

ON THE JAMES WOLFE INDICTMENT: DON'T FORGET CARTER PAGE

Last night, DOJ unsealed the indictment of James Wolfe, the former Director of Security for the Senate Intelligence Committee. He is accused of one count of false statements to the FBI. The indictment alleges that he lied about his conversation with four journalists, Ali Watkins and three others.

The NYT has revealed that Watkins, who had a three-plus year relationship with Wolfe, had years of her communications subpoenaed. They obtained years of her subscriber information, and a more narrow period of additional information from her phone. As a reminder, the subscriber information that can be obtained with a d-order is tremendously invasive – in addition to name and financial and other contact information, the government obtains IP and device addresses that allow them to map out all the communications a person uses. This post lays out what the government demands from tech companies. Obtaining it will burn all but the most disciplined operational security and with it, a journalists' sources.

The indictment also reveals the government obtained Signal and WhatsApp call records and content; it seems to have been Wolfe's preferred means to communicate "securely." I suspect they obtained the communications after June 2017, by targeting Wolfe's phone. It's possible he voluntarily provided his phone after confronted with his lies, but I suspect they obtained the Signal content via other means, basically compromising his device as an end point. I'll return to this, but it appears DOJ has made a decision in recent days to expose the ease with which they can obtain Signal and other secure chat apps, at least in national security investigations, perhaps to make people less comfortable using it.

What I'd like to focus on, however, is the role of Carter Page in the indictment.

The government lays out clear proof Wolfe lied about conversations with three reporters. With Watkins and another, they point to stories about Carter Page to do so. The Watkins story is this one, confirming he is the person identified in the Evgeny Buryakov indictment. Another must be one of two stories revealing Page was subpoenaed for testimony by the Senate Intelligence Committee – either this one or this one.

I'm most interested, however, in this reference to a story the FBI raised with Wolfe in its interview, a story for which (unlike the others) the indictment never confirms whether Wolfe is the source.

During the interview, FBI agents showed WOLFE a copy of a news article authored by three reporters, including REPORTER #1, about an individual (referred to herein as "MALE-1), that contained classified information that had been provided to the SSCI by the Executive Branch for official purposes

The story suggests they *don't* have content for the communications between Wolfe and Reporter #1, and the call records they're interested in ended last June (meaning the story must precede it).

For example, between in or around December 2015 and in or around June 2017, WOLFE and REPORTER #1 communicated at least five times using his SSCI email account.

For that reason, I suspect this is the story they asked about – whether Wolfe is a source for the original credible story on Carter Page's FISA order. The focus on Page generally in the indictment suggests this investigation started as an investigation into who leaked the fact that Page had been targeted under FISA, and

continued to look at the stories that revealed classified details about the investigative focus on him (stories which he rightly complained to SSCI about).

I know the focus will be on the impact on Watkins and any other journalists DOJ has subpoenaed, if they have with the others; that impact is very real and we'll hear more about how DOJ has shifted its treatment of journalists in upcoming days.

But I'd like to consider what it means that this investigation largely stems from leaks about the investigation into Page.

Page is not at all a sympathetic person. He's nuts, and may well be or have been a willing recruit of Russia. But there are two reasons why the leaks into the investigation into him should be of concern, along with the concern about journalism.

First, whatever the truth about Page, one reason the government treats counterintelligence wiretaps differently than criminal ones is because there are times they need to obtain content from people they don't have probable cause are criminals. Legitimately obtained wiretaps should never be revealed except in legal proceedings anyway, but that's all the more true where the government may be using the wiretap to learn whether someone has been recruited. Unlike Paul Manafort, Mike Flynn, and George Papadopoulos, Carter Page has not been charged, yet the leaks about the investigation into him (including of the damned Steele dossier) have branded him as a Russian spy. I've reported on too many cases where FISA orders were used against people who weren't spies (particularly Chinese Americans), and it needs to be said that investigative targets are kept secret, in part, because they've not been charged yet.

Then there's the flip side to the issue. All the leaks about Carter Page may well have poisoned the investigation into him in several ways.

Certainly, Page and the Russians were alerted to the scrutiny he was under. If he *is* or *was* a Russian spy, the government may never make its case because the stories on Page made it a lot easier for the targets of the investigation to counter it (I actually think several of the less credible leaks about this investigation were designed to do just that).

Indeed, all the leaked stories about him may have made it politically impossible for FBI to continue the investigation. We know the FISA orders against him ceased after all the leaks about his targeting, for example. So if Page is a spy, all the publicity about this may help him get away with it.

The government has wrapped up a tidy indictment where, while they know Wolfe is a source for at least some of the suspect stories about Page, any trial would instead focus on the clear evidence Wolfe lied about things like a multi-year relationship with someone working SSCI and not classified information. Probably, the hope is he'll plea and identify all the stories for which he has been a source. To get there, the government has used awesome powers against at least one journalist (and in Watkins' case, it's not at all clear they needed to do that).

That said, while I don't defend Page as a person at all, the giddy leaks about him do come with a cost in both due process and investigative terms and it's worth remembering that as we talk about this case.