

THE TWO NEW MATERIAL ERRORS ARE THE NEWS FROM THE IG REPORT ON WOODS FILE ERRORS

Footnote 14 in a DOJ Inspector General Report summarizing the problems with the FBI's compliance with the Woods requirement released last week claims to lay out why reviewing Woods file compliance is a good measure of FISA.

14 The OIG's December 2019 FISA Report demonstrates the significant problems that can result from a lack of compliance with the Woods Procedures. For example, one of the Woods Procedures-based failures detailed in our December 2019 report concerned the failure to seek and document the handling agent's approval of the source characterization statement for Christopher Steele in the FISA applications, which we found overstated Steele's bona fides and gave the misimpression that Steele's past reporting to the FBI had been deemed sufficiently reliable by prosecutors to use in court and that more of his information had been corroborated than was actually the case. As detailed in our December 2019 report, the handling agent told us that had he been shown the source characterization statement, as required by the Woods Procedures, he would not have approved it. Given the importance of a source characterization statement to the FISC's determination of a source's reliability, the failure to comply with the Woods Procedures was a significant error on the part of the FBI case agents involved and their supervisors. Moreover, this issue

compounded other serious problems with the subsequent FISA renewal applications, such as the FBI's continued reliance on Steele's information despite the fact that the Primary Sub-source, during his FBI interviews, had contradicted Steele's reporting on several critical issues.

The footnote badly overstates its claim.

In a post laying out how the Woods file errors in Carter Page's applications weren't the real indicators of a problem, I noted that Steele's FBI handler, Mike Gaeta, had explained why he treated Steele's reporting as reliable, even though Steele had never testified in any trials, the measure FBI normally uses to measure the reliability of a source.

[DOJ IG identified two claims unsupported by the Woods file stating] that Christopher Steele's reporting had been corroborated, something the DOJ IG Report lays out at length was not true in the terms FBI normally measured. Except, even there, Steele handler Mike Gaeta's sworn testimony actually said it had been. He described jumping when Steele told him he had information because he was a professional,

And at that time there were a number of instances when his information had borne out, had been corroborated by other sources.

He also provided a perfectly reasonable explanation for why Steele's reporting was not corroborated in the way DOJ IG measured it in the report: because you could never put Steele on a stand, so his testimony would never be used to prosecute people.

From a criminal perspective and

a criminal investigative kind of framework, you know, Christopher Steele and [redacted] were never individuals who were going to be on a witness stand.

In other words, while it appears that DOJ cleaned up many of the errors identified by DOJ IG by finding the documentation to back it over the course of months, the public record makes it clear that Crossfire Hurricane would have been able to clear up even more of the Page Woods file.

Per the IG Report, Gaeta would not have approved the source statement in the Carter Page application as written. But Gaeta is on the record explaining what measure he used to assess a source who would never be asked to testify but whose reporting had nevertheless “borne out.” And Gaeta, per his Congressional testimony, believed Steele’s reporting was worth immediate attention.

There was just one other Woods file error identified in the Carter Page IG Report that wasn’t proven elsewhere that can be publicly tested – a James Clapper claim that Russia had provided money (unproven) and disinformation (proven) to particular candidates. The majority of the problems in the Page report, however, weren’t related to a Woods violation, in large part because they were about critical information omitted from the applications, not included.

That is, the Woods file was pretty much *useless* for identifying the real errors in the Carter Page applications. That’s why I’m sympathetic with a comment that DOJ IG cited critically – DOJ IG judged that the comment “dismiss[ed ...] the weaknesses we identified related to compliance with the Woods Procedures” – that the IG emphasis on Woods file compliance may distract from getting material facts correct.

While we all understand the extreme importance of presenting accurate facts to any court on material issues, there is a concern that we are allowing our efforts to be diverted from that very important goal and instead diverted to the creation of picture perfect Woods binders that literally support every granular fact in the application regardless of whether it is material to probable cause.

That's why – as my previous post laid out at length – the DOJ IG audit is most useful for identifying problems in the claims FBI and DOJ made about the FISA process, as well as larger systematic problems identified. For example, DOJ IG scolded DOJ for releasing a statement boasting, in summer of 2020, of its accuracy, while downplaying the seriousness of the errors DOJ IG identified (something I noted in my earlier post).

On July 30, 2020, following the Department's review of the remaining applications, the FBI issued a press statement that again referenced the FBI's "dedicat[ion] to the continued, ongoing improvement of the FISA process to ensure all factual assertions contained in FISA applications are accurate and complete," while highlighting that "DOJ and FBI discovered only two material errors [in the 29 FISA applications] but—most importantly—neither of these errors is assessed to have undermined or otherwise impacted the FISC's probable cause determinations" (emphasis in original). The statement went on to state that "Within these thousands of facts, there were approximately 201 non-material errors found, across the 29 applications. These include minor typographical errors, such as misspelled words, and slight date inaccuracies."28

However, the statement did not mention that the majority of the FISA application errors—124 of these 201—involved errors beyond minor typographical mistakes and date errors, including deviations from source documentation, misidentified sources of information, and unsupported facts.

The report provided examples of the kinds of errors that DOJ deemed fairly insignificant. My favorite – which DOJ considered non-material – is that a counterintelligence suspect had visited an entirely different continent than the country they were suspected of being an agent of, but FBI misreported that destination.

Example: The FISA application stated the target returned from a trip overseas from the specific country of counterintelligence threat concern, but the support in the Woods File stated that the target was returning from a country on a different continent.

In perhaps the most telling example, though, DOJ IG described how FBI blew off as “subjective” a FISA application assertion that DOJ IG identified as a “potential inaccuracy,” only to have NSD determine the inaccuracy was not only an error, but a material one requiring a report to FISC.

[T]here were 30 instances where FBI field personnel initially determined that the potential inaccuracy we identified was not an error, yet NSD OI ultimately determined it was an error, which was thereafter reported to the FISC. In one instance that was ultimately determined to be a material omission of fact by NSD OI, the FBI field office’s initial response dismissed our note and stated that the issue was “subjective” and “not material to probable cause.”

The IG Report identifies that, in addition to two publicly released letters to FISC (one, two) describing the errors DOJ identified based off DOJ IG's preliminary review of 29 cases, there was a third, dated October 28, 2020, which DOJ NSD has not made public, revealing two additional material errors.

In three separate filings with the FISC on June 15, July 29, and October 28, 2020, the Department and FBI provided the results after their assessment of the CDC accuracy reviews of the 29 FISA applications that the OIG had reviewed and in which we had identified numerous potential errors.¹² In total, the Department notified the FISC about 209 instances of unsupported or inaccurate statements, as well as omissions of fact, that it had identified in 27 of the 29 FISA applications. The Department and FBI further informed the FISC that 2 of the 29 FISA applications reviewed did not contain any inaccurate statements.¹³ Of the total 209 errors reported to the FISC, 162 related to initial concerns identified in the OIG's review. The additional errors reported were identified by the FBI in its subsequent CDC accuracy reviews in response to the FISC's order.

[snip]

The Department and FBI determined that 4 of the 209 identified errors were material errors. FBI policy and the 2009 Accuracy Memorandum define material facts as "those facts that are relevant to the outcome of the probable cause determination" and states that NSD OI determines whether a misstatement or omission is capable of influencing the FISC's probable cause determination. The Department further assessed that none of these 209 errors undermined or otherwise impacted the FISC's probable cause

determinations. The four reported material errors or omissions occurred in three different applications related to different targets. The material errors were:

- *Failing to include context to inform the reader of the application that certain remarks the target made about a particular organization were made, according to evidentiary support, to provoke a response from law enforcement personnel. Instead, the application simply stated that the target expressed support of the referenced organization.*
- *Describing the target's support for a specific group, where the evidence in the Woods File instead indicated the target supported a specific cause.*
- *Describing that the target used a financial account as of a certain date. NSD OI stated that it was not evident from the supporting documentation how recently the government*

had confirmed the target's use of the financial account, and certain evidence on the target's use of the financial account was several years prior to the date included in the application.

- *Failing to include the required reliability statement for one of two CHSs referenced in the application.*

It's not *just* that FBI treated a comment made by someone trying to "provoke a response from law enforcement personnel" as sincere. It's that having already reviewed all these errors and publicly boasted about how minimal they were (even while ignoring that none of the worst problems in the Carter Page applications were found using this methodology), DOJ somehow went back and discovered there were additional problems, one of which they had dismissed as "subjective."

Don't get me wrong. The headline findings – that FBI simply didn't have Woods files for a number of applications – are concerning.

Out of the FBI's stated universe of over 7,000 FISA applications for which Woods Files appeared to be required, we identified at least 179 instances (in addition to the 4 that the OIG previously identified) across 21 field offices where the respective field office reported the Woods File as missing or incomplete and requiring whole or partial reassembly.¹⁷

But they're frankly not the real concern. The real concern is that the Woods file is not designed to fix the problems identified in the Carter Page applications (and this report doesn't describe whether an effort to elicit information that might otherwise be omitted is working). And somewhere along the way, Billy Barr's DOJ admitted to the FISC that their self-congratulatory press boasts turned out to be inaccurate without revealing that publicly.

Update, 11/14/21: I just realized that the Woods File violation pertaining to Clapper involved the FBI paraphrasing a Clapper interview otherwise quoted before and after the violative language.

CLAPPER: In the U.S., the United States. And of course there is a history there of – there is a tradition in Russia of interfering with the elections, their own and others'. So it shouldn't come as a big shock to people. I think it's more dramatic maybe because now they have the cyber tools that they can bring to bear in the same effort. This is still going on, but I will say that it's probably not real, real clear whether there is influence in terms of outcome. What I worry about more, frankly, is just sowing seeds of doubt, where doubt is cast on the whole process. So what are we doing about it? Well, apart from what you talked about, certainly DHS, Secretary Jeh Johnson has been very active with state election officials, offering, you know, our services and best practices and that sort of thing to secure, where appropriate, particularly if there is any dependence on the Internet in the course of the conduct of an election in voter registration, databases or the actual conduct of the election. We have a strength here in that we don't have a centralized electoral system. It's very decentralized among the states and local

officials, and that actually works our advantage to be really a real monumental undertaking to try to affect the election nationally. But again, I think probably the more likely – and I am just surmising here – the more likely objective to would be to try to just sow seeds of doubt about the efficacy and viability and the sanctity – if I could use that word – of the whole system.

_____IGNATIUS: You mentioned that there had been past instances where Russia – in this case I assume the Soviet Union – had tried to interfere in our election process. I probably should know what those are but I don't. What comes to mind in terms of the past history of this? _____CLAPPER: Well, where they have fed money to opposition candidates, or tried to feed disinformation. Again, the way it was done during the Cold War, which of course preceded what we now know as the cyber era. And of course the record is replete with cases of influencing elections in East Europe and that sort of thing by, by today's standards, more primitive methods. They have a history of that