations. Comey replied, "I don't know. I think so, but I don't know. I remember talking to Jim [Rybicki] about it at one time, and I had the sense that it was okay."

We also asked Rybicki about Comey's use of a personal email account. In response to the OIG's questions and in consultation with Comey, Rybicki sent the OIG an email on April 20, 2017, that stated:

In rare circumstances during his tenure, Director Comey sends unclassified emails from his official FBI.gov email account address to [his Gmail account]. This permits him to open attachments and use his personal laptop to then work on a speech or other content intended for wide dissemination. He then sends drafts or the completed text to his official FBI.gov email account or to another FBI.gov email account from [his Gmail account]. He opened this personal account at about the time he became Director....

To ensure a high level of cybersecurity, Director Comey routinely deletes all emails from his [Gmail] account each day, and then clears the deleted messages folder. He began this practice about two years ago.

The Director does not recall receiving and/or seeking advice concerning the use of these accounts.

We found that, given the absence of exigent circumstances and the frequency with which the use of personal email occurred, Comey's use of a personal email account on multiple occasions for unclassified FBI business to be inconsistent with the DOJ Policy Statement.

## **B. Strzok and Page**

During our review, we identified several instances where Strzok used his personal email account for government business. Examples included an email chain forwarded to Strzok's personal email account on December 10, 2016, discussing a draft congressional response, and draft versions of emails on his personal email account that Strzok eventually sent to other FBI employees using his government account. Most troubling, on October 29, 2016, Strzok forwarded from his FBI account to his personal email account an email about the proposed search warrant the Midyear team was seeking on the Weiner laptop. This email included a draft of the search warrant affidavit, which contained information from the Weiner investigation that appears to have been under seal at the time in the Southern



District of New York and information obtained pursuant to a grand jury subpoena issued in the Eastern District of Virginia in the Midyear investigation.<sup>217</sup>

We asked Strzok about these emails and his use of personal email account for FBI business. Strzok stated:

My general practice was not to use personal email for FBI business. The times that I did it was when it wasn't possible or there, there were problems with the FBI systems. In the case of I think the one issue that came out was...the one about the draft affidavit for the Weiner laptop.

Our phones at the time had significant limitations specifically to that. You couldn't view redlines. And so, and, but yet you could on an iPhone. So I remember in the case of that search warrant forwarding it over so I could see what DOJ changed and their comment bubbles in regard to that. There were some other times where I was either out of the office. I think a lot of those were either I was on travel or certainly over the weekends. It is very cumbersome on the old iPhones, or on the old Samsungs of the Bureau because of the way they autocorrect spelling and the nature of the...keyboard, it is difficult to write anything of length whatsoever. So there were times that, I mean, I think there's one where I was very aggravated with a set of circumstances that had unfolded. I was going to tell my boss about it, and I remember talking with Lisa [Page] saying, hey look, did I hit the right tone in this because I wanted to, you know, just be respectful, but at the same time convey my frustration.

I wrote that on my home computer, because it's easier to type it out. I think there was one that might be a holiday greeting that I sent to Bill [Priestap]. But, again, the sort of thing that, you know, for, for convenience, but because on the one hand it was bulky to, our technology was crappy, and it was impossible on the rare occasion I would write these things. And then send them to, you know, my account and forward it on. So it got incorporated and picked up into the FBI system.

Strzok told us that his understanding was that FBI policy discouraged the use of personal email and devices, but "there are allowances made" where "it is not practical or possible to use your [FBI] device." Strzok stated that he would double delete any work-related emails in his personal account.<sup>218</sup>

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<sup>217</sup> The OIG previously notified the respective U.S. Attorney's Offices about Strzok's actions.

<sup>218</sup> We requested access to Strzok's personal email account. Strzok agreed to produce copies of work-related emails in his personal account but declined to produce copies of his personal emails. Strzok subsequently told the OIG that he had reviewed the emails residing in his personal mailboxes and found no work-related communications. We determined that we lacked legal authority to obtain the contents of Strzok's personal email account from his email provider, which requires an Electronic Communications Privacy Act (ECPA) search warrant to produce email contents. Strzok's email

We also identified numerous references in text messages between Page and Strzok about using “Imessage” (or “Imsg”) or a personal email account. A number of these messages reference work-related discussions on those forums. We asked Strzok and Page about this. Strzok stated, “Typically, we would iMessage personal things.” We asked Strzok if he and Page ever exchanged work-related information on iMessage. Strzok told us, “I do not recall that. I can’t exclude it ever, ever happening, but I don’t recall ever sending work-related stuff on, on iMessage.”

Page told us that references to these other forums reflected “mostly personal use” as opposed to using them for work purposes. However, she stated that she and Strzok sometimes used these forums for work-related discussions due to the technical limitations of FBI-issued phones. Page explained:

[I]n particular, the autocorrect function is the bane of literally every agent of the FBI’s existence because those of us who care about spelling and punctuation, which I realize is a nerdy thing to do, makes us crazy because it takes legitimate words that are spelled correctly and autocorrects them into gobbledygook. And so, it is not uncommon for either one of us to just either switch to our personal phones or, or in this case, where it was going to be a, a fairly substantive thing that he was writing, to just save ourselves the trouble of not doing it on our Samsungs. Because they are horrible and super-frustrating.

Page also noted that she and Strzok would often use personal email accounts to send news articles to one another.

We refer to the FBI the issue of whether Strzok’s use of personal email accounts violated FBI and Department policies. As noted above, Page left the Department on May 4, 2018.

### **III. Allegations that Department and FBI Employees Improperly Disclosed Non-Public Information**

Among the issues we reviewed were allegations that Department and FBI employees improperly disclosed non-public information. We found that Department and FBI officials raised considerable concerns about alleged leaks of information, particularly in October 2016, regarding the Midyear investigation and the Clinton Foundation investigation.

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provider’s policy applies to opened emails and emails stored for more than 180 days, which ECPA otherwise permits the government to obtain using a subpoena and prior notice to the subscriber. See 18 U.S.C. § 2703(a), (b)(1)(B)(i); COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION, U.S. DEPARTMENT OF JUSTICE, SEARCHING AND SEIZING COMPUTERS AND OBTAINING ELECTRONIC EVIDENCE IN CRIMINAL INVESTIGATIONS at 129-30 (2009). In addition, although we learned that a non-FBI family member had access to Strzok’s personal email account in 2017, Strzok told the OIG that no one else had access to his personal email account during the period in question (*i.e.*, late October 2016).

As we describe in Chapter Eleven of this report, Lynch and Comey discussed their concerns about leaks on October 31, 2016. Additionally, on October 26, 2016, Lynch raised her concerns about leaks with McCabe and the head of the FBI New York Field Office (NYO), with specific focus on leaks regarding the FBI's high-profile investigation into the death of Eric Garner, as we detailed in our February 2018 misconduct report concerning McCabe.<sup>219</sup> McCabe told us that he "never heard [Lynch] use more forceful language." The head of FBI NYO confirmed that the participants got "ripped by the AG on leaks." These widespread concerns about leaks led Comey, following the 2016 election, to instruct the FBI's Inspection Division (INSD) to investigate whether confidential information was being improperly disclosed by any FBI employees.<sup>220</sup>

Concerns about the impact of possible leaks on the Midyear investigation, particularly in the October 2016 time period, are described in Chapters Ten and Eleven. Several FBI officials told us that their concerns about potential leaks were a factor that influenced them in the discussions about the possibility of sending a notification letter to Congress on October 28, 2016, regarding the FBI's discovery of Clinton-related emails on the Weiner laptop. As then FBI General Counsel Baker starkly characterized that decision to us, "[I]f we don't put out a letter, somebody is going to leak it."

Against this backdrop, and as noted at the time the OIG announced this review, we examined allegations that Department and FBI employees improperly disclosed non-public information. We focused, in particular, on the April/May and October 2016 time periods. We have profound concerns about the volume and extent of unauthorized media contacts by FBI personnel that we have uncovered during our review.

Our ability to identify individuals who have improperly disclosed non-public information is often hampered by two significant factors. First, we frequently find that the universe of Department and FBI employees who had access to sensitive information that has been leaked is substantial, often involving dozens, and in some instances, more than 100 people. We recognize that this is a challenging issue, because keeping information too closely held can harm an investigation and the supervision of it. Nevertheless, we think the Department and the FBI need to consider whether there is a better way to appropriately control the dissemination of sensitive information.

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<sup>219</sup> U.S. Department of Justice (DOJ) Office of the Inspector General (OIG), *Report of Investigation of Certain Allegations Relating to Former FBI Deputy Director Andrew McCabe*, Oversight & Review Report (February 2018), <https://oig.justice.gov/reports/2018/o20180413.pdf> (accessed May 14, 2018).

<sup>220</sup> One of those investigations led to INSD raising questions about McCabe's conduct and resulted in the OIG taking over the matter from INSD. Ultimately, the OIG found that McCabe himself had authorized others in the FBI to disclose information regarding the FBI's Clinton Foundation investigation just days prior to the election.

Second, although FBI policy strictly limits the employees who are authorized to speak to the media, we found that this policy appeared to be widely ignored during the period we reviewed.<sup>221</sup> We identified numerous FBI employees, at all levels of the organization and with no official reason to be in contact with the media, who were nevertheless in frequent contact with reporters. The large number of FBI employees who were in contact with journalists during this time period impacted our ability to identify the sources of leaks. For example, during the periods we reviewed, we identified dozens of FBI employees that had contact with members of the media. Attached to this report as Attachments G and H are link charts that reflects the volume of communications that we identified between FBI employees and media representatives in April/May and October 2016.<sup>222</sup>

In addition to the significant number of communications between FBI employees and journalists, we identified social interactions between FBI employees and journalists that were, at a minimum, inconsistent with FBI policy and Department ethics rules. For example, we identified instances where FBI employees received tickets to sporting events from journalists, went on golfing outings with media representatives, were treated to drinks and meals after work by reporters, and were the guests of journalists at nonpublic social events. We will separately report on those investigations as they are concluded, consistent with the Inspector General (IG) Act, other applicable federal statutes, and OIG policy.

The harm caused by leaks, fear of potential leaks, and a culture of unauthorized media contacts is illustrated in Chapters Ten and Eleven, where we detail the fact that these issues influenced FBI officials who were advising then Director Comey on consequential investigative decisions in October 2016. The FBI updated its media policy in November 2017, restating its strict guidelines concerning media contacts, and identifying who is required to obtain authority before engaging members of the media, and when and where to report media contact. We do not believe the problem is with the FBI's policy, which we found to be clear and unambiguous. Rather, we concluded that these leaks highlight the need to change what appears to be a cultural attitude. Accordingly, we recommend that the FBI evaluate whether (a) it is sufficiently educating its employees about both its media contact policy and the Department's ethics rules, and (b) its disciplinary penalties are sufficient to deter such improper conduct.

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<sup>221</sup> The Media Policy in effect both at the time of these events and currently authorizes only four employees at FBI Headquarters to speak directly to the media without prior authorization. This list includes the Director, Deputy Director, Associate Deputy Director, and the Assistant Director of the Office of Public Affairs (OPA). All other headquarters employees are required to coordinate with OPA prior to any contact with the media. In FBI Field Offices (FO), only the head of the FO and a designated Public Affairs Officer are authorized to speak to the media. The policies require these authorized FO officials to coordinate with OPA on stories with national interest.

<sup>222</sup> These charts do not reflect communications that occurred between media representatives and FBI employees who were working in a public affairs capacity or were otherwise authorized to speak directly to the media.